

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, November 13, 1998

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The Commission convened in the Washington Room of the Washington Plaza Hotel, Ten Thomas Circle, Northwest, Washington, D.C., at 8:00 a.m., Mary Frances Berry, Chairperson, presiding.

PRESENT:

- MARY FRANCES BERRY, Chairperson
- CRUZ REYNOSO, Vice Chairperson
- CARL A. ANDERSON, Commissioner (via phone)
- ROBERT P. GEORGE, Commissioner
- A. LEON HIGGINBOTHAM, JR., Commissioner
(via phone)
- RUSSELL G. REDENBAUGH, Commissioner
- RUBY G. MOY, Staff Director

STAFF PRESENT:

- DAVID ARONSON
- KIMBERLEY ALTON
- BARBARA BROOKS
- ERIK BROWN

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WASHINGTON, D.C. 20005-3701

STAFF PRESENT (continued):

SICILIA CHINN

LYNN DICKINSON

PAMELA A. DUNSTON

BETTY EDMISTON

EDWARD A. HAINES, JR.

GEORGE HARBISON

CAROL-LEE HURLEY

TRICIA G. JEFFERSON

LISA JONES

JOSEPH MANILLI

STEPHANIE Y. MOORE, General Counsel

PAM MOYE

GAIL PERRY

MARK PENTINO

PETER REILLY

JESSICA ROFF

EILEEN RUDERT

DAWN SWEET

COMMISSIONER ASSISTANTS PRESENT:

ADERSON FRANCOIS

CHARLOTTE PONTICELLI

KRISHNA TOOLSIE

EFFIE TURNBULL

1 P-R-O-C-E-E-D-I-N-G-S

2 (8:09 a.m.)

3 CHAIRPERSON BERRY: Could I get a motion
4 to approve the agenda for the meeting?

5 COMMISSIONER GEORGE: So moved.

6 COMMISSIONER ANDERSON: Madam Chair?

7 CHAIRPERSON BERRY: Yes.

8 COMMISSIONER ANDERSON: I'd like to second
9 that, but I'd also like to add a very quick line.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER ANDERSON: It relates to
12 yesterday, a representative of the District of
13 Columbia State Advisory Committee. I hope it won't
14 take more than two or three minutes.

15 CHAIRPERSON BERRY: Okay, the statement of
16 Lewis Anthony will be added.

17 VICE CHAIRPERSON REYNOSO: I'd like to add one
18 item pertaining to the press conference and a
19 recommendation that came out of the press conference
20 we had in California pertaining to the issue of the
21 Asian Americans in politics.

22 CHAIRPERSON BERRY: Okay, Asian Americans
23 in politics. Why don't we consider both of those
24 items under the Staff Director's report on the
25 argument that they're on-going items. How's that?

1 VICE CHAIRPERSON REYNOSO: Good.

2 CHAIRPERSON BERRY: Is it all right, with
3 you, Carl?

4 COMMISSIONER ANDERSON: Good.

5 CHAIRPERSON BERRY: Okay, with that,
6 because I have some others on the Staff Director's
7 report.

8 Okay, with that could I get a motion to
9 approve the agenda? I think somebody moved?

10 COMMISSIONER HIGGINBOTHAM: Yes, I moved.

11 CHAIRPERSON BERRY: Did somebody second
12 it?

13 COMMISSIONER GEORGE: Carl did.

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

16 ALL: Aye.

17 CHAIRPERSON BERRY: Opposed? So ordered.
18 Could I get a motion to approve the minutes of the
19 October 16, 1998 meeting?

20 VICE CHAIRPERSON REYNOSO: So moved.

21 CHAIRPERSON BERRY: Second?

22 COMMISSIONER GEORGE: Second.

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

25 ALL: Aye.

1 CHAIRPERSON BERRY: Announcements are the
2 next item on the agenda. You heard, you got some
3 information from the staff director about the omnibus
4 spending bill under which we are operating and you
5 also noted in the information you were given that we
6 have a report that the Commission has to submit to the
7 Congress some time in January about the GAO audit
8 management recommendations on the financial plans of
9 the Commission and I just wanted to make sure that you
10 were aware of that and the staff is working on that
11 and we expect it to do so in the time that -- by the
12 time that the deadlines.

13 The other thing is I wanted to say and I
14 guess I don't know if it's an announcement or not that
15 Commissioner Horner and Commissioner George, as I
16 understand it, this would be their last public
17 meeting of the Commission. Am I correct about that?
18 I don't want to say nice things if --

19 (Laughter.)

20 COMMISSIONER GEORGE: Madam Chair, you are
21 definitely correct.

22 (Laughter.)

23 CHAIRPERSON BERRY: I just wanted to on
24 behalf of the Commission thank and them very much for
25 their service. I have enjoyed the exchanges. We have

1 had agreements and disagreements, but I have always
2 been intellectually stimulated by the experience and
3 I think that we've done many things that have been
4 important for the cause of civil rights and I just
5 want to thank them for their service to this
6 Commission.

7 Does anyone else have any announcements?

8 COMMISSIONER HIGGINBOTHAM: I want to join
9 in giving them our best wishes. I'm sorry that I
10 didn't feel well enough to make the meeting, to shake
11 hands with them personally, but I have a feeling that
12 our paths will cross, but I wish them the very best.

13 COMMISSIONER GEORGE: Madam Chairman, let
14 me say --

15 CHAIRPERSON BERRY: Vice Chairman.

16 VICE CHAIRPERSON REYNOSO: I was just
17 going to join in those sentiments. I've been on the
18 Commission nearly five years so it will be quite a
19 change to not have Robbi and Connie on and I appreciate
20 the exchange of views that we've had during those five
21 years.

22 CHAIRPERSON BERRY: All right. Robbi,
23 did you?

24 COMMISSIONER GEORGE: I just wanted to say
25 thank you, Madam Chairman, to you and to Vice Chairman

1 and to Commissioner Higginbotham for those very
2 kind sentiments and I certainly share and I'm
3 confident that Connie shares the sentiments that you
4 expressed. It's been a pleasure engaging in our many
5 exchanges and I do believe that where we've had
6 differences, we've been able to argue them out in a
7 way that is useful to us and I hope to others on the
8 Commission and even helped the public. And where we've
9 been able to agree, I think that we have been able to
10 work together in the cause of civil rights and I would
11 particularly thank you for your cooperation with me in
12 the schools and religion matter and I'm looking
13 forward very much to receiving the transcripts of
14 those hearings, preparing my statement and to
15 report to the Commission on those. And also say that
16 I very much particularly enjoyed working with you on
17 the church burnings issue where I think we were able
18 to bring some good to out of the evil that was
19 constituted by those church burnings, particularly
20 insurance area and in some other areas calling
21 attention to some issues that really needed attention
22 in those days.

23 So I thank you very much for your
24 leadership and again to all of my colleagues for their
25 kind sentiments.

1 CHAIRPERSON BERRY: Thank you. The next
2 item is the staff director's report. The item
3 concerning the D.C. SAC statement. Commissioner
4 Anderson?

5 COMMISSIONER ANDERSON: Thank you, Madam
6 Chair. I think what I would like to do is propose
7 that we send to the Mayor of the District of Columbia,
8 the Mayor Elect, a letter signed by the Chair, perhaps
9 also signed by the appropriate representative from the
10 District of Columbia State Advisory Committee,
11 referencing the information that was in the statement
12 yesterday that is of the District of Columbia
13 government buildings to all but one, apparently,
14 according to a 1993 survey, were not ADA compliant.
15 Also, the statement referred to the difficulties in
16 the zoning and building permit approval for businesses
17 attempting to accompany the complaint.

18 Now the spirit in which I think this
19 letter should be sent is one in which the Mayor Elect,
20 obviously, during this transition period is putting
21 together his priorities, one to be done certainly in
22 the first year. I think it would be appropriate for
23 us to call to his attention based on what we just
24 heard yesterday, a reminder that ADA ought to be a
25 priority in his Administration.

1 We need not tell him how high a priority.
2 But I think we ought to remind him of this.

3 I also think it might be an occasion to
4 also send him a copy of the report of the Commission
5 regarding Mount Pleasant hearing that we held some
6 time ago. Obviously, there's been some time elapsed,
7 but I have a feeling that not all those
8 recommendations have been implemented and I think it
9 would be well for us to call it to his attention.

10 That's my recommendation.

11 CHAIRPERSON BERRY: All right, if there's
12 no objection, why don't we do that and add to the
13 materials to be sent the SAC. I think the SACs
14 did either a forum or some kind of follow up on the
15 Mount Pleasant recommendation since that time, so that
16 any follow up work that they've done in monitoring
17 that include that in the letter.

18 I'm sure that would be all right with you,
19 Commissioner Anderson?

20 COMMISSIONER ANDERSON: I think that would
21 be greater.

22 CHAIRPERSON BERRY: All right, so without
23 objection I will see to it that the staff will write
24 such a letter and I'll send it and send you guys a
25 copy of it. It will be --

1 COMMISSIONER HIGGINBOTHAM: May I make a
2 suggestion?

3 CHAIRPERSON BERRY: Yes.

4 COMMISSIONER HIGGINBOTHAM: I think the
5 transcript of the relevant portions of the
6 transcription should be included so that the written
7 statement is complete and it will be clear, the source
8 of discussions at issue.

9 CHAIRPERSON BERRY: All right. It will be
10 done without objection.

11 Okay, the Vice Chair, the APA issue?

12 VICE CHAIRPERSON REYNOSO: Yes, Madam
13 Chair. We had a press conference in Los Angeles where
14 we distributed the transcript of the testimony that
15 was presented to us pertaining to the issue of
16 involvement of Asian Americans in politics and the
17 discouragement that came about because of the
18 political, the attacks on them pertaining -- on some
19 of them pertaining to their political contributions.

20 At the press conference, several reporters
21 asked us what our recommendations were after those
22 hearings. And I explained to them this had not been
23 a hearing and, therefore, we had no formal
24 recommendations and however, there were some clear
25 implications, it seems to me, arising from the

1 testimony that we heard. And so I thought it would be
2 a good idea to have the staff maybe take a look at the
3 hearings and see whether or not it's appropriate for
4 us to make some recommendations based on the testimony
5 that we heard. For example, there was some discussion
6 of the transcript whether or not Congress ought to
7 change its own regulations to monitor remarks by their
8 own members that may be demeaning of ethnic or racial
9 groups. We were reminded there are regulations
10 pertaining to what folks can say on the floor of
11 Congress, so I had thought that maybe out of that
12 briefing that we had, there might be some appropriate
13 recommendations. I'm reluctant to make any at this
14 point, but I thought maybe the staff -- obviously
15 there's no urgency because all this happened some time
16 ago, but I thought it would be appropriate for the
17 staff to take a look at it and see whether they indeed
18 suggest that we make some recommendations to the
19 parties, to the President and to Congress.

20 CHAIRPERSON BERRY: And this came out of
21 the press conference that you and Yvonne had?

22 VICE CHAIRPERSON REYNOSO: Right.

23 CHAIRPERSON BERRY: So would it be
24 appropriate then to have -- are you asking that
25 someone on the staff who was there taking note of the

1 questions raised in the press conference, or are you
2 simply saying --

3 VICE CHAIRPERSON REYNOSO: No, no --

4 CHAIRPERSON BERRY: To have somebody here
5 look at the report and see if there's something?

6 VICE CHAIRPERSON REYNOSO: I'm suggesting
7 that the staff, probably General Counsel's office look
8 at the testimony that was received and see whether out
9 of that there's some recommendations that we logically
10 can make.

11 CHAIRPERSON BERRY: I'm trying to remember
12 who did the executive summary of the transcript?

13 VICE CHAIRPERSON REYNOSO: I think that
14 was actually done by -- well, now, I don't know. I was
15 going to say I thought it was done by our press
16 office, but I'm not sure.

17 CHAIRPERSON BERRY: I think it was the
18 press office.

19 VICE CHAIRPERSON REYNOSO: Yes.

20 CHAIRPERSON BERRY: We might leave to the
21 staff director who to assign the work to.

22 VICE CHAIRPERSON REYNOSO: Sure.

23 CHAIRPERSON BERRY: I hesitate to assign
24 more work to the General Counsel's office since it
25 already has a large backlog of work, and even new work

1 coming out of the hearings we're having, as well as
2 all kinds of other things that have nothing to do with
3 our projects.

4 So if it was done, the briefing -- if the
5 summary was done by the press office, it might be
6 possible to have them, along with people in the staff
7 director's office come up with some recommendations
8 that could be reviewed.

9 COMMISSIONER GEORGE: Presumably we have
10 a congressional relations office.

11 CHAIRPERSON BERRY: Or something. The
12 idea is to have the review for recommendations,
13 whoever does it.

14 COMMISSIONER GEORGE: Yes.

15 CHAIRPERSON BERRY: Okay, any objection?
16 If there is no objection we can do that?

17 COMMISSIONER GEORGE: Madam Chairman, just
18 with a note of caution to my friends who will be
19 continuing on the Commission and to new people coming
20 on as a procedural matter, I don't know if there's a
21 precedent for formal recommendations coming out of the
22 briefing, but it does strike me as an idea that
23 perhaps has some risks in it, setting the precedent
24 that formal recommendations could come out of the
25 briefing would mean that it would be unnecessary in

1 the future to set up the apparatus of a hearing with
2 all the formalities and constraints that we operate
3 under with respect to -- on issues that were divisive,
4 but a particular Commissioner thought that he could
5 get a briefing out of, but couldn't convince the
6 Commission to have a hearing on.

7 Also, I would note that in the context of
8 a briefing, a lot of concerns that we have with
9 respect are simply laid aside for the purposes of
10 briefings, the kinds of questions that are asked
11 aren't necessarily those that are asked in a briefing
12 because we're more and particularly in the briefing on
13 Asians in politics, we really were, that was an
14 especially good case in this, much more interested in
15 giving people an opportunity to present concerns that
16 they had than we were in really pressing questions and
17 getting critics to come in and offer alternative views
18 and so forth and so on.

19 There were people who wanted to present
20 concerns that they had to the Commission. They wanted
21 a forum for airing those concerns. They strongly
22 supported us giving that forum and I think it was a
23 good thing that we did. It was a very useful forum.

24 I just wonder here, if the precedent is
25 one that procedurally we might regret and if my

1 concern is warranted at all, that doesn't necessarily
2 say that we should simply drop the Vice Chairman's
3 suggestion here. I wonder what it does mean is that
4 we're sufficiently concerned and sufficiently
5 persuaded that there are some more concrete
6 recommendations to be made that it would warrant us
7 setting up a mini hearing. The briefing would be a
8 very good background for a mini hearing where we could
9 observe the appropriate formalities, bring in the
10 necessary expertise and then have findings which we
11 could defend and then recommendations that are
12 actually based on the fact findings which we could
13 claim as matters of fact because they were subjected
14 to all the rigors of hearing.

15 I don't think we'd have to go in a big
16 deal in three days and all of that to get at the
17 narrow sorts of issues that the vice chairman has in
18 mind as far as recommendations, but I wonder if it
19 might be for the Commission's future the best way to
20 go is to have a bit more formality?

21 VICE CHAIRPERSON REYNOSO: I think that
22 all of those concerns are very appropriate and I would
23 assume that the staff might think those through in
24 recommending that we not issue any recommendations or
25 that we do.

1 The analogy that came to my mind in
2 bringing this to the Commission's attention was more
3 the issues that sometimes are in the press where
4 there's no disagreement in the Commission that we
5 ought to express an opinion as we have some times
6 really on the moment. If, on the other hand, if the
7 staff going over this sees it as more complicated or
8 one in which there would not be pretty clear unanimity
9 of opinion, then I think they ought to recommend that
10 we not issue making recommendations.

11 I was very much thinking about some of the
12 issues that you've raised and I think they're very
13 approachable.

14 COMMISSIONER GEORGE: I guess, Mr.
15 Vice Chairman that the questions that you have in mind are
16 the statements that we issued for example in the
17 controversy about Connie Chung's remarks about
18 Chinese-Asians, then I think that is a very good
19 precedent.

20 Perhaps then the staff could be advised to
21 look to what -- matters that came out of the briefing
22 that were plainly uncontested and uncontestable
23 matters of fact, so that we would, in effect, have a
24 finding basis and then suggestions that we could make
25 along the lines of those that we made in that previous

1 episode that I was calling attention to that I think
2 you had in mind as well that did not necessarily go to
3 matters of policy, but were an exhortation to take
4 care in an area where perhaps people haven't taken
5 sufficient care, as again in that example or in the --
6 another example that comes to mind is and perhaps it's
7 especially appropriate today since again we're
8 contemplating the bombing of an Arab country when
9 we've tried to remind our fellow citizens and the news
10 media and the political class of the dangers in an
11 atmosphere where we're bombing or conducting -- to be
12 careful where we're not putting in jeopardy the rights
13 and interests of our own citizens of ethnic
14 backgrounds shared with our current enemies.

15 VICE CHAIRPERSON REYNOSO: Both of those
16 examples are apt and I would say in terms of my
17 reaction what the staff would be looking at, that if
18 out of that briefing we meet that criteria, i.e.,
19 uncontroverted facts and unanimity of opinion in terms
20 of bringing this to the attention of Congress and the
21 President and the parties, then we should feel free to
22 do that, if it doesn't meet that criteria, we would
23 not.

24 COMMISSIONER GEORGE: I agree.

25 CHAIRPERSON BERRY: General Counsel had a

1 comment to make concerning this discussion. I
2 recognize you.

3 GENERAL COUNSEL MOORE: Vice Chairman, I
4 just wanted to note that under our current procedure
5 that the unsworn testimony in a briefing setting is
6 inappropriate and an inappropriate basis upon which to
7 make formal findings and recommendations.

8 VICE CHAIRPERSON REYNOSO: I didn't have
9 in mind that we would make formal findings, but if the
10 staff review of the testimony were uncontroverted, for
11 example, of what the witness has said, the DNC did,
12 and what the representative of the DNC said, what the
13 DNC said, why then we can have confidence in the
14 accuracy of that testimony, although we obviously
15 aren't -- we aren't proceeding on the basis that
16 this is sworn testimony. We're proceeding on the
17 basis that we can have as much confidence in that the
18 testimony that we heard actually would say in a news
19 account that has been brought to our attention.

20 CHAIRPERSON BERRY: Well, I guess
21 basically -- beg your pardon?

22 GENERAL COUNSEL MOORE: I guess staff was
23 discussing it and if we're talking about something
24 along the lines of a supportive press release based on
25 the fact, then that would be appropriate. But again

1 an official finding would not.

2 VICE CHAIRPERSON REYNOSO: Yes.

3 CHAIRPERSON BERRY: Well, I think what
4 we're discussing here, if I understand the discussion
5 is making statements of the kind that Commissioner
6 George was referring to.

7 VICE CHAIRPERSON REYNOSO: Yes.

8 CHAIRPERSON BERRY: That the Commission
9 has often made about matters that are going on at a
10 particular time and issuing a statement saying that
11 the Commission believes whatever it believes about
12 whatever it is.

13 I think that that distinction has to be
14 drawn between that and the kinds of findings and
15 recommendations that we make out of hearings which I
16 think you clearly understand.

17 VICE CHAIRPERSON REYNOSO: I agree with
18 that and indeed I made that statement at the press
19 conference.

20 CHAIRPERSON BERRY: But the Commission has
21 to have and increasingly given the constraints on
22 resources -- I'll wait until the two of you finish
23 having your discussion.

24 (Pause.)

25 Is there something else you should say to

1 us on the record?

2 GENERAL COUNSEL MOORE: It is, but I was
3 talking to the staff director about something that was
4 previously said.

5 CHAIRPERSON BERRY: The Commission is
6 going to need to find ways to be able to publicly
7 express its views in the absence of hearings because
8 we don't have the resources to have as many hearings
9 as we would like. There are matters where we'd be
10 having hearings every day, but we obviously don't have
11 resources to have hearings every day.

12 Not only do we not have the resources to
13 have the hearings, we don't have the resources to
14 conclude the reports in a timely manner once we do the
15 hearing. And sometimes we forget that once we've done
16 a hearing, that's not the end of a subject, that
17 you've got to have a report.

18 So I think that we've got to find cost
19 effective ways and vehicles for the Commission
20 to be able to express publicly its views, Commissioner
21 George, without having to go through the very lengthy
22 process of hearings which takes a lot of resources.

23 While at the same time we avoid finding
24 facts in a formal way, when we have not found them.
25 So I'm sensitive to that. But I think this is what

1 the Vice Chair is saying is consistent with what you
2 are expressing. So in that way I think that we'll
3 follow with that.

4 Okay, the staff has heard the discussion
5 and they know what we're doing.

6 The only thing I wanted to raise in the
7 Staff Director's report, the last time we had a
8 discussion of the Los Angeles report and in going over
9 the transcript and being advised by the staff director
10 that she had received a memo from Commissioner Horner
11 on this subject, I think that there was some
12 confusion. So I want to point out here that I agreed
13 that Commissioner Horner's statement would be
14 disseminated and published, but I did not agree that
15 her statement would be included in the report because
16 she was not present during the discussions, did not
17 take place, part in the discussions and did not vote.
18 And the Commission has not, in the past, and we've
19 researched this very carefully, ever included a
20 statement by anyone in a report who was not present
21 during the discussions, did not vote and did not
22 participate in the approval or disapproval of the
23 report.

24 At the same time her statement was exactly
25 like word for word, actually word for word, the

1 statement of the dissenters which I think would in
2 addition to being unprecedented, be confusing. So
3 consistent with my agreement as a matter of courtesy,
4 her statement will be printed and included as a
5 separate statement apart from the report, but it will
6 not be included in the report, because that's just
7 illogical, unprecedented and would be confusing to the
8 public.

9 So I just wanted to make that clear on the
10 record because I thought there was some confusion
11 about it.

12 Does anybody else have anything on the
13 staff director's report?

14 COMMISSIONER REDENBAUGH: I just have a
15 question about that. The issue turns on whether the
16 Commissioner votes on a report?

17 CHAIRPERSON BERRY: Actually, voted,
18 participated. You can be present and not vote or you
19 can participate and not vote, but if you had
20 absolutely no participation, you weren't present, you
21 didn't vote, you didn't participate in the discussion,
22 the Commission has never in anything we could find
23 ever included what would appear to be the statement of
24 someone who was at the meeting or voted if the public
25 didn't know any better in a report, in the actual

1 report. That's never happened before.

2 And if we did that, it would be
3 unprecedented.

4 COMMISSIONER REDENBAUGH: Okay, so in
5 order to have a comment, you have to either be at the
6 meeting or vote?

7 CHAIRPERSON BERRY: Yes, if it's a poll,
8 if you're at the meeting, then that's fine. You don't
9 have to vote. If it's done by a poll vote, then you
10 could participate, even if you didn't vote, but we
11 noted as having participated. But if you had
12 absolutely no participation, you weren't present at
13 the meeting, you didn't -- weren't part of the
14 discussions, you can't be called a dissenter. We
15 discussed that last time because you didn't vote so
16 you didn't dissent.

17 In the past, people who were not at a
18 meeting or who didn't participate simply just -- there
19 was no reference at all to them in the report at all,
20 in any of the reports. Their names, of course, are
21 listed on the front with all the Commissioners and
22 being Commissioners of the U.S. Commission on Civil
23 Rights, but there was no special reference or note if
24 there were a dissent and they disagreed with the
25 report, they were not listed as a dissenter because

1 they weren't there. They weren't listed as not having
2 been there, but having dissented. They just got no --
3 it was as if they weren't there, which was true. So
4 if we did that this time that would be unprecedented.
5 It would be the first time that ever happened in the
6 history of the Commission and would be misleading to
7 the public.

8 COMMISSIONER GEORGE: Madam Chairman?

9 CHAIRPERSON BERRY: Yes.

10 COMMISSIONER GEORGE: Has Commissioner
11 Horner been notified of your decision or --

12 CHAIRPERSON BERRY: Well, my view is that
13 I was clear about that last time. I went over the
14 transcript. The confusion was she sent a note to the
15 Staff Director and the Staff Director has not
16 responded, but I am saying this here today so that I
17 can see what everybody says and then the Staff
18 Director will respond to her. But I didn't want the
19 Staff Director to respond to her because there was some
20 confusion, apparently. And so I wanted to make that
21 clear and so I did go over the transcript again and I
22 know that nothing I said would indicate that I said it
23 would be included as part of the report. I just said
24 that I would, as a matter of courtesy to her, see to
25 it that her statement got disseminated. And I will

1 see to that.

2 COMMISSIONER GEORGE: Is that done through
3 the press offices of --

4 CHAIRPERSON BERRY: I'll figure out how to
5 do it. Maybe we'll make a statement. It can be the
6 statement of Commissioner Horner on the report issued
7 by the Commission on -- whatever the report was. I've
8 forgotten what it was.

9 We've issued statements by people on other
10 subjects. This would be unprecedented too, but it
11 seems to me it's less confusing than having it be in
12 the report as if she were there when she was not.

13 COMMISSIONER GEORGE: If it's not in the
14 report, how does it go out? I just don't see how --
15 is it a press release?

16 CHAIRPERSON BERRY: Anybody who looked up
17 the report in the Commission's list of reports would
18 see that she made a statement on the Los Angeles --

19 COMMISSIONER GEORGE: Oh, okay, so there
20 would be some notation --

21 CHAIRPERSON BERRY: Oh yes. It would
22 become an official publication of the Commission.

23 COMMISSIONER GEORGE: Okay.

24 CHAIRPERSON BERRY: Yes. Okay. She'd
25 have her own separate little publication.

1 COMMISSIONER GEORGE: I suppose the
2 analogy there would be -- although the circumstances
3 were different, the statements that Commissioner Horner and I
4 are going to make on the transcript of the Schools and
5 Religion report. This is our separate statement.

6 CHAIRPERSON BERRY: Yes, Commissioner?

7 COMMISSIONER REDENBAUGH: Doesn't her
8 statement clarify that possible confusion you point to
9 by pointing out at the beginning of her statement that
10 she wasn't present and didn't vote?

11 CHAIRPERSON BERRY: I don't remember. I
12 don't remember. I actually think it was a bad ruling
13 on my part to even rule that we would issue her
14 statement separately, but since I did it, I can't take
15 that back. But I do think we need to discuss this at
16 some point. I think it was unprecedented. It does
17 not establish a precedent and I hope the issue doesn't
18 come up again because I have just always assumed that
19 if the Commissioners weren't there, this had never
20 happened before, Commissioners themselves assumed that
21 if they weren't there, unless they made some special
22 arrangement for themselves with the agreement of the
23 Commissioners like you've done on Schools and
24 Religion, that if you weren't there, you weren't
25 there.

1 COMMISSIONER GEORGE: Madam Chairman, just
2 a bit of advice to my fellow Commissioners who are
3 staying on the Commission and those to join in the
4 future, it might be useful to avoid conflict over
5 these matters in the future to have at the New Year
6 with the new Commissioners a general discussion right
7 off the bat of the issue of when Commissioners' names
8 can and cannot be, will and will not be attached to
9 statements of the Commission. This has come up in the
10 past, not with reports, but with press releases from
11 the Commission where Commissioners' names are listed
12 and sometimes Commissioners objected to having their
13 names listed and so forth. So I think if it were made
14 clear to everybody, there was just agreement as to
15 when not just with respect to reports but in general,
16 when a Commissioner's name can and can't be listed, as
17 to what you do to not have your name listed and what you
18 have to do if you want your name to be listed, then it
19 will be clear and future conflicts over this would be
20 avoided. Maybe just set aside a half an hour at a
21 Commission meeting fairly early on on that precise
22 issue.

23 CHAIRPERSON BERRY: I think more than that
24 needs to be done. I think what we need to do is --
25 some of these matters are in the manual that the

1 Commissioners get. I haven't read it in ages, myself,
2 and I sometimes think that we all need to read it more
3 carefully. But maybe we ought to at a meeting just go
4 over some of these items early on.

5 COMMISSIONER GEORGE: That's my thought.

6 CHAIRPERSON BERRY: So that people know
7 procedurally and then we don't have to fight about it
8 over some matter that is already settled and then have
9 suspicion about people's motives when really it is
10 that people are simply trying to do whatever we're
11 supposed to do.

12 I think that's good advice.

13 COMMISSIONER GEORGE: I think it's one of
14 those areas where it matters less what the rule is in
15 the end than that the rule is clear to everybody.

16 CHAIRPERSON BERRY: Right.

17 COMMISSIONER GEORGE: There are probably
18 a lot of different ways to do it. They have
19 strengths, pluses and minuses, but you need a bright
20 line rather than a blurry one.

21 CHAIRPERSON BERRY: I'll take your advice
22 and I think that ought to be done early on and some
23 time devoted to it.

24 Okay, we have -- if there's nothing else
25 on the Staff Director's --

1 COMMISSIONER ANDERSON: Madam Chair?

2 CHAIRPERSON BERRY: Yes.

3 COMMISSIONER ANDERSON: I have just two or
4 three quick questions of the Staff Director regarding
5 the report.

6 CHAIRPERSON BERRY: Yes, please go ahead.

7 COMMISSIONER ANDERSON: The first one is
8 about the omnibus bill provisions requiring two
9 reports that need to be submitted by the end of
10 January 1999. In the Staff Director's agenda will we
11 discuss those reports at the January 22nd Commission
12 meeting or do you think we would begin to draft
13 earlier than that?

14 STAFF DIRECTOR MOY: Staff is working on
15 it, so we will probably run the first draft through.

16 COMMISSIONER ANDERSON: Okay, thank you.
17 Regarding the draft regulation that was submitted to
18 OMB for the public review and OMB approval, are we
19 going to be informed as to the process that continues
20 as to OMB's comments if there are any and the tenor of
21 the public comment during the comment period?

22 STAFF DIRECTOR MOY: Yes, Commissioner
23 Anderson. Right now it is in OMB and it's going
24 through their processes right now.

25 COMMISSIONER ANDERSON: So if we get

1 comments back from them we'll be informed of that?

2 STAFF DIRECTOR MOY: Yes.

3 COMMISSIONER ANDERSON: Okay, then I guess
4 my final question is I noticed that the Senate in the
5 Conference Committee on the spending bill gave them
6 \$160,000 over the House passed bill. Any indication
7 as to why the Senate has \$160,000 increase over the
8 House passed bill?

9 STAFF DIRECTOR MOY: It was my
10 understanding that it went to COLAs, because we've
11 been flat lined in the past years.

12 COMMISSIONER ANDERSON: So you think this
13 is for the COLA increases?

14 STAFF DIRECTOR MOY: Yes.

15 COMMISSIONER ANDERSON: Okay. All right,
16 thanks so much.

17 STAFF DIRECTOR MOY: You're welcome.

18 CHAIRPERSON BERRY: The only other thing
19 is calendar right quick. The January meeting, we may
20 need to change the date for the January meeting. Judge
21 Higginbotham, do you know what dates you will be
22 available in January? When you won't be available?

23 COMMISSIONER HIGGINBOTHAM: I will not be
24 available the first and the fourth week of January I
25 believe.

1 CHAIRPERSON BERRY: The first and the
2 fourth week?

3 COMMISSIONER HIGGINBOTHAM: In January.

4 CHAIRPERSON BERRY: So is the 22nd in the
5 fourth week? Does anybody know? I don't have a
6 calendar.

7 COMMISSIONER HIGGINBOTHAM: I believe
8 that's the third week.

9 COMMISSIONER ANDERSON: The third week
10 will be bad for me.

11 CHAIRPERSON BERRY: Will be bad for you,
12 Commissioner?

13 COMMISSIONER ANDERSON: I could be
14 available on the --

15 CHAIRPERSON BERRY: We're supposed to have
16 a meeting on the 22nd --

17 COMMISSIONER ANDERSON: I could be
18 available on the 29th or I could be available on the
19 8th.

20 CHAIRPERSON BERRY: The 29th or the 8th.
21 8th of January you mean?

22 COMMISSIONER ANDERSON: Yes.

23 CHAIRPERSON BERRY: Are both of those bad
24 for you, Commissioner Horner, I mean Commissioner
25 Anderson? I know you said the end of the month was,

1 what about the 8th?

2 COMMISSIONER ANDERSON: Can I ask you are
3 we looking at dates other than Fridays?

4 CHAIRPERSON BERRY: Isn't the 8th -- I
5 don't have a calendar. Is the 8th a Friday?

6 COMMISSIONER HIGGINBOTHAM: Yes.

7 CHAIRPERSON BERRY: The 8th is Friday.

8 COMMISSIONER ANDERSON: The 29th would be
9 bad for me but any other Friday would be acceptable.

10 CHAIRPERSON BERRY: How about the 8th?

11 COMMISSIONER ANDERSON: 8th would be fine.

12 CHAIRPERSON BERRY: How about you,

13 Commissioner Redenbaugh?

14 COMMISSIONER REDENBAUGH: I don't have my
15 calendar. I didn't anticipate this. I'm sorry.

16 CHAIRPERSON BERRY: I know you didn't
17 anticipate this. I didn't either until this morning.

18 Can we have somebody check for you?

19 COMMISSIONER REDENBAUGH: Maybe the staff
20 can call this Monday.

21 CHAIRPERSON BERRY: Why don't we try doing
22 this. Why don't we try saying that we might change
23 the meeting to the 8th contingent upon whether
24 Commissioner Redenbaugh and Commissioner Lee can meet
25 at that time and have the staff check with them. And

1 we'll get back to you some time next week with this.
2 But the 8th is a possibility. All right? Otherwise,
3 just hold the date that you have now which is the
4 24th. Is that right?

5 COMMISSIONER ANDERSON: 22nd.

6 CHAIRPERSON BERRY: 22nd. Okay. All
7 right, State Advisory Appointments for Michigan.
8 Could I get a motion?

9 VICE CHAIRPERSON REYNOSO: So moved.

10 CHAIRPERSON BERRY: Second? Anybody want
11 to second? State Advisory Committee Appointments for
12 Michigan. No Michigan State Advisory Committee
13 Appointments?

14 Are people unready to approve the State
15 Advisory Committee Appointments for the State of
16 Michigan?

17 Should we then -- what would we do if I
18 continue this until next month, staff? Will it make
19 any difference? Okay, staff says no. We'll put it on
20 the agenda again for next month.

21 Any other agenda items, future agenda
22 items? If not, then the meeting -- can I get a motion
23 to adjourn?

24 VICE CHAIRPERSON REYNOSO: So moved.

25 CHAIRPERSON BERRY: Second?

1 COMMISSIONER REDENBAUGH: Second.

2 CHAIRPERSON BERRY: Okay, without
3 objection, the meeting is adjourned. We will now go
4 to the hearing.

5 (Whereupon, at 8:45 a.m., the meeting was
6 concluded.)

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