

1 U.S. COMMISSION ON CIVIL RIGHTS

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3

MEETING

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5

Friday, September 18, 1998

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The Commission convened in Suite 540,
8 YMCA Building, 624 9th Street N.W. Washington,
9 D.C. 20425 at 9:38 a.m., Mary Frances Berry,
10 Chairperson, presiding.

11

PRESENT:

12

MARY FRANCES BERRY, CHAIRPERSON

13

CRUZ REYNOSO, VICE CHAIRPERSON

14

CARL A. ANDERSON, COMMISSIONER

15

ROBERT P. GEORGE, COMMISSIONER

16

A. LEON HIGGINBOTHAM, JR., COMMISSIONER (Via

17

Telephone)

18

YVONNE Y. LEE, COMMISSIONER

19

RUSSELL G. REDENBAUGH, COMMISSIONER

20

RUBY G. MOY, STAFF DIRECTOR

21

STAFF PRESENT:

22

KIMBERLEY ALTON

23

DAVID ARONSON

24

ANDREA BAIRD

25

BARBARA BROOKS

- 1 DAVID CHAMBERS
- 2 SICILIA CHINN, Parliamentarian
- 3 KI-TAEK CHUN
- 4 JAMES S. CUNNINGHAM
- 5 PAMELA DUNSTON
- 6 BETTY EDMISTON
- 7 M. CATHERINE GATES
- 8 EDWARD A. HAILES, JR.
- 9 GEORGE M. HARBISON
- 10 CAROL-LEE HURLEY
- 11 REBECCA KRAUS
- 12 STEPHANIE Y. MOORE, General Counsel
- 13 MARCIA TYLER
- 14 AUDREY WRIGHT
- 15 COMMISSIONER ASSISTANTS PRESENT:
- 16 KAREN CENCE
- 17 CHARLOTTE PONTICELLI
- 18 WILLIAM L. SAUNDERS, JR.
- 19 KRISHNA TOOLSIE
- 20 EFFIE TURNBULL

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P R O C E E D I N G S

(9:38 a.m.)

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CHAIRPERSON BERRY: Why don't we go ahead and start because we have a quorum? I think Judge Higginbotham is going to be on, and I guess Commissioner George will come in at some point.

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

COMMISSIONER ANDERSON: Madam Chair?

CHAIRPERSON BERRY: Yes.

COMMISSIONER ANDERSON: I have an addition to the agenda, if that would be possible.

CHAIRPERSON BERRY: Sure.

COMMISSIONER ANDERSON: I would like to address the matter regarding the investigation of the alleged conspiracy regarding the assassination of Dr. King?

CHAIRPERSON BERRY: Okay.

COMMISSIONER ANDERSON: I would like to do that maybe earlier in the meeting, rather than later, if that is possible.

CHAIRPERSON BERRY: Okay, let's

1 see. Let's find a place for it.

2 Why don't we put it after we do the
3 SAC appointments? Okay?

4 COMMISSIONER ANDERSON: Okay, thank
5 you.

6 CHAIRPERSON BERRY: With that,
7 anybody else have a change in the Agenda?

8 (No response)

9 I. Approval of Agenda

10 CHAIRPERSON BERRY: Could someone
11 move the approval of the agenda with the
12 change that has been suggested?

13 COMMISSIONER ANDERSON: So moved.

14 CHAIRPERSON BERRY: Second?

15 COMMISSIONER LEE: Second.

16 CHAIRPERSON BERRY: All in favor,
17 indicate by saying aye?

18 (Chorus of ayes)

19 CHAIRPERSON BERRY: Opposed?

20 (No response)

21 CHAIRPERSON BERRY: So ordered.

22 II. Approval of Minutes

23 of June 23, and July 10, 1998, Meetings

24 CHAIRPERSON BERRY: Could I get a
25 motion approving the Minutes of the June 23rd

1 and July 10th meetings?

2 VICE CHAIRPERSON REYNOSO: So
3 moved.

4 COMMISSIONER ANDERSON: Second.

5 CHAIRPERSON BERRY: Okay,
6 discussion?

7 (No response)

8 CHAIRPERSON BERRY: All in favor,
9 indicate by saying aye?

10 (Chorus of ayes)

11 CHAIRPERSON BERRY: Opposed?

12 (No response)

13 CHAIRPERSON BERRY: So ordered.

14 III. Announcements

15 CHAIRPERSON BERRY: Announcements.

16 The only announcement I can think of is, of
17 course, we have a C.R., as usual, continued
18 resolution through October 9th, and there
19 will be more on the subject I am sure as we
20 go along.

21 Is there anything else, Ruby?

22 STAFF DIRECTOR MOY: Yes. I am
23 pleased to announce that Sicilia Chinn has
24 been designated to serve as the Alternate
25 Designated Agency Ethics Official for the

1 Commission. She replaces Marlissa.

2 CHAIRPERSON BERRY: She is also
3 the Parliamentarian.

4 COMMISSIONER ANDERSON: I have an
5 announcement.

6 CHAIRPERSON BERRY: Yes, yes.

7 COMMISSIONER ANDERSON: I would
8 like to say that my special assistant, Karen
9 Cence, this will be her last meeting. She is
10 now the special assistant to Commissioner
11 Mason at the Federal Election Commission.

12 I would just like to take this
13 opportunity publicly to thank her for all the
14 good work that she has done and the dedicated
15 support I have received from her.

16 CHAIRPERSON BERRY: All right.
17 Well, good luck to you. We have enjoyed
18 having you here and may you have more fun and
19 games over at the FEC. Which is not in the
20 eye of the storm.

21 (Laughter)

22 CHAIRPERSON BERRY: So be it. Good
23 morning, Commissioner.

24 (Commissioner George enters the
25 room.)

1 COMMISSIONER GEORGE: Good morning.

2 CHAIRPERSON BERRY: Also, I would
3 like to announce, or would you, please, like
4 to announce that you have a new assistant?

5 VICE CHAIRPERSON REYNOSO: Yes. I
6 have a new assistant, a UCLA graduate, of
7 course, Effie Turnbull.

8 CHAIRPERSON BERRY: Welcome.
9 Welcome, welcome.

10 Any other announcements?

11 (No response)

12 IV. Staff Director's Report

13 CHAIRPERSON BERRY: Okay, any
14 questions? Let's go to the Staff Director's
15 report.

16 Any discussion or questions
17 concerning the Staff Director's Report from
18 any of the Commissioners at this point?

19 Yes, Commissioner Redenbaugh?

20 COMMISSIONER REDENBAUGH: Yes, I
21 have a question or a series, two or three,
22 actually, about the New York hearing report.

23 CHAIRPERSON BERRY: Okay.

24 COMMISSIONER REDENBAUGH: So, Staff
25 Director, this is maturing rather nicely,

1 this report.

2 We have been expecting it since
3 August of 1997, and more recently, we were
4 promised this in March. I wonder if you can
5 now make a more definitive statement about
6 when we might have this?

7 CHAIRPERSON BERRY: Staff Director?

8 STAFF DIRECTOR MOY: Yes, thank
9 you. As you know, we have had the schools
10 and religion hearing, in which the affected
11 people who were involved with schools and
12 religion had to be involved with the
13 formulation of this hearing, not only in the
14 two hearings, but also the briefing in
15 August.

16 COMMISSIONER REDENBAUGH: Yes.

17 STAFF DIRECTOR MOY: The report
18 that you are talking about to go before the
19 affected organizations will not be done until
20 November before the ADA hearing.

21 COMMISSIONER REDENBAUGH: Now, I
22 was told in February that those actually had
23 already, at that time, been released to the
24 affected organizations.

25 STAFF DIRECTOR MOY: I believe, at

1 that time, we had the disc, and it was
2 garbled, and it had to go back for however
3 they ungarble discs before we could really
4 look at the language on it.

5 COMMISSIONER REDENBAUGH: Not only
6 my recollection, but my notes show that there
7 was a lot of press discussion in February
8 about this report, with some specificity, and
9 I was told that the press had this
10 information because it came from copies that
11 were released to the affected agencies or
12 affected parties.

13 STAFF DIRECTOR MOY: I remember
14 that article. However, no reports were
15 disseminated from our office.

16 COMMISSIONER REDENBAUGH: So the
17 affected parties didn't receive and have not
18 yet received?

19 STAFF DIRECTOR MOY: That is
20 correct.

21 COMMISSIONER REDENBAUGH: So, my
22 notes are incorrect.

23 STAFF DIRECTOR MOY: Correct.

24 COMMISSIONER REDENBAUGH: Yes?

25 STAFF DIRECTOR MOY: I mean, your

1 notes are incorrect.

2 COMMISSIONER REDENBAUGH: Right.

3 CHAIRPERSON BERRY: So could we get
4 a definitive -- if I may ask, if I may
5 interrupt you, Russell -- when will they go
6 to the affected organizations?

7 COMMISSIONER REDENBAUGH: That is
8 all right.

9 CHAIRPERSON BERRY: Do you mind my
10 asking that, Russell? I just asked, when
11 exactly will the reports go to the
12 organizations?

13 Do you mind my interrupting you,
14 Russell?

15 (Pause)

16 COMMISSIONER REDENBAUGH: I am
17 sorry. I do not mind at all.

18 CHAIRPERSON BERRY: Okay.

19 COMMISSIONER REDENBAUGH: Everybody
20 was waiting for everybody else. I was being
21 unusually polite.

22 CHAIRPERSON BERRY: Oh, I see.

23 (Laughter)

24 COMMISSIONER HIGGINBOTHAM: Hello?

25 CHAIRPERSON BERRY: Because you had

1 the floor, and I thought I would just ask.

2 Somebody said hello? Who said
3 hello?

4 COMMISSIONER HIGGINBOTHAM: Good
5 morning.

6 CHAIRPERSON BERRY: Oh, good
7 morning.

8 COMMISSIONER HIGGINBOTHAM: We have
9 been trying to get it through, but they
10 couldn't, but now, I am there. I just want
11 you to know I am here; that is all.

12 CHAIRPERSON BERRY: All right,
13 thank you. We are on the Staff Director's
14 Report.

15 COMMISSIONER HIGGINBOTHAM: Okay,
16 fine.

17 CHAIRPERSON BERRY: Commissioner
18 Redenbaugh is asking --

19 COMMISSIONER HIGGINBOTHAM: I was
20 ready this morning. It wasn't that I wasn't
21 ready to listen.

22 CHAIRPERSON BERRY: Okay.

23 VICE CHAIRPERSON REYNOSO: Should
24 we explain to the judge that the proper way
25 to do this is to clear his throat, and that

1 way we know he is on the phone?

2 CHAIRPERSON BERRY: Yes. Clear
3 your throat, next time, okay?

4 COMMISSIONER HIGGINBOTHAM: All
5 right.

6 (Laughter)

7 CHAIRPERSON BERRY: Staff Director,
8 could you tell us when the report will, in
9 fact, go to the organizations, to your
10 knowledge?

11 STAFF DIRECTOR MOY: Yes, before
12 the ADA hearing.

13 CHAIRPERSON BERRY: I have
14 forgotten when that would be.

15 COMMISSIONER REDENBAUGH: So, that
16 would be?

17 STAFF DIRECTOR MOY: That is in
18 November.

19 COMMISSIONER REDENBAUGH: Okay.
20 All right.

21 STAFF DIRECTOR MOY: We are talking
22 about probably the next month, October.

23 COMMISSIONER REDENBAUGH: I think,
24 there being only one month between now and
25 November --

1 STAFF DIRECTOR MOY: Right.

2 COMMISSIONER REDENBAUGH: It is
3 quite likely it would be October.

4 Now, I understand that the schools
5 and religion project did involve some of the
6 same people, but in a prior meeting, the
7 transcript shows that Commissioner Anderson
8 asked a series of questions about the schools
9 and religion project and was reassured very
10 strongly that the project would not interfere
11 with the New York hearing.

12 STAFF DIRECTOR MOY: Yes. May I
13 respond?

14 CHAIRPERSON BERRY: Yes, go right
15 ahead.

16 STAFF DIRECTOR MOY: At that time,
17 we were fully staffed with the people that we
18 had on-board, and, of course, I had indicated
19 at that time that there were several members
20 who had departed the Agency, as well as we
21 had a death with one of the members who was
22 involved with this report as well and had
23 taken off for bereavement.

24 CHAIRPERSON BERRY: Was that
25 Lillian -- she left, right? Lillian?

1 STAFF DIRECTOR MOY: She left, and
2 we also had the General Counsel.

3 CHAIRPERSON BERRY: Yes. I forgot
4 Lillian's name.

5 COMMISSIONER REDENBAUGH: So, these
6 staff departures were before the schools and
7 religion project?

8 STAFF DIRECTOR MOY: Well, during
9 the whole.

10 COMMISSIONER REDENBAUGH: During.

11 STAFF DIRECTOR MOY: During.

12 COMMISSIONER REDENBAUGH: Is it
13 your thought that the management information
14 system, which I have been interested in
15 following the progress, will be helpful to
16 you in discovering these things earlier?

17 STAFF DIRECTOR MOY: Yes. Yes,
18 because according to the tracking system, we
19 will be able to find out why the delay would
20 be in whatever given project.

21 COMMISSIONER REDENBAUGH: Yes.

22 STAFF DIRECTOR MOY: And the
23 reasons.

24 COMMISSIONER REDENBAUGH: When
25 might that system be in effect?

1 STAFF DIRECTOR MOY: Well, it is in
2 effect in some of the project programs that
3 we have now. In fact, I will be glad to show
4 you a chart. It is about 15 pages, but I can
5 defer that to a time when we can do a visual.

6 COMMISSIONER REDENBAUGH: That
7 would be fine. As you know, I continue to be
8 interested in the progress on that and
9 continue to look forward to when you are able
10 to give more definitive answers to these
11 kinds of questions.

12 STAFF DIRECTOR MOY: Well, I could
13 do two projects right now if you would like.

14 CHAIRPERSON BERRY: No, we are not
15 going to, because we don't have time,
16 Russell.

17 Could I ask the Staff Director? We
18 will be in a position to report to the -- we
19 gave ourselves a deadline of September 30th
20 to implement the MIS, the AIs, and to finish
21 the CFR.

22 STAFF DIRECTOR MOY: That is
23 correct.

24 CHAIRPERSON BERRY: To your
25 knowledge, we will be in a position to report

1 that that has been accomplished by September
2 30th?

3 STAFF DIRECTOR MOY: Yes.

4 CHAIRPERSON BERRY: That is great.
5 Okay. Russell, do you have any other
6 questions?

7 COMMISSIONER REDENBAUGH: Not at
8 this time, thanks.

9 CHAIRPERSON BERRY: Okay. Anybody
10 else have any questions on the Staff
11 Director's Report?

12 Yes, Commissioner George?

13 COMMISSIONER GEORGE: Thank you,
14 Madam Chairman. Just shifting over now to
15 schools and religion.

16 First, I want to express my thanks,
17 although I am often reminded that it is not
18 quite proper to thank people for doing their
19 jobs; so maybe I should change that slightly
20 and say I would like to congratulate people
21 for the hearing.

22 You, in particular, Madam Chairman,
23 for your chairmanship, which was very
24 effective and very fair.

25 CHAIRPERSON BERRY: Thank you.

1 COMMISSIONER GEORGE: I think it is
2 exemplary and of great use, I think, to the
3 whole Commission, to the Staff Director, and
4 to Eddie Hailes, for the fine jobs that they
5 did with respect to these hearings.

6 I know that Stephanie Moore was not
7 as involved as she would like to have been
8 because of bereavement, but I am sure that
9 Stephanie's involvement was also, in a
10 supervisory role, very effective here, and I
11 congratulate her for that.

12 Then, my remaining point is simply
13 the question of when we can expect to receive
14 the transcripts from the two hearings and the
15 Washington Consultation on Schools and
16 Religion?

17 STAFF DIRECTOR MOY: Well, as you
18 know, they have to go through all the legal
19 aspects.

20 Is there something wrong, because I
21 can't hear some others speak as well. Is
22 there something wrong with the microphones?

23 Anyway, as you know, they have to
24 go through legal sufficiency -- with the
25 transcripts.

1 CHAIRPERSON BERRY: Do we have any
2 idea when we might --

3 COMMISSIONER GEORGE: Yeah,
4 let's --

5 CHAIRPERSON BERRY: Do you mind if
6 I follow-up?

7 COMMISSIONER GEORGE: No, please.

8 CHAIRPERSON BERRY: Do we have any
9 idea? Do you want to ask Eddie if he knows
10 or has any idea when the transcripts might be
11 available or ask Stephanie if she knows?

12 STAFF DIRECTOR MOY: Mr. Hailes is
13 in the audience.

14 MR. HAILES: We are in the process
15 of receiving edits from the participants in
16 all three Commission proceedings in the
17 schools and religion project.

18 We expect by mid-October to have a
19 sufficient number of those edits completed to
20 begin preparing for the distribution of the
21 transcripts sometime before the November
22 meeting.

23 COMMISSIONER GEORGE: So the target
24 date, if I may, Madam Chairman, the target
25 date would be the November meeting, to have

1 the transcripts by the November meeting?

2 MR. HAILES: Exactly.

3 COMMISSIONER GEORGE: Thank you.

4 CHAIRPERSON BERRY: Anyone else?

5 COMMISSIONER GEORGE: Let me just
6 follow that up, to Eddie.

7 CHAIRPERSON BERRY: Sure.

8 COMMISSIONER GEORGE: Eddie, do you
9 foresee anything, now, that might -- I know
10 the unforeseen is by definition unforeseen,
11 but is there anything now that might push
12 that back further? Staffing problems that
13 you see? Or are you pretty confident that we
14 can get it by the November meeting?

15 MR. HAILES: I am confident.

16 COMMISSIONER GEORGE: Confident.
17 Thank you.

18 CHAIRPERSON BERRY: Okay,
19 Commissioner Redenbaugh?

20 COMMISSIONER REDENBAUGH: Do we
21 still have the ADA hearing?

22 CHAIRPERSON BERRY: Yes, we do.

23 COMMISSIONER REDENBAUGH: In
24 November.

25 CHAIRPERSON BERRY: Is it in

1 November? Somebody tell me.

2 STAFF DIRECTOR MOY: Yes.

3 CHAIRPERSON BERRY: Yes.

4 COMMISSIONER REDENBAUGH: I am
5 concerned about that date, in that it seems
6 very close and that we have a number of
7 things pending as we approach the end of the
8 calendar year.

9 It is also a date which I can't
10 easily be here. I may not even be able to be
11 here; so I want to inquire, what is the
12 status of that, and if it would, in fact, be
13 disruptive to postpone that? And it may be.
14 I am not sure where we are in the process.

15 CHAIRPERSON BERRY: Staff Director?

16 STAFF DIRECTOR MOY: The ADA is
17 going to be held in November, and I have
18 already mentioned to the appropriate staff to
19 search for sites, if not here, to have the
20 hearing.

21 CHAIRPERSON BERRY: Don't we
22 already have a site?

23 STAFF DIRECTOR MOY: There were a
24 couple that were suggested.

25 COMMISSIONER GEORGE: Well, does --

1 CHAIRPERSON BERRY: Just a minute.
2 Could I follow-up?

3 COMMISSIONER GEORGE: Yes.

4 CHAIRPERSON BERRY: How is the site
5 selection? What is the status of it now as
6 far as you -- are we having it here, or are
7 we having it -- where are we having it?

8 Could you recognize Betty and ask
9 her?

10 STAFF DIRECTOR MOY: Okay, I
11 recognize Betty.

12 MS. EDMISTON: We are not planning
13 on having it in this building. We were
14 looking at a hotel site that meets all the
15 requirements of ADA.

16 This building, because of its age,
17 has limited requirements; so we thought a
18 different site. Many of the hotels are now
19 totally compatible with ADA because of their
20 renovation.

21 We are not required to be in full
22 compliance of all the requirements for a new
23 building under ADA.

24 CHAIRPERSON BERRY: What is the
25 status of the inquiries about --

1 MS. EDMISTON: We have one site
2 which we postponed previously and made a
3 commitment to that company that we would try
4 them again if we had the ADA hearing.

5 CHAIRPERSON BERRY: Okay, so you
6 have a place picked. Thank you, Betty.

7 MS. EDMISTON: Yes.

8 CHAIRPERSON BERRY: What is the
9 status insofar as work that is being done on
10 preparing for the hearing?

11 STAFF DIRECTOR MOY: Work has
12 started on that.

13 CHAIRPERSON BERRY: How far along
14 is it; do you know? Could you recognize the
15 General Counsel and ask her?

16 STAFF DIRECTOR MOY: Yes.

17 CHAIRPERSON BERRY: Stephanie, how
18 far along? What is happening with ADA?

19 MS. MOORE: Well, the staff is in
20 the process of identifying potential
21 participants for the hearing. We expect to
22 have -- I don't have the milestones in front
23 of me, but I expect to have topic papers to
24 the Commissioners, or to the Staff Director
25 for transmission to the Commissioners, by

1 early October.

2 CHAIRPERSON BERRY: Okay.

3 MS. MOORE: The hearing has been
4 postponed once, Commissioner Redenbaugh --

5 COMMISSIONER REDENBAUGH: Yes.

6 MS. MOORE: So I am not sure if a
7 further delay would be desirable.

8 CHAIRPERSON BERRY: Okay.

9 Commissioner George.

10 COMMISSIONER GEORGE: Madam
11 Chairman, I would just like to confirm the
12 date. I have the 12th of November; is that
13 correct?

14 CHAIRPERSON BERRY: I think that is
15 right. Isn't that when the meeting is?

16 COMMISSIONER GEORGE: Could someone
17 confirm it definitely?

18 VICE CHAIRPERSON REYNOSO: I have
19 down both the 12th and 13th.

20 CHAIRPERSON BERRY: Right.

21 VICE CHAIRPERSON REYNOSO: Is it a
22 two-day meeting?

23 CHAIRPERSON BERRY: Yes, we have
24 the meeting and the hearing.

25 Commissioner Redenbaugh, did you

1 want to say something else?

2 COMMISSIONER REDENBAUGH: Yes, and
3 I am mindful that this has been postponed
4 once.

5 My concern is, I would rather
6 postpone it twice than task the staff to do
7 something which may be impossible for them to
8 do, given the other projects they have to do
9 and the number of vacancies we have.

10 So my question really is about the
11 realistic, about whether this is realistic to
12 do this in less than two months.

13 CHAIRPERSON BERRY: What is the
14 staff view of whether it is realistic or not,
15 since they are the ones that have to do the
16 work?

17 STAFF DIRECTOR MOY: It depends.
18 If we have already made the deposit on the
19 hotel, we would lose that again. Or the
20 people who are involved, I believe that the
21 Office of General Counsel, they have already
22 interviewed people for the vacancies that we
23 have and are in the process of coming
24 on-board now; so we will have three new
25 people in the Office of General Counsel in

1 which the hearing comes under their purview.

2 So I think we would be all right
3 doing this. We have to remember that in
4 December we are also doing another event.

5 CHAIRPERSON BERRY: That is Crisis?

6 STAFF DIRECTOR MOY: Crisis in the
7 African American Males.

8 Then we have the next year, which
9 usually follows with the planning and fiscal.

10 CHAIRPERSON BERRY: Could we ask
11 OGC what their view is, of whether in terms
12 of the work load, whether we ought to
13 contemplate this? In terms of looking at the
14 overall work load?

15 MS. MOORE: I mean, I think we are
16 prepared to go forward with the hearing in
17 November. A substantial amount of work has
18 already been done in preparation.

19 We have relied, to a significant
20 extent, on the OCRE report, the enforcement
21 report. Obviously, we do have to integrate
22 the new attorneys into the work load at OGC
23 once they came on-board.

24 I think it is a decision that is
25 left to the Commissioners. We are prepared

1 to move forward in November, but if you deem
2 it advisable, we will certainly postpone it.

3 CHAIRPERSON BERRY: Okay. Any?
4 Yes, Commissioner Redenbaugh.

5 COMMISSIONER REDENBAUGH: Where are
6 we, in terms of the selection of witnesses?

7 (Laughter)

8 MS. MOORE: Again, Commissioner
9 Redenbaugh, the staff is in the beginning
10 stages of identifying potential witnesses
11 which, necessarily, is done after topics are
12 selected.

13 COMMISSIONER REDENBAUGH: Yes.

14 MS. MOORE: There are a host of
15 people who have expertise in disability
16 issues and, yet, may not be appropriate for
17 the hearing, given the topics that we
18 determine to explore.

19 COMMISSIONER REDENBAUGH: Okay.

20 MS. MOORE: So that process is
21 underway. Again, we hope to get the topics
22 to the Staff Director so that the
23 Commissioners can have input in the witness
24 selection process and submit recommendations.

25 COMMISSIONER REDENBAUGH: So just

1 looking at the timing, we typically give
2 witnesses how much notice? A month or less?

3 MS. MOORE: The witnesses,
4 themselves?

5 COMMISSIONER REDENBAUGH: Yes.

6 MS. MOORE: Well, it has varied
7 over time. Some witnesses know very early on
8 that they are people that we desire to be at
9 the hearing, and others are not advised as
10 early.

11 We are required, in terms of the
12 service of the subpoenas, to have those
13 issued within 10 days of the hearing.

14 COMMISSIONER REDENBAUGH: Ten days.
15 Why I was asking, I was just trying to back
16 up from the 12th of November and figure if we
17 Commissioners have topics from the Staff
18 Director in early October and comments back
19 by mid-October, does that give you enough
20 time to then refine and --

21 MS. MOORE: Again, generally, it
22 has been my experience that the Commissioners
23 may recommend five or six additional people.
24 Oft times, we have already identified some of
25 the people that the Commissioners have

1 identified.

2 COMMISSIONER REDENBAUGH: Yes.

3 MS. MOORE: So the interviewing
4 process has continued and been underway
5 without those recommendations coming from the
6 Commissioners.

7 So, if we get an additional four or
8 five people to interview, that can be done in
9 a short turn-around period, depending on the
10 availability of the potential witness, of
11 course.

12 COMMISSIONER REDENBAUGH: Yes.
13 Okay, and the hearing, you imagine, takes two
14 full days, or a day and a half? What is your
15 thinking about that?

16 MS. MOORE: Two full days.

17 COMMISSIONER REDENBAUGH: Two full
18 days?

19 MS. MOORE: Yes.

20 COMMISSIONER REDENBAUGH: So we
21 would basically include the day that we would
22 have used for our November meeting.

23 MS. MOORE: Right. I think that
24 when it was postponed, that it was determined
25 that we would select two days that would

1 coincide with the Commission meeting for the
2 convenience of the Commissioners.

3 COMMISSIONER REDENBAUGH: Yes.

4 Yes, I recall. Okay.

5 I am just very concerned that we
6 are asking a lot of our staff in a short
7 period of time. Thank you.

8 MS. MOORE: Thank you.

9 CHAIRPERSON BERRY: Okay. All
10 right. So, what is your will?

11 Having had this discussion, is
12 there a desire to change it or shall we just
13 abide as we are and move on?

14 COMMISSIONER REDENBAUGH: I think
15 it is really not a policy issue but a
16 management issue.

17 CHAIRPERSON BERRY: It is a
18 judgment call of staff.

19 COMMISSIONER REDENBAUGH: It is a
20 management issue.

21 CHAIRPERSON BERRY: So what is your
22 will there, Staff? Just abide, or are you
23 requesting that we do something or other?

24 STAFF DIRECTOR MOY: I would like
25 for us to continue with this since the

1 momentum is already started.

2 CHAIRPERSON BERRY: Yes.

3 Commissioner George?

4 COMMISSIONER GEORGE: Russell,
5 would you be available for at least one day
6 of the hearing if it goes as planned? Or
7 would you have to be absent both days?

8 COMMISSIONER REDENBAUGH: No, I
9 would be available in person at least one
10 day.

11 COMMISSIONER GEORGE: Okay.

12 CHAIRPERSON BERRY: Okay. That is
13 good. All right, then, for the moment, we
14 will just leave it. If for some reason that
15 changes, you will inform us as quickly as
16 possible if you have some other thing to tell
17 us.

18 STAFF DIRECTOR MOY: Yes.

19 CHAIRPERSON BERRY: Anybody else
20 have questions on the Staff Director's
21 report?

22 (No response)

23 V. SAC Appointments

24 CHAIRPERSON BERRY: Okay. The SAC
25 appointments are the next item on the agenda.

1 Alaska, Arizona, California, Iowa,
2 New Hampshire, New Mexico and Oregon. Unless
3 someone has a reason to take them up
4 separately, I would prefer to just take them
5 all up as is.

6 VICE CHAIRPERSON REYNOSO: Madam
7 Chair, I guess I don't have any objection to
8 keeping them together, but I have some
9 observations.

10 CHAIRPERSON BERRY: On any
11 particular one or all of them?

12 VICE CHAIRPERSON REYNOSO: On a
13 couple of them.

14 CHAIRPERSON BERRY: Okay, which two
15 would you -- and then, I will just have a
16 motion on the others.

17 VICE CHAIRPERSON REYNOSO: On
18 Arizona, I have got a note.

19 CHAIRPERSON BERRY: Okay, and what
20 else?

21 VICE CHAIRPERSON REYNOSO: That --

22 CHAIRPERSON BERRY: Don't tell me.

23 VICE CHAIRPERSON REYNOSO: My notes
24 say, too few persons under 40.

25 CHAIRPERSON BERRY: Okay. Then,

1 what is the other one?

2 VICE CHAIRPERSON REYNOSO: I have
3 one further comment. I think it only shows
4 one Native American in Arizona. It seems to
5 me, in Arizona with the large number of
6 Native Americans, that we ought to try to do
7 better in that regard.

8 CHAIRPERSON BERRY: Okay, and then,
9 what is the other one?

10 VICE CHAIRPERSON REYNOSO:
11 California. I show no Native Americans and,
12 a good showing, my notes say, in terms of
13 people under 40.

14 CHAIRPERSON BERRY: Then, why don't
15 we move the adoption, unless somebody else
16 has got some questions on the others, of the
17 Alaska, Iowa, New Hampshire -- if someone
18 would move that -- of the Alaska, Iowa, New
19 Hampshire, New Mexico and Oregon SACs?

20 COMMISSIONER LEE: So moved.

21 CHAIRPERSON BERRY: All right.

22 Could I get a second?

23 (No response)

24 CHAIRPERSON BERRY: Nobody wants to
25 second?

1 VICE CHAIRPERSON REYNOSO: So
2 moved.

3 CHAIRPERSON BERRY: Oh, well! It
4 dies for want of a second.

5 (Laughter)

6 CHAIRPERSON BERRY: Any further
7 discussion?

8 (No response)

9 CHAIRPERSON BERRY: Okay, all in
10 favor indicate by saying aye?

11 (Chorus of ayes)

12 CHAIRPERSON BERRY: Opposed?

13 (No response)

14 CHAIRPERSON BERRY: So ordered.

15 Now, on the Arizona one --

16 COMMISSIONER ANDERSON: I am sorry.

17 I would like to record an abstention?

18 CHAIRPERSON BERRY: Oh, abstention.

19 Okay.

20 COMMISSIONER ANDERSON: Yes.

21 COMMISSIONER REDENBAUGH: I may as
22 well.

23 CHAIRPERSON BERRY: Okay.

24 Commissioner Anderson and Commissioner

25 Redenbaugh abstain. So, that means it

1 passes -- One, two, three, four, five, and
2 two abstentions.

3 Yes, go right ahead.

4 VICE CHAIRPERSON REYNOSO: I had
5 indicated a long time ago that I would vote
6 no to accept any appointments that, in my
7 view, didn't have proper representation of
8 those under 40.

9 But in fact, I have seen that the
10 state committees have responded to that
11 concern that I had, and, I think, others on
12 the Commission had when there are
13 replacements.

14 I notice in Arizona, all of them
15 are reappointments; so I just want to
16 indicate that I will vote to confirm them,
17 but I still wanted to raise that issue, in
18 case their folk need Advisory Committee
19 replacements.

20 CHAIRPERSON BERRY: Well, the SAC
21 can, if it wants, reconfigure itself to
22 include people who are under 40. It doesn't
23 have to just keep appointing the same people
24 over and over again.

25 So if you wish and if there is no

1 objection from any other Commissioner, we
2 could send the Arizona and California ones
3 back for the staff to take another look at
4 it, in light of the concern, and bring it
5 back to us again, unless somebody objects.

6 Why don't we do that, then? They
7 can take note of your concern, unless you
8 don't want to pursue it?

9 VICE CHAIRPERSON REYNOSO: No, that
10 is fine. I have a comment on California. I
11 just noticed that we have a problem,
12 particularly with finances and size, but I
13 notice that the California Advisory Committee
14 is 16, according to the reports.

15 For the large population that we
16 have, they might consider taking that up by a
17 couple of members and maybe accommodating,
18 having representation from American
19 Indians.

20 CHAIRPERSON BERRY: That might
21 help.

22 VICE CHAIRPERSON REYNOSO: It just
23 seemed practically incongruous to me that
24 Alaska has 12 on the Advisory Committee;
25 Arizona has 14; California has 16. If we

1 want representation on it, you know, we might
2 consider the size of the Advisory Committees.
3 That is my observation.

4 CHAIRPERSON BERRY: Okay.
5 Commissioner Redenbaugh?

6 COMMISSIONER REDENBAUGH: I would
7 join with Cruz on his observations and on
8 the, I guess, recommendation to increase the
9 size of California.

10 CHAIRPERSON BERRY: Okay.

11 COMMISSIONER REDENBAUGH: I think
12 it is very fitting.

13 CHAIRPERSON BERRY: All right, we
14 will just ask the staff to bring those two
15 back to us and take note of the concerns.

16 All right, we go now to an item
17 that was added, Leon, which is the
18 investigation of the conspiracy. Whether
19 there was a conspiracy in the assassination
20 of Martin Luther King, which subject was
21 raised by Commissioner Anderson.

22 VI. Investigation Of Possible Conspiracy

23 COMMISSIONER ANDERSON: Thank you,
24 Madam Chairman.

25 All right. I think we all know that

1 the Attorney General has recently opened an
2 investigation into the allegations raised
3 by Mrs. King into the death of her
4 husband.

5 However, Mrs. King's request that
6 this be done through an independent, national
7 commission was rejected. Instead, we have
8 what I think could be characterized as a type
9 of intermediate, bureaucratic response that
10 will ultimately be, in my opinion, incapable
11 of bringing finality to these questions.

12 I believe instead, there must be an
13 open, independent and credible review of the
14 concerns raised by Mrs. King and other
15 members of the King family.

16 Today, the Commission considers its
17 Los Angeles hearing report. One lesson that I
18 learned from that experience in Los Angeles
19 is that, in some issues, Americans of
20 different races can consider the very same
21 facts and yet have widely divergent
22 perceptions and reach opposite conclusions.

23 While it may be true that the vast
24 majority of white Americans conclude that
25 James Earl Ray acted alone in murdering

1 Dr. King, it is nonetheless equally true that
2 millions of African Americans are deeply
3 troubled by the questions raised by
4 Mrs. King. They have a right to have those
5 questions answered by a credible, independent
6 body, but all of us, I think, need to have
7 those questions answered.

8 American democracy can survive the
9 fact that, from time to time, national
10 leaders lie to the American public, but no
11 democracy can long survive the pervasive
12 belief that the national government may be involved
13 in the assassination of a national leader,
14 nor can democracy survive any racially
15 diverse society, should many of its minority
16 citizens conclude that the majority simply
17 does not care when such allegations concern
18 racial minorities.

19 I believe this Commission should
20 undertake the task of investigating the
21 questions raised by Mrs. King.

22 I believe the Commission is
23 eminently qualified to do so, and therefore,
24 I move that the Commission during the coming
25 year undertake an investigation into the

1 allegations raised by Mrs. King, and that it
2 is the intent of this motion that such an
3 investigation commence with a hearing to be
4 held in Washington, with Mrs. King and her
5 family members invited as the lead witnesses,
6 and that, if necessary, subsequent hearings
7 be held in Atlanta and Memphis.

8 CHAIRPERSON BERRY: Okay. That is a
9 motion. Did you hear the motion, Leon?

10 COMMISSIONER HIGGINBOTHAM: Yes, I
11 did.

12 CHAIRPERSON BERRY: First, we need
13 a second of the motion. Then we will have an
14 inquiry concerning whether it is
15 jurisdictional; so, Counsel, start putting on
16 your thinking hat, since this is a question
17 that you probably didn't expect.

18 COMMISSIONER GEORGE: I will second
19 the motion.

20 CHAIRPERSON BERRY: Okay. Let's
21 have some discussion. First, Counsel, do you
22 want to think about it some more, or do you
23 want to tell us whether it is jurisdictional?

24 MS. MOORE: It is necessary to have
25 further discussion.

1 COMMISSIONER HIGGINBOTHAM: I can't
2 hear her.

3 CHAIRPERSON BERRY: Okay. She said
4 it is necessary for us to discuss it a bit
5 more, so she can understand more about what
6 all of us would have in mind. Then she will
7 answer the question.

8 So, does any Commissioner want to
9 discuss the desirability of going forward
10 with the motion that Commissioner Anderson
11 has laid on the table? Anybody have any
12 position, one way or the way, or want to say
13 anything about it?

14 COMMISSIONER ANDERSON: I guess I
15 will jump in and --

16 CHAIRPERSON BERRY: Speak to your
17 own motion.

18 COMMISSIONER ANDERSON: And speak
19 to my own motion, in terms of the
20 jurisdictional question.

21 I think it is eminently within the
22 purview of this Commission, if we are to
23 assess civil rights matters.

24 It seems to me, take this as an
25 example. It does little good for us to

1 examine government policies responding to the
2 crisis of African American males if many, if
3 not most of those same young men believe that
4 the very same government has been involved in
5 either the assassination of Dr. King or a
6 cover-up of the assassination of Dr. King.

7 If we are finishing a multi-year
8 study of racial tension in American
9 communities, I can't think of a more profound
10 cause of racial tension in some of our inner
11 cities than the suspicion that this has gone
12 on for 30 years and that there is this
13 underlying possibility of complicity in this
14 issue.

15 CHAIRPERSON BERRY: If I may, and
16 no one else is urgently -- let me try to
17 characterize in a way that I think would have
18 no jurisdictional problem, this inquiry, if
19 the Commission were to pursue it.

20 What you are really asking for is
21 for the Commission to investigate and assess
22 the investigations that have already taken
23 place and to evaluate, because conclusions
24 have already been reached by investigatory
25 bodies that James Earl Ray did it all by

1 himself and so on.

2 So what we really are doing is
3 trying to assess whether or not enforcement
4 efforts on the part of the government which
5 are taking place, or have already taken
6 place, as well as the further efforts that
7 are being done, in fact are effective and
8 have credibility. I mean that, basically, is
9 what you are asking.

10 So that, in a sense, it is like
11 monitoring the effectiveness of a process.
12 It is not investigating and trying to find
13 out who did it, which is a whole different
14 ball of wax and which might present some
15 jurisdictional problems. May or may not,
16 unless we are talking about voting rights or
17 something.

18 But it is entirely appropriate, and
19 we do that all the time, to look to see how
20 agencies are carrying out their
21 responsibility, in this case, the law
22 enforcement agencies that are supposed to be
23 doing this.

24 I mean, we did something similar to
25 that when we talked about the law enforcement

1 folks who were supposed to be investigating
2 the church burnings and had them in and
3 talked about, you know, what are you guys
4 doing? Tell us. We want to know, and
5 whether it makes any sense, and whether you
6 are really trying to find these folks.

7 Yes, Counsel?

8 MS. MOORE: Well, as stated, I am
9 not satisfied that either inquiry fits within
10 our jurisdiction, although it could.

11 Simply to investigate a federal
12 agency's investigation isn't sufficient under
13 our jurisdiction. There has to be some
14 allegation that either that Agency has civil
15 rights enforcement responsibilities or in its
16 investigation discriminated against someone
17 on the basis of one of the protected classes.

18 Now, I am not here fully informed
19 of what Mrs. King's allegations are, other
20 than those that have been in the media. But
21 if it is that there was a conspiracy not to
22 resolve the murder of her husband due to his
23 race or that the investigations that have
24 taken place have been inadequate, again
25 because of his race and his civil rights

1 activities, that would fit within our
2 jurisdiction.

3 CHAIRPERSON BERRY: So in other
4 words, if we decided, without regard to what
5 anyone else said, that we wanted to examine
6 whether or not because of his race the
7 investigations were not carried out to the
8 fullest extent and that, because of his
9 status, which is what we are talking about
10 here, which his race is included in it, that
11 there was a cover-up or may have been, we
12 don't know, and we are trying to look into
13 it, to see whether that was the case,
14 would that be jurisdictional?

15 MS. MOORE: Yes, under our
16 administration of justice jurisdiction. Was
17 there discrimination in the federal
18 government's attempt to administer that
19 justice, and due to, again, either Dr. King's
20 race and/or his civil rights activity.

21 CHAIRPERSON BERRY: Which is what
22 we were doing on the church burnings.

23 We may not have stated it exactly
24 that way, but we were saying, is it because
25 these black churches got burned, and you guys

1 aren't carrying out complete investigations,
2 and you are not doing what you are supposed
3 to do?

4 MS. MOORE: Right.

5 CHAIRPERSON BERRY: So it is the
6 same kind of examination.

7 MS. MOORE: Yes.

8 CHAIRPERSON BERRY: Okay, Counsel,
9 thank you. Yes, Vice Chair?

10 VICE CHAIRPERSON REYNOSO: Madam
11 Chair, several things. One is that I would
12 be reluctant to vote in favor of the motion
13 without a report from the General Counsel,
14 presumably, indicating that the concerns that
15 Mrs. King has, in fact, are as they were
16 articulated a minute ago.

17 I am not sure that those are. In
18 fact, I wasn't even sure from reading the
19 reports that there was an allegation that
20 there was a federal cover-up of this. My
21 impression was that she said, hey, we have
22 here the person who confessed, saying I
23 didn't do it or raising questions. She
24 wanted to know what the truth was, quite
25 logically.

1 So I would want to be sure myself
2 that those were the concerns that the King
3 family had, one.

4 Two, with due respect, I must say
5 that my own views are that little of the
6 tensions that we find in the inner city,
7 particularly with black males, has to do with
8 this concern of the King family.

9 I believe it has to do with
10 unemployment, with poor education, with
11 discrimination, with what we have seen as
12 part of the history of this country. So in
13 some ways, I guess, I feel uncomfortable with
14 the undercurrent of the expression of
15 Commissioner Anderson as to the import of
16 this particular issue.

17 I think that the issues are there
18 and very serious, particularly in inner
19 cities, but I see the causes of this as being
20 different.

21 The lack of affirmative action, the
22 attacks on affirmative action, et cetera, et
23 cetera -- I see those as the real reasons for
24 tensions.

25 So I just want to indicate that the

1 motion proceeds, from my point of view, on a
2 false premise.

3 Nonetheless, if the issues raised
4 by the King family are within our
5 jurisdiction, you know, I feel very empathic
6 that they want to know whether or not
7 something has gone awry, and then I might
8 vote for it, for the motion.

9 CHAIRPERSON BERRY: Okay.

10 COMMISSIONER HIGGINBOTHAM: Madam
11 Chairman?

12 CHAIRPERSON BERRY: Yes, Judge
13 Higginbotham?

14 COMMISSIONER HIGGINBOTHAM: There
15 is another side of the coin which has not
16 really been focused on by Commissioner
17 Anderson.

18 I cannot think of anything which
19 would be more egregious to the King family
20 than to have us do an inquiry poorly,
21 inadequately and without the expertise which
22 this very serious issue deserves.

23 Whenever you get involved, in terms
24 of that which may have involved a significant
25 criminal act or significant conspiracy, you

1 need a whole level of talent which is quite
2 different than a group which is looking at
3 social science data.

4 I don't know how many people in the
5 General Counsel's Office have had experience
6 as prosecutors in major criminal cases by
7 which one could get a standard, either in
8 state or federal court. But my hunch is,
9 that if you took the entire General Counsel's
10 staff, which is really excellent for its
11 purposes, that the staff has not had the
12 experience of handling major criminal cases
13 with vast numbers of investigatory criminal
14 reports and that whole level which has to be
15 gone into if you have matters of this type.

16 So what I need, before I can vote
17 for it -- and I am sympathetic to Coretta
18 Scott King's concerns -- she and I were
19 classmates in college. So that it is not
20 that I am against it, but I don't want the
21 public to think that our Commission, which cannot
22 gets a unanimous report on some very, very
23 easy issues, now will have the capacity to
24 go into that broader terrain of the
25 operations of the criminal justice system and

1 take the prosecution of it.

2 So before I could vote for it, I
3 would have to have a report from staff
4 spelling out with some precision as to the
5 quality of staff, that is, the experiential
6 base of staff you would have to have.

7 You can't pull someone out of law
8 school just to handle this; so that I would
9 want a report on what type of staff, what
10 type of costs and how long it would take.
11 Before I got that, I would not vote for the
12 motion, though I know it is made with the
13 best of intentions.

14 With that and, then, some assurance
15 that we are going to have the funds to be
16 able to do that which will be necessary to
17 give a qualitative insight, I am not prepared
18 to go through with this.

19 CHAIRPERSON BERRY: Well, I think
20 that you have made some very good points; you
21 all have. That if we were do this, it would
22 probably require the Commissioners to
23 decide -- I already know how much we have in
24 the way of resources, and if you think about
25 it, you do too.

1 It would require us to decide to
2 devote our energies to this, because it would
3 be very expensive if we were to get the right
4 criminal law talent and all the rest. But I
5 think, probably, the best thing to do -- I
6 like the idea, in principle. I mean, the
7 idea of doing it, if it can be done well, and
8 if it is jurisdictional and Counsel has
9 assured us, if we characterize it properly,
10 it would be.

11 But I agree, that we would need a
12 report from the Staff Director, having OGC
13 look at what it would require, what does it
14 mean, what would it take. Then we would act
15 on that; so that we would be acting with a
16 degree of seriousness of purpose; so that
17 folks would be assured that we are going to
18 go out and do a really good job on this.

19 Then I would vote for it, and I am
20 sure Commissioner Anderson wants to do a
21 really good job. He is not suggesting that
22 we not do a really good job.

23 I will recognize you in just a
24 second, Commissioner Anderson, but
25 Commissioner Redenbaugh had his hand up,

1 unless he took it down.

2 (Laughter)

3 COMMISSIONER REDENBAUGH: Is it
4 your expectation that, if the staff were to
5 produce such a report, that it would also
6 include some rough notion of the budget?

7 CHAIRPERSON BERRY: Right.

8 COMMISSIONER REDENBAUGH: And that
9 that, then, could be the subject of a request
10 for additional money?

11 CHAIRPERSON BERRY: It could either
12 be a request for additional money or a
13 decision by the Commission that we would
14 abandon all sorts of things, that we think we
15 are going to do, and instead -- in other
16 words, a reasoned judgment, and not simply,
17 oh, gee! That is a good idea; let's go do
18 that, which is what the MIS process requires
19 us to do, if I understand it. To be serious
20 about evaluating what we can do and we can't
21 do.

22 So we would either be talking about
23 a request, or we would be talking about
24 reconfiguring what we already do to account
25 for the money.

1 COMMISSIONER REDENBAUGH: Thank
2 you.

3 CHAIRPERSON BERRY: Commissioner
4 Anderson and, then, Commissioner Lee.

5 COMMISSIONER ANDERSON: Thank you.
6 Well, just briefly, two things.

7 In regard to the comments of the
8 Vice Chair, I don't see this as a principal
9 underlying reason for racial tension. We may
10 disagree as to the cause of affirmative
11 action in that mix, but certainly, I think
12 that this is a part, but it certainly is not,
13 maybe, even the overriding reason, but I do
14 think it is a reason, seriously, really.

15 Secondly, in terms of the expertise
16 and the staff capability on an issue like
17 this, I think that we would have to probably
18 contract out for some special expertise.
19 That is not unprecedented.

20 We went to the New York hearings on
21 Wall Street, and we contracted out with
22 specialists in terms of doing the statistical
23 research. We may have to do a criminal
24 investigator that can give us an assessment
25 of just how investigations like this are

1 done. I don't know.

2 But I do believe that we have, in
3 the past, for example, the Los Angeles riots,
4 our hearings in Los Angeles, I mean, looked
5 very much at police practices, investigative
6 practices, administration of justice,
7 criminal trials. So we may need to beef up
8 on a contracting-out basis.

9 But I think we can do this. I
10 would hope we would approach it with
11 seriousness.

12 I mean, my motion is not made in a
13 non-serious way. I think if we decide to do
14 this, we ought to do the requisite planning.

15 I don't see us as necessarily
16 substituting what the Department of Justice
17 will be doing. But I do think that, if we
18 can focus certain attention on this with a
19 seriousness, it may very well affect the
20 depth and breadth of the investigation that
21 is carried on at the Department of Justice,
22 and I think we can do that. We did it in the
23 church burnings.

24 Finally, I would say, I think that
25 by looking into this matter, we can provide a

1 degree of credibility, an independent check,
2 that will provide a service and will do
3 something in the country.

4 So that is the motivation behind
5 it. We may disagree. We may decide not to
6 do it. We may decide it is not worth doing,
7 but I think it is worth really considering
8 seriously.

9 CHAIRPERSON BERRY: Commissioner
10 Lee.

11 COMMISSIONER LEE: I want to echo
12 what the Vice Chair had mentioned earlier.

13 I am intrigued with Commissioner
14 Anderson's motion, and I certainly want to
15 get more information on it, specifically what
16 Mrs. King's allegations are. I don't know.
17 I have only read it in the media, which is
18 just a one paragraph thing.

19 I do have a couple of concerns, in
20 addition to the General Counsel's report that
21 we would have. One is, how would that impact
22 the other projects that we have already
23 committed ourselves to work on?

24 It seems like because of the staff
25 shortage, everything has been pushed back,

1 and some of the projects that we had voted on
2 earlier would become irrelevant. It would
3 keep pushing them back, and we will continue
4 to produce reports five years, ten years
5 behind time.

6 So if we were to take this up, how
7 would that impact us, not only in terms of
8 budget, but in terms of other projects? Even
9 if we continue to work on them, are they
10 going to be pushed back by the expense of
11 this project?

12 Also, historically, has the
13 Commission taken a project that involved
14 individual cases like this? Church burnings
15 is an overall issue. It involves more than
16 one individual being impacted.

17 If we were to begin this kind of an
18 investigative project, how would that impact
19 us in the future if someone else wanted to
20 say, I feel so-and-so was killed because of a
21 potential conspiracy. I want the Commission
22 to look at it. What kind of a precedent
23 would we be setting if we were to go through
24 with this, with Commissioner Anderson's
25 motion?

1 So those are the additional things
2 I would like to have the General Counsel to
3 report to us the next time.

4 CHAIRPERSON BERRY: Commissioner
5 George.

6 COMMISSIONER GEORGE: Madam
7 Chairman, I think there is a very, very
8 strong prima facie case to be made for
9 Commissioner Anderson's motion.

10 I do think the jurisdictional
11 concerns should be taken very seriously, as
12 always, by the Commission so that we don't
13 overstep. However, I think that the
14 justification that you offered presents,
15 again, a very strong prima facie case that we
16 do have jurisdiction in a case of this
17 nature.

18 In response specifically to
19 Commissioner Lee's final point, I think that,
20 irrespective of whether we have precedents
21 that are directly on point, here, as I
22 understand the allegation, it is an
23 allegation of government involvement or
24 governmental cover-up in connection with
25 Rev. King's murder, precisely because of his

1 civil rights activities.

2 There is no doubt, whoever was
3 involved in Rev. King's murder, his civil
4 rights activities are what he was murdered
5 for. Now that, I think, really opens
6 strongly the possibility that we do, in fact,
7 have jurisdiction here.

8 In view of the prima facie strength
9 of the case, our comparative advantage, for
10 example, as being an independent agency, when
11 it is precisely the mechanisms of government
12 that have been called into question here, I
13 think all militates in favor.

14 I am not saying that we can just
15 vote right here at this meeting. Not at all.
16 More work has to be done. We need to go into
17 this consciously. It shouldn't just be
18 rushed into, but I see the makings here of a
19 very strong case.

20 I want to address one point on
21 which I disagree with Commissioner
22 Higginbotham. We have a divided Commission
23 on many, many issues. I don't think we have
24 divided over easy issues. Rather, I think we
25 have divided over some very difficult matters

1 of principle, on which reasonable people can
2 and do, in this country, disagree.

3 Often, we have been able to work
4 out compromises. Sometimes, we have not.

5 But there have also been cases in
6 which we have worked together very
7 effectively, and those cases are precisely
8 cases where, on the basis of shared values,
9 we investigate facts where principles are
10 shared.

11 The best example is in the church
12 burning area. I strongly believe we are
13 going to see another one, based on these
14 hearings on schools and religion, where we do
15 share principles. Now we are trying to get
16 at the facts, and we are not going to be
17 divided here. We can act in a unified way
18 and really advance the public interest.

19 I think with respect to the murder
20 of Martin Luther King, we are on the terrain
21 of shared, strongly shared, principle, and we
22 would be getting at facts when it comes to
23 monitoring the activities of the federal
24 officials and others who have looked into the
25 murder.

1 Finally, just let me say that
2 whether or not there was any government
3 involvement in Rev. King's murder and whether
4 there was a cover-up that involved any
5 governmental officials, there seems to me to
6 be very strong evidence that the federal
7 government committed crimes against Dr. King,
8 and that those involved a violation of his
9 civil rights and were committed precisely
10 because of his civil rights activity.

11 Here, I think, we get to the heart
12 of Commissioner Anderson's case. Not simply
13 among African Americans and not simply among
14 minorities, but broadly, throughout the
15 country. I think for anybody who follows
16 this case very seriously, it has been a stain
17 and has cast doubt on the credibility of the
18 U.S. Government, and the FBI and the Justice
19 Department law enforcement agencies.

20 If we can do something to try to
21 remove that stain and move in the direction
22 of doing justice in this case -- and I am not
23 certain that we can -- but if we can, and I
24 hope that we can, and Professor Anderson's
25 motion is premised on the proposition that we

1 can, then I think we should do it.

2 CHAIRPERSON BERRY: Let me just try
3 in the interest of resolving this and moving
4 the agenda, for the time being, if this is
5 acceptable to everyone, to suggest that the
6 Staff Director ought to give us a report
7 before the next meeting, which will include
8 answers to the questions that have been
9 raised here, to the best that the staff is
10 able to put them together.

11 One, what was it that Coretta King
12 alleged she thought was wrong?

13 Two, what is it that we, as a
14 Commission, can do jurisdictionally within
15 the guidelines and boundaries that we have
16 all discussed here this morning?

17 Three, how much would it cost?

18 Four, how would it impact -- I
19 mean, you would have to speculate about the
20 cost. I know you don't know exactly.

21 What do you think? How would it
22 affect the other projects that we have in
23 mind?

24 Then, give us this information.
25 Then, you may look at the transcript and see

1 if there were other questions that I have
2 missed that somebody asked.

3 Then, we will make a decision based
4 on the memo.

5 My own view is that I will wait
6 until I see it, but having been involved in
7 the church burnings issue, along with
8 Commissioners Anderson and Lee and others, I
9 think that monitoring law enforcement and
10 what they do, even if you don't do it in any
11 systematic way, or even if you don't have the
12 ability to really get down to the
13 nitty-gritty, as it were, is very healthy in
14 terms of moving them to do something, or at
15 least to feel that they are being responsible
16 to another agency that is looking over their
17 shoulders.

18 That if we could figure out how to
19 do it and if we know what the questions are
20 at the outset, which I am not sure about,
21 that it might be a useful exercise.

22 But we still have all these other
23 outstanding questions; so if it is all right
24 with everyone, can we defer this until we get
25 the answers to the questions and then make a

1 judgment about it?

2 (No response)

3 CHAIRPERSON BERRY: I hear no
4 objections; so essentially it is tabled, I
5 guess, until the next meeting. Then we will
6 have this report.

7 VII. Racial and Ethnic Tensions in American
8 Communities: Poverty, Inequality,
9 Discrimination

10 CHAIRPERSON BERRY: Okay, we go to
11 Item VII now, Racial and Ethnic Tensions in
12 American Communities: Poverty, Inequality,
13 Discrimination. The Los Angeles hearing
14 report.

15 Could I get a motion to approve it
16 for purposes of discussion?

17 COMMISSIONER LEE: So moved.

18 CHAIRPERSON BERRY: Could I get a
19 second?

20 VICE CHAIRPERSON REYNOSO: Second.

21 CHAIRPERSON BERRY: Discussion.

22 Are there Commissioners who -- yes, Vice
23 Chair?

24 VICE CHAIRPERSON REYNOSO: Madam
25 Chair, I had gone through it quickly and then

1 read portions with great care. I have, as
2 would not be unexpected, some small
3 editorial-type suggestions, but as a whole, I
4 thought it was very well done.

5 CHAIRPERSON BERRY: Okay. Any
6 other comments from Commissioners?

7 (No response)

8 CHAIRPERSON BERRY: Okay. Then,
9 are you ready for the question? I assume you
10 are, if nobody has any questions.

11 All those in favor of approving the
12 report, indicate by saying aye?

13 (Chorus of ayes)

14 CHAIRPERSON BERRY: Opposed?

15 (Chorus of nays)

16 CHAIRPERSON BERRY: Okay, we had
17 better do a list who said what. Commissioner
18 Anderson?

19 COMMISSIONER ANDERSON: No.

20 CHAIRPERSON BERRY: Berry, yes.
21 George?

22 COMMISSIONER GEORGE: No.

23 CHAIRPERSON BERRY: Higginbotham?

24 COMMISSIONER HIGGINBOTHAM: Yes.

25 CHAIRPERSON BERRY: Horner is

1 absent. Lee?

2 COMMISSIONER LEE: Yes.

3 CHAIRPERSON BERRY: Redenbaugh?

4 COMMISSIONER REDENBAUGH: No.

5 CHAIRPERSON BERRY: Reynoso?

6 VICE CHAIRPERSON REYNOSO: Yes.

7 This is with the same understanding that we
8 can suggest these editorial changes.

9 CHAIRPERSON BERRY: With editorial
10 changes anyone wants to make.

11 Four to three, okay. It passes,
12 four to three.

13 VIII. Asian Pacific American Petition

14 Briefing: Executive Summary

15 CHAIRPERSON BERRY: Now, we have
16 the next item on the agenda, the
17 Asian Pacific American Petition Briefing:
18 Executive Summary. Could I get a motion that
19 we publish so we can move forward?

20 COMMISSIONER GEORGE: So moved.

21 CHAIRPERSON BERRY: Anybody got a
22 second?

23 VICE CHAIRPERSON REYNOSO: Second.

24 CHAIRPERSON BERRY: Okay, it has
25 been moved and seconded. Discussion?

1 (No response)

2 CHAIRPERSON BERRY: All those in
3 favor, indicate by saying aye?

4 (Chorus of ayes)

5 CHAIRPERSON BERRY: Opposed?

6 (No response)

7 CHAIRPERSON BERRY: It was
8 unanimous, for those who are here.
9 Commissioner Horner is absent; so that is
10 done.

11 XI. Draft Code of Federal Regulations

12 CHAIRPERSON BERRY: As we all know,
13 GAO recommended that the Commission undertake
14 a number of items, and we agreed, or the
15 staff committed us as an Agency to completing
16 these items by September the 30th.

17 The recommendation of the GAO on
18 the CFR said, "This effort should include,"
19 that is, what the Commission is supposed to
20 do -- this is on page 21 of the GAO report.

21 COMMISSIONER HIGGINBOTHAM: Someone
22 is moving papers in front of a microphone. I
23 am having trouble hearing.

24 CHAIRPERSON BERRY: Okay. Whoever
25 is moving papers in front of a microphone,

1 stop!

2 Page 21 says, "Updating the CFR to
3 provide for public access to the current
4 organizational structure, procedures, and
5 program processes of the Commission."

6 What you have before you, I am told
7 by the Staff Director, purports to be a
8 response to this GAO recommendation and will
9 accomplish providing public access to the
10 current organizational structure, procedures
11 and program processes of the Commission.

12 A number of Commissioners had
13 questions, and then the staff prepared a grid
14 in response to your questions in preparation
15 for this meeting, so that we might move
16 expeditiously.

17 Is there any need or desire to
18 discuss any of the questions?

19 Did I get a motion? I have
20 forgotten. Could I get a motion to approve
21 the CFR, just for purposes of discussion?

22 VICE CHAIRPERSON REYNOSO: So
23 moved.

24 CHAIRPERSON BERRY: Could I get a
25 second?

1 COMMISSIONER ANDERSON: Second.

2 CHAIRPERSON BERRY: Okay, let's
3 have discussion.

4 COMMISSIONER LEE: Madam Chairman,
5 I have a question. I haven't received the
6 responses because I haven't been in the
7 office. Can I have a copy?

8 CHAIRPERSON BERRY: Okay. Could we
9 get another copy here? Commissioner
10 Redenbaugh?

11 COMMISSIONER REDENBAUGH: Yes.
12 Well, I have a concern about the Solicitor
13 and Ethics Officer arrangement, but I want to
14 set that aside for a moment because that can
15 be easily spoken to.

16 I wanted to ask Staff Director Moy
17 if in doing this, if this is the structure,
18 as the principal executive of the Agency,
19 that you want to have, that is workable and
20 will allow you to manage the Agency? Because
21 I think that is a more interesting question
22 for us than merely being in compliance with
23 the GAO, which we need to do as well.

24 But I want to go to the question of
25 management. Is this the right management

1 structure? Is this the one that will work
2 for you, that lets you manage the staff that
3 we have?

4 STAFF DIRECTOR MOY: Yes. In order
5 to manage the staff, I believe that we have
6 to bring up all regulations and statutes
7 according to current time.

8 COMMISSIONER REDENBAUGH: Yes.

9 STAFF DIRECTOR MOY: The answer to
10 your question is yes.

11 COMMISSIONER REDENBAUGH: Okay, so
12 you are satisfied with this organizational
13 structure?

14 STAFF DIRECTOR MOY: Yes.

15 COMMISSIONER REDENBAUGH: Okay.

16 CHAIRPERSON BERRY: All right.

17 Anybody have a question? Yes, Vice Chair?

18 VICE CHAIRPERSON REYNOSO: Madam
19 Chair, I just have a comment, that I had an
20 inquiry from an outside source as to the
21 elimination of the Solicitor's Office, which
22 is commented upon in this staff response
23 indicating that the Solicitor's Office has
24 not existed since 1986.

25 The position of Solicitor will

1 continue to exist; so I just wanted to
2 indicate that I have had that inquiry, and I
3 believe that the staff response takes care of
4 the inquiry.

5 CHAIRPERSON BERRY: Commissioner
6 Redenbaugh, did you have the same question?

7 COMMISSIONER REDENBAUGH: I do, but
8 I am not satisfied with the response.

9 My understanding of this is that
10 the Solicitor needs to have a certain
11 independence from other managers and
12 executives in the Agency, particularly with
13 respect to questions of ethics and advice
14 that the Solicitor may be called upon to give
15 to Commissioners in their professional
16 capacity. So I am concerned that this
17 structure doesn't produce that degree of
18 independence that is required.

19 CHAIRPERSON BERRY: Vice Chair?

20 VICE CHAIRPERSON REYNOSO: Madam
21 Chair, what I meant by saying what this
22 answer said is that, as I understood it, the
23 charge was to make sure that the regulations
24 represent what our practices are right now.
25 I didn't mean to go into the substantive

1 issue as to whether or not it makes sense.

2 I am not sure that that is a
3 discussion for today. That should be a
4 discussion that, maybe if the Commission is
5 concerned, we put it on the agenda and
6 discuss it.

7 Do we want an Office of Solicitor
8 General? But as I understood it, our charge
9 was, or the staff's charge was, to make this
10 comport to our practices, and since, in fact,
11 that office hasn't existed since 1986, it
12 seems to be proper to reflect that. Then, if
13 we want to change it, you know.

14 COMMISSIONER REDENBAUGH: Yes. I
15 interpreted it in the broader way, but I see
16 your point, Cruz.

17 CHAIRPERSON BERRY: Okay. Yes,
18 Commissioner Anderson, you have the same
19 point or another one?

20 COMMISSIONER ANDERSON: It is the
21 same point, if I might.

22 CHAIRPERSON BERRY: Okay.

23 COMMISSIONER ANDERSON: I think we
24 need to have an Office of Solicitor. I think
25 it needs to be clear that it has a certain

1 independence, particularly in regard to
2 ethics questions.

3 I am not particularly bound, or
4 feel myself bound, either that this was a
5 reform done under the Reagan Administration
6 Commission in 1986 or that we lived with this
7 for a number of years.

8 What I am concerned about is, if we
9 adopt the regulations and then go on to
10 discuss this, the answer is, it is already in
11 the regs this way. So I think we ought to
12 have a discussion of whether or not we want
13 an Office of Solicitor. If that takes a
14 certain amount of time, I think we ought to
15 use that time now.

16 The only hesitation I have is to
17 what extent this now involves itself in
18 personnel matters which might best be
19 discussed in reference to an Executive
20 Session. But if we think we can discuss this
21 without that, then fine.

22 CHAIRPERSON BERRY: My view of
23 this, having been here too long -- that is,
24 at the Commission -- I happen to have been
25 aware of the Commission when there was no

1 Solicitor's Unit, and all matters that have
2 been handled by the Solicitor's Unit were
3 handled by lawyers in OGC who reported to the
4 General Counsel.

5 I happened to have been present at
6 a luncheon meeting in which it was proposed
7 that there be a Solicitor's Unit. I happen
8 to know that the reason for it had nothing to
9 do with anything except the desire to find
10 some place to place somebody.

11 I just happened to be having lunch
12 with the Commissioners and the Chair of the
13 Commission and the Staff Director who were
14 discussing it. This was in the 1970s; so I
15 have been around too long.

16 But anyway -- and I also know that
17 we have been, in the last few years,
18 functioning since 1986. It may be that, even
19 though the decision was made in a non-serious
20 way at a lunch for reasons that had nothing
21 to do with it, it may have turned out to be a
22 good thing. That doesn't mean that it wasn't
23 a good thing.

24 It may be that there are problems
25 that exist now and have existed since 1986,

1 that could be solved by having a Solicitor's
2 Unit. Those are entirely valid questions.

3 But I think that for today's
4 discussion, we either decide that we want to
5 have this reg, this part of it, conform to
6 what we have right now, or we don't. And if
7 we don't, then we decide not to change it,
8 and we simply report to whoever we are
9 reporting to, I guess it is the Oversight
10 Committee, that we have complied with what
11 GAO recommended, but that, in this case, we
12 decided not to change this because we are
13 reviewing it or something, or there is some
14 problem.

15 But we could ask the Staff Director
16 whether this has presented a problem that you
17 are aware of, and whether we, one, have the
18 resources to set up a Solicitor's Unit, and
19 two, do you think it is a good idea and do
20 you have any views on this?

21 STAFF DIRECTOR MOY: Well, during
22 the time that I have been here, Madam Chair,
23 I have not had the need for a Solicitor that
24 couldn't be answered any other way by the
25 Office of General Counsel or the appropriate

1 person, where I needed the advice of counsel.

2 CHAIRPERSON BERRY: That was
3 Marlissa. Before that, it was Miguel. Now,
4 I guess, it would be Sicilia.

5 STAFF DIRECTOR MOY: Correct. I
6 found their information forthcoming; plus
7 they were able to cite chapter and verse
8 wherever I needed to have confirmation or
9 support of what they were saying.

10 As to the future need, I couldn't
11 answer that. But if we need to have a body
12 here, I would say we also need to have an
13 increase in funding.

14 CHAIRPERSON BERRY: Okay.
15 Commissioner Anderson?

16 COMMISSIONER ANDERSON: I think the
17 record will show that my view on this
18 predates the current General Counsel and,
19 maybe, even her predecessor.

20 My concern does not go to there
21 being a Solicitor's Unit with a staff. I
22 think what is necessary is a designated
23 official that has clearly, based on a line of
24 authority within the Agency, a certain
25 independence. That is my view.

1 Now, it may be a view shared only
2 by this Commissioner, but I think that is
3 important. I don't know how we go through
4 the last 10 to 12 years of ethics reforms,
5 restructuring constant new ethics
6 regulations, and the concept of an
7 independent Office of Solicitor that gives
8 you ethics advice is such a difficult
9 concept.

10 It seems to me to be kind of
11 obvious. But with that, I really have
12 nothing --

13 CHAIRPERSON BERRY: No,
14 Commissioner. I think there is an answer to
15 your question that is responsive. When you
16 ask it that way, I remembered.

17 First of all, the Office of
18 Solicitor, the position, still exists. Okay?
19 Right now.

20 That position is not filled by
21 anyone. I think the General Counsel is
22 called Acting Solicitor, because the position
23 is there.

24 If I say something that is
25 incorrect, somebody tell me.

1 That, therefore, if we had the
2 resources and the Staff Director chose to do
3 so, the Staff Director could appoint somebody
4 right now to be Solicitor.

5 And as I recall from years ago,
6 that position -- forgetting about whether it
7 is a unit -- can report directly to the Staff
8 Director; is that correct?

9 MS. MOORE: Well, there is debate
10 around that. It has not traditionally been
11 the case.

12 All of the previous Solicitors have
13 reported in performance appraisals directly
14 to the General Counsel, and the Staff
15 Director has been the reviewing official.

16 CHAIRPERSON BERRY: Right.

17 MS. MOORE: In personnel terms now,
18 during my tenure, the Staff Director had a
19 direct relationship with the Solicitor such
20 that they could get direct assignments from
21 the Staff Director.

22 But one problem here is that you
23 all are making Solicitor synonymous only with
24 the Ethics Officer, and that is not the case.

25 The Solicitor's functions and the

1 Solicitor's Unit is defined far more broadly
2 than simply a Designated Agency Ethics
3 Officer, which is now occupied by Sicilia. I
4 am not certain what problems you seem to
5 allude to that have arisen in terms of ethics
6 advice.

7 That position has operated
8 completely independently of the General
9 Counsel. The ethics information that is
10 provided to Commissioners is done totally
11 without any involvement by the General
12 Counsel.

13 There are other duties that the
14 Solicitor has for you, again as described in
15 the description in the reg, that do require
16 some oversight by the General Counsel and
17 that does constitute part of a person's
18 performance appraisal.

19 But in terms of ethics advice,
20 financial disclosure forms and the like, none
21 of that -- I am not involved in that at all,
22 and I don't understand any previous General
23 Counsel to have been involved in that.

24 CHAIRPERSON BERRY: So that
25 technically, Commissioner Anderson, your

1 concern -- if I understood it, correctly --
2 could be satisfied even with this conforming
3 regulation, with the Staff Director simply
4 making a staffing decision to appoint
5 somebody as Solicitor. Okay?

6 Then the Solicitor could either,
7 not for appraisal but for all ethics matters,
8 wouldn't be reporting to the General Counsel,
9 anyway. But it is a question of staffing,
10 whether there is somebody there, and that
11 this change in the regulation doesn't change
12 that. It is not getting rid of the
13 Solicitor's Office.

14 What it is saying is, we don't have
15 a Solicitor's Unit, which we don't have.
16 That is my understanding. Yes?

17 MS. MOORE: If I could, again, just
18 clarify.

19 CHAIRPERSON BERRY: Yes.

20 MS. MOORE: The Designated Agency
21 Ethics Officer relates to the Office of
22 Government Ethics. There is a desk officer
23 that is assigned to the Commission and any
24 ethics oversight that they need; they can
25 deal with OGE on. But appointing a Solicitor

1 again, there are -- the way the regs were
2 written previously, although that unit does
3 not exist, it contemplates a number of
4 additional functions of the Solicitor that I
5 respond to this, because you suggested that a
6 Solicitor be appointed to take care of
7 Commissioner Anderson's --

8 CHAIRPERSON BERRY: No, no, no.
9 What I am saying is that even if this reg is
10 approved --

11 MS. MOORE: Right.

12 CHAIRPERSON BERRY: That doesn't
13 mean that a later decision can't be made to
14 hire somebody and put them in the Solicitor's
15 slot. That is my only point.

16 MS. MOORE: I understood that. If
17 I could continue my point?

18 CHAIRPERSON BERRY: Yes.

19 MS. MOORE: My point is that it
20 does not -- the Designated Agency Ethics
21 Officer, the ethics counsel, does not have to
22 be the Solicitor.

23 CHAIRPERSON BERRY: Right.

24 MS. MOORE: The two just don't
25 necessarily relate to one another, other than

1 the fact that the regs previously identified
2 the Solicitor as occupying that role.

3 CHAIRPERSON BERRY: Okay. All
4 right? Any other comments on any other part
5 of the regulations, or are your questions
6 answered by these responses?

7 Yes, Commissioner Lee?

8 COMMISSIONER LEE: I would like to
9 raise a question on page 23.

10 COMMISSIONER HIGGINBOTHAM: Can you
11 talk a little louder, please?

12 CHAIRPERSON BERRY: She has a
13 question on page --

14 COMMISSIONER LEE: Page 23,
15 regarding the SAC. The appointments of the
16 chairpersons. I raised a question, under the
17 draft regulation, the Commission will be
18 appointing SAC chairpersons.

19 I think current practice, as we
20 approve, SAC reappointments includes
21 chairpersons. But the way, I read this as we
22 would have the authority to appoint the
23 chairperson of SAC.

24 I have a question because -- I
25 can't speak for other Commissioners, just for

1 myself -- I don't know what is going on in
2 all the other 50 States. I don't know the
3 individuals or actors in the civil rights
4 arena, and I trust the regional directors and
5 their own SAC committee members to decide
6 who should be the chairpersons and vice
7 chairpersons of those SAC, the committees.

8 I would like to change the
9 language. In fact, I would like to delete
10 the whole Subsection B, because I don't want
11 future SAC to be -- I don't want us to have
12 extensive authority over the selection of the
13 leadership of these SACs.

14 CHAIRPERSON BERRY: We are talking
15 about page 3 of the grid, and the point is
16 that the regulation, proposed reg, simply
17 confirms current Commission practice, which
18 is that, when we appoint SACs, we also
19 appoint the chairs of the SACs.

20 Commissioner Lee, as I understand
21 it, would like to change that and have the
22 chairperson and vice chairperson elected by
23 the members of the SAC.

24 So the question is whether you wish
25 to agree to this or not? Yes, Commissioner

1 Redenbaugh?

2 COMMISSIONER REDENBAUGH: I think
3 that the current practice is working just
4 fine. That, in effect -- are you thinking
5 that it is the Commissioners who are
6 appointing the chair and vice chair? Because
7 I don't think that is the current practice.

8 COMMISSIONER LEE: Well, it isn't
9 the current practice.

10 COMMISSIONER REDENBAUGH: Right.

11 COMMISSIONER LEE: We approve the
12 whole SAC reappointment.

13 COMMISSIONER REDENBAUGH: And the
14 current practice is that they are selected by
15 the regional directors.

16 COMMISSIONER LEE: Right, but the
17 way I read this is we can indeed appoint a
18 chairperson.

19 For instance, if we have some --

20 COMMISSIONER REDENBAUGH: So what
21 you are saying is that this document doesn't
22 conform to the current practice?

23 COMMISSIONER LEE: The way I see
24 it, I have questions about that.

25 COMMISSIONER REDENBAUGH: I would

1 like to maintain the current practice.

2 CHAIRPERSON BERRY: The current
3 practice, as I understand it, is that the
4 packages come, and they have a chairperson
5 and a vice chairperson named in the package.
6 A chairperson named in the package. They may
7 not have a vice chairperson.

8 Then we approve the package, and
9 the package has the chairperson named in the
10 package. Is that right?

11 COMMISSIONER LEE: Right.

12 CHAIRPERSON BERRY: That is what we
13 do, now. Correct?

14 What you would like, Yvonne, is for
15 the SAC to pick the chairperson; is that
16 correct?

17 COMMISSIONER LEE: Well, I want to
18 make it really clear that we do not -- the
19 way I read this, it opens to future
20 possibility that we could challenge the --

21 CHAIRPERSON BERRY: We do now.

22 COMMISSIONER LEE: We could
23 challenge, but we do not appoint.

24 CHAIRPERSON BERRY: Oh, we do, now.
25 That is my point.

1 COMMISSIONER LEE: I know, but I am
2 just saying that we do not -- we appoint the
3 package. Totally.

4 If we have any problems with the
5 individual perspective appointees, we raise
6 questions. But the way I read this is, now
7 we have the authority to supersede that and
8 select a chairperson.

9 CHAIRPERSON BERRY: We do it now.
10 We already select the chairperson. We do it
11 in the package that is recommended to us.

12 COMMISSIONER LEE: In the package?

13 VICE CHAIRPERSON REYNOSO: Yes, we
14 select them through the recommendation. What
15 comes to us is really the staff's
16 recommendation, and we approve them.

17 My own interpretation is that this
18 does comport to our actual practice, inasmuch
19 as we actually do the appointing. As you
20 point out, it is from staff recommendation.

21 We could add, perhaps, that the
22 staff recommends the membership and who will
23 be the chairperson, because you are perfectly
24 right that we generally vote on the package.
25 But technically, we are the ones who appoint

1 them.

2 So I don't think this is incorrect,
3 maybe incomplete, but not incorrect.

4 COMMISSIONER LEE: Then I would
5 agree to add, the regional staff would
6 provide the recommendations to the
7 Commission.

8 CHAIRPERSON BERRY: Well, it is
9 upon the recommendation of the staff. That
10 is what you are saying.

11 COMMISSIONER LEE: Right.

12 CHAIRPERSON BERRY: So you would
13 like to add the words, "upon the
14 recommendation of the staff, the chairperson
15 shall be appointed by the Commission." Is
16 that what you are --

17 COMMISSIONER LEE: Yes.

18 CHAIRPERSON BERRY: Counsel, what?

19 MS. MOORE: I just think the
20 language is too much for a regulation.

21 The regulation reflects that it is
22 the Commission who is actually doing the
23 appointing, and through whatever process that
24 is done, it is the Commission that does it.

25 COMMISSIONER GEORGE: Right. Yes,

1 the General Counsel is absolutely right about
2 this. If we establish the principle of
3 incorporating that sort of thing into these
4 procedural sorts of regulations, there would
5 be no stopping it.

6 I mean, all of what we do, or
7 almost all of what we do, we do through the
8 staff and on recommendation of the staff. We
9 don't always take the recommendations and so
10 forth and so on, but to single out this one
11 area would, all of a sudden, down the road,
12 people would say, well, why is this one area
13 singled out?

14 That gives some special
15 significance to what the staff does here. Is
16 there special authority in the staff
17 vis-a-vis the Commissioners, or do the
18 Commissioners have more limited or attenuated
19 authority ultimately here?

20 So I just think it would be a
21 mistake of prudence to single this out this
22 time.

23 CHAIRPERSON BERRY: Why don't I
24 respond to your concern, though, Yvonne, by
25 saying that by consensus we agree, hearing no

1 objection -- if I hear some, I will
2 acknowledge it -- that the appointive power
3 that is exercised in appointing the
4 chairperson of the SAC is upon the
5 recommendation of the staff, as we do with
6 the recommendations of members of the SAC?

7 COMMISSIONER GEORGE: I would only
8 add that, in which we need not always accept
9 and have not always accepted.

10 CHAIRPERSON BERRY: Right, so this
11 is everybody's understanding, and we have
12 this now in the record.

13 Okay, do people have other
14 concerns? Yes?

15 COMMISSIONER GEORGE: I just had a
16 question about the status of these revisions
17 with regard to the reauthorization
18 legislation, that was my question, which is
19 the final question on the proposed revisions
20 for regional reauthorization legislation.

21 The Commission last reauthorized
22 the statute in 1994, which changes reflect
23 the current statutory mandate.

24 If we have approved a new
25 reauthorization statute, then would we

1 revisit this?

2 MS. MOORE: Yes.

3 COMMISSIONER GEORGE: That might
4 have to happen sooner or later.

5 CHAIRPERSON BERRY: Say yes, out
6 loud.

7 MS. MOORE: Yes, we would revisit
8 it, if the regulations didn't reflect the
9 changes in the new reauthorization statute.

10 CHAIRPERSON BERRY: Okay? Well,
11 then, are you ready for the question?

12 All those in favor of approving
13 this to go forward with the regulatory
14 process, which is long and drawn out,
15 indicate by saying aye?

16 (Chorus of ayes)

17 CHAIRPERSON BERRY: Opposed?

18 (No response)

19 CHAIRPERSON BERRY: Okay, so
20 ordered.

21 Now, we go to the Executive
22 Session. What do I have to say, somebody
23 tell me? I always forget what to say when
24 you have an Executive Session.

25 SICILIA CHINN: Madam Chair, I need

1 to hear the basis for the Executive Session and
2 put it on the record, before we go into Executive Session.

3 CHAIRPERSON BERRY: The Executive
4 Session is scheduled to discuss sensitive
5 personnel matters.

6 SICILIA CHINN: Madam Chair,
7 is there a motion to go into Executive
8 Session?

9 CHAIRPERSON BERRY: Yes,
10 somebody --

11 COMMISSIONER GEORGE: So moved.

12 COMMISSIONER ANDERSON: Second?

13 CHAIRPERSON BERRY: Second, yes.

14 SICILIA CHINN: Based on today's
15 motion and the topic of discussion, I
16 certify that, pursuant to Exemptions
17 Numbers 2 and 6 of the government in the
18 Sunshine Act, which permit closure of matters
19 that relate solely to internal personnel
20 rules and practices of an agency, the
21 discussions may be closed to the public.

22 CHAIRPERSON BERRY: All right,
23 thank you. Then, I can proceed.

24 All right, everyone should leave
25 except folks who have a reason to be here.

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(Whereupon, at 11:03 a.m., the
Commission went into Executive
Session.)

P R O C E E D I N G S

(12:08 p.m.)

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3 CHAIRPERSON BERRY: Let me just say
4 that we are back on the record here. The
5 Commission had a discussion of the matter of
6 Stephanie Moore teaching at the University of
7 Pennsylvania and an inquiry we had received
8 relevant to this matter concerning the
9 procedure for her responses, the procedure,
10 not the actual responses themselves, in the
11 course of an inquiry.

12 The Staff Director gave us some
13 information in the Executive Session which
14 she is now going to say for the purpose of
15 this open meeting.

16 STAFF DIRECTOR MOY: Thank you,
17 Madam Chair. I have found no evidence that
18 Stephanie Moore has been in violation of any
19 of the relevant rules, laws and regulations
20 with respect to this matter.

21 CHAIRPERSON BERRY: Also we, as
22 Commissioners, after our discussion and
23 receiving this information from the Staff
24 Director, have no reason to believe to the
25 contrary in terms of the statement that the

1 Staff Director has made about these rules,
2 regulations and the like.

3 We also, as Commissioners, want to,
4 on the record, express our confidence in
5 Stephanie Moore with respect to her
6 integrity, meeting her ethical obligations
7 and her professional responsibilities.

8 X. Future Agenda Items

9 CHAIRPERSON BERRY: All right, we
10 go to future agenda items. Are there any
11 future agenda items, which is the last item
12 on the agenda?

13 All right, we have them, but we
14 have already discussed them; so could I get a
15 motion to adjourn?

16 VICE CHAIRPERSON REYNOSO: So
17 moved.

18 CHAIRPERSON BERRY: Second?

19 (No response)

20 CHAIRPERSON BERRY: Nobody wants to
21 adjourn. Okay, we will stay here all day
22 long then.

23 COMMISSIONER GEORGE: Second.

24 CHAIRPERSON BERRY: It is
25 non-debatable. All in favor, indicate by

1 saying aye?

2 (Chorus of ayes)

3 CHAIRPERSON BERRY: Opposed?

4 (No response)

5 CHAIRPERSON BERRY: So ordered.

6 Thank you very much.

7 (Whereupon, at 12:10 p.m., the

8 meeting of the Civil Rights

9 Commission was adjourned.)

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