

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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Friday, December 11, 1998

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The Commission convened in Offices of the U.S. Commission on Civil Rights in Room 540 at 624 9th Street, Northwest, Washington, D.C., at 9:30 a.m., Mary Frances Berry, Chairperson, presiding.

PRESENT:

MARY FRANCES BERRY, CHAIRPERSON

CRUZ REYNOSO, VICE CHAIRPERSON

CARL A. ANDERSON, COMMISSIONER (via telephone)

A. LEON HIGGINBOTHAM, JR., COMMISSIONER

YVONNE Y. LEE, COMMISSIONER

RUSSELL G. REDENBAUGH, COMMISSIONER (via telephone)

RUBY G. MOY, STAFF DIRECTOR

STAFF PRESENT:

KIMBERLEY ALTON

DAVID ARONSON

LAURA ANECKSTEIN

MARGARET BUTLER

SICILIA CHINN, Parliamentarian

STAFF PRESENT: (Continued)

YANG
KI-TAEK CHUN

PAMELA DUNSTON

BETTY EDMISTON

EDWARD HAILES, JR.

CAROL-LEE HURLEY

FREDERICK D. ISLER

LISA M. JONES

JOSEPH MANALILI

STEPHANIE Y. MOORE, General Counsel

JESSICA ROFF

AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

CHARLOTTE PONTICELLI

KRISHNA TOOLSIE

EFFIE TURNBULL

A-G-E-N-D-A

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

2 (9:55 a.m.)

3 CHAIRPERSON BERRY: Let's go ahead and
4 start the meeting.

5 I. Approval of Agenda

6 The first item is the approval of the
7 agenda.

8 VICE CHAIRPERSON REYNOSO: So moved.

9 COMMISSIONER HIGGINBOTHAM: Second.

10 CHAIRPERSON BERRY: All in favor
11 indicate by saying aye.

12 (Chorus of ayes.)

13 II. Approval of Minutes of November 13, 1998

14 CHAIRPERSON BERRY: Approval of the
15 minutes of November 13 meeting. Could I get a
16 motion?

17 VICE CHAIRPERSON REYNOSO: So moved.

18 CHAIRPERSON BERRY: Any changes to the
19 November 13th Agenda?

20 (No response.)

21 CHAIRPERSON BERRY: Okay, no discussion.

22 All in favor indicate so by saying aye.

23 (Chorus of ayes.)

24 CHAIRPERSON BERRY: Opposed?

25 (No response.)

1 CHAIRPERSON BERRY: So ordered.

2 III. Announcements

3 CHAIRPERSON BERRY: Announcements. Our
4 first announcement is that Barbara Brooks, who has
5 been in Public Affairs, Acting Chief of Public
6 Affairs is retiring from service on this Commission
7 in early January. I guess she has been associated
8 longer than anybody else on the Commission, I've
9 known her for years, through various iterations,
10 hard times, good times.

11 I will very much miss her, and I'm sure
12 that the Commission wants to express its
13 appreciation.

14 VICE CHAIRPERSON REYNOSO: I'll
15 certainly join with that.

16 CHAIRPERSON BERRY: All right.

17 The next Commission meeting is, I'm
18 reminding you, is Friday, January 22nd, and it will
19 be a planning meeting, planning for the next year.

20 What I want to say about that is, we
21 have enough proposals from last year, and the year
22 before, of things that the Commission proposed to
23 do, to review.

24 If you look at all the things you have
25 in your files from last year, the year before, that

1 we never did, I can think of some of them off the
2 top of my head, something about financial aid, and
3 different proposals that we haven't done, because we
4 haven't had the resources, that the Commission
5 always approved.

6 You might want to review those, and if
7 you don't have copies, you may ask for copies, to
8 see what your attitude is towards those proposals.

9 And then, I think, the Staff has been
10 asked that if they have new ones to add to these,
11 that they would send them for us to look at. We
12 have a lot, already, to review and to select from,
13 given the budgetary constraints.

14 So we will be planning. And since we
15 have this new system, we will be able to plan
16 better, to make sure we don't overburden the
17 offices, and that we don't try to give people more
18 work than they can do, and that we sort of get
19 things done.

20 I, for myself personally, believe that
21 we ought to think about the Commission as well as
22 think about not starting a new project unless we can
23 figure out a way to finish it within the year.

24 If we start it, twelve months later,
25 there ought to be some kind of report. And if we

1 don't project that we are going to have any twelve
2 months later, then we ought to think about doing
3 something else.

4 So maybe we ought to think about a
5 different format, or we think about -- because I
6 think that we all know what the problem is, and
7 things get stale after a while, and they are not
8 relevant to what is going on at that particular
9 time.

10 So, anyway, that is something to think
11 about in the planning meeting in January.

12 The other is on schools and religion.
13 Commissioner George had submitted a statement for
14 inclusion in the report, as we all agreed he could
15 do.

16 I wanted to suggest that we have a
17 statement, obviously. I don't know where we left
18 this. Does anybody remember where we left, what we
19 had planned to do on schools and religion? I know
20 we said we would release the transcript, and that
21 Commissioner George and Horner, if they wished, we
22 did not receive one from Commissioner Horner, is
23 that right, Staff Director?

24 STAFF DIRECTOR MOY: Correct.

25 CHAIRPERSON BERRY: She could submit one

1 if she wanted to. But I think that there ought to
2 be a statement with it, on behalf of the Commission,
3 for us to review, as we normally do with everything
4 else, for schools and religion, and that we can
5 consult with the Staff Director if we want to do
6 that, about how exactly we can get that done.

7 But I think that is something we ought
8 to do.

9 Does anybody have any reaction to that?

10 VICE CHAIRPERSON REYNOSO: Well, I
11 agree, I hate to have to put in all that effort and
12 just have a transcript out there without the normal
13 analysis.

14 CHAIRPERSON BERRY: So we can have some
15 kind of either a statement, that is based on the
16 stuff in the transcript, and try to find some easy
17 way to do it, not findings and recommendations, and
18 all of that, which take forever to do.

19 COMMISSIONER REDENBAUGH: Mary?

20 CHAIRPERSON BERRY: Yes?

21 COMMISSIONER REDENBAUGH: I think that
22 is right, I don't see how we could do, or it was not
23 our intention to do findings and recommendations.
24 But if we could just identify the issues?

25 CHAIRPERSON BERRY: Okay.

1 COMMISSIONER REDENBAUGH: And without
2 recommendations, we need to say, these are the
3 issues that we were orienting around. Now, maybe
4 that is not sufficient, but I think that would
5 certainly be maybe a start.

6 CHAIRPERSON BERRY: Well, why don't we,
7 it seems to me we have expressed here, I think there
8 is consensus, that there should be something, and
9 that these elements at least should be in it, and
10 then we should work up and see what kind of
11 statement we can get.

12 I think we have the time to do it. This
13 issue, now that the transcript has been done, is one
14 we wouldn't want to wait, it is not like next week,
15 or next month. As a matter of fact, I think it is
16 going to be more than issue a letter that lists some
17 issues.

18 So, with that, then we will wait for the
19 submittal from the Staff Director, or the Staff, can
20 produce for us.

21 COMMISSIONER REDENBAUGH: Commissioner
22 George gave us his statement?

23 CHAIRPERSON BERRY: Yes, he turned it
24 in, right?

25 COMMISSIONER REDENBAUGH: Well, I'm

1 always leery, if words go out that someone has
2 written a detailed analysis on certain descriptions
3 of what they believe to be the pathology, and it is
4 not answered, if there is a disagreement.

5 So, therefore I think that we ought to
6 have the opportunity to read his statement to see if
7 it has any significant commentary that some of us
8 may completely disagree with.

9 OPERATOR: Commissioner Anderson is
10 joining the call.

11 CHAIRPERSON BERRY: Good morning, or is
12 it afternoon, or what?

13 COMMISSIONER ANDERSON: Well, it is
14 afternoon here, but good morning to you. It took me
15 about 45 minutes to place this call.

16 CHAIRPERSON BERRY: We are happy to have
17 you on, and we are still on announcements, so you
18 haven't missed much.

19 COMMISSIONER ANDERSON: Okay, thank you.

20 CHAIRPERSON BERRY: So that we will have
21 opinion of his statement, certainly, other people
22 need to read it. We are talking about schools and
23 religion, Carl.

24 COMMISSIONER ANDERSON: Yes, okay.

25 CHAIRPERSON BERRY: And then we will

1 have a statement written for the Commission, for us
2 to review, and look at, based on that and see where
3 we go from there.

4 The Commissioners, the other
5 announcement is that the Commissioners and their
6 special assistants are invited to attend the Staff
7 holiday party at one o'clock today, which will be
8 right here in this fifth floor conference room.

9 I don't expect you to come, Carl, from
10 where you are. But those of you who are here might
11 want to drop by.

12 The other, next announcement -- does
13 anybody else have any announcements?

14 COMMISSIONER REDENBAUGH: I have a
15 comment on what you've made already. The January
16 meeting is the 22nd?

17 CHAIRPERSON BERRY: Yes, sir.

18 COMMISSIONER REDENBAUGH: Did we change
19 that at our last meeting?

20 CHAIRPERSON BERRY: We thought about
21 changing it, and we were going to check around to
22 see if everybody could do it, or something, and that
23 sort of fell by the wayside, so we are back on the
24 22nd.

25 COMMISSIONER REDENBAUGH: We did check

1 around, or we didn't?

2 CHAIRPERSON BERRY: We did check around.

3 COMMISSIONER REDENBAUGH: All right. I
4 think, to your comments, which is -- which I agree
5 with, that we should review the past approved
6 projects, and I very much like the notion of doing
7 them within a time period, I think that would be a
8 very useful notion.

9 I will add that without a clear estimate
10 of capacity in the current fiscal year, and the year
11 following, that our discussions won't make much
12 sense.

13 What I mean by our capacity is a well
14 formed estimate, we have these pending projects,
15 they are going to require these resources, and they
16 are going to be completed on or about these dates.

17 And inside the budget that we have, that
18 leaves us this amount of time and money. So we put
19 the two things together, enough time that we can
20 have a good estimate of the time required to
21 complete the pending projects.

22 I note, in the Staff Director's report,
23 this time, but almost an absence of any dates that
24 any of the pertinent projects will be completed,
25 only announcements that they won't be completed as

1 previously indicated.

2 So I don't know how to have the kind of
3 meeting you are proposing, and I think it would be
4 not only valuable, but essential, to have such a
5 meeting.

6 CHAIRPERSON BERRY: Does the MIS give us
7 the dates when these will be finished, so that what
8 you might do, we have these MIS documents that give
9 us men and women hours, and person hours, and where
10 everything is, and when they project it.

11 What we might do is have a one-page that
12 summarizes for us the purposes of these proposal
13 programs -- these are the ones that are listed here,
14 and these are the dates when they are supposed to be
15 done.

16 STAFF DIRECTOR MOY: They have the
17 start, duration, and finish date.

18 CHAIRPERSON BERRY: Right, so that we
19 would have just, so that we don't have to shuffle
20 through those things, just copy from that, for each
21 one of the projects that is underway now, on a sheet
22 of paper, the date when they are supposed to be
23 finished.

24 COMMISSIONER REDENBAUGH: I know we have
25 this print-out that says those things.

1 CHAIRPERSON BERRY: Right.

2 COMMISSIONER REDENBAUGH: I don't have
3 the sense that those are reliable.

4 CHAIRPERSON BERRY: Okay.

5 COMMISSIONER REDENBAUGH: Or that that
6 tool is being used in the management of these
7 projects. It is certainly not appearing in the
8 Staff Director's report.

9 CHAIRPERSON BERRY: You mean that in the
10 Staff Director's report it doesn't, say, correlate
11 with, say, like in the MIS that X will be done by X
12 time. If you look at the Staff Director's report
13 you see, under various offices, where X, Y, and Z,
14 it doesn't tell you that?

15 COMMISSIONER REDENBAUGH: Yes, but
16 actually more to my point, it doesn't say what we
17 now commit to, is to have this done by X.

18 CHAIRPERSON BERRY: Okay. Maybe we
19 ought to, in addition to getting this ready for the
20 meeting, and the sheet which all we are doing is
21 copying it off the MIS --

22 COMMISSIONER REDENBAUGH: Right.

23 CHAIRPERSON BERRY: -- Staff Director's
24 report, from now on, have under these offices, if
25 there are reports, have the dates that are in the

1 MIS, either transferred there, or if something else
2 has happened tell us, you know, what has happened.
3 Is that what you are saying?

4 COMMISSIONER REDENBAUGH: Well,
5 actually, more than that. What I'm saying is, not
6 only that they be taken from one page and put on
7 another, but someone making the assessment that the
8 Staff Director is saying, yes, but it is still a
9 valid estimate, and we are organizing ourselves to
10 conclude that by this date, and you can expect that.

11 Then, of course, things slip and -- but,
12 so, more than the date, the notion that we are
13 committed to that date, and we are organizing
14 ourselves around that, or we are not, and we are
15 moving it out to this other date.

16 CHAIRPERSON BERRY: Well, the next item
17 on the Agenda is the Staff Director's report. Why
18 don't we go to that, why don't we just add under
19 each one, what the status of it is?

20 COMMISSIONER LEE: Before we do that, I
21 have one announcement.

22 Last month the Commission issued the
23 Executive Summary on the Kennedy finance controversy
24 involving Asians with Americans. At the briefing, I
25 think, we all remembered the panelist mentioned how

1 Asian Pacific Americans were portrayed as
2 foreigners, and how they were also portrayed as
3 someone who uses this country, use their financial
4 influence to take over the country and what have
5 you.

6 About two weeks ago, in southern
7 California, with a really sizable Asian American
8 population, a Seven-Eleven store there started to
9 sell toy dollar bills that some of the folk in the
10 community have found were offensive.

11 Certainly, you know, we are not here to
12 advocate any kind of a censorship in this free
13 market. As you can see in this dollar bill, I will
14 fax them to Commissioners Anderson and Redenbaugh,
15 it is a fake dollar bill called the Asian States of
16 America, misspelling a variety of things.

17 They have President Clinton wearing a
18 Chinese milking hat, they have a variety of
19 different things, the most offensive thing they
20 have, in Chinese, saying Americans are stupid.

21 This kind of a play thing is really
22 offensive not only to the Asian American community,
23 but it shows a great deal of insensitivity toward a
24 significant population in this country, and further
25 perpetuates the stereotypes that we are experiencing

1 today.

2 I think that, number one, the folks who
3 have contact with Seven-Eleven wanted to know
4 whether this was being distributed across the chain,
5 or just an isolated situation. I guess the store
6 owner found out that this may be a major situation,
7 because the local press was trying to find out. So
8 they decided not to talk to anybody.

9 But regardless of this, these kinds of
10 toys have been purchased by young people, teenagers,
11 and I bring this up for the Commissioner's
12 information, and also, to see if it is appropriate
13 for us to issue a general statement, because now it
14 is Christmastime, there are a lot of toys out there,
15 some may be insensitive to different groups
16 regarding their race, gender, and ethnicity, and
17 what have you.

18 Maybe this is appropriate for us to
19 issue a statement calling for discretion on behalf
20 of parents, adults, and store owners who may be
21 carrying these kinds of items, to make sure that
22 these kind of insensitive items, that could lead to
23 further divide in our country, should not be made
24 available to communities.

25 CHAIRPERSON BERRY: Do you know whether

1 anyone got in touch with the, it used to be
2 Southland Corporation, I don't know who owns Seven-
3 Eleven now.

4 COMMISSIONER REDENBAUGH: The parent
5 company by that name is a Tokyo-based company.

6 CHAIRPERSON BERRY: I don't know, if
7 they own Seven-Elevens, do you?

8 COMMISSIONER REDENBAUGH: They do.

9 CHAIRPERSON BERRY: Did anybody get in
10 touch with -- from your reading of what happened out
11 there, with the Southland, or Seven-Eleven folks?

12 COMMISSIONER LEE: I don't know. I did
13 get a call from the LA Press, and they were trying
14 to get more information. But, regardless, the items
15 have been available. How they did it is they
16 displayed these right in front of the cash
17 registers, so people see it.

18 VICE CHAIRPERSON REYNOSO: And they were
19 selling these?

20 COMMISSIONER LEE: They were selling
21 them, \$2.50 for 10, so people were buying them as
22 stocking stuffers. So it is widely available. It
23 is very attractive for young kids, because it mocks
24 the President.

25 But besides mocking the President, you

1 know, while they intentionally, or unintentionally,
2 the Asian American community thinks that they have
3 been degraded.

4 VICE CHAIRPERSON REYNOSO: They have
5 been.

6 CHAIRPERSON BERRY: Well, they have
7 been, that is clear. I think that is the intent of
8 the people who wrote this, to both degrade, or it is
9 their intent, or they think that it will make money,
10 and I don't know what they think.

11 But I just wondered if anyone had, the
12 reason why I asked, is that one approach to it is to
13 talk to somebody at Southland and find out if they
14 know, one are all their stores selling this,
15 nationwide policy, or a California policy, and are
16 they sensitive to what it means.

17 The other is, as you said, some kind of
18 general pronouncement to people who distribute toys
19 and items. I'm not sure which one -- and then, of
20 course, one has to steer clear of censorship and the
21 idea that one is trying to keep people from
22 criticizing other people.

23 So I don't know, does anyone have any
24 view on this? You don't see what we have here, Carl
25 and Russell, so it is hard for you to know, right?

1 VICE CHAIRPERSON REYNOSO: Madam Chair,
2 in some ways I hesitate to give more advertising to
3 this effort. Therefore I would suggest that we --
4 that the Staff check to see who, indeed, are the
5 owners of Seven-Eleven, who we should write to, and
6 that you and the Staff Director sign a letter to
7 them summarizing the discussion we have had here,
8 and expressing our concern to the distribution of an
9 alleged toy, which is really a dollar bill, or a 13
10 dollar bill mocking not just the President, but it
11 seems to me by implication the Asian American
12 community.

13 CHAIRPERSON BERRY: Does anybody else
14 have any --

15 COMMISSIONER HIGGINBOTHAM: I think this
16 is a serious, and yet a very delicate problem.
17 There are lots of people who would love to take us
18 on and say that the Civil Rights Commission wants to
19 deny people "Freedom of Speech."

20 So what I think we should do, in
21 anything that we communicate, is to make it very,
22 very clear, that this is not an effort to preclude
23 anyone from even expressing polarizing opinions.
24 But what we are concerned about is that it be made
25 clear that the consequences of this type leads to

1 polarization, and has profound divisive effect in
2 America.

3 So you won't get caught by some
4 superconservative columnist saying that we are
5 throwing out the first amendment. And I know that
6 is not the intent, but I think we better cast our
7 statement very, very carefully, so that it is clear
8 what our concerns are, and what our concerns are
9 not.

10 VICE CHAIRPERSON REYNOSO: I agree with
11 that, Madam Chair. And, perhaps, even noting that
12 sometimes, as Commissioner Lee said, I think she
13 said intentionally or unintentionally, they may have
14 just thought they were poking fun at the President,
15 but sad to say the results are not just something
16 adverse to the President, but something adverse to
17 the Asian American Community.

18 COMMISSIONER HIGGINBOTHAM: One of the
19 most important things we have to do is, what did you
20 say that those Chinese words are? Because I don't
21 know what they are.

22 COMMISSIONER LEE: Well, I've been told
23 it says, Americans are stupid.

24 CHAIRPERSON BERRY: Carl and Russell,
25 gentlemen, are you still there?

1 COMMISSIONER ANDERSON: Yes.

2 COMMISSIONER REDENBAUGH: Yes.

3 CHAIRPERSON BERRY: This thing that you
4 cannot see, is a -- imagine a dollar bill which has
5 13 on it, instead of 1 dollar or 20 dollars, with
6 the face of the President on one side, with a big
7 smile and a hat and "show me the money" with a
8 heart, "One Hung Low," Treasurer of Amerika, with
9 the Chinese language right above it that Yvonne
10 referred to.

11 On the right hand side of the President,
12 E Pluribus Coitus, union made. And then with Al
13 Gore as Solicitor on the bottom of it. And then on
14 the back of this dollar bill, the Asian States of
15 America, the White House right in the middle of it,
16 and then "overnights, 100,000 dollars," little signs
17 in front of the White House.

18 VICE CHAIRPERSON REYNOSO: Also "in lust
19 we trust."

20 CHAIRPERSON BERRY: "In lust we trust,"
21 instead of in God we trust, Asia with dollars,
22 coffee klatches 25,000.

23 It is clear, to me, and the picture of
24 an Indian -- it is clear to me that the person was
25 spoofing the campaign finance controversy.

1 COMMISSIONER REDENBAUGH: It sounds like
2 it is a political statement.

3 CHAIRPERSON BERRY: And Chinese
4 connection, which has been discussed -- the alleged
5 Chinese connection. It sounds to me like they are
6 spoofing that, but in the course of having done so,
7 they have stuck the Indian in here for some reason I
8 don't understand, there is a little picture of --

9 COMMISSIONER REDENBAUGH: Maybe because
10 of the Interior Department issue.

11 CHAIRPERSON BERRY: I forgot about that.
12 And so what would be, assuming for the sake of
13 argument, that this thing is, as I am describing it,
14 would your views be similar to those of Commissioner
15 Higginbotham, and the Vice-Chair, or what would be
16 your guidance in these matters, gentlemen? And you
17 can always take it back once you know better what is
18 in it, or if you don't agree with my
19 characterization.

20 Any guidance?

21 COMMISSIONER ANDERSON: You want me to
22 go first?

23 COMMISSIONER REDENBAUGH: Please.

24 COMMISSIONER ANDERSON: It sounds to me,
25 that although it is in extraordinary bad taste, I

1 think I would associate myself with the views
2 expressed by Commissioner Higginbotham. If we are
3 going to make a statement on this, we ought to be
4 very careful we don't appear as though we are trying
5 to censure political speech, or free speech.

6 It is, like I said, in bad taste. But
7 if we need to send out a statement on this one, I'm
8 willing to join the Commission in doing it.

9 CHAIRPERSON BERRY: Okay.

10 COMMISSIONER ANDERSON: I would say one
11 thing further. If -- it may be well that we
12 investigate this a little bit more thoroughly. It
13 could be something that just the local store owner
14 has put on his shelf, his own personal statement, or
15 it could be something related to the chain of Seven-
16 Eleven stores.

17 But it seems to me that if it had a more
18 national application we would have heard, perhaps,
19 more about it now. But perhaps we can investigate
20 it a little bit more before we send out a statement.

21 CHAIRPERSON BERRY: I like that idea.

22 Russell, do you have any --

23 COMMISSIONER REDENBAUGH: I agree with
24 Carl. It is in obvious bad taste. I think it
25 offends many groups, including the political

1 classes. It is, obviously, I mean I see it as a
2 political statement, and not necessarily intended to
3 degrade Asians or Americans, but certainly our
4 political process.

5 I actually think they are doing a pretty
6 good job of degrading themselves, currently. They
7 probably need no additional help.

8 So, yes, I think we have to be specially
9 careful to not be seen as discouraging political
10 comment, however tasteless.

11 CHAIRPERSON BERRY: Why don't we ask the
12 Staff Director to have, perhaps, Carol Lee, since
13 she has the regions, find out whether this is in
14 California, or any other regions. At least that is
15 a start. And then get some more information about
16 how they happen to be there.

17 And if we then desire, once that
18 information is available, to have a statement, have
19 something drafted, which we would circulate to you,
20 for you to see before we did anything.

21 How is that?

22 COMMISSIONER REDENBAUGH: That is fine
23 with me.

24 COMMISSIONER HIGGINBOTHAM: May I just
25 make a comment? One of the ways in which I always

1 try to filter out if something is derogatory, is to
2 put different names into the group which is being
3 vilified and see what would be the reaction.

4 Now, suppose someone had a 13 dollar
5 bill out, they called it the Jewish States of
6 America? I have a feeling that would get some fast
7 attention. If someone had a 13 dollar bill out and
8 said, the Roman Catholic States of America, and they
9 had some reference to the Pope, or someone else, I
10 think that would get some fast attention.

11 I mean, on the other hand, if you put
12 the Black States of America, or the Asian States of
13 America, it just becomes a fascinating commercial
14 ploy.

15 Now, all I am suggesting is that when we
16 look at it, that if you think that society would be
17 indignant if you called it the Jewish States of
18 America, and all the -- the Roman Catholic States of
19 America, and put all the terminology, that we should
20 have the same gusto of indignation when they call it
21 the Asian States of America.

22 CHAIRPERSON BERRY: And without regard
23 to whether it is about fundraising scandal, or
24 adultery, or whatever it is. So maybe if we are
25 going to draft the statement, should write it with

1 that tone and tenor, and say that this may be about
2 the campaign finance, but the general issue is how
3 you characterize people and give examples of what
4 would be offensive.

5 I think if we end up having a statement,
6 I think that that would make good sense, that is a
7 good idea.

8 I like that, that will be done, and we
9 will proceed from there.

10 VICE CHAIRPERSON REYNOSO: Madam Chair?

11 CHAIRPERSON BERRY: Yes?

12 VICE CHAIRPERSON REYNOSO: One other
13 matter on a different topic before going on to the
14 Staff Director's report.

15 I wonder, Madam Chair, if it would be
16 appropriate for you to write a letter of
17 acknowledgement to Commissioner Horner on the
18 occasion of the termination of her six year tenure
19 with us?

20 CHAIRPERSON BERRY: Yes, I will do that
21 on behalf of the Commission unless there is some
22 objection. If there is no objection, then we will
23 do that.

24 I also wanted to mention, under
25 announcements, that Commission Higginbotham, Judge

1 Higginbotham testified, some of you may have seen
2 it, at the Hearings that are going on in the -- the
3 momentous Hearings in the history of our nation.
4 And that he was one of the witnesses invited by the
5 Committee to discuss the issue of perjury, which he
6 did in very fine fashion. We would expect no less
7 of him.

8 So I just wanted to point that out. If
9 any of you missed it, tapes I'm sure are available
10 from C-Span if you did miss it. But it has been on
11 the air, I've seen it repeated several times.

12 I just wanted to commend him for the
13 judiciousness of his presentation before the Panel.

14 COMMISSIONER HIGGINBOTHAM: Well, it is
15 the training I got here.

16 (General laughter.)

17 CHAIRPERSON BERRY: The other thing is,
18 if those are all the announcements, then we will go
19 on to this issue of projects. Let's just do a quick
20 run through, Staff Director, and let's just turn to
21 the page on the Staff Director's report.

22 Let's see, it says, Civil Rights
23 Studies, Fair Employment Law Enforcement Project.
24 That has been postponed. I guess that is correct.

25 Then we go over to Enforcement of Non-

1 Discrimination Laws Related to Health Care Projects.

2 STAFF DIRECTOR MOY: Madam Chair?

3 CHAIRPERSON BERRY: Yes?

4 STAFF DIRECTOR MOY: Under the Public
5 Affairs Unit we did send out a memo to the
6 Commissioners about the PSA announcements. And I
7 was just wondering if they had had a chance to look
8 at that.

9 CHAIRPERSON BERRY: That wasn't put on
10 here. Did anyone have a chance to look at the PSA
11 announcements memo that came from the -- it is for
12 the new public service announcement that came from
13 the --

14 COMMISSIONER REDENBAUGH: I did look at
15 it.

16 CHAIRPERSON BERRY: Is it okay?

17 COMMISSIONER REDENBAUGH: It is fine.

18 CHAIRPERSON BERRY: Does anyone have --

19 COMMISSIONER LEE: I did have a
20 suggestion. I know that you are using a publicist
21 to help you locate potential --

22 STAFF DIRECTOR MOY: Yes, there is a
23 contract.

24 COMMISSIONER LEE: And do they know --
25 if they can look into other minority entertainment

1 groups? I know there is an Asian American Actor's
2 Guild, and what have you.

3 CHAIRPERSON BERRY: We might do that, we
4 might also look at the Latino community, people who
5 are both actors, musicians, television, and all the
6 rest, to get some little bit of diversity folks who
7 are making these public service announcements.

8 So is the PSA okay, as far as you are
9 concerned?

10 VICE CHAIRPERSON REYNOSO: Yes.

11 CHAIRPERSON BERRY: Okay. Under the
12 projects, health care, is that going to meet the
13 deadline that is in the MIS, as far as we know,
14 Staff Director?

15 STAFF DIRECTOR MOY: Yes.

16 CHAIRPERSON BERRY: And what is the
17 deadline for --

18 STAFF DIRECTOR MOY: Let me check the
19 MIS. Legal sufficiency on April 12th, and then OSD
20 in June, 1999.

21 CHAIRPERSON BERRY: Okay. Now, then we
22 go to --

23 COMMISSIONER REDENBAUGH: May I ask,
24 when will it be out of OSD?

25 CHAIRPERSON BERRY: When will it be out

1 . of OSD?

2 COMMISSIONER REDENBAUGH: Uh hum.

3 CHAIRPERSON BERRY: Under the MIS, what
4 does it project?

5 STAFF DIRECTOR MOY: It projects -- I'm
6 sorry. It says June of 1999, and then it gives to
7 the Commissioners on the 7th of June.

8 CHAIRPERSON BERRY: 7th of June to us.

9 COMMISSIONER REDENBAUGH: And is that
10 still realistic?

11 CHAIRPERSON BERRY: Is that realistic?

12 STAFF DIRECTOR MOY: As it is now,
13 unless there are other obstacles.

14 CHAIRPERSON BERRY: So everything is on
15 schedule?

16 STAFF DIRECTOR MOY: Right. And then
17 the Commissioners will have two weeks.

18 CHAIRPERSON BERRY: Then we get two
19 weeks after that, Russell.

20 COMMISSIONER REDENBAUGH: Okay.

21 IV. Staff Director's Report

22 CHAIRPERSON BERRY: Now, let's go to the
23 OSD report, Staff Director. When will the New York
24 report go to the Office of the Staff Director? And
25 is that on schedule, as far as we know?

1 STAFF DIRECTOR MOY: Yes, as far as I --

2 CHAIRPERSON BERRY: What is the date, do
3 we know? Let's find it. I have become quite adept
4 at -- okay. We are going to go right down all of
5 these, so if you can find the dates and tell us.
6 Next time we will be able to do this faster.

7 STAFF DIRECTOR MOY: For the New York it
8 is --

9 CHAIRPERSON BERRY: Could you speak up,
10 so they can hear you out there?

11 STAFF DIRECTOR MOY: For the New York
12 Report the legal sufficiency review is finished,
13 according to this, December 7th.

14 CHAIRPERSON BERRY: December the 7th?

15 STAFF DIRECTOR MOY: No, I'm sorry.

16 CHAIRPERSON BERRY: It is the second one
17 after Mississippi, on the sheets that we have. And
18 it says that the --

19 STAFF DIRECTOR MOY: Report for
20 publications March '99.

21 CHAIRPERSON BERRY: When does it go to
22 the OSD, and when does it go to the Commissioners?

23 STAFF DIRECTOR MOY: The discussion on
24 the report will be sent to OSD in March.

25 CHAIRPERSON BERRY: In March?

1 STAFF DIRECTOR MOY: Yes, for one day.

2 CHAIRPERSON BERRY: March the what?

3 STAFF DIRECTOR MOY: March the 18th.

4 CHAIRPERSON BERRY: Well, on mine it
5 says legal sufficiency review March 18th. OSD it
6 says, OSD -- draft report submitted to Staff
7 Director, 2-4-99, if I'm looking at the right thing.
8 That is what it says here, 2-4-99.

9 STAFF DIRECTOR MOY: Yes, I was talking
10 about the final revision.

11 CHAIRPERSON BERRY: The final revision
12 is when, and when will we get that?

13 STAFF DIRECTOR MOY: March 17th.

14 CHAIRPERSON BERRY: But when will the
15 Commissioners -- we will vote on it on -- it says
16 here we will vote on the New York report on March
17 the 5th.

18 COMMISSIONER REDENBAUGH: Is there a
19 meeting on that date?

20 STAFF DIRECTOR MOY: Yes.

21 COMMISSIONER REDENBAUGH: Then that
22 implies we will have it before it is done with legal
23 sufficiency.

24 CHAIRPERSON BERRY: It says here, the
25 draft report sent to Commissioners for review

1 February 11th, 1999.

2 COMMISSIONER REDENBAUGH: Is that before
3 or after it goes to OSD?

4 CHAIRPERSON BERRY: It should be after,
5 obviously.

6 COMMISSIONER REDENBAUGH: Yes, but I
7 thought we were -- we received things there that --

8 STAFF DIRECTOR MOY: Well, I was saying
9 it was the final part.

10 COMMISSIONER REDENBAUGH: I see.

11 CHAIRPERSON BERRY: This is stuff that--

12 COMMISSIONER REDENBAUGH: I know we are
13 going to have to learn how to use this.

14 CHAIRPERSON BERRY: But what it says,
15 Russell, is that what we really need to know, what
16 is realistic is these dates when it is supposed to
17 come to OSD and then come to us.

18 COMMISSIONER REDENBAUGH: Right.

19 CHAIRPERSON BERRY: And this says that
20 it will go to OSD February 4th, and that -- then
21 there are some things, and then it says it comes to
22 Commissioners for review, and we get 25 days to do
23 that, and it comes to us on February 11th.

24 Is that still realistic, Staff Director,
25 as far as you know, can we count on that?

1 STAFF DIRECTOR MOY: Yes.

2 CHAIRPERSON BERRY: So that is that one.
3 Then Mississippi Delta, which is right in front of
4 that, I guess we do the same. This won't take us as
5 long next time, I guess.

6 We have Commissioners review in full, it
7 says we will get it 4-8-99, and we get 36 days, and
8 that we will vote on it on May 14, 1999.

9 Is that still -- is that what we -- is
10 that okay?

11 STAFF DIRECTOR MOY: Yes.

12 CHAIRPERSON BERRY: Those are the dates,
13 okay. Then we have schools and religion, and we
14 have just discussed what to do about schools and
15 religion, which has to be taken into account as a
16 modification.

17 STAFF DIRECTOR MOY: Correct.

18 CHAIRPERSON BERRY: Then we have crisis
19 of the young African American Male project, which --
20 what is the skinny on that?

21 STAFF DIRECTOR MOY: Madam Chair, there
22 has been a change. We would like the Commissioners
23 to give us a decision on whether or not we could
24 have this conducted on April 15th, and 16.

25 CHAIRPERSON BERRY: Could you have --

1 could you explain to us, to the Commissioners, why
2 we are not having it today, and what is the
3 obstacles, and whether we can actually count on the
4 date in April, and what the problems are, so that we
5 can get some assurances before we set a date?

6 STAFF DIRECTOR MOY: Well, as you know
7 we have had these statements from OGC, and there are
8 additional attorney advisors on board now, and three
9 additional attorneys have been assigned to it, and
10 they just need more time to secure these commitment
11 figures.

12 CHAIRPERSON BERRY: Well, this is a
13 consultation, right?

14 STAFF DIRECTOR MOY: Correct.

15 CHAIRPERSON BERRY: Which means people
16 are committed to write papers?

17 STAFF DIRECTOR MOY: That's right.

18 CHAIRPERSON BERRY: Are there people
19 already committed to write these papers?

20 STAFF DIRECTOR MOY: Some.

21 CHAIRPERSON BERRY: Have any of the
22 papers been written?

23 STAFF DIRECTOR MOY: Yes.

24 CHAIRPERSON BERRY: How many?

25 STAFF DIRECTOR MOY: I'm not quite sure.

1 CHAIRPERSON BERRY: Have most of them
2 been written, some of them been written?

3 STAFF DIRECTOR MOY: Some of them.

4 CHAIRPERSON BERRY: A few of them have
5 been written?

6 STAFF DIRECTOR MOY: Some of them have
7 been written.

8 CHAIRPERSON BERRY: So is the problem
9 that the people who write the papers haven't been
10 identified, or that they haven't written the papers,
11 or what? Because the attorneys aren't writing the
12 papers is my understanding.

13 STAFF DIRECTOR MOY: Correct.

14 CHAIRPERSON BERRY: They are being
15 written by other people.

16 STAFF DIRECTOR MOY: Right. May I ask
17 Ed Hailes, he is in the audience, to speak on this?

18 CHAIRPERSON BERRY: If he wishes.

19 DEPUTY GENERAL COUNSEL HAILES: Good
20 morning, Madam Chair.

21 CHAIRPERSON BERRY: Good morning.

22 DEPUTY GENERAL COUNSEL HAILES: At this
23 point we have tentative commitments from 15
24 consultants, and we don't have firm agreements with
25 those consultants.

1 Most of the consultants will not proceed
2 with writing the papers until they receive a
3 written, firm agreement from the Commission. The
4 agreement would include both the preparation of a 15
5 to 20 page paper, and attendance at a consultation.

6 So we have recommended to the Staff
7 Director that we have a firm date, which we
8 recommend being early 1999, preferably April 15 and
9 16, and with that firm commitment we can send them
10 an agreement that they would sign, giving them a
11 modest stipend, and they would go forward and
12 prepare the papers.

13 The 15 consultants that we have
14 identified, as I said, they have tentatively agreed
15 to prepare them. One consultant has completed the
16 paper without a written agreement, most of the
17 consultants will not proceed with writing the paper
18 until they have this firm agreement.

19 CHAIRPERSON BERRY: And the 15th of
20 April is the date where you are assuring, Staff
21 Director and Mr. Hailes, that we would, in fact,
22 have a consultation?

23 STAFF DIRECTOR MOY: Yes.

24 CHAIRPERSON BERRY: Commissioners, any
25 objection to the scheduling for the 15th?

1 (No response.)

2 CHAIRPERSON BERRY: So that is a firm
3 date, that is a meeting, right? We already have a
4 meeting, right?

5 STAFF DIRECTOR MOY: The 16th is a
6 Friday, and it is a meeting date.

7 CHAIRPERSON BERRY: 16th is the meeting,
8 so we are just adding the 15th to have the
9 consultation.

10 COMMISSIONER REDENBAUGH: I have no
11 objection.

12 CHAIRPERSON BERRY: So we will move
13 forward, and write that in the MIS, April as the
14 deadline of that project, and that is when we expect
15 to have it. Thank you, Mr. Hailes.

16 DEPUTY GENERAL COUNSEL HAILES: You are
17 very welcome.

18 CHAIRPERSON BERRY: The ADA's report.
19 The ADA, if I understand this correctly, will come
20 to the Staff Director on June the 9th, 1999, and
21 will come to the Commissioners for 26 days of review
22 on June the 17th, and the Commissioners would vote
23 on it at the July 9th meeting, 1999.

24 Staff Director, are you committed to
25 these as the dates for these reports?

1 STAFF DIRECTOR MOY: Yes.

2 CHAIRPERSON BERRY: And the next time
3 you can also just write the dates on the, just the
4 last two, when it is coming to us, and when it is
5 coming to you, and when it is coming to us.

6 COMMISSIONER REDENBAUGH: On this ADA,
7 is that a report based on the Hearing we just had?

8 CHAIRPERSON BERRY: It is a report based
9 on the Hearing we just had.

10 COMMISSIONER REDENBAUGH: I just wanted
11 to complement the Staff and particularly the Office
12 of the General Counsel for, in my view, the best
13 Hearing that we have had in my years in the
14 Commission. I think it was extremely well done, I
15 know under very tight time lines, very balanced.
16 Excellent representation from many different points
17 of view, from very qualified people.

18 And I just want to say that it was a
19 superb job.

20 CHAIRPERSON BERRY: Okay. I agree with
21 that, I think it was very well done, and so I'm
22 hoping that we will get the report out, and that it
23 will be, and I'm sure it will be as well done as the
24 Hearing itself, and reflect credit on everybody in
25 the organization.

1 The -- I did mention the Los Angeles
2 Hearing report? I skipped over that. That is the
3 second one that is listed. What is happening with
4 the Los Angeles Hearing report? Does anybody know?

5 STAFF DIRECTOR MOY: May I ask the
6 Office of General Counsel?

7 CHAIRPERSON BERRY: You may ask anyone
8 you please.

9 GENERAL COUNSEL MOORE: The LA report,
10 we had received revisions from the Vice Chair, which
11 have been incorporated into the report. In addition
12 there were updates that were being incorporated by
13 two staff members, one of whom, unfortunately, is a
14 parliamentarian and ethics officer, and has been
15 overwhelmed in the last two weeks with requests from
16 the Staff Director, so she has not been able to make
17 those updates, as of yet.

18 CHAIRPERSON BERRY: So what kind of time
19 lines do we have?

20 GENERAL COUNSEL MOORE: We have not
21 projected any at this point, of course, MIS requires
22 a revolving review, and these projects have just
23 come up in the last week and a half.

24 CHAIRPERSON BERRY: And, also, will the
25 LA report take into account the recent changes in

1 LA, when the Inspector General, I think left, and
2 there is a report on whether there should be a new
3 Inspector General appointed?

4 And I think when we did the Hearing the
5 Inspector General process, and what that person did
6 was part of it, and I think it was a woman Inspector
7 General, if I recall, she has left, and there is a
8 controversy about it.

9 So when this was done, will the update
10 report include that information?

11 GENERAL COUNSEL MOORE: Yes.

12 CHAIRPERSON BERRY: And is the
13 suggestion then that we would get time lines on this
14 at the next meeting, or in between the meeting, or
15 what?

16 STAFF DIRECTOR MOY: It will be revised
17 accordingly, for the MIS in tracking.

18 CHAIRPERSON BERRY: So --

19 COMMISSIONER REDENBAUGH: Which means
20 that revision is when?

21 CHAIRPERSON BERRY: What did you say,
22 Russell?

23 COMMISSIONER REDENBAUGH: I was just
24 asking for clarification, I didn't understand.

25 CHAIRPERSON BERRY: I'm trying to find

1 out, too.

2 COMMISSIONER REDENBAUGH: Okay.

3 CHAIRPERSON BERRY: What does that mean,
4 that we will be told when it will be ready, or what?

5 STAFF DIRECTOR MOY: Yes, as soon as
6 changes and adaptation, and scheduling for
7 resources, are included in the tracking system.

8 CHAIRPERSON BERRY: Could you inform us,
9 since that is the only one we don't have, as soon as
10 Sicilia is able, who is the person that the General
11 Counsel referred to, is able to project when she is
12 going to finish, and the General Counsel is able to
13 project that, could you please inform us?

14 STAFF DIRECTOR MOY: Yes.

15 CHAIRPERSON BERRY: What the new time
16 lines are on that. We did the reports. Anybody
17 have any questions on the Staff Director's report?

18 COMMISSIONER LEE: I just have a
19 question.

20 CHAIRPERSON BERRY: Yes.

21 COMMISSIONER LEE: Under this report, it
22 was mentioned that there was lack of understanding
23 of what the relationship between the office and the
24 Commission, and the General Counsel was going to do
25 with it. I wonder if this is an isolated situation,

1 or does this involve all offices, regional offices?

2 STAFF DIRECTOR MOY: This is just an
3 isolated --

4 CHAIRPERSON BERRY: It was about the
5 offices cooperating with the Commission when the
6 Commission Staff requests information, and by law
7 they are required to cooperate, and apparently we
8 were having some problems. I understand a letter is
9 being written, or has been written?

10 STAFF DIRECTOR MOY: Yes, it has been
11 sent.

12 CHAIRPERSON BERRY: If they do not
13 cooperate after that, this has happened one time in
14 the past, not that often, but somebody else who
15 didn't cooperate. Eventually we have to, as the
16 Commissioners, write a letter to the head of the
17 agency reminding them of their responsibility, or
18 asking them by picking up the phone to remind them,
19 that usually works.

20 But we will see what happens as a result
21 of the letter.

22 The other thing I wanted to mention, we
23 have this draft of the status report. This was
24 given to you because the report has to be submitted
25 to the Senate in January, and we didn't want to wait

1 until the January meeting, and have about two days
2 to figure out, you know, whether we in fact had a
3 report, what the report said, if anybody had any
4 comments on it, because we do not want to be late.
5 We want to start trying to be on time with
6 everything.

7 So we gave you this draft so that you
8 could look at it and decide whether you wanted to
9 make changes in it, whether the tone and tenor of it
10 was basically what you thought we would be doing, or
11 whether you had any other suggestions.

12 Does anyone want to discuss it now, or
13 does anyone have any comments about it, or any
14 objections to it, or any suggestions about how it
15 should be changed, or what?

16 This was required of us in the
17 appropriations language by the Senate, that we would
18 do a further report on the GAO, and write
19 implementation of the GAO recommendations.

20 And our financial plan for the year,
21 i.e., how we expect to spend the money that we have,
22 the projects and so on. So did all the
23 Commissioners get this?

24 COMMISSIONER REDENBAUGH: Yes, I did,
25 Mary. I'm not prepared to comment yet, but just

1 from my preliminary look at it, I will definitely
2 have comments and recommendations.

3 CHAIRPERSON BERRY: Okay.

4 COMMISSIONER REDENBAUGH: And, in terms
5 of the timing, by when would those be needed so they
6 could be considered?

7 CHAIRPERSON BERRY: Well, I believe that
8 so that we are not behind the eight ball at the last
9 minute, trying to do something, that you should have
10 any comments in no later than about -- how about two
11 weeks or three weeks?

12 COMMISSIONER REDENBAUGH: Let me do two
13 weeks.

14 CHAIRPERSON BERRY: You can do it in two
15 weeks?

16 COMMISSIONER REDENBAUGH: Yes.

17 CHAIRPERSON BERRY: I don't know what
18 the date will be two weeks from now. Christmas Day.

19 COMMISSIONER REDENBAUGH: How about the
20 third of --

21 STAFF DIRECTOR MOY: The third of
22 January is a Sunday, how about Monday the 4th?

23 COMMISSIONER REDENBAUGH: Thank you.

24 CHAIRPERSON BERRY: Anyone who has any
25 comments on the report to the Senate, the draft, or

1 recommendations for additional things, have them in
2 by the fourth, close of business, so that we can
3 write this thing all over again, and make sure that
4 we get it in when it is supposed to go, okay?

5 The other thing I wanted to point out is
6 the Staff Director informed me that Fred Isler's
7 shop has rewritten, and revised, a couple of reports
8 that they presented to the Commission last year, and
9 they want the Commission to read them as revised,
10 and to see whether the Commission is willing to
11 consider approving them for publication.

12 So my suggestion is that they send them
13 to us, and give us at least a month to read them.
14 It would be better if they gave us more than a
15 month, so that we can then consider whether we want
16 to or not.

17 So I just wanted to point that out to
18 you, so you will be getting a couple of reports from
19 Fred's shop that have been rewritten to look at
20 again.

21 Now we have the -- anything else on the
22 Staff Director's report? And have I failed to
23 announce something I should have announced?

24 (No response.)

25 CHAIRPERSON BERRY: The State Advisory

1 Committee appointments for Michigan. Could I get a
2 motion on the State Advisory Committee appointments
3 for Michigan?

4 VICE CHAIRPERSON REYNOSO: So moved.

5 COMMISSIONER LEE: Second.

6 CHAIRPERSON BERRY: Any discussion?

7 VICE CHAIRPERSON REYNOSO: Madam Chair,
8 I just want to comment that I'm sure that all of the
9 members are as qualified as Mary Lou, who I know is
10 very qualified, has a great deal of enthusiasm about
11 the work that she does.

12 But I wonder if we might inquire of the
13 regional directors if they, in turn, could have a
14 discussion with the advisory committee about the
15 issue that I raised some months ago, but I have been
16 persuaded that I should not proceed with the same
17 form that I have considered at that time, mainly
18 suggesting that maybe half of all advisory
19 committees be very young people, but that they
20 consult with the advisory committees on what their
21 thoughts are in terms of youth.

22 My own thoughts being that we have to
23 worry about young people knowing about civil rights,
24 and that a very good place to have such young people
25 would be on the advisory committee.

1 And by young I mean younger than 40.
2 Right now we describe anybody under 40 as young, but
3 I would hope that we could have folk 25 or under,
4 have a couple of people who are still college age,
5 or young professionals.

6 The appointments are only for two years,
7 it seems to me that we have stability even in young
8 people for a period of two years, and I think it
9 would be of value to have more young people of that
10 age group represented.

11 So my suggestion now is only that we
12 inquire of the staff, of the regional staff, if they
13 in turn had that discussion with the advisory
14 committee, and see how they feel. I know there is a
15 lot of value to having well established, well
16 respected folk on the committees.

17 On the other hand I'm concerned in terms
18 of the evolution of civil rights, and having young
19 people be more involved.

20 CHAIRPERSON BERRY: So how would we
21 accomplish that? I guess we shouldn't say half the
22 people should be age--, then it would be age
23 discrimination.

24 VICE CHAIRPERSON REYNOSO: Well, I
25 received a letter suggesting that I might be

1 involved in age discrimination, but that is not the
2 way I interpret it.

3 I interpret it, in fact, at the opposite
4 of age discrimination, making sure we don't
5 discriminate on basis of age, and have that sort of
6 distribution.

7 My suggestion would be that if the
8 Commission thinks it is worthwhile to have the Staff
9 Director talk with the regional directors, or the
10 office that deals with the advisory committee, and
11 have that discussion.

12 I always hesitate to say that we ought
13 to do this without checking with the people
14 involved, that is my main concern.

15 COMMISSIONER HIGGINBOTHAM: Well, I
16 support Cruz' concept. We may want to say that we
17 think it is important to have pluralism. And [if]
18 you can't have pluralism without having young
19 people.

20 There are also some easy techniques we
21 could use, just go into your computer and you get
22 the age distribution of people who are over 21, who
23 are in that, and point out what your age profile is
24 in relationship to the population.

25 And no one is asking 100 percent

1 compatibility. This age question is one of great
2 importance. The Chair was kind enough to mention
3 that I had appeared before the Commission, the
4 Judiciary Committee last week. What was more
5 important was that yesterday, of the five witnesses
6 called to testify, two were my former law clerks,
7 Ron Noble who is now a professor at NYU, and Ed
8 Dennis, who is a partner with Morgan, Lewis, and
9 Bacchius.

10 And I recall them as young people who
11 had great potential, and that I thought it was very,
12 very essential that they be exposed to develop their
13 talent.

14 And I think that is the greatest
15 tragedy. I became a Commissioner for the
16 Pennsylvania Human Rights Commission when I was
17 about 30, and there were others 31, 32, who have
18 since really made significant impact.

19 And if we are getting a disproportionate
20 number of people over 50, what we are doing is that
21 we are skewing our breath of insights.

22 CHAIRPERSON BERRY: I was thinking about
23 what you were talking about, my own experience. I
24 mean, I peaked very early. I became Chancellor of
25 the University of Colorado, and had been Chancellor

1 when I was 38, had already done that, and since then
2 it has been downhill.

3 COMMISSIONER HIGGINBOTHAM: Until you
4 got here.

5 CHAIRPERSON BERRY: Yes, but if somebody
6 had waited until I was 50? I think that is right,
7 we have to find a gentle way of trying to get, and
8 we need some people to follow in the footsteps, you
9 know, to come along, and who have ideas. So I think
10 that is a good point, if we can figure out a way to
11 do it.

12 COMMISSIONER REDENBAUGH: Yes, I want to
13 associate myself with all of these comments. And I
14 don't know how to do it either, but I'm definitely
15 in favor of doing it.

16 You said 21, and I'm not arguing for any
17 other age, but 18 does sound awfully young to me,
18 but that is the age for voting.

19 COMMISSIONER HIGGINBOTHAM: Well, I
20 don't want to get too locked in on what should be
21 the age of the youngest.

22 COMMISSIONER REDENBAUGH: Nor do I. I
23 was actually just curious, I don't know where to put
24 it, either. I'm not dissatisfied with 21 at all.

25 COMMISSIONER HIGGINBOTHAM: Again, we

1 just have to do a statistical compilation, and you
2 can do it in incremental units, 18 to 21, 21 to 25,
3 or something like that.

4 But I think you want to let people know
5 that we are aware of this gap.

6 COMMISSIONER REDENBAUGH: Is maturity
7 21, or 18?

8 COMMISSIONER HIGGINBOTHAM: 18 in most
9 states.

10 COMMISSIONER REDENBAUGH: In most states
11 now.

12 VICE CHAIRPERSON REYNOSO: For most
13 purposes.

14 COMMISSIONER REDENBAUGH: But not all?

15 VICE CHAIRPERSON REYNOSO: Yes.

16 COMMISSIONER REDENBAUGH: Interesting.

17 VICE CHAIRPERSON REYNOSO: I would be
18 interested in what response we get. It may be that
19 some of the advisory committees think that we even
20 ought to get some high school students, some seniors
21 as well as college students, or people of that age
22 group.

23 COMMISSIONER REDENBAUGH: I don't think
24 I would want to go that far. I mean, I'm thinking
25 about my own children, and it is a horrifying

1 thought.

2 CHAIRPERSON BERRY: I was about to say,
3 Russell, that those of you who have children are
4 better able to tell --

5 COMMISSIONER REDENBAUGH: Yes, and that
6 is why I definitely disagree with Cruz, based on my
7 personal experiences. My kids are really good.

8 CHAIRPERSON BERRY: I'm sure they are.

9 COMMISSIONER REDENBAUGH: But I'm just
10 not going to give them the car keys.

11 STAFF DIRECTOR MOY: Madam Chair? May I
12 make a suggestion that when Commissioners feel, from
13 time to time, compelled to make suggestions or
14 recommendations, that they do so with those
15 characteristics in mind.

16 CHAIRPERSON BERRY: The other point that
17 I -- yes?

18 COMMISSIONER LEE: I understand that a
19 lot of the major universities they have student
20 organizations, and national student bodies that get
21 together once a year for conferences. And that is
22 the kind of arena that the folks get together and
23 talk about certain issues that the membership should
24 be involved with.

25 And I know that other Government bodies

1 routinely send their staff, or representatives, to
2 attend these conferences, to talk about what does
3 EOC do, you know, what are some of the concerns that
4 the students or colleges have.

5 And it seems to me that -- I understand
6 that the staff is really, really overburdened with
7 all the work. But this may be a good way for either
8 the Commissioners or the Staff to make time to
9 attend these events, to let them know that the
10 Commission is doing well, we have all these
11 wonderful projects, that they will have a place for
12 input, to get them plugged into what we do.

13 That will get them involved with the
14 State Advisory Committees, because many of the
15 students really didn't know that we have those.

16 CHAIRPERSON BERRY: I think that is a
17 great idea, which permits me to say that I think the
18 Commissioners should be aware how hard the staff has
19 been working to finish all these GAO requirements,
20 the MIS, the Administrative Instructions, and all
21 the rest of this work, which is layered on top of
22 the work that they are already doing.

23 The Staff, as you know, is very small
24 indeed, and people have a lot of other things to do,
25 and then they have all these projects, and then they

1 have these initiatives.

2 I just hope that they will, indeed, help
3 us to function more effectively. I think we saw
4 today, with the MIS, some use as to which it can be
5 put.

6 But I just would like to say that I'm
7 grateful to the Staff for all this work they've been
8 doing. And in that regard our passback from OMB, of
9 course, was 11 million dollars. We requested 16, we
10 are at 8.9. At the end of the budget cycle in the
11 negotiations that took place, all the Civil Rights
12 enforcement agencies, all the civil rights agencies
13 got budget increases except us.

14 And we got 160, or whatever it is, on
15 top of 8.75 for COLAS that we discussed the last
16 time. Mr. Anderson, remember you asked the question
17 about what that was for?

18 COMMISSIONER ANDERSON: That's right.

19 CHAIRPERSON BERRY: And in all the
20 discussions that I've had with people about our
21 budget, what came up over and over again, was that
22 there were these management initiatives that GAO had
23 asked us to do, and we hadn't quite finished those,
24 and people said, well, we will put something in the
25 report that will require them to report again on

1 them, and that this kept coming up over, and over,
2 and over again.

3 I think that having finished these, or
4 we are just about at the end of reviewing and
5 finishing these, that argument will no longer be out
6 there to be used, so I think the staff work on that.

7 And in my discussions with people down
8 the street about our budget, we've appealed, and
9 I've been talking to them, to hope that we can come
10 up with a figure between 11 million and 16 million.

11 But even more important than that, that
12 it will be a figure that they will support to the
13 end, and one that we can persuade our oversight
14 subcommittee chair to support for the Commission, if
15 they see that we are on the right track.

16 I must tell you that also there were
17 people expressing concerns about whether we are, in
18 fact as a Commission, engaged in projects and
19 working on issues that are cutting edge in terms of
20 what is going on in the society now.

21 I know that there was one cutting edge
22 issue that Commissioner Anderson raised about the
23 Martin Luther King assassination, that -- and the
24 discontent that was expressed by the King family on
25 the subject, and we were exploring whether or not we

1 would do something on that.

2 Staff Director, how did that turn out,
3 what happened? Remind me, since we have a minute,
4 to see where that is?

5 STAFF DIRECTOR MOY: Staff has been
6 trying to reach the Martin Luther King family by way
7 of Bobby Doctor in Atlanta, and also we up here have
8 been trying to contact sources as well that was
9 involved in the press conference.

10 We finally secured the tape of the press
11 conference, and we are looking into that, although
12 it was late coming. So I would like to defer that
13 to a later time.

14 CHAIRPERSON BERRY: Didn't we get some
15 kind of information about the -- whether the project
16 is jurisdictional or not?

17 Can you hear Commissioner Anderson?

18 COMMISSIONER ANDERSON: Yes, I can,
19 thank you.

20 CHAIRPERSON BERRY: We did get
21 something, and it was a problem of jurisdiction.
22 Did you get that, Commissioner Anderson?

23 COMMISSIONER REDENBAUGH: Yes. How was
24 that resolved? I thought there was an
25 interpretation that said we could have jurisdiction,

1 is that understanding correct?

2 STAFF DIRECTOR MOY: I think it would be
3 up to the Commissioners to charge the Staff.

4 CHAIRPERSON BERRY: And how could we
5 frame it to make it part of our jurisdiction; I mean
6 to make it fit within our jurisdiction, should we
7 desire to do something?

8 VICE CHAIRPERSON REYNOSO: My
9 recollection was that if this were interpreted as a
10 concern by the King family, that the normal
11 processes of administration of justice had not
12 involved properly here, then that is one of the
13 matters that we, as a Commission, have jurisdiction
14 over.

15 COMMISSIONER REDENBAUGH: Yes, my
16 recollection, but I will --

17 VICE CHAIRPERSON REYNOSO: There was a
18 factual question, because in the press conference
19 they had been -- there had not been indication by
20 the family that they were unhappy with what happened
21 with that aspect of our governmental activity, so it
22 was a little bit up in the air, if I remember
23 correctly.

24 CHAIRPERSON BERRY: So where we are left
25 is; where are we left?

1 STAFF DIRECTOR MOY: Pursue it further.

2 We have had exchanges of phone calls, but no
3 contact.

4 COMMISSIONER HIGGINBOTHAM: It seems to
5 me that one, this staff is tremendously overloaded.

6 It is a project we want to take on. I mean, I went
7 to school with Coretta, and I think a great deal of
8 the King family.

9 I think that we have limited resources,
10 and we have to really evaluate what we should take
11 on. I mean, as an example, the number of minorities
12 at the University of Texas Law School decreased from
13 34 to 4 in the law school, African-American,
14 significant decrease of Mexican-Americans. The
15 number at Berkeley decreased.

16 The number of applicants for medical
17 schools in the fifth circuit, that is in
18 Mississippi, Texas, Louisiana, is down by twelve
19 percent. And so I think that we have to deal with
20 what Franklin Delano Roosevelt said, each generation
21 must have its rendezvous with destiny.

22 And we've got to balance out, focusing
23 on the resolution of the problems of kids who have
24 been born long after Martin Luther King died, and
25 correcting what they may, appropriately, feel is a

1 travesty.

2 And someone has to face up to it and
3 say, this is how we are going to allocate our
4 resources. And I'll be prepared to vote on it next
5 month, but I would not want to do it without the
6 staff making additional comment, if they wish.

7 But I read the General Counsel's memo,
8 and it made a lot of sense to me.

9 CHAIRPERSON BERRY: You have something
10 to say, Staff Director?

11 STAFF DIRECTOR MOY: Yes, I've been
12 informed that the King family was not interested in
13 our pursuing this.

14 CHAIRPERSON BERRY: They don't want us
15 to. Then I guess if that is the case, then we will
16 drop it. The point you just made, made me think of
17 something else. Yes?

18 VICE CHAIRPERSON REYNOSO: I'm sorry, I
19 was going to say, we should have a little -- in
20 light of the fact that it was brought up rather
21 formally, we should have a little memo or something,
22 and maybe vote on it the next time, it seems to me.

23 COMMISSIONER HIGGINBOTHAM: Yes.

24 CHAIRPERSON BERRY: Would that be okay,
25 with you, Carl?

1 COMMISSIONER ANDERSON: Yes, it would.

2 I would like to know a little bit more, maybe in
3 this memo, regarding the communication with the King
4 family. A minute ago they had not yet been
5 contacted now they are not interested.

6 So maybe we can have a more formal
7 description on precisely what was done.

8 CHAIRPERSON BERRY: Okay, so let's have
9 a memo to us, before the meeting, describing what
10 the process was, and what happened, and then we can
11 discuss it again, okay?

12 VICE CHAIRPERSON REYNOSO: Madam Chair?

13 CHAIRPERSON BERRY: Yes?

14 VICE CHAIRPERSON REYNOSO: I just wanted
15 to add, since I have personal experience, that we
16 have some of the same problems that have been
17 described in Texas in California, in my own school,
18 UCLA School of Law.

19 We have, in recent decades, an average
20 of 18, 19, 20 percent Latinos, and that has gone
21 down, it went down to 12 percent last year, it is
22 down to 6 percent this year.

23 We have had an average of 7, 8, 9, 10,
24 11 percent African Americans, and it went down to 6
25 percent last year, down to 3 percent this year. So

1 we are practically back at the '50s in terms of
2 representation, at least in the major law schools.

3 CHAIRPERSON BERRY: Well, what you have
4 both said brings to my mind that once before the
5 Commission decided, not formally but just simply
6 decided, not to deal with the issue of affirmative
7 action, because we were so divided over it, we
8 thought, at least.

9 But it occurs to me, after thinking
10 about it, and the events that have taken place in
11 the last two years, and having some discussions
12 individually with some Commissioners, that it may be
13 that the Commission could find some agreement on
14 what to do, at least it is no less likely that we
15 would find agreement than anybody else would.

16 And it is possible, depending on how we
17 were to approach it, because the country greatly
18 needs someone to look at this issue and to come up
19 with some recommendations about where we go from
20 here.

21 And if not us, then I don't know who.
22 And it may be worth the risk of trying to do it. I
23 know Commissioner Redenbaugh had some ideas that I
24 find very interesting, others of you too.

25 So maybe we ought to consider, as a

1 Commission, taking up this subject, and looking at
2 what has happened already, what the country is at
3 odds about, and what we might do on the subject of
4 affirmative action.

5 COMMISSIONER REDENBAUGH: Madam Chair?

6 CHAIRPERSON BERRY: Yes?

7 COMMISSIONER REDENBAUGH: Is there a way
8 that we could do a project in which, ahead of time,
9 we realized that we were unlikely -- that we might
10 not reach agreement, but there is still a valuable
11 project.

12 I don't know quite how to frame that,
13 but make an exploration of the issue, which would be
14 useful and valuable, in which we don't have the
15 expectation that we are going to get an agreement on
16 what exactly to do.

17 What would happen if we did do the
18 project, if it is something that we agreed on, or
19 such a compromise that might not be useful, or as
20 valuable, as -- actually, the more I talk I'm not
21 sure if I like this idea or not.

22 It may be that it sounds great in the
23 abstract, and horrible in the implementation.

24 CHAIRPERSON BERRY: Russell, even if it
25 does sound great in the abstract, and horrible in

1 the implementation, let me try to say the same thing
2 you said, because it sounded appealing to me when
3 you said it, and maybe both of us are wrong.

4 But it seems to me that it ought to be
5 possible to say, for example, have someone write a
6 paper for us, canvassing the issue with all sorts of
7 ideas, like a briefing paper, or something, and then
8 to have some kind of forum.

9 I use the term forum broadly, because
10 I'm not sure which kind of forum, in which people
11 who had different views about this issue, different
12 views about what we are fighting about, what has
13 happened, and what we ought to do now.

14 And then we could discuss them, and talk
15 to them, and then at the end, either lay out all the
16 various things that have been suggested, without us
17 reaching a conclusion how one is better than
18 another, or we think that the middle position is the
19 right one.

20 It ought to be possible to do that.
21 Whether we ought to do that, I don't know. But if
22 that is the kind of thing you mean?

23 COMMISSIONER REDENBAUGH: It is.

24 CHAIRPERSON BERRY: Abstractically it
25 sounds good. I don't know if it would be good if we

1 really did it. Or if we, in the end, would be able,
2 out of all of this to come to some agreement. We
3 are all reasonable people, you know?

4 COMMISSIONER REDENBAUGH: I'm not sure
5 about that.

6 (General laughter.)

7 COMMISSIONER ANDERSON: Madam Chair?

8 CHAIRPERSON BERRY: Yes, Commissioner
9 Anderson?

10 COMMISSIONER ANDERSON: I would like to
11 hear a little bit more, maybe we ought to have a
12 project design on this. But if what I hear being
13 said is the purpose of affirmative action programs
14 in state law schools was to increase the number of
15 minority students, the affirmative action programs
16 having come to an end, the number of minority
17 students has declined.

18 That seems to be, to me, stating the
19 obvious. Now, we can have a position as to whether
20 we think that is good or bad, but I'm not sure,
21 without hearing more, what the purpose of a study of
22 this problem would be.

23 COMMISSIONER HIGGINBOTHAM: Well, first
24 of all, I am not concerned about our getting a
25 consensus on whether there should or should not be

1 affirmative action.

2 There are reasonable people who have
3 given a lot of thought to this, who are most -- I
4 respect them. What the Civil Rights Commission can
5 do is to expose the data, and what has been the
6 consequence of the elimination of these affirmative
7 action programs.

8 Now, this is a serious problem. Two
9 weeks ago, in the first circuit, they just
10 eliminated an affirmative action program for the
11 Boston Latin School, and I have been told that these
12 individuals who want pure objective grade point
13 averages, that about one half of the people in
14 Harvard would not be there.

15 I mean, you wouldn't get people from
16 Cambridge. You would get people from New York. You
17 wouldn't get people, percentage wise, from Utah and
18 Idaho.

19 Now, whether you should or should not
20 eliminate these programs, all we have to do is to
21 look at the consequences.

22 Now, it is very significant to me that
23 every time when I dealt with this issue on
24 affirmative action, and I say, well, what about the
25 military, and what about police? I have found very

1 few people who are willing to have a police force in
2 the inner city, which has 95 percent a completely
3 different race.

4 And then they start to give explanations
5 as to why. Now, I think we should test all of
6 these. I'm not asking anyone to buy into any
7 particular conclusion. But I do have tricky
8 questions about where do you draw the line.

9 We can't deal with all of affirmative
10 action if we are going to, but you could deal with
11 higher education. What is the impact on law, on the
12 lawyers. You deal with what is the impact in
13 medicine.

14 So we could do some discrete areas and
15 look at the consequences. And after you see those
16 consequences do you say, does it make any
17 difference?

18 In California in five years, it is my
19 understanding that the majority of the population
20 will be non-white. And if that is true, what is the
21 significance when the number of African Americans,
22 and Mexican Americans, and others, are significantly
23 decreasing, and does it have some impact on
24 leadership?

25 And some of the people who are great

1 advocates of Colin Powell don't want to recognize
2 that until the Army decided it was important to have
3 African Americans as generals, he would have cashed
4 out as a colonel.

5 Now, I don't know what this anecdotal
6 evidence is worth. But I think that if we can't
7 analyze it, no one else can do a better job. And
8 I'm not worried about where we come out conclusion-
9 wise.

10 I think it is one of the most
11 significant issues of the next century, and the
12 consequence.

13 CHAIRPERSON BERRY: Well, Carl, for
14 myself I would not, if we did such a thing, see it
15 as just answering, you know, we had it before, and
16 now these enrollments have gone down, so now these
17 enrollments have gone down.

18 I mean, everybody knows that, or anybody
19 who has paid attention to the issue, I guess, in
20 addition to what Leon has said. And I don't know
21 where it would come out.

22 I just think that the issue is important
23 enough, that enough people have asked why if we are
24 in the Civil Rights Commission, why is this
25 important and significant, and major issue, that we

1 seem to be paying no attention to, at all, wherever
2 we come out.

3 And I have argued that one, it would
4 divide us, we disagree, why bother with something
5 when we know we disagree, when we could be doing
6 other things.

7 And some people find that persuasive,
8 and others say, well, you are no more divided than
9 the country is, the country has to deal with it, so
10 why don't you have to deal with it?

11 COMMISSIONER REDENBAUGH: Mary?

12 CHAIRPERSON BERRY: Yes?

13 COMMISSIONER REDENBAUGH: Excuse me for
14 interrupting. I'm imagining that if we were to do
15 this, that staying for a moment on just this higher
16 education issue, that one could argue, what is the
17 way to get the enrollments up is to go back to the
18 legal arrangement we had previously.

19 Another group could argue, it is very
20 important to get the minority enrollments up, here
21 is another way to do that.

22 CHAIRPERSON BERRY: Right.

23 COMMISSIONER REDENBAUGH: Here is the
24 way the Army did that, the aggressive outreach and
25 supplemental skills training.

1 I agree with what both Cruz and Leon
2 have said, that it is important for minority
3 enrollments to go up. And if we were to discuss
4 alternative ways to accomplish that, that might be
5 valuable, as well as very interesting and useful.

6 CHAIRPERSON BERRY: Well, when I said
7 where do we go from here, I meant to try to figure
8 out where do we go from here. I meant just that.

9 COMMISSIONER REDENBAUGH: Right.

10 CHAIRPERSON BERRY: And everybody will
11 have some idea about what we should do. I mean,
12 there are some people who would simply argue that we
13 can't do anything until we fix all the public
14 schools. That is a reasonable argument.

15 COMMISSIONER REDENBAUGH: That has some
16 merit, definitely.

17 CHAIRPERSON BERRY: And then the
18 question for them would be, okay, tell us how to fix
19 it, you know? And give us some ideas and tell us
20 who to talk to, and maybe we could have a little
21 section on how you do that.

22 But there are questions about, are we
23 doing it right now, whatever it is we are doing,
24 what has been the impact of what we've done, and
25 then what are we fighting about on this issue, and

1 then assuming that it is important, I would start
2 out with an assumption that it is important to
3 increase minority enrollment for the future of the
4 country.

5 COMMISSIONER REDENBAUGH: I think we
6 would all agree with that.

7 CHAIRPERSON BERRY: But the question is
8 how do you do it?

9 COMMISSIONER REDENBAUGH: Yes. It is a
10 question of not whether we want to accomplish it,
11 but how might it be accomplished.

12 CHAIRPERSON BERRY: And if we could
13 canvass and present all the different ideas,
14 altogether, and even some of us might find one or
15 two of them persuasive, in the end. I think that is
16 worth doing.

17 COMMISSIONER REDENBAUGH: I'm a little
18 biased in agreeing with you, because I have already
19 done some work in this area, and I think it is worth
20 doing.

21 CHAIRPERSON BERRY: Carl, are we
22 persuading you that it is worth doing?

23 COMMISSIONER ANDERSON: I'm not so far
24 away from being persuaded. I think that the problem
25 is a real problem, and it is something that I would

1 be happy to join with the other Commissioners in
2 looking into, if we want to set this as a priority.

3 I think the study ought to be global
4 enough to answer some other questions, if we can
5 answer them.

6 I suspect that most law school
7 applicants in the State of Texas want to go to the
8 University of Texas Law School, and very few of them
9 are able to do that.

10 I know a number of people who applied to
11 law schools, and they may not get their first
12 choice, or their second choice, or their third
13 choice, but they end up going to law school, they
14 end up passing the Bar, and they end up practicing
15 law.

16 Now, maybe that is not the ideal
17 situation for them, but that is a situation that
18 happens in the real world. And they end up being,
19 at the end of the day, pretty good lawyers, out
20 representing clients.

21 There is probably not anyone in the
22 United States that would not want to go to one of
23 the top five or six law schools in the country, if
24 they are interested in going to law school. But
25 very few are able to do that, and others have to

1 settle for their second or third choice.

2 So if we are going to look at the
3 statistics, then I think an important statistic to
4 look at, if we can find the data, is how many
5 applicants for the first tier school, however we are
6 going to define first tier, how many minority
7 applicants who are not now being admitted do end up
8 in a law school, an accredited law school; how many
9 of those applicants end up passing the bar and
10 actually practicing law?

11 I think that would be important to know
12 because if the fundamental objective is to have
13 capable attorneys, or capable doctors in the
14 minority community, and to increase that number,
15 then it would be worth knowing exactly how many
16 minority applicants to those type of graduate
17 schools, because of affirmative action are closed
18 out of that educational option altogether, or how
19 many now have to settle for their second or third
20 choice school.

21 CHAIRPERSON BERRY: Okay. Did you want
22 to make a --

23 COMMISSIONER HIGGINBOTHAM: I would
24 support all of the issues that you are talking about
25 studying. There is one issue which no one wants to

1 study, and it is the Hopwood case out in the
2 University of Texas that you mentioned.

3 Sheryl Hopwood was ordered to be
4 admitted at the University of Texas Law School, even
5 though there were 100 white kids who had lower grade
6 point averages, and law school test scores, than she
7 did.

8 And the reason that she was admitted was
9 because some blacks had more scores than she. So
10 when the Court considered it, they disregarded all
11 of the 100 white kids. So that what has happened is
12 that we have gotten skewed, where the 100 white kids
13 stayed there, no litigation about them. The black
14 kids don't get in.

15 And then we are saying that the black
16 kids should go to a less prestigious school. Now,
17 maybe all that makes sense, but we have to really
18 flesh it out.

19 Let me give you one final comment, and
20 it is what I call the Michael Jordan syndrome. My
21 wife and I took a year off to go to the Humanities
22 Center in North Carolina, and I had never been in
23 that great state before.

24 I could not get a hot dog, or a
25 hamburger, where people would not talk to me about

1 Michael Jordan. And I appreciate their respect, you
2 know? But every time they said it, I will tell you
3 what flashed through my mind.

4 When I was in college in 1946, when the
5 first Civil Rights Commission report came out, the
6 issue was whether the white schools could be
7 segregated. And it was an intense debate, not only
8 that it was unconstitutional to force it on them,
9 but the impermissibility.

10 Now, somehow or another, it is
11 fascinating that now Michael Jordan is a hero, and
12 Grant Hale is a hero, when in my generation, because
13 I'm the oldest person around, they couldn't have
14 gotten into the school.

15 So we've got to put together, for the
16 American people, something about our corridor of
17 history, because the significance of it is not that
18 Michael Jordan isn't a great basketball player, but
19 why is it that for decades before, blacks never got
20 into these schools because of apartheid.

21 So I think that if we really want to do
22 a keen, analytical approach, we can raise important
23 issues to America. And it does not mean that
24 everyone has to come out for or against affirmative
25 action, but we have to put it all in context.

1 CHAIRPERSON BERRY: I think the point
2 that you are -- those are all good points, and the
3 data that you talked about, Carl, is very much
4 needed, not only that data, but data about what
5 happens to undergraduates who apply for admission to
6 Berkeley, say, or to UCLA, or wherever, Michigan,
7 and who don't get in, and where do they go to
8 college, and sort of tracking some of them to see
9 where they end up.

10 Because, after all, their parents are,
11 and I don't take any position on this aspect of it,
12 I've just been thinking about it a lot. Their
13 parents are taxpayers in the State of California, or
14 the State of Michigan, or wherever it is.

15 And, increasingly, their parents are
16 going to be the majority of the taxpayers in the
17 State of California, or wherever. And the question
18 is, do their parents pay taxes to support public
19 institutions that their kids can't go to, and what
20 will their parents think about that, eventually,
21 when they look and see.

22 And we are familiar with that as African
23 Americans, because part of our history is that we
24 pay taxes to support universities and colleges in
25 the north, and public schools, that our children

1 couldn't go to. And then had to pay for your
2 children to go to another private school at the same
3 time that you were paying taxes that were going to
4 go to support public schools, just like people who
5 send their kids to religious schools have to do
6 today, and who find it burdensome, necessarily they
7 should.

8 So I think that those issues would have
9 to be looked at. And the Hopwood case, I too -- the
10 legal issue, I don't know how we would explain that
11 to the public. Ginsburg says, in one of those
12 cases, I think it was -- I'm not sure which one, the
13 one case I'm talking about where she said it was an
14 irony that the law is in such a position that if you
15 have programs targeted, or something targeted to
16 benefit African Americans, it becomes illegal. But
17 if it is targeted to Latinos -- she said Hispanics,
18 I think. If it is targeted to benefit anyone other
19 than African Americans or Latinos, then it is not
20 illegal.

21 And there was an article in the New York
22 Times the other day about schools giving
23 preferential treatment to boys, or to men, because
24 the enrollment of women has gone down, and they want
25 more men. I guess women can identify. And that

1 there was a letter in the New York Times the other
2 day, by Cynthia Harrison, who is a scholar in the
3 gender studies, about why no one was claiming that
4 that was preferential treatment. And she expected
5 the next day to see a press conference, where people
6 were saying, my God, they are giving preferential
7 treatment to boys to come to these schools, and that
8 no one said a word.

9 And that is because the legal standard
10 for gender, as I understand it, is very different
11 from the legal standard for race and national
12 origin. And I think that is correct, about what is
13 permissible.

14 These are all very touchy, sensitive
15 issues, and without privileging any outcome, or
16 predicting one, I just think that if the country has
17 to face up to all these issues, then it is about
18 time we faced up to them, even if we disagree.

19 And I think in the end, knowing you as I
20 know you, that we are all reasonable enough, and I
21 mean that, to come up with -- we are lucky that we
22 are reasonable people, to come up with something
23 that makes sense to people.

24 All those things you said, Russell,
25 about how the military forces do it, all the issues

1 around how to improve public education, so that you
2 can -- and all the issues around standards, have we
3 got the right ones, or all the issues about looking
4 at a class at an elite university, and thinking as
5 Leon was saying, why are some of these white
6 students here?

7 I often do that when I look at my
8 sockless wonders that I see in my class, who are
9 Lacrosse players, and trying to figure out why they
10 are there, when some other people are not.

11 So I was just hoping that we would be --
12 well, I'm just letting out. Yes, Commissioner Lee?

13 COMMISSIONER LEE: I agree with the
14 Judge's proposal. I would like to add one more
15 dimension to his proposal, which is, as we look at
16 this data, then we need to be very careful not to
17 just look at it at face value, that this is the real
18 picture, particularly affecting the Asian American
19 community.

20 Because when you look at the numbers,
21 one can draw the conclusion that Asian Americans are
22 benefitting with the removal of affirmative action
23 programs.

24 We need to be very careful looking at
25 how those numbers came about, the type of education

1 opportunities these students have as a result of
2 Hopwood, how it impact not only the other
3 minorities, but also the Asian American students who
4 are now admitted.

5 There is a lot of concern within the
6 Asian American community that if the UCLAs and the
7 UC Berkeleys are going to turn into 70 to 80 percent
8 Asian Americans, given the 209 debate, what kind of
9 education are these students getting?

10 And I think that that is part of the
11 dimension we take, that we should look into, not
12 just purely numbers, where we are gaining, where we
13 are losing.

14 CHAIRPERSON BERRY: What kind of
15 education is important, of course.

16 COMMISSIONER LEE: Exactly.

17 CHAIRPERSON BERRY: For people. I don't
18 have any -- just so I'm clear about -- I don't have
19 any particular outcome that I would expect or want
20 in this discussion, except to find ways to increase
21 the educational opportunities, as the overall goal
22 for minorities.

23 But I just think it is worth doing, and
24 I think it has to be done carefully and
25 thoughtfully, because it is so sensitive. In many

1 ways it would probably be the most important study
2 this Commission, in recent years, has done, if it is
3 done right.

4 And I would think that if we are going
5 to do it we ought to start with getting someone to
6 write us a briefing paper, even before we do a
7 project design, to see what that looks like. And we
8 can tell how fair the person is who writes the
9 briefing paper by how they deal with all the issues
10 in the briefing paper. Maybe a consultant or
11 someone, to do so. I would not burden the Staff
12 with this, because they already, as we can see from
13 the MIS, have enough things.

14 But that is what we are thinking about.

15 But maybe just tentatively, I'm not saying to just
16 step into it, committed all the way to it, as a
17 result of this discussion, but we are just laying it
18 out here.

19 So can we at least think about doing
20 that much, Commissioners? Is there anyone that
21 objects to this sort of tentative exploration?

22 COMMISSIONER REDENBAUGH: What would you
23 think the timing of the briefing paper would be, and
24 this would be for our own use?

25 CHAIRPERSON BERRY: Right.

1 COMMISSIONER REDENBAUGH: And not for
2 publication?

3 CHAIRPERSON BERRY: No, no, no. This is
4 for our own use.

5 COMMISSIONER REDENBAUGH: Right, just to
6 inform us.

7 CHAIRPERSON BERRY: Right, and then we
8 kind of see how we want to sort of get into it, you
9 know?

10 COMMISSIONER REDENBAUGH: I'm thinking
11 about the timing being that we have in January. I
12 guess really all we could do is perhaps reserve some
13 capacity for later in the year.

14 CHAIRPERSON BERRY: Right, this is not
15 something that can be done --

16 COMMISSIONER REDENBAUGH: Before then.

17 CHAIRPERSON BERRY: Right. And then we
18 would have to plug it in, depending on how we want
19 to go forward, once we see the briefing paper, think
20 about it some more, talk about it some more, and
21 then figure out. It just has to be carefully done.

22 COMMISSIONER REDENBAUGH: But we could
23 reserve, you know, some capacity or have an
24 alternative plan, or something.

25 CHAIRPERSON BERRY: You are right, under

1 this new way we are managing around here, we have to
2 reserve capacity, and not just throw things in,
3 right?

4 COMMISSIONER REDENBAUGH: I think. It
5 seems to work well in other places I've been.

6 VICE CHAIRPERSON REYNOSO: I think that
7 is the important thing.

8 CHAIRPERSON BERRY: Right. Why don't we
9 think about this in that way. Carl, is that all
10 right with you, at least that much, tentatively.

11 COMMISSIONER ANDERSON: Sure that is
12 fine with me. I think that all of us at the
13 Commission have come to this issue, and the many
14 issues before us, with a particular philosophical
15 viewpoint. If the paper could be kind of low on
16 philosophy and high on the facts, and what the
17 current state is of the problem, as well as some of
18 the historical background, I think that would be
19 most beneficial to us.

20 CHAIRPERSON BERRY: Right, we know
21 enough of the philosophy, right?

22 COMMISSIONER REDENBAUGH: I think we can
23 draw a lot of our own conclusions from the data.

24 CHAIRPERSON BERRY: That is good advice,
25 we will abide by that.

1 I forgot to have us vote on the Michigan
2 Advisory Committee, and we started discussing age,
3 and we went on from there. We never did vote.

4 It was the motion, let's see, who moved
5 to -- well, let's do it again. Somebody move to
6 accept the Michigan --

7 VICE CHAIRPERSON REYNOSO: I'll so move.

8 CHAIRPERSON BERRY: Would you second it?

9 COMMISSIONER LEE: I do.

10 CHAIRPERSON BERRY: Okay. All in favor
11 indicate by saying aye.

12 (Chorus of ayes.)

13 CHAIRPERSON BERRY: Opposed?

14 COMMISSIONER REDENBAUGH: No.

15 CHAIRPERSON BERRY: Did you say no?

16 COMMISSIONER REDENBAUGH: I did.

17 CHAIRPERSON BERRY: Okay. Would you
18 mind telling us why? We did record your no, but is
19 there something --

20 COMMISSIONER REDENBAUGH: Thank you. I
21 have --

22 CHAIRPERSON BERRY: Do we need to do
23 something else to it, or what?

24 COMMISSIONER REDENBAUGH: I don't know.
25 Well a couple of -- two that I can state pretty

1 clearly. One is I find it to be not sufficiently
2 balanced. And I think there was one piece missing.
3 I'm not clear, exactly.

4 But I think in terms of sources of the
5 members -- is there a requirement for that to be in
6 the package? I can't remember, and is it missing?
7 And if so, that is the second issue.

8 CHAIRPERSON BERRY: Russell, I'm
9 informed that there was no sources because it was a
10 straight reappointment of all the same people.

11 COMMISSIONER REDENBAUGH: Well, that by
12 itself troubles me.

13 CHAIRPERSON BERRY: Okay. Do you want
14 to know why?

15 COMMISSIONER REDENBAUGH: Sure.

16 CHAIRPERSON BERRY: Somebody tell us
17 why. Who knows why?

18 COMMISSIONER REDENBAUGH: I don't
19 suppose any of these people in the interim two years
20 got any younger.

21 CHAIRPERSON BERRY: Why we didn't
22 propose any new people, I guess that is what he
23 wants to know.

24 MS. HURLEY: I can't tell you, 100
25 percent sure, but I can tell you that that

1 particular committee worked together very well, they
2 are all active participants, and has probably the
3 highest participation rate of any of the committees.

4 And when you have a good committee working
5 together, as a committee, the regional staff, that
6 is good reason to continue the membership.

7 COMMISSIONER REDENBAUGH: I can accept
8 that. Thank you.

9 CHAIRPERSON BERRY: Well, we will, next
10 time if there is one that is a straight
11 reappointment, maybe we can be informed why it is
12 like that, just informally, so we would know ahead
13 of time.

14 The other thing is that I was asked to
15 say something about, correct the record concerning
16 the King family's opinion. And someone gave me a
17 note, but I don't know what I did with it.

18 So what is it that I'm supposed to --
19 who is correcting the record on the King family's
20 opinion, who has that information? Eddie Hailes
21 wants to come forward.

22 DEPUTY GENERAL COUNSEL HAILES: Actually
23 I just wanted to make it clear that, to my
24 knowledge, no member of the King family has said,
25 officially, that they have no interest in the

1 Commission taking up this issue.

2 We have just been faced with the reality
3 that they have not returned numerous telephone calls
4 to us. So it may be inferred that they don't have
5 an interest, but there is no specific statement by
6 the King family that they are uninterested in our
7 involvement.

8 CHAIRPERSON BERRY: Did you hear that,
9 Carl?

10 COMMISSIONER ANDERSON: Yes, I did,
11 thank you. I wonder whether we might communicate
12 with the King family in writing about this.

13 CHAIRPERSON BERRY: Okay, why don't we
14 have a letter drafted up, and we will send a letter.

15 The other point is that there was a
16 letter that you asked for, Commissioner Anderson, to
17 the new Mayor of Washington, D.C. And we have a
18 minute.

19 The letter, basically, it will take me
20 about a minute and a half to read it to you, and
21 then the Commissioners can tell me if it is okay to
22 send it.

23 It is to Anthony Williams who is the new
24 Mayor of the District of Columbia. It says:

25 The Commission held a Hearing November

1 13th on ADA. The Reverend Lewis Anthony,
2 representing the Advisory Committee, spoke briefly
3 to the Commission about concerns on implementation
4 of the ADA in the District.

5 Reverend Anthony told us that a survey
6 in June 1993 showed that all but one of the D.C.
7 government buildings, 48 out of 49 violated ADA
8 provisions on access. And that an estimated one
9 third of the businesses cannot accommodate
10 wheelchairs through their front doors.

11 He also reported that businesses seeking
12 to come into compliance with the ADA's provisions
13 have, on some occasions, run into difficulties with
14 the City agencies in obtaining the needed permits,
15 and other concerns of persons with disability is the
16 long time it takes to resolve complaints and
17 discrimination on the basis of disability filed with
18 the D.C. Government.

19 We recognize that you will have many
20 priorities as you take the office of Mayor. We urge
21 you to make one of these priorities bringing the
22 D.C. Government's buildings into compliance with
23 ADA, removing obstacles to private compliance of the
24 ADA, and improving the handling of complaints of
25 disability discrimination.

1 A second area about which the Commission
2 has been concerned is the treatment of hispanic or
3 latino residents in the District. In 1993 the
4 Commission reported on the Hearing it held after the
5 riot in Mount Pleasant. We made many
6 recommendations for improving relationships and
7 services to latino residents.

8 As reported in the attachment, the
9 District of Columbia Advisory Committee has
10 monitored the response to our recommendations. We
11 urge you to review the recommendations, and to
12 implement those that are outstanding.

13 We wish you great success in your new
14 position.

15 Does that convey, basically, what you
16 had in mind, Carl?

17 COMMISSIONER ANDERSON: It does, thank
18 you.

19 CHAIRPERSON BERRY: Well, we will send
20 this letter out to them.

21 V. Future Agenda Items .

22 CHAIRPERSON BERRY: Let's go to future
23 agenda items. Does anyone have any future agenda
24 items that they would like to discuss, that we have
25 not already discussed?

1 (No response.)

2 CHAIRPERSON BERRY: Hearing none, then I
3 would entertain a motion to adjourn.

4 VICE CHAIRPERSON REYNOSO: So moved.

5 CHAIRPERSON BERRY: Second?

6 COMMISSIONER REDENBAUGH: Second.

7 CHAIRPERSON BERRY: Non-debatable, so we
8 hereby adjourn.

9 (Whereupon, at 11:50 a.m. the above-
10 entitled matter was adjourned.)

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