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U.S. COMMISSION ON CIVIL RIGHTS

+ + + + + **EDITED**

MEETING

+ + + + +

FRIDAY, FEBRUARY 8, 2013

+ + + + +

The Commission convened in Suite  
1150 at 1331 Pennsylvania Avenue, Northwest,  
Washington, D.C. at 11:45 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
- DAVID KLADNEY, Commissioner
- MICHAEL YAKI, Commissioner (via telephone)
- ADAM TRZECIAK, Inspector General
- LOUISE DIBENEDETTO, Office of the  
Inspector General
- VANESSA EISEMANN, Parliamentarian

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STAFF PRESENT:

MARGARET BUTLER, Acting Chief, OCRE

PAMELA DUNSTON, Chief, ASCD

ALFREDA GREENE

JENNIFER CRON HEPLER

TINALOUISE MARTIN, Director, OM

DAVID MUSSATT, Acting Chief, RPCU  
(via telephone)

LENORE OSTROWSKY, Acting Chief, PAU

ELOISE PLATER

MICHELE YORKMAN

JOHN RATCLIFFE, Chief, BFD

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN

ALEC DEULL

TIM FAY

JOHN MARTIN

CARISSA MULDER

MARLENE SALLO

ALISON SOMIN

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

(11:45 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 11:45 a.m. And we're at the Commission's headquarters: 1331 Pennsylvania Avenue, Northwest in Washington, D.C.

I am Chairman Marty Castro. Commissioners who are present are myself, Vice Chair Thernstrom, Commissioner Heriot, Commissioner Gaziano, Commissioner Achtenberg, and Commissioner Kladney. Commissioner Yaki is appearing by phone. And Commissioner Kirsanow had to leave. A quorum of Commissioners is present.

Is the court reporter present?

That's a yes. Okay. So the meeting will now come to order.

#### **I. APPROVAL OF AGENDA**

CHAIRMAN CASTRO: The first item is

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1 the approval of the agenda. I move that we  
2 approve the agenda. Is there a second?

3 COMMISSIONER GAZIANO: I second.

4 CHAIRMAN CASTRO: Are there any  
5 amendments?

6 (No response.)

7 CHAIRMAN CASTRO: Hearing none,  
8 let's vote to approve the agenda. All those in  
9 favor say aye. Aye.

10 CHAIRMAN CASTRO: Any opposed?

11 COMMISSIONER HERIOT: Nobody said  
12 aye, did they?

13 CHAIRMAN CASTRO: No. Any ayes?

14 (Whereupon, there was a chorus of  
15 "Ayes.")

16 CHAIRMAN CASTRO: Okay. Any  
17 opposed?

18 (No response.)

19 CHAIRMAN CASTRO: Any abstentions?

20 (No response.)

21 CHAIRMAN CASTRO: Well, in the  
22 opinion of the Chair, the ayes have it.

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1                   **II. INTRODUCTIONS FROM THE OFFICE OF THE**  
2                                   **INSPECTOR GENERAL**

3                   CHAIRMAN CASTRO: Our first item of  
4 business is a presentation by our Office of the  
5 Inspector General. We have a new Inspector  
6 General, General Adam Trzeciak. As you all  
7 know, our previous Inspector General, Ms.  
8 Frances Garcia, has retired. So today we are  
9 welcoming Inspector General Trzeciak. And we  
10 would like to have him come forward to one of  
11 the microphones. And please address the  
12 Commissioners.

13                   MR. TRZECIAK: Good morning,  
14 Commissioners. Thank you. Is this on --

15                   CHAIRMAN: you can pull it a little  
16 closer to yourself.

17                   MR. TRZECIAK: One of these days they  
18 are going to make all of these microphones  
19 uniform. And we're not going to have --

20                   VICE CHAIR THERNSTROM: One of these  
21 days they will make them work.

22                   (Laughter.)

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1 MR. TRZECIAK: Thank you.

2 It is really great to be here. As  
3 you know, I am the Inspector General at the  
4 General Accountability Office. And Congress  
5 asked if I would be the Inspector General for  
6 the Civil Rights Commission.

7 It is kind of an unusual  
8 relationship, to be honest with you. Not very  
9 many IGs have this dual role. And what makes  
10 our role especially interesting and challenging  
11 is that you are not a Legislative Branch agency.  
12 And so --

13 COMMISSIONER GAZIANO: Yes, we are.

14 (Laughter.)

15 MR. TRZECIAK: You are a Legislative  
16 Branch?

17 (Laughter.)

18 CHAIRMAN CASTRO: No, well, it is a  
19 long story. Commissioner Gaziano believes that  
20 we are.

21 COMMISSIONER GAZIANO:: We can talk  
22 about that later.

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1                   CHAIRMAN CASTRO: We've got plenty  
2 of time for you to hear about that.

3                   MR. TRZECIAK: We can put that down.

4                   COMMISSIONER HERIOT: And that's why  
5 you were appointed. Congress agrees.

6                   MR. TRZECIAK: I see. Okay. Thank  
7 you.

8                   So I'm really just getting my feet  
9 wet. I am trying to understand. The General  
10 Government Accountability Office, even though I  
11 started my career there some 25  
12 years ago, it is a completely different agency,  
13 as you can imagine. And I am still learning my  
14 way around. So I really haven't gotten a chance  
15 to do much background work on the Civil Rights  
16 Commission, but I will be doing that.

17                   I think the work you do is very  
18 important. And I am honored to be the IG for  
19 the Civil Rights Commission.

20                   Just a very brief background.  
21 Again, I started my career at the Government  
22 Accountability Office, then called the General

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1 Accounting Office. I stayed there for about  
2 seven or eight years. Then at the time the  
3 Congress passed what was known as the IG Act  
4 Amendments, where they took this concept of an  
5 IG and transposed it to a number of smaller  
6 agencies, mid-sized and smaller agencies.  
7 That was back in 1988 and 1989.

8 As you can imagine, the GAO was the  
9 only training ground for auditors and  
10 investigators at that time or one of the few  
11 training grounds, I should say. So we had  
12 opportunities to jump ship, if you will. And I  
13 took advantage of that and went to the State  
14 Department, where I was able to look at some of  
15 our foreign service and foreign policy type of  
16 reviews.

17 I stayed there for four years. I  
18 then went to the Federal Trade Commission, where  
19 I set up the IG office there as the Assistant  
20 Inspector General for Audits. And I stayed there  
21 for about 14 or 15 years.

22 The Federal Trade Commission is just

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1 an amazing agency and have done a number of  
2 things and what I consider to be one of the best  
3 programs since Social Security, the Do Not Call  
4 List. At the time when it went out, you know, I  
5 think 25 million people signed up in the first  
6 day and I think 75 million people in the first  
7 week. So it was a great program.

8 It's a great agency.

9 I had an opportunity to be the IG at  
10 the Federal Maritime Commission after that,  
11 about six years ago, seven years ago. And that  
12 agency is much like yours. It is very small,  
13 but it has an enormous responsibility. I think  
14 they have about 100 people, a little bit more  
15 than you all have. The idea there is their  
16 mandate is so broad that with only 100 people,  
17 it's easier to get lost in what they are  
18 required to do. They do the best they can, and  
19 they do a great job.

20 At the beginning of January, I  
21 accepted the Comptroller General's offer to  
22 become the IG at the GAO. I have been here

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1 since. Again, with the analogy of drinking out  
2 of a fire hose, I started saying no. It's more  
3 like drinking out of Hoover Dam. Then I  
4 realized Hoover Dam, there was no water coming  
5 out. So I've gone back to the analogy of a fire  
6 hose.

7 My staff has been amazing. Louise  
8 is amazing. I mean, the dedication, the  
9 professionalism that I have experienced in just  
10 these three or four weeks has been phenomenal.  
11 I am real happy that Louise is dedicated to the  
12 Commission, although we are pulling her back a  
13 little bit to do some things at GAO. But her  
14 primary responsibility will remain the  
15 Commission.

16 So, with that said, I am happy to  
17 entertain any questions that you have of me.

18 That's it.

19 CHAIRMAN CASTRO: We want to thank  
20 you. And we look forward to -- oh, I'm sorry.  
21 I didn't see you.

22 COMMISSIONER ACHTENBERG: I don't

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1 have any questions. I just had an observation  
2 that for the last however long we have had an  
3 IG -- what, has it been about a year and a half  
4 now or -- the IG has been extremely helpful.  
5 And I find that to be -- it makes me optimistic.  
6 And it is very refreshing. That hasn't always  
7 been my experience in working with federal  
8 government.

9 So I have appreciated the  
10 constructive partnership-like attitude that has  
11 been displayed by our Inspector General to date.  
12 And I am hoping that that can continue because  
13 it helps the agency operate more effectively.

14 MR. TRZECIAK: Thank you.

15 Yes. There are some IGs out there  
16 who, for lack of a better term, practice  
17 "Gotcha," where they come in, they find these  
18 findings, and they run with them.

19 I am not that kind of IG. In fact,  
20 many of my colleagues are not that kind of IG.  
21 I will never blindside you. I will never, you  
22 know, look for the press or look for the

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1 publicity with findings that we have. That is  
2 not what IGs are about, at least in my  
3 estimation.

4 So yes. We hope to continue along  
5 Frances' path.

6 CHAIRMAN CASTRO: We look forward to  
7 working with you.

8 MR. TRZECIAK: Good. Thank you.

9 CHAIRMAN CASTRO: Thank.

10 MR. TRZECIAK: Thank you.

11 **III. PROGRAM PLANNING**

12 CHAIRMAN CASTRO: Out next item on  
13 the agenda is program planning. We are going to  
14 have a few reports on the status of various of  
15 our briefing reports. So if I could have  
16 Margaret Butler as well as Lenore come to the  
17 microphone? I think you all are responsible for  
18 the various briefings that are on the schedule  
19 here. So if we can get an update on the various  
20 briefings that you all are responsible for.

21 MS. BUTLER: Okay. Sex trafficking.  
22 OCR continues to work on the draft briefing

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1 report, which we plan to complete within the  
2 next two weeks. And then I am responsible for  
3 the Arab and Muslim American briefing report and  
4 work on similar items.

5 The transcript has been postponed  
6 because staff is performing data analysis for  
7 OGC's statutory report. And so once the data  
8 analysis is completed, we will go back to that  
9 report.

10 MS. OSTROWSKY: We are finalizing I  
11 guess is the word, making final, the redactions  
12 from the nearly 300 public comments that were  
13 generated by the criminal background check  
14 briefing. To my knowledge, at least, in the  
15 last five years, this is the first time that any  
16 of our briefings has generated more than a  
17 handful of comments. I guess I should say that  
18 we were administratively unprepared for it and  
19 the process is expensive.

20 So I am recommending to the  
21 Commission that we add a statement on our Web  
22 page right above where it says "Please submit

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1 public comments." And the statement would read  
2 something like "This is not cast in stone. If  
3 commenters wish their personally identifiable  
4 information other than their names be kept  
5 private, such as email addresses, please submit  
6 your comments as attachments to any email in  
7 Word form that can be published in whole without  
8 redaction." That will save us thousands of  
9 dollars. So that is my strong recommendation  
10 for that. And I hope that we can do that.

11 The second thing is that the  
12 criminal background check briefing report draft  
13 is in process. I should have it finished within  
14 I would say a few weeks. It was a large one, as  
15 you know. And the comment period has ended. So  
16 we don't have more than 300 comments for that.

17 CHAIRMAN CASTRO: Any questions for  
18 any of our staff? Vice Chairman and  
19 Commissioner Heriot?

20 VICE CHAIR THERNSTROM: What's the  
21 gist of these? Is there a theme that runs  
22 through these 300 comments?

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1 MS. OSTROWSKY: Roughly more, about  
2 55 percent maybe, yes, about 55 percent  
3 criticized the Guidance, in whole or in part.  
4 And about 45 percent supported the Guidance, in  
5 whole or in part. Many of the comments were  
6 generated by various groups asking their write  
7 in. And it's pretty obvious from the comments  
8 themselves that that is the case.

9 VICE CHAIR THERNSTROM: So the  
10 wording of the comments is pretty much  
11 identical?

12 MS. OSTROWSKY: No. Oh, absolutely  
13 not.

14 VICE CHAIR THERNSTROM: Even though  
15 they were generated by --

16 MS. OSTROWSKY: Even though they  
17 were generated, many of the comments supporting  
18 the Guidance are from people who identify  
19 themselves as being ex-offenders who have had  
20 enormous problems finding jobs. Many of the  
21 comments criticizing the Guidance are from  
22 people who either own businesses, work for

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1 businesses, or who are people who want to be  
2 secure, who want to feel secure in their own  
3 homes and object to the Guidance, in whole or in  
4 part.

5 VICE CHAIR THERNSTROM: I mean, this  
6 is an unusual circumstance in which what the  
7 word of what the Commission does has since  
8 gotten out. Why? I mean, what did we do right  
9 here? What could we do so that, you know, we  
10 are more visible, more in touch, you know, get  
11 more of a response?

12 MS. OSTROWSKY: Part of the reason,  
13 I am guessing, is that the public interest was  
14 already high as a result of the EEOC Guidance  
15 hearings themselves and the publication of their  
16 Guidance in April of 2012. Groups that had  
17 submitted comments to the EEOC had already done  
18 the work required to make their views known.  
19 And these are groups on all sides who have an  
20 active and loyal following. So the interest was  
21 already high I guess is what I am trying to say.

22 And, in addition, the groups that we

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1 asked to testify are groups that are in constant  
2 contact I would say with their membership. It  
3 is not a situation more like something to do  
4 with Washington administrative law, where you  
5 pretty much have to be a lawyer to care what  
6 happens one way or the other. It affects  
7 everyone, but only lawyers seem to have any  
8 interest in hearing about it. So it's partly  
9 that it was pre-existing interest and partly  
10 that the groups we ask to testify are extremely  
11 effective at being --

12 VICE CHAIR THERNSTROM: And the  
13 redacting process itself, cumbersome, expensive?

14 COMMISSIONER YAKI: Hello?

15 MS. OSTROWSKY: Yes.

16 CHAIRMAN CASTRO: Yes.

17 VICE CHAIR THERNSTROM: Because it  
18 has to just be page by page gone through?

19 MS. OSTROWSKY: Each individual  
20 email, especially from people who are  
21 ex-offenders, some of them wrote from using sort  
22 of anonymous email addresses, but some of them

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1 did not. And they put their first and their  
2 last names. And if their purpose is to  
3 reintegrate with the general society, it is  
4 probably not a good idea for them to be  
5 identified in that way.

6 What's more, we are under an  
7 obligation, I believe, legally to redact  
8 personally identifiable information.

9 VICE CHAIR THERNSTROM: Is other  
10 stuff redacted? Okay. The personal  
11 identification is.

12 MS. OSTROWSKY: No, no. Clearly  
13 what we have asked is last names for people who  
14 are ex-offenders of individuals, that last names  
15 be redacted and that email addresses.

16 COMMISSIONER HERIOT: Why is that?

17 COMMISSIONER GAZIANO: I could  
18 understand email addresses. The public doesn't,  
19 but these are public comments. So why are last  
20 names --

21 MS. OSTROWSKY: It was a judgment  
22 call I guess on my part. And that's partly

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1 because we don't currently have a warning  
2 statement or a disclaimer or anything else on  
3 our public comments Web page that says, "By  
4 submitting a comment here, both your full name  
5 as you give it and your email address will be  
6 disclosed to the public." And my judgment call  
7 was that we need to put that disclaimer up there  
8 before we would do so. Obviously the  
9 Commission -- if the Commission wants a  
10 different result, please let me know.

11 CHAIRMAN CASTRO: Ms. Hepler, it  
12 sounds like you might have something to add to  
13 this. And then Commissioner Achtenberg wants to  
14 ask a question.

15 MS. HEPLER: I know, Commissioner  
16 Gaziano, you like to keep in compliance with the  
17 FOIA, whether or not you say it applies, but  
18 FOIA --

19 VICE CHAIR THERNSTROM: Whether or  
20 not what?

21 MS. HEPLER: You like to keep in  
22 compliance with the FOIA.

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1 COMMISSIONER GAZIANO: Compliance,  
2 whether it binds us or not.

3 MS. HEPLER: So that is why I am  
4 professing that. And I don't know if we have  
5 received any requests for these. Under FOIA, if  
6 someone asks for the information, then you  
7 should redact the personally identifiable  
8 information. That's where this is coming from.

9 Right now there is nothing that says  
10 that if you put this in, that it will be  
11 available to the public with your personal  
12 information. So we would have to redact  
13 anything that could identify them personally,  
14 including their last name, especially if it is  
15 with their first name. Do you understand?

16 I think the proposal here is to put  
17 something there that would say if you don't want  
18 it released, then let us know.

19 COMMISSIONER GAZIANO: Let me just,  
20 if you don't mind -- this is out of turn here,  
21 but for most people who send in a public  
22 comment, they expect it to be a public comment.

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1 And what is a little odd to me is FOIA doesn't  
2 dictate that we remove the name of some  
3 association president's last name if they send  
4 in a public comment. But we're making a  
5 decision in a non-FOIA context to remove the  
6 last name. Maybe that makes sense, but I still  
7 don't quite understand it.

8 MS. HEPLER: I'm going to bring up  
9 the sexual assault in the military. Some of  
10 those people, what it was that they wrote in  
11 there if you read it was more or less that they  
12 were putting an outpouring of what happened to  
13 them. I don't think they want that information  
14 with their name out available to the public.

15 VICE CHAIR THERNSTROM: That's  
16 interesting they have sent a comment in, then,  
17 with --

18 MS. HEPLER: Well, I think that  
19 one -- they don't realize it. I'm sure that  
20 they don't think about the FOIA. If you were  
21 not -- you have to understand we work for the  
22 federal government. But if you don't, if you

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1 are somewhere and you may not even know what the  
2 FOIA is, you think you are sending in, "They  
3 want to know my story. I'm going to tell you my  
4 story." And some of those things in the sexual  
5 assault, if you have read them, they are  
6 heart-wrenching. And I don't think those people  
7 want their privacy and those things out there in  
8 the public.

9 COMMISSIONER HERIOT: If it's just  
10 going to be on the internet, in particular, it  
11 makes perfect sense to me that we're not going  
12 to put, you know, people's personal stories as  
13 to sexual assault on the internet. On the other  
14 hand, there may be occasions where somebody is  
15 doing research and they want to follow up with  
16 that person. They want to be able to ask that  
17 person questions. Do we have any mechanism by  
18 which a serious researcher could find out the  
19 name, contact that person, and say, "Can you  
20 give me more information?"

21 MS. HEPLER: Can I respond to that  
22 first? I think what they would do is we would

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1 take it, and we would contact the person and  
2 say, "All right. Would you like to talk to this  
3 person?" That's how that would be worked  
4 out.

5 CHAIRMAN CASTRO: Commissioner  
6 Achtenberg?

7 COMMISSIONER ACHTENBERG: No.  
8 Somebody else --

9 MS. OSTROWSKY: I wanted to make  
10 clear that we are not redacting the names and  
11 identifiable information of groups on all sides  
12 that sent in information. These are just  
13 individuals.

14 COMMISSIONER HERIOT: And many of  
15 those individuals are with personal stories.  
16 I assume that if somebody wrote -- you know, if  
17 I were to write in as a professor of law, you  
18 wouldn't redact my name.

19 MS. OSTROWSKY: No, no, no, no.  
20 We are talking about individuals who wrote in  
21 about their specific crimes and their troubles  
22 finding a job. That's all. Groups we are not

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1 redacting. We are not redacting the names of  
2 groups or people who write on behalf of  
3 businesses.

4 CHAIRMAN CASTRO: Are there any  
5 questions?

6 COMMISSIONER YAKI: Shouldn't we be  
7 advising people when they write in with an email  
8 response, something to the effect of, "Do you  
9 want to submit it for the record? And these are  
10 the FOIA considerations"?

11 I just wonder how much we should be  
12 involved in drawing that line because it may  
13 be -- someone may -- especially in the case of  
14 the military or, in fact, any potential  
15 whistleblower situation, if a person decides to  
16 maybe not tell their personal story but tell a  
17 story about someone else, maybe we would say,  
18 "Well, that's a story that someone else. And  
19 maybe it's personal and confidential. We might  
20 not want to do it." A person may be subject to  
21 immense retaliation for the fact that they even  
22 brought that up. And should there be some kind

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1 of warning or something that lets people know?

2 MS. HEPLER: That's what we are  
3 trying to talk about doing.

4 CHAIRMAN CASTRO: I was handed  
5 something --

6 MS. OSTROWSKY: Right.

7 CHAIRMAN CASTRO: -- right before  
8 this, the ending of the program, and asked to  
9 read it. I don't know where -- Marlene gave it  
10 to me, but --

11 MS. OSTROWSKY: I created a --

12 CHAIRMAN CASTRO: Okay.

13 MS. OSTROWSKY: -- statement.

14 CHAIRMAN CASTRO: So I just use  
15 this? But this is what you want us to consider  
16 using? Is there something else perhaps you can  
17 circulate?

18 MS. OSTROWSKY: It hasn't been  
19 written in stone. It was just I wanted the idea  
20 out there.

21 CHAIRMAN CASTRO: I appreciate that.  
22 And what I am suggesting is perhaps you all can

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1 come up with some model language for the  
2 Commission to consider at our next meeting that  
3 would answer the concerns that have been raised  
4 here as well as make sure that we are addressing  
5 the concerns that Commissioners have raised.

6 Commissioner Heriot?

7 COMMISSIONER HERIOT: I have just  
8 got an unrelated issue here.

9 MS. OSTROWSKY: Could we finish this  
10 first?

11 COMMISSIONER HERIOT: Okay.

12 MS. OSTROWSKY: Commissioner Yaki, I  
13 think in answer to your point, what we would  
14 like to do is put a disclaimer on the public  
15 comments web page itself that says "If you would  
16 like your personal information redacted, you  
17 must say so in your communication.

18 Otherwise whatever you write will be made  
19 available to the public." Would that satisfy  
20 your concern? Commissioner Yaki?

21 COMMISSIONER KLADNEY: I actually  
22 like your --

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1           COMMISSIONER YAKI: Yes. That might  
2 be helpful. I just have to look at how  
3 prominent it is and whether simply an automated  
4 response back to anyone who sends this stuff  
5 unsolicited in the public comment should get  
6 that because I just don't know how many people  
7 read that carefully these kinds of things or  
8 perhaps are told by someone else, "This is an  
9 email link to send public comments to," and they  
10 never see our website, they just get it from  
11 someone else who tells someone else who forwards  
12 them the link to send it in. You know what I  
13 mean?

14           MS. HEPLER: Yes. I understand.  
15 This is Jennifer Cron Hepler. I want to look at  
16 this, too, because I was looking at something in  
17 some of the Inspector General sites. When you  
18 go to put in a complaint, they do have something  
19 you can click if you want to keep it anonymous  
20 or keep it private. So I see what you are  
21 saying, and I think we should look at something  
22 like that, too.

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1                   COMMISSIONER YAKI:     Okay.     Thank  
2     you.

3                   MS. OSTROWSKY:     Also, the General  
4     Counsel's office has just pointed out that we  
5     can also put this disclaimer in our press  
6     release. It is not a complete answer, but if  
7     the Chairman makes the announcement, if it is on  
8     our website, and it is in a press release, that  
9     goes about as far as we can go, I think, to  
10    making it clear.

11                  CHAIRMAN CASTRO:       Commissioner  
12    Heriot? Then the Vice Chair.

13                  COMMISSIONER HERIOT:    I didn't hear  
14    anyone mention eminent domain. What is the  
15    status of eminent domain?

16                  MS. BUTLER:       Eminent domain is  
17    completed. It is ready for the Commissioners to  
18    review it, but --

19                  COMMISSIONER HERIOT:    Someone will  
20    be getting it in the next couple of days.

21                  CHAIRMAN CASTRO:    I guess there is a  
22    question about doesn't the staff director have

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1 to review that?

2 MS. BUTLER: The staff director  
3 normally reviews it and forwards it to the  
4 Commissioners.

5 CHAIRMAN CASTRO: So what do we have  
6 to do?

7 COMMISSIONER HERIOT: Well, we have  
8 to designate someone else to review it. And so  
9 we have got to get things moving here.

10 CHAIRMAN CASTRO: There's an AI that  
11 speaks to this, isn't there? I don't know  
12 what -- I don't have it in front of me, but I  
13 think we just look at that. And it's pretty  
14 elaborate as to what is required by the staff  
15 director to do this.

16 COMMISSIONER HERIOT: Yes. I move  
17 that Margaret Butler be designated as the point  
18 person for this.

19 COMMISSIONER KLADNEY: Can I say  
20 something?

21 CHAIRMAN CASTRO: Yes, Commissioner  
22 Kladney?

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1                   COMMISSIONER KLADNEY:     Perhaps it  
2 would be better if we just ask that it be  
3 submitted to the Commissioners for --

4                   VICE CHAIR THERNSTROM:   I was going  
5 to say that. Just submit it to the Commission.

6                   CHAIRMAN CASTRO:     Then there's a  
7 motion.

8                   COMMISSIONER KLADNEY:   Easier said.

9                   COMMISSIONER HERIOT:   I will second  
10 the motion.

11                  CHAIRMAN CASTRO:   Okay. So there is  
12 a motion --

13                  COMMISSIONER KLADNEY:   Thank you.

14                  CHAIRMAN CASTRO:   -- of the draft.  
15 Should we make it for all draft reports  
16 submitted to us getting ultimately to the staff  
17 director?

18                  VICE CHAIR THERNSTROM:   Yes, yes.

19                  CHAIRMAN CASTRO:   Okay. That's what  
20 I want to make sure because it won't be here for  
21 the sexual assault one. So the motion would be  
22 that until the appointment of a staff director,

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1 draft reports once completed by the staff will  
2 be sent directly to the Commissioners per our  
3 review and comment. Is that correct? Okay.  
4 And that has been the motion.

5 COMMISSIONER GAZIANO: My only  
6 possible caveat to that is we do want to make  
7 sure there -- you know, among the steps, I  
8 forget the exact order -- is our defame/degrade  
9 review. We have got to make sure it is done.  
10 Sometimes it makes sense if that is done before  
11 it is shared to us. I'm not sure I care that  
12 much about the order, but we need to make sure  
13 if it's circulated to us before, that we don't  
14 skip that step.

15 COMMISSIONER HERIOT: I would rather  
16 it be circulated after that.

17 COMMISSIONER GAZIANO: Pardon?

18 COMMISSIONER HERIOT: I would rather  
19 it be circulated after that.

20 CHAIRMAN CASTRO: And then there is  
21 also an external review which has to occur. So  
22 it is a little more complicated than that. I

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1 don't know if we could --

2 COMMISSIONER GAZIANO: I think at  
3 least for some reports -- and there is one that  
4 I had a concern about -- it would be better if  
5 that were done or if they all present the same  
6 or if other Commissioners agree that all of them  
7 should be done that way. But I think that, at  
8 least with the -- maybe it is better that the  
9 legal sufficiency and the external review people  
10 were circulated to us.

11 COMMISSIONER GAZIANO: How is it --  
12 do you know --

13 MS. BUTLER: Normally the legal  
14 sufficiency is done before the report goes to  
15 the Commissioners.

16 COMMISSIONER GAZIANO: Okay. And  
17 that includes the defame/degrade and --

18 MS. BUTLER: Right. Right.

19 COMMISSIONER HERIOT: And those are  
20 done internally, right?

21 MS. BUTLER: Yes, the ERB

22 CHAIRMAN CASTRO: And then there is an external

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1 review, right?

2 MS. BUTLER: Yes. There is the  
3 external review. And I'm not sure about this  
4 process, but I think once the report goes to the  
5 Commissioners, there is a form that is attached  
6 that the office who prepared the report states  
7 that everything has been done, the dates. And  
8 then the staff director gets the outside  
9 reviewer. And he or she completes the second  
10 part.

11 COMMISSIONER GAZIANO: I would at  
12 least prefer that we keep the regular order for  
13 defame/degrade and legal sufficiency, that that  
14 be done first.

15 COMMISSIONER HERIOT: Okay.

16 COMMISSIONER GAZIANO: And I would  
17 amend the motion to just have the Office of  
18 General Counsel do that, then it be circulated  
19 to us.

20 COMMISSIONER ACHTENBERG: That's  
21 fine. I agree.

22 COMMISSIONER HERIOT: How do we

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1 select external reviewers?

2 CHAIRMAN CASTRO: I don't know.

3 COMMISSIONER GAZIANO: I don't know.

4 That we may have to think about if you don't  
5 have a separate --

6 MS. OSTROWSKY: That was always done  
7 at the discretion of the staff director.

8 It would have to be done either by --

9 CHAIRMAN CASTRO: Maybe Commissioners  
10 could --

11 MS. OSTROWSKY: You know, it depends  
12 how, as you say, down in the weeds you want to  
13 get, but if you want to allow the person writing  
14 the report to select the external reviewers,  
15 that is one way or the Commissioners can  
16 designate.

17 VICE CHAIR THERNSTROM: No, I don't.  
18 I don't like the idea. I'm sorry. I lost my  
19 voice here. I don't like the idea of the report  
20 being written by somebody who then chooses the  
21 person reviewing.

22 COMMISSIONER ACHTENBERG: I agree.

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1 VICE CHAIR THERNSTROM: Pardon me?

2 CHAIRMAN CASTRO: She agrees.

3 COMMISSIONER ACHTENBERG: I said I  
4 agree.

5 VICE CHAIR THERNSTROM: Yes.

6 MS. OSTROWSKY: Would you like it,  
7 then, submitted to the Commission for a decision  
8 as to whom to submit it?

9 COMMISSIONER GAZIANO: Yes. Maybe  
10 for individual reports, you --

11 COMMISSIONER HERIOT: And maybe  
12 we'll get lucky and we'll have a staff director  
13 by the time we get to --

14 COMMISSIONER GAZIANO: Maybe so or  
15 if we don't quite have a staff director, we  
16 could have a subcommittee of Commissioners  
17 suggest to the rest of the Commission.

18 MS. EISEMANN: I was going to  
19 suggest that because I would hate for us to be  
20 in a situation where it -- we have to wait a  
21 month for the next meeting for a majority of the  
22 Commissioners to actually vote on who is going

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1 to do the external review. Meanwhile the report  
2 is sitting there, and nothing is moving forward.

3 COMMISSIONER GAZIANO: We might have  
4 an informal subcommittee that the Chair appoints  
5 that doesn't violate any to make a  
6 recommendation to the Commission.

7 CHAIRMAN CASTRO: So, then, the  
8 motion is that the staff will conduct the, the  
9 Office of General Counsel will conduct the,  
10 legal sufficiency and defame and degrade review  
11 once the report is completed, send that to the  
12 Commissioners. We will review it. And then we  
13 will come up with a process for determining who  
14 will be an external reviewer.

15 MS. BUTLER: What about the  
16 editorial review board? Will we need three  
17 people for that?

18 MS. OSTROWSKY: That's the external  
19 review.

20 MS. BUTLER: No, that is not.

21 MS. OSTROWSKY: Oh, it's a  
22 different?

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1 MS. BUTLER: Yes. The external  
2 review is an individual at the end.

3 CHAIRMAN CASTRO: So that needs to  
4 be done as well before it comes to us.

5 MS. BUTLER: Yes. That's also  
6 during the legal sufficiency --

7 CHAIRMAN CASTRO: Which is --

8 MS. BUTLER: The staff director.

9 MS. OSTROWSKY: Also, the legal  
10 sufficiency review is done not just by the  
11 Office of General Counsel because we have so few  
12 people working in this agency. The staff  
13 director has appointed people in various  
14 offices, sometimes even the regional offices,  
15 to do it.

16 MS. EISEMANN: And if it's the  
17 Office of General Counsel that has written the  
18 report, then we need somebody outside of our  
19 office, too, to do the legal sufficiency review.  
20 Lenore has done several of them.

21 CHAIRMAN CASTRO: You all will  
22 figure out who the appropriate legal sufficiency

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1 reviewer should be based on the report. There  
2 is no procedure for drafting it, then you'll do  
3 it and vice versa.

4 In terms of the -- what was the  
5 other one?

6 MS. BUTLER: ERB.

7 CHAIRMAN CASTRO: ERB? While we're  
8 among staff, whoever did draft the report, if  
9 they could choose someone to do the ERB so that  
10 there is not the person who drafted the report  
11 is also doing the ERB. Whether it's a regional  
12 director, you know, we'll leave that to you.  
13 And then send it to us. And we'll select the  
14 outside reviewer.

15 COMMISSIONER HERIOT: We'll figure  
16 out a way to select the outside.

17 CHAIRMAN CASTRO: Okay. Does that  
18 make sense? Is that good with your motions?

19 COMMISSIONER HERIOT: It moves  
20 things along here.

21 CHAIRMAN CASTRO: All right. So we  
22 have a motion. All those in favor say aye.

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1 (Whereupon, there was a chorus of  
2 "Ayes.")

3 CHAIRMAN CASTRO: Any opposed?

4 (No response.)

5 CHAIRMAN CASTRO: Any abstentions?

6 (No response.)

7 CHAIRMAN CASTRO: Okay.

8 COMMISSIONER KLADNEY: I have a  
9 comment to make on the -- digress back to the  
10 emails. I was thinking if you have a way on the  
11 website for them to submit the email on the  
12 website. When you hit the button, before it  
13 goes to the place where they submit the email, a  
14 warning should come up in red. And just tell  
15 them that blah, blah, blah public whatever. And  
16 they can attach a statement that will be full  
17 rather -- you know what I'm saying.

18 MS. OSTROWSKY: Yes.

19 MS. EISEMANN: Our plan is to work  
20 with our IT staff to try to rework our website  
21 so that --

22 COMMISSIONER KLADNEY: Okay. I was

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1 just thinking if a page came up that --

2 MS. EISEMANN: Like a pop-up?

3 COMMISSIONER KLADNEY: Right.

4 CHAIRMAN CASTRO: All right.

5 Well, thank you all. We appreciate your helping  
6 us navigate this.

7 **IV. MANAGEMENT AND OPERATIONS**

8 CHAIRMAN CASTRO: Next up is the  
9 Management and Operations Section.

10 **ACTING CHIEF OF REGIONAL PROGRAMS UNIT REPORT**

11 CHAIRMAN CASTRO: We have a report  
12 that was submitted by the Chief of Regional  
13 Programs, David Mussatt. I understand that  
14 David is on the phone, but he doesn't have  
15 anything to add to the report. If there are  
16 questions that you have for him on the report,  
17 he is happy to answer them. Is that correct,  
18 Mr. Mussatt?

19 MR. MUSSATT: Yes. I'm available  
20 for questions if you have any.

21 CHAIRMAN CASTRO: Hearing none,  
22 we'll move on, then -- thank you -- to the OGC

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1 update on transaction reporting rules. Ms.  
2 Hepler?

3 **IV. MANAGEMENT AND OPERATIONS**

4 **OGC UPDATE ON TRANSACTION REPORTING RULES**

5 MS. HEPLER: It's a PowerPoint, and  
6 it's behind you. Did you get it on the screen?

7 CHAIRMAN CASTRO: It's on the  
8 screen.

9 MS. HEPLER: Okay. And I'll send  
10 out a signal. And here is the handout. These  
11 are just the new form.

12 CHAIRMAN CASTRO: Different from  
13 last year?

14 MS. HEPLER: Well, that's why it's  
15 an update. Okay. I'm going to talk  
16 about -- there was an update to the "Stop  
17 Trading on Congressional Knowledge Stock Act,"  
18 that went into effect in January of this year.  
19 Let's see. What happened? It's not coming.  
20 There it is. It is coming through slowly. Yes.  
21 The whole page, yes. The whole page. Okay.

22 This is the one I talked about, told

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1 you about last year. It applies to all of the  
2 Commissioners and the special assistants. And  
3 the rule change started as of the beginning of  
4 this year.

5 Next slide, please. Okay. And what  
6 it is, it is on the form I have given you, you  
7 see it has been revised January 2013. You have  
8 to report certain financial transactions  
9 monthly. And it's any purchase, sale, or  
10 exchange -- and this is the big rule  
11 change -- by you, your spouse, or your dependent  
12 child. In the past, it was just you. So now  
13 anything that you, your spouse, or your  
14 dependent child purchase, sell, or exchange. We  
15 will go through the specific assets coming up,  
16 but this is the new change. So I want all of you  
17 to be aware of it.

18 Okay. Slide 3, please. Okay.  
19 And what you have to report are individual  
20 stocks, bonds, commodity futures, and other  
21 security transactions if the transaction exceeds  
22 \$1,000. And that's even if it results in a net

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1 loss to you. So if you sold something, if the  
2 transaction was over \$1,000 but you got a loss,  
3 you still have to report it.

4 And this is something - it includes  
5 assets in retirement plans, IRAs, 401(k)'s, et  
6 cetera. So if you have stocks and securities in  
7 your IRA, your 401(k) and you have a  
8 sale/exchange, it needs to be reported as well.

9 Next slide, please. Okay. It must  
10 be -- the form has to be filed 30 days after the  
11 transaction but no later than 45 days after the  
12 transaction occurred.

13 Next slide. But what I do is I send  
14 each of you a monthly email reminder. And I  
15 build in an extension. I haven't sent out  
16 an -- usually be due around the 15th of the  
17 month I'll make it. And that actually counts  
18 the 45-day. But this month you haven't gotten  
19 it yet because I wanted to wait for the  
20 training. But I send you an email. I will  
21 build an extension. If you need more  
22 time -- and I know sometimes people do -- just

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1 call me. And you'll get an extension.

2 Next slide, please. Okay. Questions  
3 have come up. You do not need to report your  
4 mutual funds, accepted investment funds, ETFs,  
5 EIFs, certificates of deposit, savings, checking  
6 accounts, Treasury bills, notes or bonds, thrift  
7 savings plans. This is something -- it's a  
8 federal government asset. You don't need to  
9 report that, real property sales, or  
10 transactions that are solely between you, your  
11 spouse, and/or dependent child. Okay?

12 Next slide. And if you have any  
13 questions, contact me. And I will send you the  
14 new form because even the Office of Government  
15 Ethics hasn't updated all of their forms for the  
16 requirement.

17 Any questions? Yes?

18 COMMISSIONER GAZIANO: So I can  
19 cross out "Executive Branch" and put  
20 "Legislative Branch" if I ever have to comply?

21 MS. HEPLER: If you have the assets  
22 because, you know, the same rules apply to

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1 Legislative Branch on this one. So, "Stop  
2 Trading on Congressional Knowledge, okay. Okay?  
3 Yes?

4 COMMISSIONER KLADNEY: Thank you.

5 MS. HEPLER: You got it.

6 **V. APPROVAL OF STATE ADVISORY COMMITTEE**

7 **SLATES**

8 CHAIRMAN CASTRO: Now, moving on to  
9 the State Advisory Committee slates. We have a  
10 number of them that are up for approval today.  
11 Do we have any -- do we want to do these as an  
12 omnibus or should I just go through each of  
13 these individually?

14 COMMISSIONER GAZIANO: Omnibus.

15 CHAIRMAN CASTRO: Okay.

16 COMMISSIONER ACHTENBERG: It's  
17 preceded by a gracious thank you to Commissioner  
18 Heriot and Commissioner Achtenberg and their  
19 staffs for doing the extraordinary job of trying  
20 to make this balanced and fair. And I think, at  
21 least to our respective satisfaction, we have  
22 done the same.

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1                   CHAIRMAN CASTRO:     Thank you.     We  
2 very much appreciate that.

3                   COMMISSIONER HERIOT:       Alec and  
4 Alison should be mentioned by name.

5                   COMMISSIONER ACHTENBERG:     Exactly.  
6 Alec and Alison should be mentioned by name.

7                   COMMISSIONER GAZIANO:     And it's a  
8 shame you had to make your own motion presently,  
9 but I --

10                   (Laughter.)

11                   COMMISSIONER GAZIANO:     -- heartily  
12 would accept the motion.

13                   CHAIRMAN CASTRO:       So I have a  
14 question.   Do I need to read each of these  
15 slates?   Okay.   I just want to make sure of  
16 that.

17                   COMMISSIONER HERIOT:     That's what  
18 they have always said here.

19                   CHAIRMAN CASTRO:     Okay.

20                   COMMISSIONER GAZIANO:     We could  
21 accept it.   Never mind.

22                   CHAIRMAN CASTRO:     No.   I'll read

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1 subcommittee to execute the appropriate  
2 paperwork for appointments.

3 **LOUISIANA**

4 CHAIRMAN CASTRO: Next is the  
5 Louisiana State Advisory Committee. I move that  
6 the Commission appoint the following individuals  
7 to the Committee based upon the recommendation  
8 of our SAC Recharter Subcommittee: Lorna E.  
9 Bourg; Jason M. DeCuir; George J. Fowler, III;  
10 Robert A. Garda; Michelle W. Ghetti; A. Gregory  
11 Grimsall; Neely S. Griffith; Gwendolyn P.  
12 Hamilton; Robert E. Lancaster; Nadia E. Nedzel;  
13 Nolan V. Rollins; James R. Stoner; James E.  
14 Viator. Pursuant to this motion, the Commission  
15 appoints A. Gregory Grimsall as Chair of the  
16 Louisiana State Advisory Committee.

17 These members shall serve as  
18 uncompensated government employees. Under this  
19 motion, the Commission authorizes the  
20 subcommittee to execute the appropriate  
21 paperwork for the appointments.

22 **OHIO**

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1                   CHAIRMAN CASTRO: Next we have the  
2 Ohio State Advisory Committee. I move that the  
3 Commission appoint the following individuals to  
4 the Committee based upon the recommendations of  
5 our SAC Recharter Subcommittee: Diane E.  
6 Citrino; Hal R. Arkes; Cassandra A. Bledsoe;  
7 Deborah L. Burstion-Donbraye; Subodh Chandra;  
8 Catherine H. Crosby; Sharon L. Davies; George W.  
9 Dent, Jr.; Dilip D. Doshi; David F. Forte; Scott  
10 D. Gerber; Robert, Chip, C. Harrod; Emerald L.  
11 Hernandez; Kevin R. McDermott; Edith Thrower;  
12 David C. Tryon; Robert S. Salem; Mark P.  
13 Strasser. Pursuant to this motion, the  
14 Commission appoints Ms. Diane E. Citrino as  
15 Chair of the Ohio State Advisory Committee.

16                   These members will serve as  
17 uncompensated government employees. Under this  
18 motion, the Commission authorizes the  
19 subcommittee to execute the appropriate  
20 paperwork for the appointments.

21                   **SOUTH CAROLINA**

22                   CHAIRMAN CASTRO: Next is the South

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1 Carolina Advisory Committee. I move that the  
2 Commission appoint the following individuals to  
3 the Committee based upon recommendations of our  
4 SAC Recharter Subcommittee: Walter F. Caudle;  
5 James Gallman; Park D. Gillespie; Robert T.  
6 King; Joanne Metrick; Robert M. Nance; Eboni S.  
7 Nelson; Randi O. Olafson; Samuel J. Tenenbaum;  
8 Myriam Elsa Torres; Angelique R. Vincent; Jesse  
9 Washington, Jr.; Ryan C. Wilson. Pursuant to  
10 this motion, the Commission appoints Mr. James  
11 Gallman as Chair of the South Carolina State  
12 Advisory Committee.

13 These members will serve as  
14 uncompensated government employees. Under this  
15 motion, the Commission authorizes the  
16 subcommittee to execute the appropriate  
17 paperwork for the appointments.

18 So now we will take a vote on this  
19 omnibus. First I need a second.

20 COMMISSIONER HERIOT: Second.

21 CHAIRMAN CASTRO: Okay. So Vice  
22 Chair is gone. So is Mr. Kirsanow.

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1 Commissioner Heriot, how do you vote?

2 COMMISSIONER HERIOT: Yes.

3 CHAIRMAN CASTRO: Commissioner

4 Gaziano, how do you vote?

5 COMMISSIONER GAZIANO: Yes.

6 CHAIRMAN CASTRO: Commissioner Yaki,

7 how do you vote?

8 COMMISSIONER YAKI: Yes.

9 CHAIRMAN CASTRO: Commissioner

10 Achtenberg, how do you vote?

11 COMMISSIONER ACHTENBERG: Yes.

12 CHAIRMAN CASTRO: Commissioner

13 Kladney, how do you vote?

14 COMMISSIONER KLADNEY: Yes.

15 CHAIRMAN CASTRO: And I vote yes.

16 It passes unanimously.

17 **IV. ADJOURN MEETING**

18 So I now will entertain a motion to

19 adjourn.

20 COMMISSIONER ACHTENBERG: So moved.

21 CHAIRMAN CASTRO: Is there a second?

22 COMMISSIONER KLADNEY: Second.

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CHAIRMAN CASTRO: All right.  
We're adjourned. It is now 12:25. Thank you,  
everybody.

(Whereupon, the above-entitled  
matter was concluded at 12:27 p.m.)