

U.S. COMMISSION ON CIVIL RIGHTS

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MEETING **EDITED**

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FRIDAY, NOVEMBER 15, 2013

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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C., at 9:30 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ABIGAIL THERNSTROM, Vice Chair

ROBERTA ACHTENBERG, Commissioner

TODD GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MARLENE SALLO, Staff Director

JENNIFER CRON HEPLER, Parliamentarian

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STAFF PRESENT:

MARGARET BUTLER, Acting Chief, OCRE

LATRICE FOSHEE

BARBARA DE LA VIEZ

PAMELA DUNSTON, Chief, ASCD

ALFREDA GREENE

YASMIN ELHADY

TINALOUISE MARTIN Director, OM

HOPE LOVETT

MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

ALEC DEULL

TIM FAY

KENEISHA GRANT

JOHN MARTIN

CARISSA MULDER

JUANA SILVERIO

ALISON SOMIN

KIMBERLY TOLHURST

OCRE INTERN PRESENT:

RICHARD AHNE

OGC INTERNS PRESENT:

REZIYA BRUMFIELD

KRISTIN STITCHER

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P R O C E E D I N G S

9:32 a.m.

CHAIRMAN CASTRO: The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is currently 9:32 a.m. on November 15th, 2013. Our meeting is taking place at our headquarters, 1331 Pennsylvania Avenue, N.W. in Washington, D.C.

I'm Chairman, Marty Castro. The Commissioners who are present at the meeting with me are Vice Chair Thernstrom, Commissioner Gaziano, Commissioner Heriot, Commissioner Achtenberg, Commissioner Yaki, Commissioner Kirsanow, and Commissioner Kladney.

A quorum of the Commission is present. Is the court reporter present?

COURT REPORTER: Yes.

CHAIRMAN CASTRO: Is the Staff Director present?

STAFF DIRECTOR SALLO: Yes.

I. APPROVAL OF AGENDA

CHAIRMAN CASTRO: Okay. So, the first item is that I move the agenda be approved. Is there a second?

(Moved and seconded.)

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1 CHAIRMAN CASTRO: Are there any
2 amendments?

3 VICE CHAIR THERNSTROM: Mr. Chairman, I'd
4 like to --

5 CHAIRMAN CASTRO: You have to turn your
6 mic on.

7 VICE CHAIR THERNSTROM: Sorry about that.

8 CHAIRMAN CASTRO: I'm going to give you
9 an opportunity speak. We don't need to amend the
10 agenda for that.

11 VICE CHAIR THERNSTROM: No? Okay. But I
12 move to amend the agenda as follows, move the
13 following Program Planning -- I'm sorry. Move the
14 following Program Planning items to the top of the
15 Program Planning section of the agenda. One,
16 discussion and vote on the 2014 Statutory Enforcement
17 Report topic. Two, Discussion and to schedule two
18 briefings for 2014, the Statutory Enforcement Report
19 topic, and Enforcing the Americans with Disabilities
20 Act Online. And, lastly, Discussion and Vote on the
21 Civil Rights Effect of Regulatory and Other Barriers
22 to Small Business. So, this is just a shuffling of
23 putting these things at the top of the Program
24 Planning section.

25 CHAIRMAN CASTRO: Do we have a second on

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1 that?

2 COMMISSIONER GAZIANO: I'll second.

3 CHAIRMAN CASTRO: Okay. Any discussion
4 needed on that?

5 STAFF DIRECTOR SALLO: If I may, Chair?

6 CHAIRMAN CASTRO: Yes.

7 STAFF DIRECTOR SALLO: Are we proposing
8 to move everything before or after the training
9 because the training is mandatory for the
10 Commissioners and the Special Assistants.

11 CHAIRMAN CASTRO: Could we do that right
12 after the --

13 STAFF DIRECTOR SALLO: After.

14 CHAIRMAN CASTRO: After the training.

15 STAFF DIRECTOR SALLO: Thank you.

16 CHAIRMAN CASTRO: Any further discussion
17 on that?

18 (No response.)

19 CHAIRMAN CASTRO: Hearing none. So, I'd
20 like to move to approve the agenda with the
21 amendments.

22 (Moved and seconded.)

23 CHAIRMAN CASTRO: Okay. All those in
24 favor say aye.

25 (Chorus of ayes.)

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1 CHAIRMAN CASTRO: Any opposed? Any
2 abstention? Okay. So, the mic went off. How's that?
3 It's supposed to be constantly on, no? Okay.

4 So, before we actually get into the
5 formal agenda there's a couple of things I'd like to
6 say and to allow others to say. First of all, I'm
7 really pleased you've been hearing these pings, a
8 number of pings going on our phone call with folks
9 who can listen in on our meeting via telephone. And
10 most of those folks, about 26 or 27 of them are
11 members of our State Advisory Committees, and so I
12 want to commend the Staff Director and the Regional
13 Directors for insuring that our SAC members know the
14 time, and the date, and the way to call in on these
15 meetings so they can listen in and hear what we're
16 doing, and participate via at least telephone.
17 Although they don't have the ability to interact with
18 us, they do have the ability to hear firsthand what's
19 going on, so I think that's a welcome move in the
20 right direction for further engagement with our SACs.
21 So, for those SAC members on the phone I just want
22 to, on behalf of the Commission thank you all for
23 your continuing service and for being on the call
24 with us today.

25 Some of you know, the next topic, that

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1 each Commissioner has a term of six years. Some
2 Commissioners serve again after reappointment, but
3 this year we have several of our Commissioners whose
4 terms are expiring at various times in December. And
5 so, for some of our Commissioners this will be their
6 last meeting. I know it will be a last meeting for
7 our Vice Chair, and possibly Commissioner Heriot and
8 Commissioner Kirsanow. Commissioner Gaziano, his term
9 does not expire until after our December meeting so
10 presumably he'll join us then.

11 So, having said that, I want to afford
12 the opportunity to some of our colleagues to say a
13 few words and I'll start with our Vice Chair. Madam
14 Vice Chair, you have the floor.

15 VICE CHAIR THERNSTROM: Thank you very
16 much, Mr. Chairman.

17 Well, it's hard for me to believe that
18 I've been on the Commission since January 2001, and
19 some would say she's been there too long, and I would
20 agree. It is time for me to, with some regret, to
21 leave. I've grown old in the years I've been on the
22 Commission, and I sometimes think maybe I can blame
23 the Commission for that, but I think not.

24 I want to say a few words about my
25 colleagues. First, I want to thank Marty Castro for

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1 his graciousness towards me even though, of course,
2 we disagree politically. But he has been very
3 gracious, and I've been very appreciative of that.

4 I've had disagreements across the aisle
5 with most members of the Commission, but I leave with
6 high respect for everyone here. And I look forward to
7 the work, the important work that the Commission will
8 be doing in the coming months and years. And I will
9 certainly follow it with great interest.

10 And, finally, I need to thank Tim Fay
11 who has been indispensable to me. He's a friend but
12 by now, but he is also someone I have the highest
13 regard for intellectually. Frankly, if I could get
14 him on the Commission as a Commissioner I would do so
15 believing he belongs on it. But I've been completely
16 dependent on his wisdom, his good humor, his
17 friendship. And I think not only I, but the
18 Commission as a whole has greatly benefitted from his
19 presence.

20 I have spent my professional life around
21 very smart people, in general, but Tim ranks among
22 those I've known, ranks high up on the list. And so,
23 the thing I will perhaps miss the most is my
24 relationship with Tim.

25 And with that I bid farewell. I'm

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1 slightly, physically under the weather so I don't
2 know how long I will stay at the meeting, but I will
3 stay as long as I can. And, again, thanks to
4 everybody for being colleagues for whom I have the
5 utmost respect.

6 CHAIRMAN CASTRO: Thank you, Madam Vice
7 Chair. Before I respond, I want to know if any of the
8 Commissioners would like to say a few words so we
9 could allow that time, as well.

10 COMMISSIONER KIRSANOW: Thanks, Mr.
11 Chairman. I came on the Commission just a few months
12 after Abby did, and had the pleasure of working
13 together with her and valued her friendship and her
14 wisdom, and taught me a great deal about civil
15 rights, in general. Of course, she is a national
16 scholar of the first order. She has written perhaps
17 some, if not the definitive texts with respect to
18 Voting Rights and, of course, the iconic "American
19 Black and White," along with Steven, and so it's been
20 my privilege to serve with her.

21 It's been my privilege to serve with
22 everybody on this Commission and all those that I've
23 served with in the past despite our sometimes acerbic
24 disagreements, some of which was probably at my
25 instance. But, nonetheless, it's been great, but

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1 especially with respect to the 12 years I've had the
2 pleasure of serving with Abby. So, thanks very much,
3 Abby.

4 VICE CHAIR THERNSTROM: Pete, thank you
5 very much. And I was trying to figure out last night
6 how long the two of us have been together, but --

7 COMMISSIONER KIRSANOW: Yes, nearly 12
8 years.

9 VICE CHAIR THERNSTROM: Yes, but I feel
10 the same about you. It's been a great privilege, and
11 you're a very special person. And I feel -- I hope we
12 won't lose touch.

13 CHAIRMAN CASTRO: Commissioner Heriot.

14 COMMISSIONER HERIOT: I don't do goodbyes
15 all that well, but it has been very much a pleasure
16 serving on the Commission. I've enjoyed everyone that
17 I've worked with. I think we've turned out some good
18 work, and I know that the Commission will continue to
19 turn out good work. And thanks to everyone.

20 COMMISSIONER GAZIANO: I thought people's
21 terms were expiring after mine, so I'm not prepared,
22 but I'll have to -- so very
23 uncharacteristically -- very uncharacter, but I will
24 be missing some Commissioners at a minimum. Two of us
25 may possibly be among those who are reappointed, but

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1 I didn't realize this would be the last meeting.
2 Maybe I will try to collect some thoughts and mention
3 them, but I do want to thank everyone, and thank
4 particularly those who are cycling off.
5 Uncharacteristically said I'll be brief, but I can
6 say to all of you, I kind of knew from the first few
7 months before many of you joined us that it would be
8 a great challenge and learning experience. And I have
9 another professional -- I made a comment to one or
10 two of you. It's good to learn new subject areas, new
11 skills, but I think what I have valued the most is
12 the attention and difficulty in serving in a
13 collegial way, on a collegial body where you
14 disagree. And we had some rough periods, particularly
15 as new people cycle on and off the Commission. But
16 I'm pleased that we were able to kind of figure each
17 other out, figure out how to do the business of the
18 Commission. But I also -- I will try to maybe collect
19 my thoughts a little better.

20 I wanted to thank our excellent staff
21 and, of course, I can praise John Martin, and I
22 should praise John Martin individually, but I want to
23 thank all of the Commission's Special Assistants and
24 the professional staff, as well, for making the
25 Commission run.

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1 CHAIRMAN CASTRO: Well, Madam Vice Chair,
2 I want to thank you and echo your comments about me
3 back to you. It's been a gracious partnership. Being
4 Chair is a difficult job, but having you as my Vice
5 Chair has made it easier. While we are of different
6 political philosophies, I think we clearly share the
7 love of this Commission and its mission, and on many
8 occasion it was that joint mission that allowed us to
9 overcome many challenges that were facing us and
10 resolve them in a way that allowed bipartisanship to
11 actually happen here at the Commission while down the
12 road a bit it wasn't happening. And I appreciate
13 that.

14 You have been a great source of advice
15 and guidance to me as I took on this role, and I will
16 always appreciate that, and will always consider you
17 a friend, so even though you won't be here at our
18 meetings, I know that you will be here in spirit, and
19 I will hopefully be able to still call upon you from
20 time to time to provide me with additional advice and
21 guidance as we move forward. So, it has been a
22 pleasure.

23 VICE CHAIR THERNSTROM: And it will be my
24 pleasure to hear from you any time.

25 CHAIRMAN CASTRO: Thank you. Commissioner

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1 Kirsanow, I knew at our first meeting that we were
2 kindred spirits when you kept referring to yourself
3 as a Klingon, and as a Star Trek and sci-fi fan.

4 COMMISSIONER KIRSANOW: But I actually
5 resemble one.

6 CHAIRMAN CASTRO: I didn't want to say
7 that, but you said it.

8 (Laughter.)

9 CHAIRMAN CASTRO: And so, while we don't
10 agree on a lot of the issues, I think that we were
11 able to develop a working relationship that was based
12 on mutual respect and allowed us to really be able to
13 move the Commission forward on important issues.

14 In that first meeting that we had when
15 you all were considering whether or not to support
16 me, the President's appointment of me as Chairman, I
17 know we all sat down and I told that while we may not
18 agree on the issues, I would always work to make sure
19 that we could work in a professional manner to
20 address all the issues that everyone wanted
21 addressed. And I think we did that, and it was in
22 large measure due to the leadership that you also
23 provided in your caucus on that, and I appreciate it.

24 Commissioner Heriot, we've come to work
25 very closely together over the last three years. You

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1 have been a point person for me in understanding the
2 needs of your caucus as we try to figure out how we
3 can move important topics forward. You have also
4 been -- I consider you a friend. You are concerned
5 about issues beyond just the issue at hand on
6 everything from whether I have the right kind of
7 office.

8 (Laughter.)

9 COMMISSIONER HERIOT: I still think you
10 need a window office.

11 CHAIRMAN CASTRO: So, you've been very
12 thoughtful to me, and I know that when there are
13 times when we are having difficulty reaching a
14 consensus, I know that I can always go to you and we
15 can thoughtfully consider how to move forward. So, I
16 hope that you come back, but I know at this point we
17 don't know whether you all are going to be back with
18 us. But if this is indeed farewell, it's only a brief
19 farewell because we hope to stay in touch.

20 Todd, I know I get a chance to say
21 goodbye probably in December, but I just want to tell
22 you now that it's been fun working with you. I know
23 we've talked about a lot of issues behind closed
24 doors, and I know that while publicly we may be apart
25 on a lot issues, I think when we're behind closed

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1 doors there's a lot more commonality than folks
2 realized, and I know that you work very hard to
3 insure that your point of view is presented, and by
4 the same token, at least in your interactions with
5 me, you've been very gracious, and thoughtful, and
6 professional. And I've enjoyed hearing your stories
7 and I hope to continue to hear them beyond your
8 service here on the Commission.

9 COMMISSIONER GAZIANO: Thank you, Mr.
10 Chairman.

11 CHAIRMAN CASTRO: So, I don't know if any
12 other Commissioners want to chime in. Commissioner
13 Yaki?

14 COMMISSIONER YAKI: Thank you very much,
15 Mr. Chair. And having served the longest with some of
16 the folks who are cycling off, I wanted to say a few
17 words. One, for Abby who I've considered over these
18 past 8 years a dear friend. We do fight like cats and
19 dogs on a lot of issues, but we can always at the end
20 of the day laugh about it, and talk about things of
21 commonality. We both know we care about these issues.
22 Sometimes you care about them in different ways, but
23 it doesn't mean that we don't come from a good heart.
24 And as an individual, I've never met someone who is
25 as intellectually deep and as personally warm as

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1 Commissioner Thernstrom, so I want to thank you for
2 your friendship over the years.

3 Commissioner Kirsanow and I have had
4 some well documented battles over the years, mainly
5 because we're both -- well, I mean; he's a Klingon
6 so -- and I'm a Federation guy. It just doesn't work
7 out sometimes.

8 (Laughter.)

9 COMMISSIONER YAKI: But I've always
10 admired his professionalism, his -- I'll never forget
11 the time that he would come to the Commission with
12 these binders on Supreme Court nominees that were
13 about 5,000 pages long and he's start leafing through
14 them and talking about well, I think -- amazing. And
15 there's a great depth and warmth there, as well, that
16 sometimes we don't see, but I see it even when we're
17 busy trying to punch each other. So, in your native
18 language I would say majQa' which means well done in
19 Klingon. And thank you for everything.

20 And for Todd and Gail, I'm going to
21 reserve comments because you could be back. And I
22 know that when I had my quote, unquote" last meeting"
23 in 2010, I actually thought I'd be back at the next
24 meeting, and then something got all held up in the
25 gummy works. But, briefly, it's been a pleasure, and

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1 I hope to see you again in about three weeks.

2 VICE CHAIR THERNSTROM: Michael, I want
3 to thank you personally for those warm words. It was
4 a surprise to me that we became the friends that we
5 did, but it's been wonderful. And I -- you know, you
6 and I share -- we don't share the same views on
7 civil rights issues but we share a certain style that
8 we have appreciated in each other. And hat's off to
9 you in life. I hope, you know, the future brings
10 whatever you want it to bring. And I will miss you.

11 CHAIRMAN CASTRO: Commissioner Achtenberg
12 or Commissioner Kladney, anything you'd like to add.

13 COMMISSIONER KLADNEY: I would just join
14 in everyone's remarks. I just can't say how much I've
15 learned in the last three years, and I'm sure I'll
16 learn more. Thank you. Thank you very much to you,
17 too, Abby.

18 CHAIRMAN CASTRO: Commissioner
19 Achtenberg.

20 COMMISSIONER ACHTENBERG: Just thank you
21 very much.

22 CHAIRMAN CASTRO: Okay. Well, actually,
23 we have a little something for you all. Hopefully,
24 nobody is allergic to sweets because we have a little
25 thank you cake here for our outgoing Commissioners.

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1 COMMISSIONER YAKI: It was a two-tier
2 cake before the sequestration and then--

3 CHAIRMAN CASTRO: Yes. So, while we move
4 on --

5 VICE CHAIR THERNSTROM: This is an "Oh,
6 my God moment." You've actually bought a cake.

7 COMMISSIONER YAKI: Sequestration took it
8 down to one tier.

9 CHAIRMAN CASTRO: We'll do it at -- when
10 we take a break we can go up there and grab some
11 cake. Okay?

12 VICE CHAIR THERNSTROM: That's lovely,
13 Marty.

14 CHAIRMAN CASTRO: So, we're now moving on
15 to our Program Planning updates and discussion of
16 projects.

17 **II. PROGRAM PLANNING UPDATES**

18 CHAIRMAN CASTRO: So, the first item on
19 the agenda -- actually, we have two reports from our
20 General Counsel's office. The first is from Yasmin
21 Elhady who's going to talk to us about the annual
22 giving. It's hard to believe it's that time of year
23 already. It seems like it was just a couple of months
24 ago.

25 MS. ELHADY: Good morning, Commissioners.

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1 CHAIRMAN CASTRO: Good morning.

2 MS. ELHADY: Always lovely to see all of
3 you, full house, incredible.

4 I would like to present to you the idea
5 of CFC and the giving campaign, again. This year
6 marks a very important year because the entire CFC
7 NCA program has raised over \$60 million last year,
8 one of its highest numbers ever. And this year marks
9 an important year because so many people could be
10 cycling off, so we want to make sure that if you have
11 the opportunity to give, that you give now,
12 hopefully, before you go.

13 This is a very important time of the
14 year, as well. A lot of people really are in need.
15 Our deadline this year will be actually extended to
16 January 15th of 2014, so you can give until January
17 15th, 2014.

18 You have over 4,000 charities to choose
19 from. What's wonderful is that your dollars, your
20 funding helps really make the impossible possible.
21 You make it possible. That's the theme of this year,
22 and we hope that each of you will go to CFCNCA.org
23 and check out the charities for yourself. You can
24 also come to my office or to Barbara de La Viez'
25 office and get a paper catalogue with a listing of

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1 all of the charities, if you prefer paper. I also
2 have paper pledge forms for anyone who would like to
3 pledge in paper. But of course, you can go online, as
4 well.

5 I'm happy to answer any of your
6 questions now or offline, since I know you have a
7 meeting to get along with. And I appreciate your
8 time. I hope that you give.

9 CHAIRMAN CASTRO: I'm sorry; I do have a
10 quick question.

11 MS. ELHADY: Yes?

12 CHAIRMAN CASTRO: So, I'm on the Board of
13 the Chicago Community Trust and they will match
14 certain gifts, so how -- is there some process in
15 there for that?

16 MS. ELHADY: For matching?

17 CHAIRMAN CASTRO: Yes.

18 MS. ELHADY: We can talk about that.

19 CHAIRMAN CASTRO: Okay.

20 MS. ELHADY: Yes.

21 CHAIRMAN CASTRO: And I know last year we
22 had a goal that you wanted us to exceed, and I think
23 we exceeded it.

24 MS. ELHADY: Yes. Every year now for the
25 past decade we've reached or exceeded our goal. And

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1 last year we exceeded it guys, so I really need your
2 help.

3 CHAIRMAN CASTRO: What's our goal this
4 year?

5 MS. ELHADY: Five-thousand dollars.

6 CHAIRMAN CASTRO: Okay.

7 MS. ELHADY: Yes, and I think we can make
8 it.

9 CHAIRMAN CASTRO: Thank you.

10 MS. ELHADY: Thank you so much. Bye.

11 CHAIRMAN CASTRO: All right. Now, I'd
12 like to have --

13 COMMISSIONER HERIOT: Can I ask a
14 question?

15 CHAIRMAN CASTRO: Yes, go right ahead.

16 COMMISSIONER HERIOT: If I logon will it
17 tell me what I'm already doing because some of the
18 charities I give to are small, and if I were to
19 adjust the amount they would say "why doesn't Gail
20 like us any more" if I went down.

21 MS. ELHADY: Oh, I see what you're
22 saying.

23 COMMISSIONER HERIOT: So, I don't want to
24 do something like that. Will I be able to tell what I
25 did last year when I logon?

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1 MS. ELHADY: No, unfortunately.

2 COMMISSIONER HERIOT: Okay.

3 MS. ELHADY: Yes.

4 COMMISSIONER HERIOT: That's all I had.

5 MS. ELHADY: Sorry.

6 CHAIRMAN CASTRO: All right, thank you.

7 Ms. Hepler, you have an Ethics Training for us?

8 **III. OFFICE OF GENERAL COUNSEL**

9 **ETHICS TRAINING**

10 MS. HEPLER: I have some signature sheets
11 in here.

12 CHAIRMAN CASTRO: Okay.

13 MS. HEPLER: And these are a little
14 different --

15 MS. DUNSTON: Excuse me, Jennifer. Excuse
16 me, you all. We have people on the telephone, and if
17 you don't use your microphones they will not be able
18 to hear you.

19 CHAIRMAN CASTRO: Okay, thank you.

20 MS. HEPLER: Okay. I'm going to pass out
21 some sheets. I want you to sign them to show you're
22 here today. But also I have email addresses and phone
23 numbers for the departing people. And for the people
24 who are staying here, I still would like your
25 personal email address when I have questions to

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1 direct to you, and if you're not here. And so, I'm
2 going to pass them around. If your email address or
3 your phone number that's listed is wrong, please
4 correct it while you're looking at it. Thank you.

5 Okay, good morning. This may be the last
6 time I address some of you, and you're probably
7 clapping up and down with joy. And for others, you'll
8 be hearing more ethics in the future.

9 Today's topic is Expiration of
10 Appointments and Applicable Ethics Rules for
11 Departing Commissioners and Special Assistants. And
12 for those who are staying, there's some information,
13 too. So, this will count towards your annual ethics
14 training requirement, and this is the last training
15 for 2013.

16 The agenda is we're going to talk about
17 ethics authorities, and then expiration of terms,
18 financial disclosure requirements. Yes, you have to
19 file another one even if you're leaving; seeking
20 employment, and post-employment, and other topics.

21 Okay. And the first one, and I'm going
22 to send this to all of you, is the ethics authorities
23 and links. And we're undergoing an Office of
24 Government Ethics Review, and they want people to
25 have access to all the ethics rules and laws, so in

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1 the future I'm including this slide, as well as this
2 one. So, if you want the exact provisions you can
3 find them, or come to me.

4 Seeking ethics advice. And I want to
5 explain the Safe Harbor provisions, and this is for
6 current -- people are staying and leaving. If you
7 come to see me before you take action and I give
8 advice, even though it may be wrong, I try, but then
9 you will not be administratively liable. And that's
10 why I say come to me and talk before you do it. If
11 you disclose all the facts and I give you advice,
12 even if I do something wrong, you don't have to
13 worry, unless it's criminal. Now, there was a case at
14 DOI where they went to the ethics person, did not
15 tell all the facts, got an okay, and then it turned
16 out it was criminal, and they used the ethic
17 officer's advice against the person because he did
18 not disclose all. Okay, go to the next one. That's
19 Department of Interior.

20 And I always remain a representative of
21 the federal government. That's what I want you to
22 know. There is no attorney/client privilege as came
23 out in that case definitely. And there's no Safe
24 Harbor for criminal provisions. I mean, I'm not going
25 to tell you to steal and it's okay, let's be honest.

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1 Okay?

2 And now we're going to the big topic,
3 expiration of Commissioner terms. And, as you know,
4 four of you Presidential, four of you Congressional.
5 And there's - - and I want to say first that I had
6 two of my interns help with this presentation, and
7 one is here, Reziya Brumfield, and the other one is
8 Kristin Stitcher, and she has a paid internship on
9 Friday, so she's not here, but they helped me with
10 this.

11 No more than four from one political
12 party, and you know they're six-year terms, and you
13 can only be removed for neglect of duty. And,
14 obviously, a felony. Okay.

15 And there is a case on this
16 interpretation, United States v. Wilson. And the
17 court -- was that you? That was you?

18 COMMISSIONER KLADNEY: No, I'm not
19 Wilson.

20 MS. HEPLER: Okay. Know you're not
21 Wilson. Okay.

22 COMMISSIONER GAZIANO: He was a party.

23 MS. HEPLER: He was a -- okay.

24 VICE CHAIR THERNSTROM: It was memorable.

25 MS. HEPLER: It was memorable.

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1 VICE CHAIR THERNSTROM: The litigation,
2 yes.

3 MS. HEPLER: Oh, okay. Well, you've been
4 there. And it creates -- the statute creates fixed
5 six-year terms of office that run with the calendar
6 instead of the person in order to preserve staggered
7 six-year terms. And there's the cite. And, obviously,
8 some of us are very familiar with the case then.
9 Okay.

10 And, also, the court held that the
11 calculation of the fixed term is anchored by the term
12 of each member of the Commission and the initial
13 membership. For example, if someone only served -- if
14 they were appointed the first time and then it goes
15 on from that day, and if someone serves a partial
16 term then the next Commissioner gets the rest of that
17 term. And I think Commissioner Kladney's in that
18 situation when someone else started your term and
19 you're coming in. You can to that end of that term.

20 VICE CHAIR THERNSTROM: And when I
21 arrived I was finishing somebody's term.

22 MS. HEPLER: You did that also. Okay,
23 where you finished and it ends on a fixed date, and
24 we'll go to that the next slide.

25 These are the dates for each one's term

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1 ending, and it is based on the prior one up there,
2 the person who had it. So, your term is with your end
3 date there. And four are this year, and four are in
4 2016. Okay?

5 And the next question --

6 COMMISSIONER YAKI: I was the last
7 holdout in 2016. I just want --

8 MS. HEPLER: What? Okay. The expiration
9 of the Special Assistant's terms, because each of you
10 has a Special Assistant. And each of you hold what's
11 called a Schedule C appointment, and you work
12 directly for a Presidential or Congressional
13 appointee. You have a confidential or
14 policy-determining relationship with your supervisor,
15 who is the Commissioner. And you have a confidential
16 relationship that implies knowledge and support of
17 the goals, viewpoints, and philosophies of the
18 supervisor. And that's all the Special Assistants.
19 Okay.

20 And the rules are when a supervisor
21 leaves, then the confidential Schedule C relationship
22 ends, so either the Special Assistant would resign,
23 or the agency can involuntarily separate the Schedule C
24 at the same time, or soon thereafter. And this is
25 from the Guide to Schedule C positions, and if you

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1 have any questions go to HR, because this is their
2 area. Okay?

3 Now, as I said before, you still have to
4 file that financial disclosure form when you're
5 leaving. And you have to file a termination one, and
6 if you do it on line, I will send -- I'm going to
7 send you, if you let me know if you want it in paper
8 or not, I will send you the form, the right form.

9 You have to file on or before the 30th
10 day after you leave government service, and you can
11 get a 45-day filing extension again. Okay. Must pay a
12 \$200 late filing fee for any form that is filed more
13 than 30 days late. And it isn't on there, I had
14 something -- also, if you fail to file, it's
15 referred to Department of Justice, and you owe up to
16 \$50,000, so if you are thinking of not filing, I
17 don't recommend it.

18 COMMISSIONER GAZIANO: Can we ask a
19 couple of questions about this subject, or do you
20 want us to hold our questions to the end?

21 MS. HEPLER: Can you wait until I get
22 through the financial disclosure requirements and
23 then you can ask me the questions?

24 COMMISSIONER GAZIANO: Okay, sure.

25 MS. HEPLER: Okay. Let's go to the next

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1 one. Okay. And this goes to the electronic filing
2 versus the other -- the paper filing. And as you
3 know, and especially if you want to file paper do it
4 before the end of this year. As of next year, you're
5 going to be required to do it on line.

6 Also, I recommend, because there have
7 been people that have left, Special Assistants,
8 before that if you're using the online system, we can
9 set it up so you can access it afterward, but I
10 suggest for all of you that you click it the day you
11 leave if you're doing it online, because you're not
12 supposed to do it before you leave within 30 days,
13 but if you click it the day you leave and say submit,
14 that'll take care of your filing. And that's why I
15 asked for the personal information; if I have any
16 questions, I can contact you after you leave.

17 Also, I may have to set it up, the
18 system, to put in your personal email to contact you
19 because, obviously, your regular email, government
20 email will be shut off. Okay? I think there's one
21 more. Is there one more? Let's see. I think that was
22 the filing, if you want to file paper or not. Okay.
23 Go ahead.

24 COMMISSIONER GAZIANO: There's a couple
25 of questions I may ask later, but if we're one of the

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1 people who will be reappointed but there's a gap, I
2 assume there's no need to -- there may be a situation
3 where like Commissioner Yaki, it was unclear, and it
4 was 30 -- anyway.

5 MS. HEPLER: You're going to have to file
6 a termination, unfortunately, and then file a new one
7 when there's a gap like that.

8 COMMISSIONER GAZIANO: What if there
9 is --

10 COMMISSIONER YAKI: That's what I did.

11 COMMISSIONER GAZIANO: But how could you
12 do any work after you're not a Commissioner because
13 that's forbidden by law, anyway? Those are some of
14 the little things that we can get --

15 MS. HEPLER: Well, that's why I'm
16 saying -- a good thing -- if you get it ready and you
17 can submit it on your last day. That's what I always
18 advise people.

19 COMMISSIONER GAZIANO: We'll probably
20 work through some of those issues, I suppose, as they
21 get a little clearer. But it seems to me there's a
22 couple of things that -- for those who might be
23 continuing, you wouldn't need to file one. Right?

24 MS. HEPLER: No, you still need to
25 because technically your term ends. If you're

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1 reappointed before the term ends then you're
2 continuing and there's no termination.

3 COMMISSIONER GAZIANO: Okay.

4 MS. HEPLER: But once it terminates and
5 you're off, then that's a termination. Even if you
6 come back only two weeks later. I know it sounds
7 bizarre, but that's how it works.

8 COMMISSIONER GAZIANO: Okay.

9 COMMISSIONER YAKI: But isn't that -- a
10 question. Isn't that a contradiction to the fixed
11 term requirement, because if it's meant to run as a
12 fixed term, how can you be reappointed before your
13 term actually expires, because it's supposed to
14 run --

15 MS. HEPLER: I don't know -- I just -- I
16 don't know how the term appointments work because I
17 haven't dealt with that. I'm from the ethics area. If
18 you terminate, then you have to file a termination.
19 If you come back --

20 COMMISSIONER YAKI: I seem to recall that
21 if -- back in the time period that I was dealing
22 with, the -- my term expired I think December 12th or
23 something, December -- I don't know what the heck
24 it -- I think December 15th. And even though I was
25 submitted in November to be reappointed for that

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1 time, it didn't go through. One of the thoughts was
2 that, nevertheless, even though I continue, that
3 first term did expire and, therefore, a new term
4 began and someone determined at that time that I
5 would have to file anyway because the term expired
6 because we are dealing with fixed terms.

7 MS. HEPLER: Yes, you're right. You're
8 dealing with fixed terms.

9 COMMISSIONER YAKI: Yes.

10 MS. HEPLER: I didn't think -- where I
11 was before, in that case one of the Commissioner's
12 terms expired and the President appointed her a
13 two-year -- gave her a two-year extension so she
14 didn't have to, but you're right.

15 COMMISSIONER YAKI: Right.

16 MS. HEPLER: Yes, the term does end on a
17 fixed date. Right. But if you have more questions,
18 you know, we can talk offline about it. Okay, let's
19 go.

20 That's just asking you for your contact
21 information, and I pass the sheets around. Okay?

22 And seeking employment, and most of the
23 Commissioners that's not an issue because most of you
24 have full-time or outside jobs and work. This is more
25 aimed at the Special Assistants. If you are looking

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1 for employment, you're disqualified from working on
2 matters with a potential employer that may affect
3 your financial interest, or that employer's, and you
4 have to look to see if there's a conflict of interest
5 or apparent conflict. And if there is, you have to
6 recuse yourself.

7 With these -- I'm going through seeking
8 employment and post-employment. And these
9 specifically, come to see me if you have questions
10 because they're going to be very general and broad,
11 but we can go into it more in detail individually.

12 And when you say seeking employment,
13 it's when you're talking to the person. Let's say the
14 employer has contacted you about possible employment
15 and you say I'm interested. You contact the potential
16 employer, or you're engaged in actual negotiations
17 for employment, which brings up another topic. Okay.

18 Oh, this is one other thing. Interview
19 expenses, it's very interesting. If you get -- you
20 can accept gifts of meals, lodging, transportation,
21 and other benefits if they're flying you out for
22 interviews. It's a little exception to the Gifts
23 Rule. Okay.

24 And we're going back to the stock acts,
25 remember the stock acts. If you are in negotiations,

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1 then you have to file a notification statement within
2 three business days after commencing employment
3 negotiations. Let's say you get the interview and
4 then they say we're interesting in hiring you, and
5 you start discussing salary. At that time the three
6 days would start. If you're just submitting a resume
7 and you haven't heard back, then you don't need to
8 file the notification statement. And there's the
9 form, and I will send it out to everybody so they
10 have it to fill it out. And when past Special
11 Assistants have left, they have filled out the form
12 when they have employment out there.

13 Okay, post-employment. And there's a
14 couple of bans that are interesting. One is a
15 full-time lifetime ban, and I don't think it will
16 really apply to any of you. But it is something that
17 you've worked on personally and substantially as a
18 government employee and there's a -- the United
19 States is a party and the direct and substantial
20 interest in the matter. And we handle more general
21 things, but if you have any questions come see me.
22 That's more if you worked on something specific, and
23 it later comes back, contract, grant, something like
24 that. But if you have anything let me know, and we
25 can discuss it one on one. Okay?

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1 This is an interesting one I wasn't
2 aware of because I hadn't dealt with Commissioners
3 who were Special Government Employees, but it turns
4 out that this does apply to you.

5 There's a one-year cooling off period
6 for Commissioners from representing another before
7 the former agency to seek official action. If you
8 notice I said another because most of -- when you
9 come to talk, you would represent yourself. If you
10 said you're representing some organization or
11 something then there would be an issue, but if you
12 come up as a panelist and say these are my views,
13 that's perfectly acceptable.

14 If you have any questions please see me,
15 because this one actually is a criminal violation.
16 And it came up -- and this was sort of an example.
17 One time there was a high-level doctor at HHS where I
18 worked, and she retired, and we didn't even
19 know -- talk about file a termination, because she
20 came back working for herself as a consultant and her
21 email address was the same, so we didn't get the
22 form. We didn't know she had left. And then it turned
23 out the IRS was coming and saying well, you're not
24 paying her benefits or the taxes so you have to get
25 someone to be a contractor. So, then we had -- there

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1 was a service, and she worked for them. Well, it
2 turned out that was another because she was working
3 for a contracting service, so that was actually
4 criminal. She wasn't charged, but you can't do that.
5 Okay.

6 And there's also something, this applies
7 to the Special Assistants only. If you recall there
8 was the Ethics Pledge, and there's a lobbying ban in
9 it. And if you talk to -- are interested in working
10 for a lobbying organization of some sort, please come
11 see me and we'll discuss the specific provision and
12 its applicability to you. Okay?

13 Now, we're going to get to the other
14 applicability of the Standards of Conduct, and these
15 contain the basic obligations of public service. And
16 they do not apply to you once you leave, of course.
17 There is no retroactive or past requirements. And
18 that's the CFR section, again.

19 Okay. As you recall, and this is for the
20 current and staying Commissioners, too. You can use
21 your official title position for a non-governmental
22 teaching, speaking, or writing, as long as it's
23 listed as one but several biographical details while
24 engaged in teaching, speaking, or writing as an
25 outside employment or an outside activity. Okay.

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1 And we have -- Commissioner Thernstrom
2 is our poster child on this one. And she --

3 (Off microphone comment.)

4 MS. HEPLER: What? And I want to show
5 this is her current, and she has -- as you can see,
6 there are several items there. She's the Vice Chair,
7 U.S. Commission on Civil Rights, you know, what she's
8 done. She's got a lot of things on her bio, as well
9 as a nice picture.

10 VICE CHAIR THERNSTROM: A very old
11 picture, I must say.

12 CHAIRMAN CASTRO: A similar bio of mine,
13 you indicated not to make my Commission title so
14 prominent, so I kind of put it in the middle of
15 stuff, or in the back. So, if you lead off with your
16 Commission title, is that making it too prominent?

17 MS. HEPLER: Well, we can -- you know,
18 we'll talk about that. If you have it in there, you
19 know, among -- she has it among many things. I think
20 you do, too. I don't remember. I remember I've worked
21 on your bio. I have to look at it again to see.

22 CHAIRMAN CASTRO: Yes.

23 MS. HEPLER: I know --

24 CHAIRMAN CASTRO: Yes, it was up front,
25 but then they put it --

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1 MS. HEPLER: Put it sort of not in
2 the -- okay. We'll talk about it.

3 CHAIRMAN CASTRO: Okay.

4 MS. HEPLER: Okay. And then this one
5 here, she can say she's the former Vice Chair of the
6 U.S. Commission on Civil Rights. It doesn't need
7 anything else. Likewise, if you're writing an article
8 or a blog, you can say former, you know, if you want.
9 It's up to you whether or not you want to put it in
10 there. You don't have to put any disclaimers or
11 anything anymore because you're not a federal
12 government employee. Okay. And the same for the
13 Special Assistants, you can say you're a former
14 Special Assistant.

15 And now we're getting to non-public
16 information and government records. Non-public
17 information includes but not limited to information
18 that's exempt from disclosure under the Freedom of
19 Information Act, information the agency has
20 designated as confidential, information that has not
21 actually been disseminated to the general public and
22 is not authorized to be made available to the -- that
23 is the old one. The new one didn't get up there,
24 public upon request. I'm sorry; I don't know one
25 would end up there. Okay.

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1 Examples are subpoenaed documents. If we
2 subpoena something and don't use it, you
3 can't -- it's not open to the public to view. Privacy
4 protected information, comments from the public,
5 employee and state advisory members, personal
6 telephone numbers and address, Social Security
7 numbers, those sort of things. Okay?

8 And here are some things -- and now
9 we're also going to federal records. And federal
10 records include organizations, functions, policies,
11 decisions, procedures, and operations, or other
12 information that contain information about you. And
13 examples are -- go back one.

14 I know what happened. This is when the
15 computer went down and it didn't save all the
16 changes, I'm sorry. It's paper files, electronic
17 files, images, video and audio recording, websites,
18 social media. We don't have that. We have website,
19 databases, shared file drives, email, all that is
20 government records under the Federal Records Act.
21 Okay. And you're not supposed to remove the records
22 from federal government custody without proper
23 authorization. Okay.

24 And this is what I've done before. If
25 you have any questions, please come see me and we'll

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1 discuss whether or not these can go, or you can take
2 them with you, or that they should stay here.

3 Extra copies of records, you know, that
4 are not privacy protected you could take, or
5 non-work, other work-related materials, non-record
6 materials. For example, if you print out copies of
7 cases or CFRs, you can take those. Documentary
8 material that's purely personal, of course, your
9 time, pay, leave, whatever. And then your personal
10 matters include family and personal correspondence,
11 materials documenting professional activities and
12 outside business or political pursuits even though,
13 you know, let's say you have something you're going
14 to, some society meeting and you keep your schedule
15 there, you can take that with you. You can take your
16 personal stuff, but if it's agency stuff, be careful.
17 Okay? Any questions?

18 Okay. I wish those of you who are not
19 coming back the best in your future. Okay?

20 CHAIRMAN CASTRO: Okay. So, now we have a
21 revised agenda, so we're going to move now to
22 discussion and vote on the 2014 Statutory Enforcement
23 Topic.

24 IV. PROGRAM PLANNING

25 2014 STATUTORY ENFORCEMENT REPORT TOPIC

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1 CHAIRMAN CASTRO: As you all recall -- I
2 thought this was always going to stay on for me as
3 Chairman, but I guess not. So, we're now going to
4 discuss and vote on a replacement project for our
5 2014 Statutory Enforcement Report.

6 Those of you recall that after we voted
7 on the drug policy concept paper, there were some
8 concerns about whether or not it met with the
9 requirement for a Statutory Enforcement Report. Those
10 concerns were raised by our General Counsel's office.
11 I know there had been a lot of back and forth between
12 Commissioners and agency staff over that issue. There
13 have been some informal discussions among
14 Commissioners as to how to proceed.

15 We wanted to proceed quickly because we
16 know we need to give our staff the time to really
17 plan out the Statutory Enforcement Report. So, what
18 we've decided to present to you this morning for
19 consideration is a global motion that will address
20 both the issue of the replacement of the Statutory
21 Enforcement Report topic, as well as swapping out of
22 a prior concept paper for a briefing that we had on
23 the ADA and Online Accessibility with another concept
24 paper from our Conservative colleagues. So, I will
25 make a motion for discussion purposes and then we

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1 will move forward.

2 So, I will move that we substitute the
3 previously approved Drug Policy Concept Paper which
4 was approved as our Statutory Enforcement Report
5 topic, and replace that with a concept paper
6 distributed by Commissioner Kladney on the issue of
7 Patient Dumping. You all have that in your materials.
8 And that would replace the Drug Policy Concept Paper
9 as our 2014 Statutory Enforcement Topic.

10 And, in addition, that we would replace
11 the ADA Online Accessibility Concept paper previously
12 approved by the Commission as a briefing topic, and
13 replace it with a topic presented by Commissioner
14 Heriot on Sexual Harassment in Higher Education. And
15 also she amended that to add K-12. So, that is the
16 motion. Is there a second?

17 COMMISSIONER YAKI: Second.

18 CHAIRMAN CASTRO: Okay. Any discussion on
19 that? Do you want to say something, Commissioner
20 Heriot?

21 COMMISSIONER HERIOT: Yes, I just -

22 CHAIRMAN CASTRO: Make sure your mic is
23 on, though.

24 COMMISSIONER HERIOT: I just wanted to
25 say that on the issue of whether or not we have (a)

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1 jurisdiction, and (b) whether it qualifies as a
2 Statutory Enforcement Report, I'm confident that at
3 least one of these reports that we're voting on will
4 qualify, and so I can support it on that basis.

5 CHAIRMAN CASTRO: Okay. Any other
6 comments or discussions? Where did Commissioner
7 Gaziano go?

8 STAFF DIRECTOR SALLO: Chairman Castro,
9 if I may?

10 CHAIRMAN CASTRO: Yes, Madam Staff
11 Director.

12 STAFF DIRECTOR SALLO: If everyone would
13 indulge me for a moment. I wanted to take an
14 opportunity to thank staff because for the past three
15 months they have worked very diligently on the
16 current topics that we had before us. They have done
17 extensive research. They have set forth a project
18 outline, and they have also come out with a Statutory
19 Report time line, so I did not want that to go
20 unnoticed.

21 At this point in time, I would hope that
22 as we move forward the topics that we have so
23 extensively researched may be considered in the
24 future and adopted as a potential briefing so that
25 work does not go to waste.

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1 Secondly, as it applies to the topic
2 that Commissioner Heriot is bringing forth, is there
3 a concept paper that perhaps staff could take a look
4 at, because when I hear the title I get a little
5 nervous that it's like all-encompassing, and it's
6 going to be really vague. And so, I just want to make
7 sure that we have something to go by, so that we
8 could start taking a look at it.

9 COMMISSIONER HERIOT: We have a paragraph
10 written on it, and we can easily expand that if you'd
11 like us to.

12 STAFF DIRECTOR SALLO: Please, so that
13 we -- I know we have the blurb, but I was wondering
14 if anything else had been expanded.

15 COMMISSIONER HERIOT: We can do that for
16 you.

17 STAFF DIRECTOR SALLO: Okay, thank you.
18 So, I'm going to make a plug, and my plug is as we
19 move forward to schedule the Statutory Enforcement
20 Report, if we could possibly target February 14th, it
21 really cuts the time extremely short for us to have
22 the hearing on that day, but that is the only way
23 that we can physically get the report out within our
24 statutory mandate.

25 CHAIRMAN CASTRO: Yes. That's going to be

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1 the next topic after we vote on this. So, first we
2 want to get the topics nailed down. Any other
3 questions, issues? If not, then I will take a roll
4 call vote. We had a second. Right? Yes.

5 So, Madam Vice Chair, how do you vote?

6 VICE CHAIR THERNSTROM: Yes. Okay. The
7 answer is yes.

8 CHAIRMAN CASTRO: Okay. Commissioner
9 Kirsanow, how do you vote?

10 COMMISSIONER KIRSANOW: Yes.

11 CHAIRMAN CASTRO: Commissioner Heriot,
12 how do you vote?

13 COMMISSIONER HERIOT: Yes.

14 CHAIRMAN CASTRO: Commissioner Gaziano
15 has stepped out. Commissioner Achtenberg, how do you
16 vote?

17 COMMISSIONER ACHTENBERG: Yes.

18 CHAIRMAN CASTRO: Commissioner Yaki, how
19 do you vote?

20 COMMISSIONER YAKI: Yes.

21 CHAIRMAN CASTRO: Commissioner Kladney,
22 how do you vote?

23 COMMISSIONER KLADNEY: Yes.

24 CHAIRMAN CASTRO: And I vote yes, so it
25 passes unanimously. Alright. Thank you, everybody,

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1 really appreciate that.

2

IV. PROGRAM PLANNING

3

SCHEDULE TWO BRIEFINGS FOR 2014

4

THE STATUTORY ENFORCEMENT TOPIC and the

5

ENFORCING THE AMERICANS WITH

6

DISABILITIES ACT ONLINE.

7

CHAIRMAN CASTRO: The next item is to

8

set up a schedule for the briefing on that topic. The

9

concept paper, and I guess we should also set up a

10

briefing date for the sexual harassment paper. But

11

first let's deal with the Statutory Enforcement

12

Report.

13

I agree with Madam Staff Director that

14

the sooner we can do this the better. What -- if we

15

do this on February 14th, it would require that

16

Commissioners come into D.C. twice in February

17

because we currently have our meeting schedule for

18

December, I'm sorry, February 28th.

19

What I would like for us to consider is

20

possibly moving our meeting to the 14th, from the

21

28th to the 14th so that we can come in once, save

22

additional dollars in terms of having to fly back

23

twice. If need be, we could work a long day so we can

24

do any work that we need to do for our monthly

25

meeting, and then go into the briefing.

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1 I don't know what people's schedules
2 look like. I know some folks won't be here anymore so
3 it doesn't matter.

4 VICE CHAIR THERNSTROM: I was going to
5 say --

6 CHAIRMAN CASTRO: But those that
7 anticipate that you might be back, you might want to
8 check your schedule for February 14th so that we
9 could make that a form of a motion if it works.

10 COMMISSIONER YAKI: I so move.

11 CHAIRMAN CASTRO: Second? Commissioner
12 Heriot is looking at her calendar right now.

13 COMMISSIONER HERIOT: I'm still trying to
14 figure out what month that --

15 CHAIRMAN CASTRO: It's February 2014.
16 Okay?

17 COMMISSIONER YAKI: So, the motion would
18 be to consolidate the meeting of the 28th with the
19 hearing on the 14th?

20 CHAIRMAN CASTRO: Yes.

21 COMMISSIONER YAKI: On the date of the
22 14th.

23 CHAIRMAN CASTRO: Correct. And we'll try
24 to have Valentine's Day cookies for you all.

25 COMMISSIONER YAKI: And my birthday is

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1 the day after.

2 COMMISSIONER HERIOT: Valentine's Day.

3 COMMISSIONER YAKI: Not that anyone
4 would --

5 CHAIRMAN CASTRO: We'll try to get you
6 home in time for dinner, but I can't promise
7 anything.

8 COMMISSIONER HERIOT: Mr. Chairman, I'm
9 either not going to be on the Commission then or I
10 will be available.

11 CHAIRMAN CASTRO: Okay. So, then we've
12 got a motion that's been seconded.

13 COMMISSIONER KLADNEY: Mr. Chairman?

14 CHAIRMAN CASTRO: Yes, Commissioner
15 Kladney.

16 COMMISSIONER KLADNEY: I believe a couple
17 of us have spoken about having a business meeting on
18 Thursday.

19 CHAIRMAN CASTRO: If we needed to, yes.
20 If we think it's going to be --

21 COMMISSIONER KLADNEY: Well, that should
22 be part of the motion that maybe someone should have
23 discretion to schedule that so that the staff would
24 have direction on that.

25 CHAIRMAN CASTRO: Yes.

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1 COMMISSIONER YAKI: Yes, I would like to
2 amend the motion to give the Chairman and the Staff
3 Director to put the business meeting on Thursday, the
4 13th in order to accommodate the briefing -- if
5 needed, to accommodate the briefing on the 14th.

6 CHAIRMAN CASTRO: Okay. Is that all right
7 with you folks? Okay. So, that is the motion then. I
8 guess we'll take a roll call vote on that.

9 Madam Vice Chair, how do you vote?

10 VICE CHAIR THERNSTROM: Yes.

11 CHAIRMAN CASTRO: Commissioner Kirsanow,
12 how do you vote?

13 COMMISSIONER KIRSANOW: Abstain.

14 CHAIRMAN CASTRO: Okay.

15 VICE CHAIR THERNSTROM: I should have
16 abstained, too.

17 COMMISSIONER YAKI: Abstain? Come on.

18 CHAIRMAN CASTRO: Commissioner Heriot,
19 how do you vote?

20 COMMISSIONER HERIOT: Well, I guess I
21 should abstain, too, then.

22 CHAIRMAN CASTRO: Well, you might be
23 here.

24 COMMISSIONER HERIOT: But -- I might vote
25 yes then.

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1 CHAIRMAN CASTRO: Okay. I'll take that as
2 a yes. Commissioner Gaziano is still not back.
3 Commissioner Achtenberg?

4 COMMISSIONER ACHTENBERG: Yes.

5 CHAIRMAN CASTRO: Commissioner --

6 VICE CHAIR THERNSTROM: You could change
7 mine to abstain.

8 CHAIRMAN CASTRO: Okay. Commissioner
9 Yaki?

10 COMMISSIONER YAKI: Aye.

11 CHAIRMAN CASTRO: Commissioner Kladney?

12 COMMISSIONER KLADNEY: Yes.

13 CHAIRMAN CASTRO: I vote yes. We'll
14 change the Vice Chair's to abstain, so we have one,
15 two, three, four, five yeses, two abstentions.

16 COMMISSIONER HERIOT: Can we change mine
17 to abstain, because you don't need --

18 CHAIRMAN CASTRO: Okay. So, Commissioner
19 Heriot has abstained. We still have a majority of
20 yes, so we will move to consolidate the meeting to
21 the 14th of February. Do we need to set anything else
22 up? Oh, the briefing for the Sexual Harassment
23 concept paper. Yes?

24 COMMISSIONER YAKI: And I want to -- I
25 have something for that, as well.

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1 CHAIRMAN CASTRO: For the Sexual
2 Harassment?

3 COMMISSIONER YAKI: No, but another
4 briefing date, as well.

5 CHAIRMAN CASTRO: Oh, for the Stand Your
6 Ground.

7 COMMISSIONER YAKI: Right.

8 CHAIRMAN CASTRO: Yes, that's right. So,
9 let's do this one and then we'll go to Stand Your
10 Ground.

11 COMMISSIONER YAKI: Okay, thank you.

12 CHAIRMAN CASTRO: Okay? So, is there a
13 particular time that you want to do the Sexual
14 Harassment briefing?

15 STAFF DIRECTOR SALLO: May I inquire? It
16 will be -- it will require data collection. Correct?

17 COMMISSIONER HERIOT: I would think that
18 yes, we want to do the data collection first, so
19 April sounds like the right time to me.

20 CHAIRMAN CASTRO: April was -- we're
21 going to try to do -- we're going to make a proposal
22 for Stand Your Ground to be in April?

23 COMMISSIONER YAKI: Right.

24 CHAIRMAN CASTRO: So, maybe --

25 COMMISSIONER HERIOT: Okay, how about

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1 May?

2 STAFF DIRECTOR SALLO: I would prefer a
3 little later to give staff ample time to --

4 COMMISSIONER HERIOT: The one thing is
5 I'm confident that this report would be one that
6 would fit our definition of an Enforcement Report,
7 whether we call it that or not. There's no need to
8 call it that. So, I would like to have the report out
9 by the end of September.

10 COMMISSIONER YAKI: Assuming you're here.

11 COMMISSIONER HERIOT: Assuming -- well,
12 even if I'm not here, I would like that.

13 STAFF DIRECTOR SALLO: I can't make any
14 promises right now, but -- because we have the
15 Statutory Enforcement Report we also need to get out,
16 as well.

17 COMMISSIONER HERIOT: I know. I'm
18 sympathetic.

19 STAFF DIRECTOR SALLO: Okay, thank you.

20 COMMISSIONER HERIOT: A -- we will try I
21 think is the best we can do.

22 STAFF DIRECTOR SALLO: Okay, thank you.

23 CHAIRMAN CASTRO: So, is that May then?

24 COMMISSIONER HERIOT: May.

25 CHAIRMAN CASTRO: Okay. So, is there a

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1 second on that?

2 COMMISSIONER YAKI: Second on both the
3 dates.

4 CHAIRMAN CASTRO: Let's do -- you want to
5 do them both at the same time?

6 COMMISSIONER YAKI: Yes.

7 CHAIRMAN CASTRO: Sure. So, I will move
8 that Stand Your Ground hearing occur in April.

9 COMMISSIONER YAKI: Right.

10 CHAIRMAN CASTRO: Do we have an issue as
11 to location that we need to discuss, or will that
12 be --

13 COMMISSIONER YAKI: I think it will be at
14 the discretion of the Staff Director and the Chair in
15 terms of location at some point.

16 CHAIRMAN CASTRO: Okay. So, that is the
17 motion to hold the Sexual Harassment briefing in May,
18 and the Stand Your Ground briefing in April at a
19 location at the discretion of the Chair and the Staff
20 Director. Is there a second on that motion?

21 COMMISSIONER YAKI: Second.

22 CHAIRMAN CASTRO: Any additional
23 discussion? If not, we'll take a vote.

24 Madam Vice Chair, how do you vote?

25 VICE CHAIR THERNSTROM: Yes.

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1 CHAIRMAN CASTRO: Commissioner Kirsanow,
2 how do you vote?

3 COMMISSIONER KIRSANOW: Abstain.

4 VICE CHAIR THERNSTROM: I should have
5 abstained, too. I don't know what I'm thinking.

6 CHAIRMAN CASTRO: You want to abstain?
7 Okay, abstain. Commissioner Kirsanow abstains.
8 Commissioner Heriot?

9 COMMISSIONER HERIOT: I think to be
10 consistent I need to abstain, too.

11 CHAIRMAN CASTRO: Commissioner Gaziano?

12 COMMISSIONER GAZIANO: Why are we
13 abstaining?

14 COMMISSIONER HERIOT: Because we might
15 not be here.

16 COMMISSIONER GAZIANO: Can't you vote
17 the -- I think it's one of these situations -- I vote
18 aye.

19 COMMISSIONER HERIOT: Go for it, anyway.

20 COMMISSIONER GAZIANO: Because I think
21 whether I'm on or off, we vote the best interests of
22 the Commission, and hope if we're not replaced that
23 people who replace us like it.

24 CHAIRMAN CASTRO: That's why I like you.

25 (Laughter.)

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1 CHAIRMAN CASTRO: Commissioner
2 Achtenberg?

3 COMMISSIONER ACHTENBERG: Yes.

4 CHAIRMAN CASTRO: Okay. Commissioner
5 Yaki?

6 COMMISSIONER YAKI: Aye.

7 CHAIRMAN CASTRO: Commissioner Kladney?

8 COMMISSIONER KLADNEY: Yes.

9 CHAIRMAN CASTRO: And I vote yes, so the
10 motion passes. We have three abstentions, and the
11 balance are yeses.

12 IV. PROGRAM PLANNING

13 CIVIL RIGHTS EFFECTS OF REGULATORY

14 AND OTHER BARRIERS TO SMALL BUSINESSES

15 CHAIRMAN CASTRO: Okay. So now, again,
16 with the amended agenda we are going to move to the
17 discussion and vote on the Civil Rights Effects of
18 Regulatory and Other Barriers to Small Businesses.
19 That's the briefing report that was previously
20 circulated. Everyone, hopefully, had a chance to look
21 at the revised version that was in your materials.
22 Any motions? Do we have a motion, anybody? We need a
23 motion.

24 (Off the record comments.)

25 CHAIRMAN CASTRO: Okay. I'm told that

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1 there's some proposed edits that are pending, and
2 there's someone going to get the copies.

3 While we wait, I guess if anybody wants
4 to grab some cupcakes you might as well go for it.

5 (Whereupon, the proceedings in the
6 above-entitled matter went off the record at 10:32
7 a.m., and went back on the record at 10:34 a.m.)

8 CHAIRMAN CASTRO: All Commissioners got
9 their cupcakes, so I think we can -- and more
10 importantly, we have the revisions to the draft
11 report that have been circulated by Mr. Martin.
12 Right?

13 COMMISSIONER YAKI: Are we sure we want
14 to consider this after ingesting sugar? That's all I
15 want to know.

16 (Laughter.)

17 CHAIRMAN CASTRO: So, we are now on the
18 topic of the part A of the Civil Rights Effects of
19 Regulatory and Other Barriers to Small Business draft
20 report. And Special Assistant John Martin has
21 circulated to us a revision, I believe, to Footnote
22 17, so I don't know who wants to address this, or
23 make a motion, or take this issue up.

24 COMMISSIONER KIRSANOW: Mr. Chair, I
25 would move that Footnote 17 as described here as it

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1 currently reads be changed to that second version
2 there. I think it's a little bit more specific and
3 accurate.

4 CHAIRMAN CASTRO: Do we have a second on
5 that motion?

6 COMMISSIONER GAZIANO: I second.

7 CHAIRMAN CASTRO: Any additional
8 discussion? No? All right, let's see. Let's take a
9 vote on that then.

10 Madam Vice Chair, how do you vote on the
11 amendment?

12 VICE CHAIR THERNSTROM: Yes.

13 CHAIRMAN CASTRO: Commissioner Kirsanow,
14 how do you vote on the amendment to the draft?

15 COMMISSIONER KIRSANOW: Yes.

16 CHAIRMAN CASTRO: Commissioner Heriot,
17 how do you vote on the amendment to the draft?

18 COMMISSIONER HERIOT: Yes.

19 CHAIRMAN CASTRO: Commissioner Gaziano,
20 how do you vote on the amendment to the draft?

21 COMMISSIONER GAZIANO: Yes.

22 CHAIRMAN CASTRO: Commissioner
23 Achtenberg, how do you vote on the amendment to the
24 draft?

25 COMMISSIONER ACHTENBERG: I vote yes.

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1 CHAIRMAN CASTRO: Commissioner Yaki, how
2 do you vote on the amendment to the draft?

3 COMMISSIONER YAKI: No.

4 CHAIRMAN CASTRO: Commissioner Kladney,
5 how do you vote on the amendment to the draft?

6 COMMISSIONER KLADNEY: No.

7 CHAIRMAN CASTRO: I vote no. It passes,
8 one, two, three, four to three. Now, there needs to
9 be a motion on the overall draft Part A. Is there a
10 motion on that?

11 COMMISSIONER GAZIANO: I move that we
12 adopt Part A.

13 CHAIRMAN CASTRO: As amended?

14 COMMISSIONER GAZIANO: As amended.

15 CHAIRMAN CASTRO: Is there a second?

16 VICE CHAIR THERNSTROM: Second.

17 CHAIRMAN CASTRO: Any discussion on that?
18 Okay.

19 Commissioner, I mean, sorry, Madam Vice
20 Chair, how do you vote?

21 VICE CHAIR THERNSTROM: Yes.

22 CHAIRMAN CASTRO: Commissioner Kirsanow,
23 how do you vote?

24 COMMISSIONER KIRSANOW: Yes.

25 CHAIRMAN CASTRO: Commissioner Heriot,

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1 how do you vote?

2 COMMISSIONER HERIOT: Yes.

3 CHAIRMAN CASTRO: Commissioner Gaziano,
4 how do you vote?

5 COMMISSIONER GAZIANO: Yes.

6 CHAIRMAN CASTRO: I vote no. Commissioner
7 Achtenberg, how do you vote?

8 COMMISSIONER ACHTENBERG: No.

9 CHAIRMAN CASTRO: Commissioner Yaki, how
10 do you vote?

11 COMMISSIONER YAKI: No.

12 CHAIRMAN CASTRO: Commissioner Kladney,
13 how do you vote?

14 COMMISSIONER KLADNEY: No.

15 CHAIRMAN CASTRO: Four to four, the
16 motion fails.

17 COMMISSIONER HERIOT: Wait, but why?
18 What's the problem?

19 CHAIRMAN CASTRO: It didn't have enough
20 votes.

21 COMMISSIONER HERIOT: I guess that's
22 right.

23 COMMISSIONER GAZIANO: Are you asking why
24 the --

25 COMMISSIONER HERIOT: Is there a

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1 particular problem with the report? I thought it was
2 kind of uncontroversial.

3 CHAIRMAN CASTRO: Well, you know, I guess
4 everyone could chime in. I thought it was a little
5 more one-sided than I expected it to be. The briefing
6 I felt was -- and the concept paper was more focused
7 on -- it should have been more focused on conditions
8 of the minority businesses. And it really, to me,
9 ended up being an effort to, in my opinion, a bit
10 anti-minority owned business, anti-union, so I just
11 didn't feel comfortable voting for it as drafted.

12 COMMISSIONER GAZIANO: What, what
13 amendments could be made? I didn't read especially
14 the anti-minority small business. I have to say, I'm
15 kind of confused by that, or not confused, but --

16 CHAIRMAN CASTRO: Yes, I just think
17 that --

18 COMMISSIONER GAZIANO: -- taken aback by
19 that. But are there --

20 CHAIRMAN CASTRO: I would think --

21 COMMISSIONER GAZIANO: Are there
22 suggestions, constructive suggestions that can be
23 made from those who didn't vote to approve this,
24 concrete suggestions, perhaps, that -- to put it in a
25 form that you all might find acceptable?

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1 CHAIRMAN CASTRO: You know, I did submit
2 some changes to the Office of the Staff Director, but
3 in all honesty I felt that I would have to rewrite
4 the entire report in order to make it palatable to
5 me. And I'm just speaking for myself. Other
6 Commissioners can chime in, so absent a complete
7 rewrite or reworking of the briefing -- report, I
8 just didn't feel comfortable voting for it. That's
9 not to say that maybe at some point in the future we
10 can't take that data and rewrite it, but sitting here
11 today, I think for me it would take more than some
12 edits and some tweaks. Any other Commissioner want to
13 add anything?

14 COMMISSIONER YAKI: Yes, Mr. Chair. This
15 points out to me the continued problem with briefings
16 in that they are ultimately limited by how the
17 speakers are chosen, and what outside materials are
18 actually provided at these very limited snapshots of
19 an issue. And I would agree with you that if one were
20 to look at this in a different way with different
21 briefing witnesses, and different materials it might
22 be one where we could do that, but that's not on the
23 record before us. We have voted no. I think there's
24 procedurally, there's really no more need for debate
25 on it, and we should just simply move on.

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1 VICE CHAIR THERNSTROM: Mr. Chairman?

2 CHAIRMAN CASTRO: Madam Vice Chair?

3 VICE CHAIR THERNSTROM: You said -- what
4 were your exact words? I'm not sure but, in effect,
5 it could be rewritten.

6 CHAIRMAN CASTRO: I would think it would
7 substantially have to be rewritten. I, you know,
8 can't sit here and tell you --

9 VICE CHAIR THERNSTROM: Right. But if you
10 really think it could be rewritten to be acceptable
11 to the majority of the Commissioners should we set a
12 date for --

13 CHAIRMAN CASTRO: Well, you know, I don't
14 know -- sure, that's a good question. I think that
15 given the other reports that are still in the
16 pipeline from this year's hearings, the reports that
17 we've already approved today for 2014, I think those
18 need to take precedence. Once staff gets through
19 that, I think we'll have a few more new colleagues in
20 a month or two who may want to have some briefing
21 topics, that we'll have to see how we factor that
22 into all of the existing requirements on our staff.
23 But I'm not averse personally to looking at that
24 again. That would, I think, take a vote of a majority
25 of the Commission.

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1 VICE CHAIR THERNSTROM: Do you think it's
2 an unimportant topic?

3 CHAIRMAN CASTRO: No, I think it's
4 important. That's why we held it. I just didn't feel
5 that it was --

6 VICE CHAIR THERNSTROM: No, I'm just
7 saying in terms of going forward.

8 CHAIRMAN CASTRO: No, I think it is
9 important. Yes, and I think it didn't reflect, in my
10 estimation, and then we will move on, the essence of
11 what was in the original concept paper. Some of it
12 was there, but I think we went a little far afield,
13 and as drafted I can't support it. But it is an
14 important topic, yes, I agree.

15 Okay, we've got a few more things on the
16 agenda, and some of them I know will probably not
17 pass, but we'll move ahead and do it anyway.

18 IV. PROGRAM PLANNING

19 PROPOSED EMINENT DOMAIN FINDINGS

20 AND RECOMMENDATIONS

21 CHAIRMAN CASTRO: I had circulated some
22 proposed findings and recommendations for the Eminent
23 Domain report, and there was an additional revision
24 sent around yesterday because I didn't notice that I
25 had failed to include the first part of that for Part

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1 B. So, what I would like to do is for discussion
2 purposes make a motion to approve the Part B that was
3 circulated yesterday. Do I have a second? We've got a
4 second from Commissioner Achtenberg. Any discussion
5 on that? I believe everyone should have a copy of
6 that.

7 COMMISSIONER HERIOT: Can we give me a
8 chance to read this?

9 CHAIRMAN CASTRO: Sure, sure. It's
10 basically a -- that's the one. It repeats what was in
11 my statement, which I'm not sure you may have read
12 anyway, but that statement was previously circulated.
13 Let me know when you all are ready to discuss. And as
14 you consider this, you really should not take into
15 account that we got you some cupcakes.

16 (Laughter.)

17 COMMISSIONER HERIOT: Don't worry, we
18 won't.

19 CHAIRMAN CASTRO: We are looking at Part
20 B of the Eminent Domain Abuse report which is
21 proposed findings -- a proposed finding and some
22 proposed recommendations. The revised version was
23 circulated last night. It adds recommendations 1
24 through 6, which were in my statement, but I
25 neglected to have them put into my proposed Part B

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1 recommendations.

2 Are folks ready? We could take these one
3 by one, or do it en masse, however -- I mean we have
4 technically a motion already on the floor for them in
5 entirety, but I'm willing to put that motion aside
6 and go one by one, if you'd like, or you may decide
7 you don't even want to support any of these.

8 COMMISSIONER HERIOT: I think they're a
9 package.

10 CHAIRMAN CASTRO: Okay.

11 COMMISSIONER HERIOT: I'm happy to use
12 whatever procedure you want, but I think they're a
13 package.

14 CHAIRMAN CASTRO: Okay. We'll deal with
15 them as a package then. So, we have a motion on the
16 floor to approve these -- this one finding and seven
17 proposed recommendations to the Civil Rights
18 Implications of Eminent Domain Abuse. Any discussion?
19 Commissioner Heriot?

20 COMMISSIONER HERIOT: I have a number of
21 problems with this. One, like in seven, the
22 suggestion that we want to standardize this, and it's
23 a question of uniformity. I don't agree with that.

24 On number three, amending the Fair
25 Housing Act to clarify that it applies to

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1 condemnation of residences without regard to intent,
2 I'm not even sure what you mean by that, so I would
3 oppose the package on that basis.

4 Also, in number six, that there should
5 be an unbiased empirical study using rigorous social
6 science standards; since we're a Commission that's
7 supposed to conduct research like that it seems kind
8 of odd to be recommending that somebody else do it.

9 CHAIRMAN CASTRO: Yes, someone else who
10 has the resources.

11 COMMISSIONER HERIOT: Yes, but I'm sort
12 of embarrassed to make a recommendation like somebody
13 with the resources should do this, so I intend to
14 vote no on the package.

15 CHAIRMAN CASTRO: Okay. Commissioner
16 Gaziano?

17 COMMISSIONER GAZIANO: Yes, there's
18 several that I disagree with, and I don't think the
19 others really stand on their own. And there are none
20 that I'm -- so, I think it would -- I did look at
21 these before, so I know you -- since you provided
22 them before, I'm not saying you didn't provide them
23 with some time for us.

24 I think that I have a concern
25 with -- you know, residents often get -- don't have

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1 some of the resources that commercial residents, but
2 creating -- saying that some property owners have
3 more taking rights than others is a little concerning
4 to me. Again, I don't think there needs to be or
5 should be uniformity in just compensation and takings
6 laws, since states can provide more than the
7 constitutional floor, and we like laboratories of
8 democracy.

9 You know, I think part of the problem,
10 of course, is that the -- it's really the Supreme
11 Court that made the mistake in Kelo and Public Use.
12 Again, local jurisdictions can and should do more
13 than what the real meaning of the Constitution is
14 that the Supreme Court abandoned. So, I'm -- for
15 those reasons, I don't think that I can support
16 these.

17 CHAIRMAN CASTRO: Okay, anybody else?

18 COMMISSIONER KIRSANOW: Yes, Mr. Chair.

19 CHAIRMAN CASTRO: Yes?

20 (Off microphone comments.)

21 CHAIRMAN CASTRO: You need to turn your
22 mic on.

23 COMMISSIONER KIRSANOW: I'd align my
24 comments with those of Commissioners Gaziano and
25 Heriot. I don't think that there should be, unless

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1 individual states decide to come up with a different
2 formula, a distinction, or I don't see really the
3 reason for a distinction at this point between
4 certain types of property owners, commercial versus
5 resident.

6 In addition to which, the second
7 proposed recommendation, I think I understand the
8 impetus behind it, but then, again, tenants are not
9 owners of the property, and I am not sure that they
10 would be entitled to compensation. And beyond that,
11 as I said, I would align my comments with those of my
12 other two Commissioners.

13 CHAIRMAN CASTRO: Any comments over here
14 on the Democrat side? Commissioner Kladney?

15 COMMISSIONER KLADNEY: I also intend to
16 vote no on this. I believe that each state and
17 jurisdiction should fend for itself, and have its own
18 definitions of what it needs. I'm sure everybody has
19 had an opportunity to read my statement.

20 I think that when it comes to making
21 just compensation payments, people who own
22 residential properties, depending on the state and
23 jurisdiction, get not just compensation for their
24 property, they get relocation money, they get all
25 sorts of other stuff, excuse me, compensation. And I

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1 believe that, you know, every jurisdiction should
2 decide for itself whether it should have a
3 redevelopment plan or not accept redevelopment in the
4 Kelo sense of the word. And the Supreme Court does
5 have the final word and definition on this, and they
6 have decided so far to uphold redevelopment types of
7 projects.

8 I believe that every jurisdiction has
9 the right to choose its own method of how it wants to
10 impose Eminent Domain in its jurisdiction. Thank you.

11 CHAIRMAN CASTRO: Any other comments
12 before we vote? Commissioner Yaki?

13 COMMISSIONER YAKI: Yes, thank you very
14 much. I support the Chairman's proposal, but given
15 the fact that it's probably not going to pass, I was
16 not going to make any -- I was thinking of making
17 amendments, but I don't think that it's worth the
18 time, other than to simply make a few remarks about
19 the issue of eminent domain.

20 While I agree with many of my colleagues
21 that this is an issue that is very state or even
22 municipality-specific, I think that the impact in
23 terms of the Civil Rights laws and impact on
24 minorities in this country is -- has a nationwide
25 impact.

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1 I think that given when you think about
2 the fact that our Civil Rights laws are meant to
3 protect people across state boundaries, to be able to
4 cross state lines to go to places of economic
5 opportunity wherever they may be, the odd
6 juxtaposition of redevelopment laws and eminent
7 domain often result in the exact opposite, which is
8 to drive people away from areas where they could or
9 had economic prosperity, safe housing, and a place
10 that they called their home or their neighborhood.

11 Too often in these instances, in a rush
12 dependent on the economic times, the tax base, any
13 number of different factors, municipalities go into
14 these with good ideas and good intentions. But as we
15 all know, the raison d'etre of our Civil Rights laws
16 is that there may be good ideas and good intentions,
17 but without monitoring and enforcement, and real
18 measurement of what the impact would be, you have
19 these, I think, situations where communities are
20 disrupted, divided, and a second diaspora occurs for
21 many of these communities. And money doesn't solve
22 the problem. It's more fundamental in that it goes to
23 the roots of political power, it goes to the roots of
24 community empowerment, issues of economic,
25 environmental, racial justice are frequently

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1 intertwined with these types of activities. And this
2 barely scratches the surface of the complexities of
3 what goes on in these types of takings.

4 And like what we said about perhaps the
5 other briefing that we alluded to, I was not here for
6 this briefing. This is one of those briefings where I
7 believe I was gone for -- not of my own choosing, but
8 it's something where, obviously, this is something
9 that I would have structured differently. I would
10 have held the briefing differently. There are many
11 more facets to this than meet the eye. And as a
12 beginning, this is okay, but it's nothing anywhere
13 near addressing the depth and the human cost that
14 eminent domain nowadays inflicts upon many minority
15 communities in America.

16 COMMISSIONER HERIOT: Mr. Chairman?

17 CHAIRMAN CASTRO: Yes.

18 COMMISSIONER HERIOT: Can I make one more
19 comment?

20 CHAIRMAN CASTRO: Yes, you may.

21 COMMISSIONER HERIOT: Well, I just wanted
22 to comment on that section, providing more procedural
23 protections or compensation for residents than to
24 commercial property owners. A respectable argument
25 can be made that would go just the other way around,

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1 actually, and that is that certain commercial
2 businesses have a big ticket item that is left off,
3 and that is customer goodwill. If I were to run a
4 restaurant and have a loyal clientele in a particular
5 neighborhood and I have to move just like three miles
6 away because of an eminent domain issue, those
7 clients, you know, those customers won't come, and
8 I've lost something really very profound; whereas, a
9 resident's move may be less of a problem.

10 But certain businesses, on the other
11 hand, don't have that sort of customer goodwill
12 that's attached to a particular location the way a
13 restaurant or a small store might. So, I actually
14 think there are going to be a lot of cases where it's
15 the commercial property owner who has the bigger
16 problem rather than the smaller problem.

17 CHAIRMAN CASTRO: Point well taken. All
18 right. Well, let's take a vote on this.

19 Madam Vice Chair, how do you vote on
20 Part B?

21 VICE CHAIR THERNSTROM: No.

22 CHAIRMAN CASTRO: Commissioner Kirsanow,
23 how do you vote?

24 COMMISSIONER KIRSANOW: No.

25 CHAIRMAN CASTRO: Commissioner Heriot,

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1 how do you vote?

2 COMMISSIONER HERIOT: No.

3 CHAIRMAN CASTRO: Commissioner Gaziano,
4 how do you vote?

5 COMMISSIONER GAZIANO: No.

6 CHAIRMAN CASTRO: Commissioner
7 Achtenberg, how do you vote?

8 COMMISSIONER ACHTENBERG: Yes.

9 CHAIRMAN CASTRO: Commissioner Yaki, how
10 do you vote?

11 COMMISSIONER YAKI: Aye.

12 CHAIRMAN CASTRO: Commissioner Kladney,
13 how do you vote?

14 COMMISSIONER KLADNEY: No.

15 CHAIRMAN CASTRO: And I vote yes. The
16 motion fails, but I'm pleased that I was able to
17 bring you all together in a bipartisan way to oppose
18 my motion.

19 (Laughter.)

20 COMMISSIONER HERIOT: Not all.

21 CHAIRMAN CASTRO: Not all, you know, you
22 had a Democrat join.

23 So, next we have a number of updates on
24 some of our reports, so I will turn the stage over to
25 our Staff Director. Madam Staff Director, the floor

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1 is yours.

2 STAFF DIRECTOR SALLO: Commissioners, at
3 this point in time we do have an in-house editor for
4 a six-month period who has worked -- she's working
5 diligently to make sure that all of our current
6 reports that are in the pipeline are taken care of,
7 and edited with covers and everything in order to get
8 it out. The next two reports that are in queue are
9 the Sex Trafficking report, along with the Arab and
10 Muslim report. And after that, we'll take the rest in
11 order with the hope that we can complete everything
12 and issue these reports no later than April of next
13 year.

14 CHAIRMAN CASTRO: Any questions for the
15 Staff Director? Hearing none, we will move on to our
16 next topic which is a vote on the results of the
17 telephonic vote -- no? What's next? Okay, so we just
18 have to put it on the record.

19 **IV. PROGRAM PLANNING**

20 **RESULTS OF THE TELEPHONIC VOTE**

21 **HELD ON JULY 21, 2013**

22 CHAIRMAN CASTRO: Okay. So, we are
23 putting on the record -- so, I need to read those?
24 How do I do this? What do I read? I have to read the
25 whole thing?

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1 STAFF DIRECTOR SALLO: Well, there have
2 been questions because folks seem to have been
3 unaware that we held a telephonic meeting, so I just
4 wanted to make sure that we put on the record the
5 date that the telephonic meeting took place, and what
6 the results were of the actual vote for the findings
7 and recs.

8 CHAIRMAN CASTRO: Okay, so let me put
9 that on the record. The meeting was held on July
10 21st, 2013, which was a Sunday, to vote on the
11 findings and recommendations for the 2013 Statutory
12 Report on Sexual Assault in the Military. Since the
13 Commission did not hold meetings in September or
14 October, this was overlooked at the August 2013
15 meeting. That's why it's on the agenda today.

16 The result of that telephonic call was
17 that there was no consensus on the findings and
18 recommendations for the 2013 Statutory Enforcement
19 report, which has subsequently been published and
20 released by a September 30th statutory deadline.

21 **IV. PROGRAM PLANNING**

22 **PROPOSALS FOR THE COMMEMORATION OF THE**
23 **13TH AND 14TH AMENDMENTS**

24 CHAIRMAN CASTRO: Okay. So, now we will
25 move on to the next topic, which is a joint proposal

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1 that Commissioner Heriot and I have circulated to the
2 Commission for commemoration of the 13th and 14th
3 Amendment anniversaries which will be coming up in
4 due course over the next period of time. Hopefully,
5 everyone has had an opportunity to review those.

6 This is similar to what we did with
7 Lincoln Cottage, although at this point, obviously,
8 we're not identifying an entity like Lincoln Cottage
9 to partner with, but we've sort of set forward a
10 framework for directions that we might take this in.
11 And I'll actually ask Commissioner Heriot to chime
12 in, as well, and then we'll make a motion.

13 COMMISSIONER HERIOT: Okay. I just wanted
14 to say that the anniversary of the 13th and 14th
15 Amendments is an extremely important date in our
16 history, and I think that the Commission on Civil
17 Rights has a responsibility to try to make sure that
18 it is properly commemorated, and we bring in as many
19 organizations and various entities as we can to make
20 sure that this gets celebrated with all the dignity
21 that it should be celebrated.

22 CHAIRMAN CASTRO: So, for discussion
23 purposes let me make a motion based on the proposal
24 that was submitted and circulated to all of you by
25 myself, and by Commissioner Heriot. Do I have a

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1 second?

2 COMMISSIONER HERIOT: Second.

3 CHAIRMAN CASTRO: Okay. Any discussion,
4 questions? Commissioner Achtenberg?

5 COMMISSIONER ACHTENBERG: Mr. Chairman, I
6 think this is an excellent proposal. I think it
7 follows nicely on the cooperative effort we undertook
8 last year with the Lincoln Cottage to commemorate the
9 Emancipation Proclamation which, by the way, I don't
10 feel we've publicized the product of which gathering
11 was generated as broadly as I hope we intend to going
12 forward. And I like the emphasis in this new proposal
13 on having contact with the states, and encouraging
14 state legislatures, as well, to recognize this in
15 locally appropriate ways. Involving our Regional
16 Directors and State Advisory Committees, I think, is
17 a nice touch, as well. So, I think it's really an
18 excellent proposal, and I intend to support it.

19 CHAIRMAN CASTRO: Thank you. Any other
20 questions, comments from members of the Commission?
21 Hearing none, then let us take a vote on this.

22 Madam Vice Chair, how do you vote?

23 VICE CHAIR THERNSTROM: I think it's an
24 excellent proposal. I'm not sure I should be voting
25 on anything --

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1 CHAIRMAN CASTRO: Oh, yes, you should.
2 You're a sitting Commissioner. You have the right to
3 vote.

4 VICE CHAIR THERNSTROM: All right. Okay.
5 Yes. I vote yes.

6 CHAIRMAN CASTRO: Commissioner Kirsanow,
7 how do you vote?

8 COMMISSIONER KIRSANOW: Yes.

9 CHAIRMAN CASTRO: Commissioner Heriot,
10 how do you vote?

11 COMMISSIONER HERIOT: Yes.

12 CHAIRMAN CASTRO: Commissioner Gaziano,
13 how do you vote?

14 COMMISSIONER GAZIANO: Yes.

15 CHAIRMAN CASTRO: Commissioner
16 Achtenberg, how do you vote?

17 COMMISSIONER ACHTENBERG: Yes.

18 CHAIRMAN CASTRO: Commissioner Yaki, how
19 do you vote?

20 COMMISSIONER YAKI: Aye.

21 CHAIRMAN CASTRO: Commissioner Kladney,
22 how do you vote?

23 COMMISSIONER KLADNEY: Yes.

24 CHAIRMAN CASTRO: And I vote yes. It's
25 unanimous. Thank you all, this is good. Another

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1 bipartisan program that we're going to really be
2 proud of, so thank you.

3 **IV. PROGRAM PLANNING**

4 **LETTER TO DEPARTMENT OF DEFENSE**

5 **ON BEHALF OF SIKH MILITARY MEMBERS**

6 CHAIRMAN CASTRO: Next we have on the
7 agenda a proposal, I know some of us have talked
8 about this, and I previously before the shutdown have
9 circulated a draft of a letter to the Department of
10 Defense regarding the issue that was brought to our
11 attention in our May briefing by Major Kalsi about
12 the concern in the Sikh American community about
13 certain policies of the Department of Defense
14 prohibiting -- possibly prohibiting service of Sikh
15 Americans and other members of different religious
16 minorities unless they gave up their Articles of
17 Faith. In the case of the Sikh Americans, their
18 beard, their unshorn hair, and their turban.

19 There was a concern among many of us
20 about that issue, and rather than wait for a report
21 to come out, we wanted to put forward a letter. The
22 initial letter that I circulated was not,
23 necessarily, the direction that most folks wanted to
24 go in, so what I've done is revised it to make it
25 more of an inquiry to the Department of Defense to

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1 allow them to provide us their perspective on this
2 issue before we draft our report, as opposed to
3 approaching them with a view that we already
4 considered this to be a problem and wanted them to do
5 something about it.

6 So, I've tried with the assistance of a
7 few folks here to present a letter that is more
8 inquisitive, more of an inquiry than the original
9 letter was. So, hopefully, you've all had a chance to
10 look at that letter. And I don't know if folks have
11 any comments or questions before we make a motion on
12 that.

13 COMMISSIONER KLADNEY: Mr. Chairman?

14 CHAIRMAN CASTRO: Yes, Commissioner
15 Kladney?

16 COMMISSIONER KLADNEY: I actually believe
17 that we should let the staff make general inquiry,
18 get as much information as possible from Department
19 of Defense included in the report. I don't think a
20 letter of this sort really covers the entire gamut of
21 the four different services, and whatever.

22 CHAIRMAN CASTRO: Okay. Any other
23 comments? If not, I will move that we accept and
24 approve this letter. Is there a second?

25 COMMISSIONER ACHTENBERG: Second.

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1 CHAIRMAN CASTRO: Okay. Let me take a
2 vote.

3 Madam Vice Chair, how do you vote?

4 VICE CHAIR THERNSTROM: I'm deferring my
5 vote for a minute.

6 CHAIRMAN CASTRO: Okay. Commissioner
7 Kirsanow, how do you vote?

8 COMMISSIONER KIRSANOW: Yes.

9 CHAIRMAN CASTRO: Commissioner Heriot,
10 how do you vote?

11 COMMISSIONER HERIOT: I vote yes. I just
12 wanted to comment, there's an acronym in here that we
13 don't define.

14 CHAIRMAN CASTRO: Okay, which one is
15 that?

16 COMMISSIONER HERIOT: I think it's EMS.

17 CHAIRMAN CASTRO: Okay, we'll define that
18 then.

19 Commissioner Gaziano, how do you vote?

20 COMMISSIONER GAZIANO: Yes.

21 CHAIRMAN CASTRO: Commissioner
22 Achtenberg, how do you vote?

23 COMMISSIONER ACHTENBERG: Yes.

24 CHAIRMAN CASTRO: Commissioner Yaki, how
25 do you vote?

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1 COMMISSIONER YAKI: Aye.

2 CHAIRMAN CASTRO: Commissioner Kladney?

3 COMMISSIONER KLADNEY: Abstain.

4 CHAIRMAN CASTRO: Madam Vice Chair?

5 VICE CHAIR THERNSTROM: I'll vote yes.

6 CHAIRMAN CASTRO: And I vote yes. Okay,
7 so the letter passes unanimously and we will define
8 EMS. I believe we have -- Commissioner Kladney,
9 although you voted no, would you --

10 COMMISSIONER KLADNEY: I abstained.

11 CHAIRMAN CASTRO: Oh, you abstained.
12 Would you consider still signing the letter, or not?

13 COMMISSIONER KLADNEY: I'll sign it.

14 CHAIRMAN CASTRO: Okay. So, I think we
15 have all of the Commissioner's electronic signatures
16 so we'll insure that that's done. Thank you very
17 much, appreciate this.

18 Now we move on to Management and
19 Operations. Madam Staff Director, the floor is yours
20 again.

21 **V. MANAGEMENT AND OPERATIONS**

22 **STAFF DIRECTOR'S REPORT**

23 STAFF DIRECTOR SALLO: Thank you.
24 Commissioners, I just wanted to provide an update,
25 and I wanted to use the framework of our current

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1 Strategic Action Plan to provide you with updates. As
2 you know, as we move toward submitting our budget
3 request in February, we have to provide an update as
4 to how far we've gotten along on certain goals and
5 objectives that are contained within our Strategic
6 Action Plan. So, as it stands right now Goal A pretty
7 much refers to the reports that we issue. And,
8 obviously, that is an ongoing process, and we do have
9 several reports that are in queue. And as of today,
10 we've now scheduled some upcoming briefings, so that
11 goal will continuously be updated.

12 In reference to Goal B, it indicates
13 that we would regularly provide new objective
14 information and analysis on Civil Rights issues. And,
15 obviously, when this was put into effect, the one
16 project that we had in the pipeline was the Stand
17 Your Ground project.

18 As you know, today we voted to hold a
19 briefing, but in reference to the actual report that
20 was submitted for consideration by Commissioner Yaki,
21 what we have done with the help of staff along with
22 our interns, Richard Ahne, and Reziya Brumfield, and
23 Ms. Stitcher, we have gone forward and we have looked
24 at least half of what was requested within the
25 project, I guess, outline that was provided by

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1 Commissioner Yaki, so I will be more than happy to
2 disseminate after our meeting today a status on the
3 different sections that we have looked at. We have
4 gathered lots of research. We have looked into some
5 of the data that's out there. At the present time,
6 we're also trying to get data from FDLE so that we
7 can also take a look at the analysis that has already
8 been done. There are some agencies in the community
9 that have taken the data that we were proposing to
10 look at and they have analyzed it themselves. And the
11 Congressional Research Service is my understanding as
12 a result of a hearing that I recently attended, that
13 they've also done this analysis. So, we're in the
14 process of collecting that, because if the analysis
15 is along the same lines of what we were proposing,
16 then I think it behooves us not to reinvent the
17 wheel, and use the information that they've provided
18 as we move forward in cultivating our project.

19 As we move on to Strategic Goal C, this
20 one deals with apprizing individuals of Civil Rights
21 laws and policies. And it also had some interior, I'm
22 sorry, some goals and objectives that applied within
23 the agency itself, so I wanted to advise everyone, as
24 I previously indicated, we do have a contractor on
25 board for six months who's helping us not only with

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1 the actual reports. Rather than hiring an individual
2 contractor for a report, we just have someone
3 in-house doing all the reports. But at the same time,
4 we are revising our style guide which is what staff
5 uses as they draft the reports. And we're also
6 revising our Uncle Sam publication, and in addition
7 to that, we will be translating our Uncle Sam
8 publication into Spanish, as indicated in the
9 Strategic Action Plan.

10 We're also tracking complaints online.
11 We receive a lot of complaints from correctional
12 facilities, and so in meeting with staff we have
13 determined that there are some issues out there that
14 keep arising from certain facilities, so we're going
15 to track them so that we can then report any
16 significant findings to the Department of Justice,
17 since it is our job to refer complaints to them. But
18 I'd rather have it be specific types of complaints
19 where we can say in X Correctional Facility we've
20 identified these two issues as a result of this
21 number of complaints.

22 In addition to that, we have discussed
23 also mapping complaints that we receive nationwide
24 because sometimes when you map, you're able to
25 identify specific issues in a region. And so, we are

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1 also working on doing that as part of our
2 Clearinghouse project, and as part of our complaint
3 process.

4 As we move forward, we will also be
5 updating our website, removing items off the website
6 that are out of date, and pretty much tightening the
7 website so that it becomes a bit more user-friendly.

8 One of the additions to that will be to
9 actually provide links to all of the federal agencies
10 within their Civil Rights Department, rather than
11 having folks call us and then we having to speak to
12 someone and say well, we don't actually investigate
13 the complaint. We'll have to refer you someplace
14 else. It makes more sense to actually provide that
15 information on the website and provide an active link
16 that will take them directly to the Civil Rights
17 Division of the respective agency. So, the goal would
18 be to establish that in English, and then ultimately
19 in Spanish, and any other language that we may
20 identify in the future that is prominent in reference
21 to queries that we receive from the public.

22 As we look at Strategic Goal D, which is
23 about improving the Commission's profile and
24 effectiveness in communicating with the general
25 public, some of what I just spoke about also falls

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1 under this umbrella, but in addition to that, we had
2 indicated that we would be translating some reports
3 into Spanish. We have identified four SAC reports
4 from different regions that addressed that affect the
5 Latino community, and as a result those four reports
6 will be translated. And, in addition, we will be
7 translating into Spanish the Bullying report, and
8 that will also be issued. So, at the present time, I
9 believe the Illinois report is completed in Spanish.
10 We're moving on to a Connecticut report, a Texas
11 report, and I can't remember the fourth state, my
12 apologies. So, we're in the process of doing that.

13 As it applies to our website, I'm happy
14 to say that we just had a test run yesterday with
15 Ready Talk, and Ready Talk will allow us to actually
16 hold webinars with not only our staff, but our SAC
17 members. So, Ready Talk will be used next week for a
18 mandatory two-day training that all staff and
19 regional offices will have to participate in on
20 report writing.

21 As we move forward, it is very important
22 when we draft our reports that there's consistency,
23 and that there's uniformity. And templates are
24 necessary, so we have someone coming on board to
25 provide training to staff for two days. They will

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1 leave us with templates and everyone will be on the
2 same page as it applies to what is required in a
3 report, and what is needed in a report for it to be
4 effective, and to allow us to present the material in
5 the best light to the public. So, we are working on
6 that, as well.

7 I know that Commissioner Kladney has
8 been hoping and praying for video conferencing, and
9 so at this point in time we're hoping that we can
10 test that in January. So, we will keep everyone
11 abreast of how that is going, but the goal is for
12 that. We've put all the wires in to allow us to do
13 that, and we have the equipment to do the Ready Talk.
14 Now we just have to get the audio set up, and then
15 we'll be able to do a test run.

16 COMMISSIONER YAKI: Does that mean that
17 Commissioner Kladney can participate in a conference
18 with just a picture of his head on his chair?

19 STAFF DIRECTOR SALLO: Wouldn't be any
20 different, but then we go on to --

21 (Laughter.)

22 STAFF DIRECTOR SALLO: Sorry. We go on to
23 Strategic Goal E, where we discuss strengthening the
24 Commission's financial and operational controls.

25 COMMISSIONER ACHTENBERG: Can I ask a

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1 question?

2 STAFF DIRECTOR SALLO: Yes, ma'am.

3 COMMISSIONER ACHTENBERG: Is that live
4 streaming of our media?

5 STAFF DIRECTOR SALLO: That is also
6 another component that we will hope to do a test run
7 in January, yes.

8 COMMISSIONER ACHTENBERG: Thank you.

9 STAFF DIRECTOR SALLO: So, the framework
10 is there. It's just getting it ramped up so that we
11 can ultimately do the test run.

12 In Goal E, as it applies to our
13 financial and operational controls, we currently have
14 an ongoing audit. It's safe to say that nothing has
15 been flagged thus far, so that's -- I'm very proud of
16 staff for working so diligently on this issue. We're
17 undergoing a FISMA audit, as well, so everything
18 there is in compliance.

19 I've been in conversations with the IG
20 and giving them updates because that was one of the
21 goals in the IG report, is that we came into
22 compliance with FISMA. So, I'm happy to report that
23 we're moving along.

24 As it applies to our Human Capital Plan,
25 Tina identified someone that could come in to work

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1 with us whom I am very impressed with, who will be
2 working with us in order to make sure that we align
3 our Human Capital Plan with our Strategic Action
4 Plan, with the ultimate goal to make sure as we move
5 forward into the next fiscal year that our
6 performance appraisals that we're using comport with
7 not only the Human Capital Plan, but the Strategic
8 Action Plan, and are truly delivering a very specific
9 perspective on each employee's goals and objectives
10 while they're here in the Commission.

11 It is important as we move forward to
12 evaluate the employees and make sure that the
13 performance plan that is being implemented truly
14 captures what their duties are on their job, so we
15 are working very closely to modify that, along with
16 the AIs. I have set a time line for all employees in
17 the sense that they are -- everyone has reviewed the
18 AIs, we have now flagged them to see what needs
19 revisions and what needs to be tweaked, and now we're
20 going to start our working groups to make sure as we
21 move forward that all of that can be taken care of.

22 In addition to what I've just described,
23 I told you about the training. Online training will
24 also be expanded, so as you know, we also -- we
25 always have to do our ethics training. Our SAC

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1 members are required to do ethics training. We now
2 have online ethics training for all of our SAC
3 members, so as soon as they are appointed they do the
4 training, and then they can print out their
5 Certificate of Completion. And I have to thank
6 Jennifer Hepler for that. We're ongoing in Office of
7 Government Ethics audit right now, and they brought
8 to my attention that they were very happy that she
9 was able to implement this online training.
10 Apparently, this was requested from a long time ago,
11 but Jennifer came in and she was able to get it done
12 in a very short period of time, so I have to thank
13 her for that.

14 And, finally, Strategic Goal F, which is
15 to increase participation of our SACs. As you know, I
16 did have the opportunity before the furlough to visit
17 not only our Rocky Mountain office, but our Western
18 Region office. I have had the pleasure since then to
19 have continuing conversations with SAC Chairs. The
20 Regional Directors have been very helpful in putting
21 together conference calls with all the SAC Chairs
22 within their region. They have been very productive.

23 I have also participated in SAC
24 Committee meetings telephonically, and the goal is to
25 establish bimonthly SAC Chair conference calls with

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1 the Staff Director and all the SAC Chairs so that
2 there can be an exchange of information. The one
3 feedback that I'm getting from all the SAC members is
4 that they feel disconnected to the Commission, and so
5 my goal is to not only raise awareness through an
6 exchange of information between the Commission and
7 the SAC members, but also between the SAC members
8 themselves.

9 So, that said, our website is being
10 updated and a new page will be added that is
11 specifically for our SACs. And on that page we will
12 announce any reports that are being released by the
13 SACs, any appointments by the uploading of press
14 releases, and SAC members will also be able to go on
15 there and access any information on financial
16 disclosure rules with a link to the website, or any
17 government ethics rules with a link to the OGE
18 website.

19 In addition, we're setting up emails for
20 them so that they can have an exchange of information
21 through a LISTSERV. We're doing e-blast so that
22 they're aware of what other SACs are doing, and what
23 the Commission as a whole is doing. There is a
24 proposal by some of our Regional Directors to
25 establish a newsletter and they're going to draft it,

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1 and they're going to be sending it out to make sure
2 that there's communication between the different
3 regions, and the different SAC members. And I believe
4 that is about it as it applies to the updates from
5 the Staff Director's office.

6 CHAIRMAN CASTRO: Is that all? What do
7 you do with your time? I want to thank you, Madam
8 Staff Director for, first of all, the report that
9 tracks our Strategic Plan. I can't tell you how many
10 organizations I'm a part of that will do a Strategic
11 Plan and then it sits on a shelf and no one ever
12 monitors whether we're hitting the guideposts. And
13 I'm really, really pleased to see that you're doing
14 that on top of the substantive efforts that are
15 occurring to make sure that that happens. So, I want
16 to thank you and the staff that are making that
17 occur, and I'm really pleased that you're acting on
18 many issues that we've been wanting to do for a long
19 time, whether it's SAC engagement, whether it's
20 access to the LEP community. So, bravo, appreciate
21 it.

22 STAFF DIRECTOR SALLO: Thank you. But I
23 couldn't do it without the staff.

24 CHAIRMAN CASTRO: Absolutely. Any
25 questions for the Staff Director on what she just

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1 provided to us?

2 **VI. ADJOURN MEETING**

3 CHAIRMAN CASTRO: Hearing none, then I
4 am happy to entertain a motion to adjourn.

5 COMMISSIONER HERIOT: So moved.

6 CHAIRMAN CASTRO: Is there a second?

7 COMMISSIONER KLADNEY: Second.

8 CHAIRMAN CASTRO: Okay, there we go. All
9 those in favor say aye.

10 (Chorus of ayes.)

11 CHAIRMAN CASTRO: Okay, the
12 meeting -- oh, hold on.

13 STAFF DIRECTOR SALLO: I'm so sorry.

14 CHAIRMAN CASTRO: What?

15 STAFF DIRECTOR SALLO: I failed to give
16 one last update. We have a General Counsel that's
17 been chosen, and he will be commencing on Monday,
18 December 16th.

19 CHAIRMAN CASTRO: Can you share a name?

20 STAFF DIRECTOR SALLO: Oh, sure. His name
21 is Rorey Smith, and he is -- he comes to us from the
22 Courts Services and Offender Supervision Agency of
23 the Office of the General Counsel. He has served
24 there as both Deputy General Counsel, as well as
25 Acting General Counsel. He has a Bachelor's in

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1 Business Administration. He has a JD, and he an LLM
2 in Law and Government with a Constitutional and Civil
3 Rights Admin Law and Regulatory Practice certificates
4 from American University.

5 CHAIRMAN CASTRO: Great. Well, thank you.
6 Welcome news.

7 COMMISSIONER GAZIANO: With that
8 announcement, I'd like to review our AIs, and I'd
9 like the Staff Director to do so, as well. If I
10 remember correctly, and I think it's -- whether it's
11 our AI or CFR, might even be a CFR, that the
12 Commission has either 30 days to reject the General
13 Counsel's appointment, or that we need approval. I
14 think it may be a rejection right, but I think there
15 should be a formal submission if either of those is
16 true.

17 CHAIRMAN CASTRO: I believe that that was
18 when the General Counsel was a Presidential
19 appointee.

20 STAFF DIRECTOR SALLO: Yes, this is a
21 General --

22 CHAIRMAN CASTRO: This is a career
23 appointment now, so that is something that is not in
24 the purview of the Commission.

25 COMMISSIONER GAZIANO: Okay.

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1 CHAIRMAN CASTRO: Yes.

2 COMMISSIONER GAZIANO: If that is - okay.
3 So, that makes sense, but I'd like at least, if it is
4 a career appointment --

5 STAFF DIRECTOR SALLO: It is. It's a
6 career. It went through the process as a -- it's a GS
7 position.

8 COMMISSIONER GAZIANO: Okay. If I have a
9 further question upon research, I'll submit it.

10 CHAIRMAN CASTRO: Call the new General
11 Counsel.

12 (Laughter.)

13 COMMISSIONER YAKI: And you have one
14 month to do it.

15 CHAIRMAN CASTRO: All right. Well, now we
16 have a motion to adjourn pending. All those in favor
17 say aye.

18 (Chorus of ayes.)

19 CHAIRMAN CASTRO: Aye. It is now --

20 COMMISSIONER YAKI: Farewell, Abby.

21 CHAIRMAN CASTRO: -- 11:25 p.m.

22 Eastern --

23 COMMISSIONER HERIOT: You didn't call for
24 the noes, again.

25 CHAIRMAN CASTRO: Oh, noes. Any noes?

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1 COMMISSIONER HERIOT: No.

2 CHAIRMAN CASTRO: Okay. All right. Thank
3 you, everybody.

4 (Whereupon, the proceedings in the
5 above-entitled matter went off the record at 11:25
6 a.m.)

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