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U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

UNEDITED

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FRIDAY, SEPTEMBER 11, 2015

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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue Northwest, Washington, D.C. at 10:00 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman  
PATRICIA TIMMONS-GOODSON, Vice Chair\*  
ROBERTA ACHTENBERG, Commissioner  
GAIL L. HERIOT, Commissioner  
PETER N. KIRSANOW, Commissioner\*  
DAVID KLADNEY, Commissioner\*  
KAREN K. NARASAKI, Commissioner  
MAURO MORALES, Staff Director

\* *Present via telephone*

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STAFF PRESENT:

ANGELA FRENCH-BELL, Director, OCRE  
ALFREDA GREENE, Secretary, OSD  
JENNIFER HEPLER, Parliamentarian  
PAMELA DUNSTON, Chief, ASCD  
PILAR VELASQUEZ MCLAUGHLIN  
DANIELLE ROOT

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART  
ALEC DEULL  
JASON LAGRIA  
CARRISA MULDER  
AMY ROYCE  
JUANA SILVERIO  
ALLISON SOMIN  
KIMBERLY TOLHURST

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

(9:59 a.m.)

CHAIRMAN CASTRO: The meeting is going to come to order. This is a meeting of the U.S. Commission on Civil Rights. It is currently 9:59. Actually, we're starting a minute early. According to that clock, it's past 10:00, but. It's September 11, 2015.

This meeting is taking place at the Commission's headquarters located at 1331 Pennsylvania Avenue N.W. in Washington, D.C.

I'm Chairman Marty Castro. The Commissioners that are present with me here at the office are, of course, myself, Commissioners Narasaki, Achtenberg and Heriot.

And also we have participating by phone Vice Chair Timmons-Goodson, Commissioner Kladney, and Commissioner Kirsanow.

Commissioner Yaki was to participate by phone but we understand that he is currently stuck on

1 an airplane and hopefully will be able to join us before  
2 the meeting is over. But if not, we want to make the  
3 record clear he was intending to be on.

4 So a quorum of the Commissioners is  
5 present. Is the court reporter present?

6 COURT REPORTER: Yes.

7 CHAIRMAN CASTRO: Is the Staff Director  
8 present?

9 STAFF DIRECTOR MORALES: Yes.

10 CHAIRMAN CASTRO: Okay. So the meeting  
11 will now come to order. Before we approve the agenda,  
12 just a couple of items. We all know today is the 14th  
13 anniversary of September 11th, a day that, obviously,  
14 we all want to remember.

15 And throughout the day, there will be  
16 remembrances back home in our communities as well as  
17 here in the United States Capitol. But I thought it  
18 would be appropriate for us here at the Commission to  
19 take a few moments of silence.

20 (Moment of silence.)

21 CHAIRMAN CASTRO: So as we remember all  
22 those that were lost on that day and subsequent to that,  
23 we have to remember what our role is as a Commission.

24 We did a report not long ago on issues of

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1 hate crimes and other issues related to violations of  
2 the civil rights of Muslim and Arab Americans. And I'm  
3 sad to say that, you know, even 14 years later we still  
4 see hate crimes being committed in the name of what  
5 happened on 9/11.

6 Just the day before yesterday in a suburb  
7 of Chicago, a Sikh American man was very badly beaten.  
8 He was followed on the road by a road rager yelling at  
9 him to go back to his country, calling him a terrorist.

10 When the gentlemen pulled over to let these  
11 folks go by, allegedly they blocked his car, came into  
12 his car, and beat him tremendously and terribly. He's  
13 suffering from broken facial bones in the hospital.  
14 And while he was being beaten, was being told to go back  
15 to his country, because he's a terrorist.

16 We heard testimony like this in our  
17 Islamophobia hearing, and I think it's appropriate that  
18 today we remember that this is still a ramification of  
19 what happened on 9/11 and misplaced hatred for  
20 Americans, so. With that in mind B-

21 COMMISSIONER HERIOT: Can I mention  
22 though --

23 CHAIRMAN CASTRO: Yes.

24 COMMISSIONER HERIOT: -- also, that 9/11

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1 was itself a hate crime.

2 CHAIRMAN CASTRO: It was, yes. Terrible.

3 Was someone else on the phone to say  
4 something? Okay. Let's move on to the agenda.

5 **I. APPROVAL OF AGENDA**

6 CHAIRMAN CASTRO: We have an agenda set  
7 forward in the notice, but there are some potential  
8 amendments we would like to entertain. One of them  
9 would be in a motion to amend the agenda to remove the  
10 appointment of the Ohio State Advisory Committee.

11 Another would be to amend the agenda to  
12 read the notational vote regarding the Flores letter  
13 into the record. And the third would be to add a  
14 discussion and vote on the letter to the President  
15 regarding Flores.

16 Is there anyone who would like to make a  
17 motion to amend on all three or any one of those?

18 COMMISSIONER NARASAKI: So moved.

19 CHAIRMAN CASTRO: On all three? I'm  
20 sorry?

21 COMMISSIONER NARASAKI: Yes.

22 CHAIRMAN CASTRO: Is there a second?

23 COMMISSIONER HERIOT: Is Tennessee going  
24 to be B-

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1 CHAIRMAN CASTRO: No. Tennessee was  
2 taken off. Do we --

3 COMMISSIONER HERIOT: It's already --

4 CHAIRMAN CASTRO: -- need a motion on  
5 that?

6 STAFF DIRECTOR MORALES: No, it's not on  
7 the B

8 CHAIRMAN CASTRO: It's not on the agenda.  
9 It was taken off.

10 COMMISSIONER HERIOT: Oh, it's on mine.

11 CHAIRMAN CASTRO: Is it?

12 COMMISSIONER HERIOT: Yes.

13 CHAIRMAN CASTRO: It's on yours?

14 COMMISSIONER HERIOT: I have an old one.

15 CHAIRMAN CASTRO: Yes.

16 CHAIRMAN CASTRO: No. Oh, okay. Well,  
17 we'll also discuss it, though. Was Tennessee on the  
18 agenda?

19 STAFF DIRECTOR MORALES: Not the one that  
20 was submitted and formally sent to B

21 CHAIRMAN CASTRO: Yes. It's only got  
22 Ohio. Okay.

23 COMMISSIONER HERIOT: So mine must be old,  
24 I guess.

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1 CHAIRMAN CASTRO: Yes. Well, okay.

2 STAFF DIRECTOR MORALES: I'm sorry if that

3 occurred.

4 CHAIRMAN CASTRO: Okay. So then it's

5 just Ohio.

6 STAFF DIRECTOR MORALES: It's the only one

7 I have.

8 CHAIRMAN CASTRO: No. I think was just

9 the draft that was sent to the Special Assistants.

10 STAFF DIRECTOR MORALES: Okay.

11 CHAIRMAN: Okay. So we have a motion.

12 Do we have a second?

13 COMMISSIONER ACHTENBERG: Second.

14 CHAIRMAN CASTRO: Okay. All those in

15 favor say aye.

16 GROUP: Aye.

17 CHAIRMAN CASTRO: Any abstentions?

18 (No audible response.)

19 CHAIRMAN CASTRO: Any nos?

20 (No audible response.)

21 CHAIRMAN CASTRO: Okay. So the first

22 item on the agenda is program planning.

23 **II. PROGRAM PLANNING**

24 **STATUS ON COMMISSION REPORTS AND HIRING**

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**OF CONTRACTORS BY OCRE**

CHAIRMAN CASTRO: We have an update on the reports and the hiring of the contractors from Angela French-Bell.

MS. FRENCH-BELL: Good morning, Chairman Castro. Is it on? Good morning, Chairman Castro, Madam Vice Chair, Special Assistants and Staff. I'm reporting on two things today, the status of the contractor and a few of our reports.

We want to thank you for the patience in the contractor. As promised, we've completed the Statement of Work and it's been forwarded to GSA.

The next step is they are working with us to select the top vendor. From there, we will interview the top three candidates and we are working diligently to turn that around as quickly as possible. Our goal is to get them here as quickly as we can after we've selected the top candidate.

The next thing that I wanted to talk about are our reports. We will have the Statutory Enforcement Report completed by today. So that will be sent over to ASCD so that we will be ready to get that up and running on the Web. So thank you for that.

Civil rights -B

1 CHAIRMAN CASTRO: Could I just interrupt  
2 you?

3 MS. FRENCH-BELL: Yes?

4 CHAIRMAN CASTRO: But it won't go up on the  
5 Web until the 17th, right?

6 MS. FRENCH-BELL: That's correct.

7 CHAIRMAN CASTRO: Okay.

8 MS. FRENCH-BELL: But they needed the time  
9 to get it running.

10 CHAIRMAN CASTRO: Just want to make sure.

11 (Off microphone discussion.)

12 CHAIRMAN CASTRO: All right, please  
13 proceed.

14 MS. FRENCH-BELL: Okay. Civil rights for  
15 vets. We received your comments. We appreciate it  
16 and we're working to edit the report accordingly.

17 State immigration is currently with the  
18 Office of the Staff Director and that will be coming  
19 out soon. It's been rewritten and that will be  
20 completed at the end of this month. We wanted to at  
21 least give you two weeks.

22 CHAIRMAN CASTRO: Could anyone on the  
23 phone mute your phone, please. We're getting some  
24 weird feedback. Thank you. Go ahead.

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1 MS. FRENCH-BELL: Thank you. So we at  
2 least wanted to give you some time between statements  
3 so that you are able to do your comments in a timely  
4 manner. And we wanted to be fair to all of you.

5 And the last thing is Stand Your Ground.  
6 The investigation is complete. Dr. Sean Goliday did  
7 go to Florida. Found out some great information.  
8 It's been incorporated into the report. We're meeting  
9 with Kimberly Tolhurst, Commissioner Yaki's assistant,  
10 on Monday to talk about next steps.

11 Are there any questions for me? Yes?

12 COMMISSIONER HERIOT: Yes. I understood  
13 you, right, you were talking about posting the  
14 Immigration Detention Report today?

15 CHAIRMAN CASTRO: No.

16 MS. FRENCH-BELL: No. We're just having  
17 -- the report will be completed --

18 COMMISSIONER HERIOT: Okay.

19 MS. FRENCH-BELL: -- and sent over to ASCD  
20 to be reported.

21 COMMISSIONER HERIOT: I'm assuming that I  
22 can get you my statement with its rebuttal by the five  
23 o'clock today, is that right?

24 MS. FRENCH-BELL: That's correct.

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1 COMMISSIONER HERIOT: You'll probably get  
2 it a little bit before that, because I've got a plane  
3 to catch.

4 MS. FRENCH-BELL: Oh, absolutely.  
5 Absolutely. Thank you. Are there any other  
6 questions? Yes?

7 COMMISSIONER NARASAKI: I'm sorry, miss,  
8 did you say when the NVRA will be recirculated?

9 MS. FRENCH-BELL: NVRA is going to be a  
10 little more time. We've decided to rewrite that  
11 report. So we're looking more of a late fall time frame  
12 for that report. We're working diligently. I promise  
13 you, we are. It's just going to take us some time.

14 COMMISSIONER NARASAKI: Yes. I thought  
15 it was fine without the rewriting so I didn't know you  
16 were rewriting.

17 MS. FRENCH-BELL: Yes.

18 CHAIRMAN CASTRO: Apparently, someone  
19 else must have thought otherwise.

20 MS. FRENCH-BELL: And that's what happens  
21 sometimes. Any other comments or questions? Thank  
22 you so much for your time.

23 CHAIRMAN CASTRO: Thank you. Next we  
24 have a discussion on hearing dates for the 2016

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1 Enforcement Report. Angela or Staff Director?

2 **DISCUSSION ON HEARING DATES FOR 2016**

3 **STATUTORY ENFORCEMENT REPORT**

4 STAFF DIRECTOR MORALES: I'll defer to  
5 Angela. We've had a discussion about the potential of  
6 having the Statutory Enforcement Report in November,  
7 depending on the date that you select for moving that  
8 meeting, because we have a Commission and business  
9 meeting on December 11th at the Lincoln Cottage.

10 And so the next opportunity would be in  
11 January for a hearing on the Statutory Report. So I'll  
12 let Angela talk about what she can do.

13 MS. FRENCH-BELL: It would be beneficial  
14 to us to have the briefing either on the 13th or the  
15 20th of November. Beyond that, we start getting into  
16 the holiday season and it's much more difficult to get  
17 government panelists to attend because of their  
18 vacation plans or use or lose time.

19 Also, it would be better for us in terms  
20 of our time line for the Statutory Enforcement Report  
21 to have it in November versus having it in January.  
22 That could substantially impact our time line for that  
23 report.

24 CHAIRMAN CASTRO: Yes.

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1 COMMISSIONER HERIOT: Could I ask a  
2 question about that?

3 CHAIRMAN CASTRO: Sure, go ahead.

4 COMMISSIONER HERIOT: What about the  
5 discovery that will be involved in this? I mean, I  
6 worry about having a hearing before we really know what  
7 we're looking for. And so, do we have a discovery plan,  
8 and is the Commission going to see that discovery plan?

9 MS. FRENCH-BELL: We are working on our  
10 discovery plan. We will send that through Mauro to the  
11 Commission. We are also working collaboratively with  
12 a couple of different agencies to obtain information  
13 as well, so that will help to determine what exactly  
14 needs to go in to the interrogatories.

15 COMMISSIONER HERIOT: So are we going to  
16 -B I just worry about the notion of having the hearing  
17 or the briefing at a time when we really aren't clear  
18 on what we're looking for yet. I mean, is that B-

19 MS. FRENCH-BELL: Well, we've done a lot  
20 of research. We are working on an annotated outline,  
21 so we have a pretty good idea of the information that  
22 we need.

23 COMMISSIONER HERIOT: I don't have it,  
24 though, and I'm, you know, that's a problem. I mean,

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1 it seems like every year B-

2 MS. FRENCH-BELL: Mm-hmm.

3 COMMISSIONER HERIOT: -- we aren't as  
4 careful about our discovery plan as we need to be and  
5 we figure that out in July that we really didn't look  
6 for the right things and didn't ask the right things.  
7 And so, that worries me.

8 MS. FRENCH-BELL: Well, thank you for your  
9 concern. We're definitely taking that into  
10 consideration. We're definitely going to work with  
11 Mauro to send you a detailed, annotated bibliography  
12 so that you B-

13 COMMISSIONER HERIOT: I don't want just a  
14 bibliography. I want a, here's what we're going to  
15 ask, here's what we're looking for.

16 MS. FRENCH-BELL: Yes.

17 COMMISSIONER HERIOT: Here's what we, you  
18 know, we think this is the right question for the  
19 following reasons.

20 MS. FRENCH-BELL: Okay. Understood.  
21 Thank you.

22 COMMISSIONER KIRSANOW: When do we expect  
23 to get that document?

24 MS. FRENCH-BELL: Beginning of October.

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1 You'll have it at the beginning of October.

2 CHAIRMAN CASTRO: And I think in the past  
3 we have actually voted on discovery --

4 COMMISSIONER HERIOT: Yes, I think that's  
5 --

6 CHAIRMAN CASTRO: -- too, haven't we?

7 COMMISSIONER HERIOT: Yes. And we need a  
8 real discovery plan. Not just a vague, you know,  
9 here's vaguely what we think the problem is, you know.  
10 What I want to hear is, like, we're going to ask for  
11 the following documents in the following way.

12 MS. FRENCH-BELL: Thank you, Commissioner  
13 Heriot.

14 COMMISSIONER NARASAKI: Yes. I have to  
15 say I agree with Commissioner Heriot and I understand  
16 that Commissioner Yaki also is concerned.

17 MS. FRENCH-BELL: Mm-hmm.

18 COMMISSIONER NARASAKI: We understand the  
19 concern on the back end, right, that it's hard to pull  
20 together the report by the statutory deadline.

21 But I also feel that if you take the time  
22 up front to do what, you know, needs to be done in terms  
23 of really focusing on what we're going to do, then the  
24 back end will be more efficient.

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1                   And I am concerned about the fact that  
2 we're talking about, you know, basically six weeks,  
3 which is not a lot of time to really get there. So,  
4 Mr. Chair, I think, even though -- no choice is ideal,  
5 but I would rather wait to January than to try to rush  
6 and try to do something in November.

7                   MS. FRENCH-BELL: I definitely understand  
8 your concern. For us, we have already done a lot of  
9 the front end research. We just need to make sure that  
10 we are collaborating with you and that you understand  
11 what our plan is. So I don't think it's much of a  
12 concern on the front end as it might initially appear.

13                   COMMISSIONER NARASAKI: Well, part of my  
14 concern is that we have a back log of reports that we're  
15 trying to get out. You've just told me that we're  
16 delaying the NVRA again, which I actually thought was  
17 ready a year ago.

18                   And we've been working on the findings and  
19 recommendations, so we were hoping to try to get that  
20 done in a timely way. So you have so much that we're  
21 trying to push out in the fall. That's also a concern  
22 to me as well.

23                   CHAIRMAN CASTRO: Yes. I know that while  
24 Commissioner Yaki is not here, he did express through

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1 his Special Assistant a desire to try to get this report  
2 done, or the hearing done, before the end of the year.

3 And I appreciate that. I know that this  
4 is his, he's the primary movement behind this. But it  
5 sounds to me like January is probably a better day for  
6 all involved and we'll have a stronger and better  
7 hearing. We, as Commissioners, will be better  
8 prepared for it.

9 So that's the sense I'm getting. And I  
10 don't know if folks want to make a motion on that. I  
11 think we probably should.

12 COMMISSIONER NARASAKI: I so move.

13 COMMISSIONER KLADNEY: And I'll second  
14 that, Mr. Chair.

15 CHAIRMAN CASTRO: Okay. Any additional  
16 discussion? Hearing none, I will take a vote.  
17 Commissioner Kirsanow, how do you vote?

18 COMMISSIONER KIRSANOW: Aye.

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

21 COMMISSIONER HERIOT: Aye.

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

24 COMMISSIONER NARASAKI: Yes.

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

3 COMMISSIONER KLADNEY: Yes.

4 CHAIRMAN CASTRO: Commissioner  
5 Achtenberg, how do you vote?

6 COMMISSIONER ACHTENBERG: Yes.

7 CHAIRMAN CASTRO: Commissioner Yaki, I  
8 assume you're not on the phone yet? Okay. Madam Vice  
9 Chair, how do you vote?

10 VICE CHAIR TIMMONS-GOODSON: Yes.

11 CHAIRMAN CASTRO: And I vote yes. It is  
12 unanimous with seven yeases. Okay, so January will be  
13 the hearing date for the 2016 Enforcement Report.

14 Next, we have a discussion and vote on the  
15 actual changing of the October, excuse me,  
16 October/November business meeting dates.

17 **DISCUSSION ON CHANGING OCTOBER 16 AND**

18 **NOVEMBER 6 COMMISSION BUSINESS MEETING DATES**

19 CHAIRMAN CASTRO: As I indicated, I think,  
20 to all of you at some point, I am going to be out of  
21 the country on the dates that we had previously chosen  
22 and I was hoping to be able to adjust those dates to  
23 allow my participation.

24 The Staff Director circulated two dates as

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1 alternatives to begin the discussion. October 30th  
2 for the October meeting and November 13th for the  
3 November meeting.

4 I understand there are some issues with  
5 some other Commissioners on those dates. I'd like to  
6 kind of get folks' input. I know in the past we have  
7 had meetings on days other than Fridays. I'm open to,  
8 depending on scheduling, doing something on a Tuesday  
9 or a Wednesday, et cetera.

10 So I don't know if folks want to opine on  
11 those two initial dates. The 30th of October or the  
12 13th of November. Or let's just take October for the  
13 first and then we'll deal with November next.

14 COMMISSIONER NARASAKI: Mr. Chair?

15 CHAIRMAN CASTRO: Yes.

16 COMMISSIONER NARASAKI: So I'm one of the  
17 Commissioners not available to change to the 30th. I  
18 would hope that we could do it on the, you know -- I'm  
19 not sure what your openings are and when you come back,  
20 but would the 26th, Monday the 26th, or the 27th or 28th  
21 be available to you?

22 CHAIRMAN CASTRO: 27th would work.

23 COMMISSIONER NARASAKI: No, I can't.

24 CHAIRMAN CASTRO: No? How about the

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1 28th?

2 COMMISSIONER NARASAKI: No.

3 CHAIRMAN CASTRO: No?

4 COMMISSIONER NARASAKI: No.

5 CHAIRMAN CASTRO: Let's see. How about  
6 the 29th?

7 COMMISSIONER NARASAKI: No.

8 CHAIRMAN CASTRO: So the 30th doesn't work  
9 for you?

10 COMMISSIONER NARASAKI: No.

11 CHAIRMAN CASTRO: And who else doesn't  
12 that work for?

13 COMMISSIONER KIRSANOW: The 30th doesn't  
14 work for Kirsanow.

15 CHAIRMAN CASTRO: Okay. Let me see.

16 COMMISSIONER HERIOT: When are you out,  
17 Mr. Chairman?

18 CHAIRMAN CASTRO: I am out until the 9th  
19 of October. Then I leave again the 16th of October.  
20 I think I come back the 21st of October. I've got to  
21 be at a meeting in Chicago on the 23rd. unless I could  
22 do that remotely.

23 COMMISSIONER HERIOT: How about the 14th?

24 CHAIRMAN CASTRO: Let's see. That's

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1 possible. Yes, I could do the 14th. The 14th work for  
2 everybody? All right. Wednesday, November 14th B-

3 FEMALE PARTICIPANT: Could the people on  
4 the phone hear you.

5 CHAIRMAN CASTRO: I'm sorry, October  
6 14th. Wednesday, October 14th, does that work for  
7 everybody?

8 FEMALE PARTICIPANT: Does it work for  
9 David?

10 CHAIRMAN CASTRO: We don't know.

11 COMMISSIONER KLADNEY: I don't know if it  
12 works for me or not, but do what you want.

13 CHAIRMAN CASTRO: Thank you, Commissioner  
14 Kladney. So I'll entertain a motion.

15 COMMISSIONER KIRSANOW: Mr. Chair?

16 CHAIRMAN CASTRO: Yes?

17 COMMISSIONER KIRSANOW: This is Kirsanow.  
18 I'm always in favor of trying to accommodate the  
19 schedules of Commissioners and we have done so in the  
20 past, but I'm wondering if it's possible that we could  
21 keep the date as is. Have the Vice Chair chair the  
22 meeting and maybe you call in. Is that a possibility?

23 CHAIRMAN CASTRO: I would hesitate to say  
24 I can call in from Egypt. I don't know what the

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1 situation is going to be like there. Where I'm going  
2 to be deployed.

3 I'm going possibly to be the -B the plan  
4 is that I'm going to be one of the observers of their  
5 Congressional races. And, you know, if I'm assigned  
6 to Cairo, probably.

7 If I'm assigned to somewhere else in the  
8 country, I can't say. That's, you know, I could be sent  
9 anywhere. So I have no idea whether I'd have access  
10 to any kind of B- you know, what my communication access  
11 will be.

12 COMMISSIONER KLADNEY: Well, I have the  
13 same problem with the date you just chose. I mean, I'm  
14 going to be traveling somewhere. And I don't really  
15 even know where, but it's not going to be in this  
16 country.

17 CHAIRMAN CASTRO: Oh, no.

18 COMMISSIONER KLADNEY: And I think you  
19 take -- I think you have to either try and attend or  
20 you miss the meeting. I mean, that's how I'm looking  
21 at it for myself.

22 CHAIRMAN CASTRO: I could say the same to  
23 you, Commissioner Kladney, since I'm the Chairman.

24 COMMISSIONER KLADNEY: But I'm just

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1 saying, I mean --

2 CHAIRMAN CASTRO: I know. And I'm just  
3 saying, too.

4 COMMISSIONER KLADNEY: -- that's how I'm  
5 looking at it for myself, Mr. Chairman. I'm not saying  
6 that B-

7 CHAIRMAN CASTRO: I appreciate that.

8 COMMISSIONER KLADNEY: -- that's how you  
9 might look upon it.

10 CHAIRMAN CASTRO: I appreciate that.  
11 Sure. Well, you know, folks can make a motion if they  
12 want. If they're willing to make a change and make  
13 accommodations. If not, then so be it.

14 VICE CHAIR TIMMONS-GOODSON: Are we  
15 satisfied that we are not able to come up with an  
16 alternate date in October? Have we exhausted all of  
17 the possibilities already?

18 COMMISSIONER HERIOT: The 14th.

19 CHAIRMAN CASTRO: The 14th seemed to be  
20 the one that worked for everybody except Commissioner  
21 Kladney. We don't know Commissioner Yaki's  
22 availability because he's not available to talk right  
23 now.

24 COMMISSIONER HERIOT: Does Kimberly know?

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1 CHAIRMAN CASTRO: She doesn't know.

2 VICE CHAIR TIMMONS-GOODSON: Well, do we

3 -B

4 COMMISSIONER ACHTENBERG: I'll move

5 October 14th, Mr. Chairman.

6 COMMISSIONER HERIOT: I'll second that.

7 CHAIRMAN CASTRO: Okay. Any additional

8 discussion? Do I do a voice vote or do you want me to

9 go roll call? Is there B-

10 VICE CHAIR TIMMONS-GOODSON: A voice

11 vote.

12 CHAIRMAN CASTRO: A voice vote? Okay.

13 All in favor of changing the October meeting to October

14 14th, signify by saying aye.

15 GROUP: Aye.

16 CHAIRMAN CASTRO: Those against?

17 (No audible response.)

18 CHAIRMAN CASTRO: Any abstentions?

19 (No audible response.)

20 CHAIRMAN CASTRO: Okay. Thank you. Now

21 we move on to November. I had suggested the 13th, but

22 I know that was a problem for, I think it was you,

23 Commissioner Heriot?

24 COMMISSIONER HERIOT: Which one?

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1 CHAIRMAN CASTRO: November 13th.

2 COMMISSIONER HERIOT: Yes. 13th was B-

3 CHAIRMAN CASTRO: Yes.

4 COMMISSIONER HERIOT: -- was a problem for  
5 me. You're going to be out of the country on that date,  
6 too? I thought we were just moving this because it made  
7 it too close to the other meeting, but now we don't have  
8 that problem.

9 CHAIRMAN CASTRO: Right. No, that wasn't  
10 it. I've got a B- I'm going to be out of the country  
11 then as well.

12 COMMISSIONER HERIOT: Okay.

13 CHAIRMAN CASTRO: And so, how about the -B  
14 no, that the Thanksgiving break. We can't do that.

15 COMMISSIONER HERIOT: Yes.

16 CHAIRMAN CASTRO: You know, Wednesdays or  
17 Tuesdays are B- no, I'm leaving for Egypt that day  
18 again.

19 COMMISSIONER HERIOT: What days are you  
20 out?

21 CHAIRMAN CASTRO: The 20th. The Fridays  
22 I'm out are the 6th B-

23 COMMISSIONER HERIOT: Now what days  
24 altogether are you out?

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1 CHAIRMAN CASTRO: November 5th through  
2 the 10th and then November 20th through the 27th.

3 COMMISSIONER HERIOT: So what days are you  
4 available?

5 CHAIRMAN CASTRO: The 11th, the 12th --

6 COMMISSIONER HERIOT: Yes.

7 COMMISSIONER NARASAKI: Is the 11th  
8 Veteran's Day?

9 CHAIRMAN CASTRO: Yes.

10 COMMISSIONER HERIOT: Yes.

11 CHAIRMAN CASTRO: That's a holiday,  
12 though, right?

13 FEMALE PARTICIPANT: Yes. Our staff  
14 would --

15 CHAIRMAN CASTRO: Yes, it's a federal  
16 holiday.

17 FEMALE PARTICIPANT: Our staff would be  
18 off.

19 CHAIRMAN CASTRO: Okay.

20 FEMALE PARTICIPANT: We could do it, but  
21 I don't think we'd happy about that.

22 FEMALE PARTICIPANT: We'd be lonely.

23 CHAIRMAN CASTRO: Yes. 17th or 18th?

24 FEMALE PARTICIPANT: Yes, I can do those.

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1 FEMALE PARTICIPANT: I can, too.

2 FEMALE PARTICIPANT: I can do the 18th.

3 CHAIRMAN CASTRO: The 18th? How's the  
4 18th look for folks on the phone?

5 COMMISSIONER KLADNEY: Looks fine for me.

6 CHAIRMAN CASTRO: Okay.

7 COMMISSIONER KIRSANOW: Kirsanow can do  
8 it.

9 CHAIRMAN CASTRO: Okay. Do we have a  
10 motion?

11 COMMISSIONER ACHTENBERG: So moved.

12 CHAIRMAN CASTRO: Is there a second?

13 COMMISSIONER NARASAKI: Second.

14 CHAIRMAN CASTRO: Okay. For November  
15 18th, any additional discussion?

16 If not, I'll call the question. All those  
17 in favor of a new November date of November 18th say  
18 aye.

19 GROUP: Aye.

20 CHAIRMAN CASTRO: Opposed?

21 (No audible response.)

22 CHAIRMAN CASTRO: Abstentions?

23 (No audible response.)

24 CHAIRMAN CASTRO: Okay. Thank you. I

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1 really appreciate everybody's courtesy on this. Next  
2 item is a discussion and vote on Part A of the Peaceful  
3 Coexistence Report.

4 **DISCUSSION AND VOTE ON PART A OF**  
5 **PEACEFUL COEXISTENCE REPORT**

6 CHAIRMAN CASTRO: I know the Staff  
7 Directors Office had circulated a copy of that, based  
8 on our request for some changes a couple meetings ago.

9 I believe Commissioner Achtenberg's  
10 office also circulated a redraft a couple days ago as  
11 well. So I'll turn it over to you, Commissioner, to  
12 maybe if you could explain the changes that you  
13 proposed.

14 COMMISSIONER ACHTENBERG: The changes  
15 were modest, Mr. Chairman. They were delineated to all  
16 the Commissioners. They included Pages 2, 3, 11 and  
17 16. If there are any specific questions with regard  
18 to those pages, I'm happy to entertain those questions.

19 CHAIRMAN CASTRO: Any questions? Okay.  
20 Then why don't we entertain a motion. Does anyone want  
21 to make a motion on this?

22 COMMISSIONER ACHTENBERG: I'll make a  
23 motion to adopt the report.

24 CHAIRMAN CASTRO: As revised by --

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1 COMMISSIONER ACHTENBERG: As revised.

2 COMMISSIONER HERIOT: Second.

3 CHAIRMAN CASTRO: Is there a second?

4 Okay. Any discussion? Hearing none, let's take a

5 vote on that. Commissioner Kirsanow, how do you vote?

6 COMMISSIONER KIRSANOW: Aye.

7 CHAIRMAN CASTRO: Commissioner Heriot,

8 how do you vote?

9 COMMISSIONER HERIOT: Yes.

10 CHAIRMAN CASTRO: Commissioner Narasaki,

11 how do you vote?

12 COMMISSIONER NARASAKI: I abstain.

13 CHAIRMAN CASTRO: Commissioner Kladney,

14 how do you vote?

15 COMMISSIONER KLADNEY: Yes.

16 CHAIRMAN CASTRO: Commissioner

17 Achtenberg, how do you vote?

18 COMMISSIONER ACHTENBERG: Yes.

19 CHAIRMAN CASTRO: Commissioner Yaki, are

20 you on the phone yet? No? Madam Vice Chair, how do

21 you vote?

22 VICE CHAIR TIMMONS-GOODSON: I'm

23 abstaining.

24 CHAIRMAN CASTRO: Okay. And I'll vote

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1 yes. So we have one, two, three, four, five yeses.  
2 Two abstentions. So the motion passes on the report  
3 as amended.

4 Let's see. All right, now we move on to  
5 reading into the record the notational vote on Flores.

6 COMMISSIONER HERIOT: Can I ask a  
7 question? Findings and recommendations on this  
8 report. What's our schedule on that?

9 CHAIRMAN CASTRO: I don't know if we set  
10 one up, or if whether we're going to do that.

11 COMMISSIONER HERIOT: Are we going to have  
12 them?

13 CHAIRMAN CASTRO: I'm sorry.

14 FEMALE PARTICIPANT: I think usually the  
15 Staff Director B-

16 CHAIRMAN CASTRO: The Staff Director's  
17 Office does that?

18 FEMALE PARTICIPANT: Does the time line.

19 COMMISSIONER HERIOT: Time line, yes.

20 STAFF DIRECTOR MORALES: I'll circulate it  
21 now that the -- and then we'll --

22 COMMISSIONER HERIOT: Yes, I'm kind of  
23 worried that we're going to be able to come up with  
24 anything, because this is a very complicated area.

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1 It's an area that I sort of get scared of because it is  
2 so complicated. I wouldn't mind not having them, but  
3 I just want a schedule for knowing when I'm supposed to  
4 write a statement.

5 COMMISSIONER KIRSANOW: Mr. Chairman,  
6 this is Kirsanow.

7 CHAIRMAN CASTRO: Yes.

8 COMMISSIONER KIRSANOW: Maybe I'm  
9 misremembering, but it was my recollection that a long  
10 time ago, we had come to the conclusion that we would  
11 have findings and recs. Does anybody remember anything  
12 along those lines?

13 COMMISSIONER ACHTENBERG: I do not.

14 CHAIRMAN CASTRO: I don't but, you know,  
15 it's very possible that no one's going to have any.  
16 Maybe they will. I don't know.

17 COMMISSIONER HERIOT: Do we want to, like,  
18 call for proposals for this, like, for the next two  
19 weeks? And if it looks like we can't we do it, then --

20 CHAIRMAN CASTRO: Yes.

21 COMMISSIONER HERIOT: I just want to get  
22 the show on the road for some of these reports.

23 CHAIRMAN CASTRO: Yes. Yes. So the  
24 Staff Director will circulate something that builds in

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1 a little time for us. If folks want to recommend some  
2 findings and recs, they can do it in that window. And  
3 if not --

4 COMMISSIONER HERIOT: Yes.

5 CHAIRMAN CASTRO: -- then we'll set up a  
6 time for statements.

7 COMMISSIONER HERIOT: Yes.

8 CHAIRMAN CASTRO: Does that work?

9 COMMISSIONER HERIOT: Because, like, if we  
10 come to the conclusion that we can't come up with  
11 Findings and Recs, we could then start the count down  
12 at that point and that might get this, move this a little  
13 bit more quickly.

14 CHAIRMAN CASTRO: Okay. All right, we'll  
15 have the Staff Director's Office issue something on  
16 that.

17 VICE CHAIR TIMMONS-GOODSON:  
18 Timmons-Goodson here. Would it be worth our while to  
19 go ahead and propose a date by which if we have not come  
20 up with agreed Findings and Recs, that we agree that this  
21 will not contain any?

22 CHAIRMAN CASTRO: Sure. What do you  
23 propose? Two weeks?

24 VICE CHAIR TIMMONS-GOODSON: I didn't have

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1 a particular date in mind, but looking at the schedule  
2 and when we hope to get it out, just come up with a date.

3 CHAIRMAN CASTRO: Sure. The Vice Chair  
4 has suggested that we come up with a date today to say  
5 if by that date no one circulates --

6 VICE CHAIR TIMMONS-GOODSON: I'm sorry, I  
7 can't hear you, Mr. Chair.

8 CHAIRMAN CASTRO: Oh, I'm explaining to  
9 Commissioner Heriot what you just proposed. That if we  
10 hit that date by which that date comes and goes, no one  
11 has submitted findings and recs, then we start the  
12 schedule.

13 COMMISSIONER HERIOT: We start the count  
14 down automatically then?

15 CHAIRMAN CASTRO: Yes. So I suggested two  
16 weeks.

17 COMMISSIONER HERIOT: That's fine.

18 CHAIRMAN CASTRO: Okay.

19 COMMISSIONER ACHTENBERG: Point of --

20 CHAIRMAN CASTRO: Yes.

21 COMMISSIONER ACHTENBERG: --  
22 clarification, Mr. CHAIRMAN. Shouldn't the  
23 determination about whether or not to propose findings  
24 and recommendations be subject to a public meeting? I

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1 don't know that --

2 CHAIRMAN CASTRO: No, no. We would then  
3 meet and vote on those findings and recommendations.

4 COMMISSIONER HERIOT: Yes. If they're  
5 proposed, then we'll --

6 CHAIRMAN CASTRO: Yes.

7 COMMISSIONER HERIOT: But if nobody  
8 proposes anything.

9 CHAIRMAN CASTRO: So the thing here is  
10 we're trying to figure out whether any of us even wants  
11 to put Findings and Recs forward. I don't think anyone  
12 right now sitting here knows for sure. Although, there  
13 seems to be the thought that maybe not.

14 But if we say if there are going to be  
15 findings and recs, submit them by X date. Once X date  
16 comes, then we will schedule a vote on those findings  
17 and recs. They will not automatically become the  
18 official Findings and Recs. Could be we still vote them  
19 down or --

20 COMMISSIONER HERIOT: Yes.

21 CHAIRMAN CASTRO: -- vote them up.

22 COMMISSIONER HERIOT: This is basically a  
23 mechanism just in case nobody wants to propose them. We  
24 might as well get the show on the road.

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1                   CHAIRMAN CASTRO:     But if there's a  
2 concern, you know, how would you propose we do it?

3                   COMMISSIONER ACHTENBERG:   A decision not  
4 to go forward with Findings and Recs, it seems to me,  
5 has to be the subject of a notice.

6                   CHAIRMAN CASTRO:   I see what, I understand  
7 what you're saying.

8                   COMMISSIONER ACHTENBERG:   Meeting.

9                   COMMISSIONER HERIOT:    But the thing is,  
10 see, if we adopt this proposal now, we will have decided  
11 that if nobody proposes, then we're not going to have  
12 them. So we'd be making that decision here.

13                  VICE CHAIR TIMMONS-GOODSON:   And that --

14                  COMMISSIONER HERIOT:    The notion that  
15 nobody proposes. Anybody could stop that by simply  
16 proposing something.

17                  VICE CHAIR TIMMONS-GOODSON:   Exactly.

18                  COMMISSIONER ACHTENBERG:        No, I  
19 understand. I don't --

20                  CHAIRMAN CASTRO:    So are you suggesting  
21 that we, at the October meeting, or that we vote on  
22 whether or not here today or at the next meeting, we vote  
23 do we want Findings and Recs or not?

24                  COMMISSIONER ACHTENBERG:    Yes.

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1 CHAIRMAN CASTRO: So do you want to make a  
2 motion right now that we not, or that we --

3 COMMISSIONER ACHTENBERG: That we --

4 CHAIRMAN CASTRO: -- not have findings?

5 COMMISSIONER ACHTENBERG: -- consider the  
6 adoption of Findings and Recs at our October meeting.

7 CHAIRMAN CASTRO: That's your motion?

8 COMMISSIONER ACHTENBERG: In the ordinary  
9 course. That's typically the way we do it. And the  
10 Staff Director can set up a time by which we agree today  
11 that if you're going to submit proposed Findings and  
12 Recs, submit them two weeks hence.

13 CHAIRMAN CASTRO: It sounds like we're on  
14 the same page here. It's just a matter of how we're  
15 wording it.

16 COMMISSIONER HERIOT: No, it sounds like  
17 we're not on the same page.

18 COMMISSIONER ACHTENBERG: No, we're not on  
19 the same page.

20 (Off microphone comment.)

21 CHAIRMAN CASTRO: Yes. Could you mute  
22 your phones back on the phone there? Okay, then I'm  
23 missing something. You're saying, let's set a vote up  
24 in October for Findings and Recs. Should there be any?

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1 Right?

2 COMMISSIONER HERIOT: No. Even if  
3 there's not, I think is her proposal. In which case,  
4 it's going to go on for several months.

5 CHAIRMAN CASTRO: But you still give  
6 people two weeks to submit something if they want?

7 COMMISSIONER ACHTENBERG: Yes.

8 CHAIRMAN CASTRO: Is that what you're  
9 saying? So I'm --

10 COMMISSIONER NARASAKI: Gail is trying to  
11 take two weeks off the clock for resubmitted statements,  
12 so we can get the report out to --

13 COMMISSIONER HERIOT: Can you use the  
14 microphone?

15 COMMISSIONER NARASAKI: Oh, I'm sorry.  
16 My understanding is the difference is Commissioner  
17 Heriot is trying to speed up the process by taking,  
18 starting the clock for Commissioner's statements two  
19 weeks earlier than we would otherwise --

20 CHAIRMAN CASTRO: Ah, okay

21 COMMISSIONER NARASAKI: -- do. That's  
22 the difference.

23 COMMISSIONER HERIOT: If there are no  
24 proposals for it.

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1                   CHAIRMAN CASTRO:    I see.    Do we have a  
2                   motion up for that?

3                   COMMISSIONER NARASAKI:    I don't know.

4                   CHAIRMAN CASTRO:    Is there anyone who  
5                   wants to make a motion?   Commissioner Achtenberg, do  
6                   you want to make a motion?

7                   COMMISSIONER ACHTENBERG:    I will make a  
8                   motion that we consider the adoption of Findings and  
9                   Recs at our October meeting on the Peaceful Coexistence  
10                  Report.

11                  CHAIRMAN CASTRO:    Is there a second?

12                  COMMISSIONER ACHTENBERG:    Well --

13                  COMMISSIONER NARASAKI:    I second.

14                  COMMISSIONER ACHTENBERG:    -- if that  
15                  happens do we do it?

16                  (Simultaneous speaking.)

17                  VICE CHAIR TIMMONS-GOODSON:    I'm having a  
18                  hard time hearing.

19                  CHAIRMAN CASTRO:    Yes, who can -- could you  
20                  please mute your phones while you're on the phone?  
21                  We're getting this weird sound.   Thank you.

22                  Commissioner Achtenberg just made a motion  
23                  that we consider -- actually, could you repeat your  
24                  motion?

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1 COMMISSIONER ACHTENBERG: We consider -- I  
2 move that we consider the adoption of Findings and  
3 Recommendations on the Peaceful Coexistence Report at  
4 our October meeting.

5 CHAIRMAN CASTRO: And that was seconded by  
6 Commissioner Narasaki. Any additional discussion?  
7 Hearing none, I --

8 COMMISSIONER KIRSANOW: Kirsanow here.  
9 Clarification. All right, are we going to be voting on  
10 Findings and Recs at that point? In other words, are  
11 certain Findings and Recs going to be proposed between  
12 now and that date, and then we'll be voting on it? Or  
13 is it something that we're going to be voting as to  
14 whether or not we're going to have Findings and Recs?

15 CHAIRMAN CASTRO: Commissioner  
16 Achtenberg, your interpretation?

17 COMMISSIONER ACHTENBERG: Well, Chairman,  
18 if proposals are put forward then we would --

19 CHAIRMAN CASTRO: Well then October --

20 COMMISSIONER ACHTENBERG: -- vote on them  
21 in October. If no proposals are put forward then we  
22 will --

23 CHAIRMAN CASTRO: Not have any Findings  
24 and Recs.

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1                   COMMISSIONER ACHTENBERG:  -- not have any  
2 Findings and Recs.  Seems that we've done with --

3                   COMMISSIONER  HERIOT:           What's  the  
4 advantage of that?

5                   CHAIRMAN CASTRO:  It sounds to me --

6                   COMMISSIONER ACHTENBERG:  It's --

7                   CHAIRMAN CASTRO:  -- like it's the same  
8 thing you all were asking for.

9                   COMMISSIONER ACHTENBERG:  -- the ordinary  
10 course.  That's exactly how we do it every time.

11                  CHAIRMAN CASTRO:  All right.

12                  COMMISSIONER  HERIOT:           What's  the  
13 advantage?

14                  CHAIRMAN  CASTRO:           Well,  from  your  
15 perspective, what's the disadvantage of it?

16                  COMMISSIONER  HERIOT:       When  we  go  to  
17 Congress and they say where are your reports we feel  
18 embarrassed because we'll just get one out two weeks  
19 earlier perhaps.

20                  CHAIRMAN CASTRO:  Well, that won't make a  
21 big difference in the grand scheme of things.  But  
22 we'll see.  Do we have any other comments on this?  If  
23 not, I'm going to take a roll call vote.  Commissioner  
24 Kirsanow, how do you vote?

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1 COMMISSIONER KIRSANOW: No.

2 CHAIRMAN CASTRO: Commissioner Heriot,  
3 how do you vote?

4 COMMISSIONER HERIOT: I guess I vote no.  
5 That doesn't seem to make a lot of sense to me.

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

8 COMMISSIONER NARASAKI: I vote yes.

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

11 COMMISSIONER KLADNEY: Yes.

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

14 COMMISSIONER ACHTENBERG: Yes.

15 CHAIRMAN CASTRO: Commissioner Yaki, are  
16 you on the yet? Madam Vice Chair, how do you vote?

17 VICE CHAIR TIMMONS-GOODSON: Yes.

18 CHAIRMAN CASTRO: And I vote yes. That's  
19 one, two, three, four, five -- five yeses and two nos  
20 so the motion passes.

21 **READING INTO THE RECORD OF THE NOTATIONAL**

22 **VOTE ON THE FLORES LETTER**

23 Okay, so now I will read into the record,  
24 this is the notational vote on the Flores letter.

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1                   "The notational vote occurred on August  
2                   31st, 2015 and addressed the following. Pursuant to  
3                   Administrative Instruction AI 1-7, at the request of  
4                   Chairman Martin R. Castro, the Office of the Staff  
5                   Director circulated a ballot for the Commission vote to  
6                   approve a letter on the recent court order on Flores  
7                   updated August 25th, 2015 to be sent to President Barack  
8                   Obama, Attorney General Loretta Lynch and Secretary Jeh  
9                   Johnson."

10                   The notational vote failed to get a  
11                   majority with four yes votes, two no votes, one  
12                   abstention and one recusal. As a result of that I know  
13                   that there was some interest and revisiting that letter.  
14                   I don't know if the Vice Chair and Commissioner Kladney  
15                   had an opportunity to discuss what, if anything, we were  
16                   going to present today or if we just do not have an  
17                   alternative to discuss today. Madame Vice Chair?

18                   VICE CHAIR TIMMONS-GOODSON: Yes. Oh,  
19                   yes, Mr. Chair. We have come up with a letter, or a  
20                   letter has been sent to Commissioner Kladney for him to  
21                   take a look at. And, truthfully, the two of us have not  
22                   conferred.

23                   The small changes that were proposed were  
24                   just that, very small. One of our major concerns was

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1 this letter being sent without the dissent and all  
2 competing thoughts attached to our report.

3 And it looks like, based on the timing now,  
4 that at the time that we, if we were to send the letter,  
5 the parties would have a full picture or report,  
6 complete report would be released concurrently or about  
7 the same time.

8 And then a stab was made at possibly  
9 softening it. And I'm willing to put it forward. I'll  
10 go along with it at the time.

11 CHAIRMAN CASTRO: Well, just a reminder,  
12 we're issuing the report on September 17th, as I believe  
13 I emailed. So all Commissioners were actually due at  
14 9 o'clock over here at the National Press Club. So that  
15 certainly answers the concern about that.

16 But without -- I think we need something in  
17 front of us to kind of take a look at before we vote on  
18 it. So, Commissioner Narasaki?

19 COMMISSIONER NARASAKI: Could I suggest  
20 that perhaps we try to do a notational vote because it  
21 would be ideal to be able to release it, at least at the  
22 same time as --

23 CHAIRMAN CASTRO: Yes.

24 COMMISSIONER NARASAKI: -- the report is

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1 released?

2 CHAIRMAN CASTRO: Yes. I would suggest  
3 that that sounds like a good idea as well. If we could  
4 --

5 COMMISSIONER HERIOT: That means we're  
6 going to have to do it fast so we need see the draft.

7 CHAIRMAN CASTRO: Yes. Yes, we,  
8 definitely. So can you get us a draft of those, of that  
9 changed letter as soon as possible so that we can --

10 VICE CHAIR TIMMONS-GOODSON: At the close  
11 of the meeting.

12 CHAIRMAN CASTRO: Okay, and then we will  
13 have the staff director issue a notice of notational  
14 vote. Can we get this all done quickly enough? I think  
15 it's an urgent situation, so.

16 STAFF DIRECTOR MORALES: As soon as I get  
17 the letter then we can send out the notice of the  
18 notational vote.

19 CHAIRMAN CASTRO: Okay. Commissioner  
20 Narasaki?

21 (Off microphone discussion.)

22 COMMISSIONER NARASAKI: Yes, no, this can  
23 wait until after you close this part, but it's related  
24 to this.

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1                   CHAIRMAN CASTRO:    Okay, so that's what  
2 we'll do. We will have the staff director issue the  
3 notational vote on the letter as soon as we get a draft  
4 from Commissioner Timmons-Goodson.

5                   VICE CHAIR TIMMONS-GOODSON:   Yes.

6                   CHAIRMAN CASTRO:    And, okay, Commissioner  
7 Narasaki?

8                   COMMISSIONER NARASAKI:       Then you're  
9 waiving the notice?

10                  CHAIRMAN CASTRO:    I can waive the notice,  
11 period. So I will waive the notice, period.

12                  COMMISSIONER NARASAKI:   Okay. So I just  
13 want to note that the voting process sort of laid bare  
14 that we have some ambiguity in our AIs about what happens  
15 when a Commissioner is recusing herself and how the  
16 votes get counted.

17                  And so I would request that the Commission  
18 work on trying to clarify some of those requirements in  
19 the AIs.

20                  CHAIRMAN CASTRO:    Okay.

21                  COMMISSIONER NARASAKI:       Because even  
22 though I recused myself my vote ended up being counted  
23 as no, which I don't think was appropriate, so.

24                  COMMISSIONER HERIOT:       Yes, I want to

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1 second Commissioner Narasaki's point here, and that is  
2 that, first, I am not at all convinced that that motion  
3 did not carry. I think there's an argument both ways.

4 I thought that the particular provision  
5 that was cited to us dealt with reports and not with  
6 letters and that --

7 CHAIRMAN CASTRO: Okay.

8 COMMISSIONER HERIOT: -- there were also  
9 other parts of the rules, which I haven't given full  
10 thought to. But I thought that was, that's something  
11 that we need to have clarified. We need to know exactly  
12 how these votes work.

13 CHAIRMAN CASTRO: All right.

14 COMMISSIONER HERIOT: And so I would  
15 appreciate an effort to look back at our AIs and make  
16 sure we know what we're doing here.

17 CHAIRMAN CASTRO: Sure. Miss Hepler's  
18 going to sit down and speak with us about that. And as  
19 she's doing that maybe she could give --

20 COMMISSIONER NARASAKI: Actually, Mr.  
21 Chair, I'm not asking. I completely understand what  
22 the theory is that the counsel's office put forward.  
23 And I don't think it's necessary to discuss it here  
24 because my request was actually to revisit the AI, to

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1 clarify what should be done regardless of what is  
2 currently thought to be done at this point.

3 So I just don't feel like we need to spend  
4 time on what is or what isn't the debate.

5 CHAIRMAN CASTRO: Yes, one thought is to  
6 maybe just amend an AI to say it should reflect Robert's  
7 Rules of Order. I don't know if that's even doable.

8 MS. HEPLER: I was going to say the  
9 applicable section in 1.7 says, if a commissioner  
10 returns a ballot to the staff director but fails to put  
11 an appropriate mark in one of the block then that shall  
12 constitute an abstention. A commissioner who abstains  
13 shall be considered to have participated in the vote for  
14 purposes of ascertaining a quorum."

15 COMMISSIONER NARASAKI: I completely  
16 understand that. But what we did was, it wasn't that  
17 I turned in a ballot with no mark. We turned, I turned  
18 in a ballot, noting I was recusing myself which, under  
19 Robert's Rules of Order, would have a different impact.

20 So I'm not arguing with you on your  
21 interpretation. I am saying that we need to fix the  
22 problem.

23 MS. HEPLER: Oh.

24 CHAIRMAN CASTRO: All right. Thank you.

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1                   COMMISSIONER HERIOT: I don't want to say  
2 that I'm not arguing at this point.

3                   CHAIRMAN CASTRO: That's okay.

4                   COMMISSIONER HERIOT: But I agree that --

5                   CHAIRMAN CASTRO: Appreciate it.

6                   COMMISSIONER HERIOT: -- you know, there  
7 are arguments here. We need to have clear rules.

8                   CHAIRMAN CASTRO: Yes, we will put that on  
9 one of our agendas, to clarify this, so that we don't  
10 run into this problem in the future. But just keep this  
11 in mind for this next notational vote though.

12                  COMMISSIONER HERIOT: On the Robert's  
13 Rules, all of this is simple stuff.

14                  CHAIRMAN CASTRO: I understand.

15                  COMMISSIONER HERIOT: It's just that our  
16 rules possibly change that. And --

17                  CHAIRMAN CASTRO: You know, the thing  
18 about our AIs, as we all know, is that they are an  
19 amalgamation of years of situations which, to us, today  
20 are not present as to why it happened. And some --

21                  COMMISSIONER HERIOT: The more you look at  
22 --

23                  CHAIRMAN CASTRO: -- were for good  
24 intention, maybe some were with bad --

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1                   COMMISSIONER HERIOT:    -- the more you  
2 realize the older rules have actually make sense.

3                   CHAIRMAN CASTRO:    -- intention.  But --

4                   COMMISSIONER HERIOT:    And we keep adding  
5 things that mess it up.

6                   CHAIRMAN CASTRO:    Well, the thing is, we  
7 haven't had a complete rehaul --

8                   COMMISSIONER HERIOT:    We need to make  
9 modifications.

10                  CHAIRMAN CASTRO:    -- overhaul.  And it's  
11 just been a tremendously big --

12                  COMMISSIONER HERIOT:    The trouble is it's  
13 a big job.

14                  CHAIRMAN CASTRO:    Yes.  So --

15                  COMMISSIONER HERIOT:    And like nobody's  
16 going to want to do it, including me.

17                  CHAIRMAN CASTRO:    So then we live with  
18 these anachronisms of things that happened in the past  
19 or AIs that no longer fit the current situation and then  
20 we --

21                  COMMISSIONER HERIOT:    Some of these  
22 things, like the rule that says you have to actually have  
23 a majority to issue a report, I think that actually makes  
24 sense.  At least that's --

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1 CHAIRMAN CASTRO: Yes, and I wouldn't want  
2 to play with that.

3 COMMISSIONER HERIOT: The trouble is what  
4 constitutes a report? And will people like get behind  
5 -- be, you know, will they get around the rule by calling  
6 something not a report that really is a report?

7 Should a letter be regarded as a report or  
8 not?

9 And I don't know the answer to that.  
10 That's a policy question. But it's a significant --

11 CHAIRMAN CASTRO: Now you put some ideas in  
12 people's heads there.

13 COMMISSIONER HERIOT: Well.

14 CHAIRMAN CASTRO: All right, we'll move  
15 on. Thank you. Next we go to Management and  
16 Operations. Mr. Staff Director?

17 **III. MANAGEMENT AND OPERATIONS**

18 **STAFF DIRECTOR REPORT**

19 STAFF DIRECTOR MORALES: Thank you, Mr.  
20 Chairman. I'm going to grab your mic here?

21 CHAIRMAN CASTRO: Oh, yes, please.

22 STAFF DIRECTOR MORALES: Thank you, Mr.  
23 Chairman. I got the report out a little bit late to  
24 everybody yesterday. But I just want to focus on a

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1 couple of items if I can. Of course, I can entertain  
2 questions. I want to first acknowledge  
3 we have Pilar Velasquez who is on detail from the U.S.  
4 Department of Agriculture, the Office of Civil Rights.  
5 She started a five-month detail. She's already been --  
6 Pilar, can you step forward so the commissioners on the  
7 panel -- yes, can see you.

8 Thank you for coming and helping us on this  
9 detail. We're, as you well know, short-handed in the  
10 Office of General Counsel, and she's been very helpful  
11 to me and to Jennifer in helping us get through some  
12 legal considerations.

13 She comes with some really outstanding  
14 experience from the Office of Civil Rights over at USDA.  
15 And so they've loaned her to us, and while she's here  
16 we're going to utilize her skills and talents.

17 So, Pilar, thank you. And hopefully  
18 you'll get a chance to meet with some of the  
19 commissioners today as they're here, before they leave.  
20 So thank you.

21 MS. VELASQUEZ: Thank you very much.

22 STAFF DIRECTOR MORALES: Second, I sent  
23 out an email to all the commissioners, I believe,  
24 yesterday regarding security awareness training on the

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1 Internet. I know it's, you know --

2 COMMISSIONER NARASAKI: I took mine.

3 STAFF DIRECTOR MORALES: Oh, thank you,  
4 Commissioner Narasaki. You're an angel. It takes  
5 about an hour. It's not fun. It's, you know, but it's  
6 important, given the cyber hack --

7 CHAIRMAN CASTRO: Now you're really  
8 talking me into doing it.

9 STAFF DIRECTOR MORALES: The cyber hacking  
10 that occurred, it's important for our audit in regards  
11 to our security audit and our technology audit that the  
12 government goes through. So please -- I want to --  
13 please respectfully engage.

14 And if you can't please notify Pam and she  
15 can make some sort of accommodations for you. So the  
16 staff is all being told they need to do this. And there  
17 is a cut-off date. If you don't do it then your  
18 technology gets turned off.

19 So I just wanted to put that on notice to  
20 everybody, so thank you for your -- yes? Yes,  
21 Commissioner Narasaki?

22 COMMISSIONER NARASAKI: I'd like to note  
23 its relatively painless. And have a glass of wine and  
24 the time will speed by.

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1                   STAFF DIRECTOR MORALES:   When I did mine I  
2                   didn't have a glass of wine but that's a great idea.  
3                   Thank you.

4                   CHAIRMAN CASTRO:   Anything else?

5                   STAFF DIRECTOR MORALES:   Yes, I had a  
6                   couple more items.  I'm sorry, Mr. Chairman.  One is  
7                   the General Counsel position.  I have completed my  
8                   first round of interviews.  And so I'm going through the  
9                   written samples and the resumes that I've looked at and  
10                  will continue the process.

11                  I hope to start conducting the second round  
12                  of interviews next week and make the selections shortly  
13                  thereafter, have the individual in place if not the  
14                  beginning of October, certainly within the first few,  
15                  week or two of October.

16                  So hopefully by the time of the next meeting  
17                  we will have a General Counsel or at least a date that  
18                  the General Counsel's starting in place that I can  
19                  report on.  So thank you for you know, your assistance  
20                  on this.  And I'll try to be very transparent on this  
21                  and so thank you.

22                  COMMISSIONER   KIRSANOW:           Mr.   Staff  
23                  Director, Kirsanow here.

24                  STAFF DIRECTOR MORALES:   Yes, sir.

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1                   COMMISSIONER KIRSANOW: Is the name of the  
2 individual going to be presented to the Commission for  
3 a vote?

4                   STAFF DIRECTOR MORALES: No, sir.

5                   COMMISSIONER KIRSANOW: We've had a  
6 discussion on this in the past, and we're going back,  
7 but in the past prior to the last General Counsel the  
8 Commission has had, assigned General Counsels. What's  
9 changed?

10                  STAFF DIRECTOR MORALES: Well, sir, you  
11 know, definitely you have a good question. In respect  
12 to the applicability of AI-116, after consideration my  
13 view is that the prior staff director for the  
14 Commission, Marlene Sallo, did not follow AI-116  
15 because the position of the General Counsel, the  
16 Commission was deemed a career position and not a  
17 political position.

18                  The Commission has authority to hire career  
19 attorneys under that accepted service designation,  
20 under Schedule A following the decision of the previous  
21 staff director. And I have concluded that AI-116 is not  
22 applicable and that the General Counsel with the  
23 Commission is a career position and not a political  
24 position.

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1                   As the designated hiring official I am  
2 authorized to hire certain career employees for the  
3 Commission. And the position was advertised on  
4 USAJOBS.gov as a career position. It's a supervisory  
5 attorney advisor, a classification of GS090515. It's  
6 a GS15 slot.

7                   And because AI-116 does not apply  
8 commissioners are not permitted to vote on my selection  
9 for the Commission's General Counsel. A vote by the  
10 commissioners to approve the hiring of the General  
11 Counsel could result in a violation of 5 U.S. Code  
12 Section 2302, Prohibited Personnel Practices.

13                   Because it is a career position, voting on  
14 their qualifications when you haven't interviewed them,  
15 when you haven't gone through the process of selection  
16 would be a violation. And voting on them in regards to  
17 any potential political affiliation they have would be  
18 a prohibited personnel practice.

19                   And so on that basis I've decided that  
20 AI-116 does not apply. It's a career position. And  
21 the commissioners are not permitted to vote on them.

22                   COMMISSIONER KIRSANOW: I respect the  
23 amount of thought you've put into it and your analysis.  
24 I'm not necessarily convinced, not that I've spent as

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1 much time on it as you have.

2 I have looked at 5 USC 2302, and I'm not sure  
3 that's necessarily determinative. I mean, there's a  
4 lot moving parts to an analysis such as this. And we've  
5 had a discussion among commissioners and as a Commission  
6 regarding the role of the Commission and what  
7 constitutes the Commission and the scope of our  
8 authority, especially vis-a-vis Staff Director and  
9 General Counsel.

10 And I would just respectfully submit maybe  
11 what should and whether or not any other commissioners  
12 might want to weigh in on whether or not the Commission,  
13 meaning commissioners, should have a voice in selecting  
14 the Commission -- at least not a voice, but a ratified  
15 selection by the Staff Director of General Counsel.

16 COMMISSIONER HERIOT: Mr. Chairman?

17 CHAIRMAN CASTRO: I'm waiting to hear.  
18 Okay, go ahead.

19 COMMISSIONER HERIOT: I guess I agree with  
20 Commissioner Kirsanow. The AI itself doesn't make any  
21 distinction between career and Schedule C position.  
22 And so I don't that that's going to get us off the hook.

23 As a matter of we cannot consider the  
24 politics of the particular applicants, well, that goes

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1 without saying. And that's also true, of course, of the  
2 Staff Director who, I assume, will not allow politics  
3 to get into this, just as if the Commission were to vote  
4 on this. Knowing that the law prohibits the  
5 consideration of the political affiliation of the  
6 applicant, they would not consider that.

7 Just as we are political appointees, so is  
8 the Staff Director a political appointee. So the  
9 notion that he can select without regard to the  
10 political affiliation of the candidate but that we  
11 somehow can't, that, I think, is error.

12 I doubt that this is actually going to be  
13 something that would come to a head here. And I don't  
14 really think that we need to spend a lot of time. What  
15 I'm concerned about is the precedent. I believe that  
16 the Commission does, in fact, have authority over this.

17 But my understanding of the rule is that  
18 it's not one where the Commission would necessarily vote  
19 even if this were a political appointee. It's simply  
20 that if it chooses to vote it has that power.

21 What I would suggest is that the Staff Director  
22 give us the name. Not saying that we have authority or  
23 that we don't have authority over this but that the odds  
24 are we're not going to want to take a vote on it anyway.

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1 But if it's submitted to us then we haven't decided  
2 whether or not we have that authority only if a majority  
3 decides that they would otherwise wish to veto the  
4 candidate would it come up. If it's simply  
5 submitted to us odds are nothing's ever going to happen.  
6 And that way we skip the question.

7 CHAIRMAN CASTRO: The precedent's already  
8 been set. The last time we hired a Staff Director --

9 COMMISSIONER HERIOT: Lots of mistakes  
10 have been made in the past. There's a lot of precedent  
11 from before that as well.

12 CHAIRMAN CASTRO: Okay. And that  
13 distinction is clear that, prior to that these were  
14 political appointments. The reason, when I became  
15 chair, that we asked the White House to change that,  
16 because there was a lot of politicization in the prior  
17 General Counsel's offices. And, whether democrat or  
18 republican, we wanted the next administrations to be  
19 able to have a career General Counsel. And sometimes  
20 you know what, we're maybe not happy --

21 COMMISSIONER HERIOT: No, but our last  
22 decision was not a happy one.

23 CHAIRMAN CASTRO: Well, you know what,  
24 maybe we're not happy sometimes with the decisions the

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1 General Counsel makes. But that's part of why we're  
2 picking people --

3 COMMISSIONER HERIOT: These are for a long  
4 time. No.

5 CHAIRMAN CASTRO: -- that were going to  
6 make decisions based on the law and not on politics.  
7 But I don't know if you want to add anything, Mr. Staff  
8 Director. And then did you want to say something? So,  
9 Commissioner Narasaki, after you. All right, yes, go  
10 ahead.

11 COMMISSIONER NARASAKI: Yes, I mean, my  
12 understanding is that that's, there was decision before  
13 I can onboard to try to take this out of the political  
14 realm. And I think that I'm concerned about  
15 commissioners being given a candidate and then making  
16 a decision, whether we have the power or not to override  
17 that.

18 I think that, then, undermines the whole  
19 effort and the change to, and the purpose of making this  
20 a career position. I'm not saying whether I agree  
21 whether that was a good idea or not, but it's the reality  
22 and I don't think it would be appropriate for the  
23 commissioners to weigh in now that that person is a  
24 career position.

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1                   STAFF DIRECTOR MORALES: I'd just like to  
2 point out one more thing, that this position was  
3 advertised as a career GS15, Supervisory Attorney,  
4 position. We went through a interview, a selection  
5 process whereby we looked at their qualifications,  
6 their education. They were certified as qualified, a  
7 select number of the application.

8                   And from those that were certified we went  
9 through and looked at their qualifications further and  
10 developed a criteria that they met the criteria we set  
11 in our advertisement. And they were interviewed by me.  
12 And there's another round of interviews to take place  
13 before that selection.

14                   So for another entity to come in and review  
15 my process would, again, not only because it's political  
16 but because they haven't been involved in the process,  
17 is a prohibited personnel practice.

18                   So, with that, I'll leave it and say that  
19 I believe, you know, if you want to change that position  
20 at some future date it can be. But at this point my  
21 selection is -- and I will share, once I select and make  
22 the offer and the individual accepts the position, I  
23 will have him or her meet with you and talk to you about  
24 their interest here at the Commission.

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1                   But until that point, I believe it's within  
2 my authority as the designated hiring official for the  
3 Commission to make this selection.

4                   CHAIRMAN CASTRO:   Okay.  I'd like to --

5                   COMMISSIONER HERIOT:  Can I make one more  
6 comment?  Again, I would think it's better just to push  
7 this issue off.  You know, if you bring in somebody  
8 without observing what I consider to be the proper  
9 procedure, you could get litigation in the future under  
10 quo warranto, if I got that right.

11                  And I don't think anybody wants that.  It  
12 would be so much easier just to submit it.  Given that  
13 the present makeup of the Commission, it seems very  
14 likely that the decision would be simply approved.  But  
15 if you don't approve it then you leave the question open  
16 and it can be pushed into litigation later.

17                  CHAIRMAN CASTRO:  Oh, please.  You're not  
18 threatening litigation, Gail?

19                  COMMISSIONER HERIOT:       No, I'm not  
20 threatening litigation.

21                  CHAIRMAN CASTRO:  All right.  So I think  
22 we've, this has been discussed enough now.  We'll move  
23 on.  Anything else, Mr. Staff Director?

24                  STAFF DIRECTOR MORALES:  No, sir.

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1 CHAIRMAN CASTRO: Okay.

2 STAFF DIRECTOR MORALES: Oh, one more  
3 thing. I'm sorry. Two more things, real quick, real  
4 brief. One, that the Pope will be in town next week.  
5 It could impact -- it will impact our personnel here in  
6 the Washington, D.C. office. I just wanted, I sent out  
7 an email to the staff, to all folks to utilize any  
8 tele-work.

9 We've been warned several times that,  
10 especially because of where we're situated downtown  
11 there will be significant traffic and commuting  
12 problems. But on the other hand, I want to make sure  
13 that all the operations of the Commission continue to  
14 run and function and we carry out our responsibilities  
15 and our duties. So I'm working with the supervisors to  
16 make sure we're able to accommodate all that.

17 And the second and last piece, I just want  
18 to let you know, is that we're moving forward with the  
19 planning on the meeting in December 11 for the Lincoln  
20 Cottage. I've gone with several of the staff  
21 assistants out to the Lincoln Cottage to view the site  
22 and to see its availability.

23 And it looks like we're able to secure the  
24 date, and I'm working with the staff assistants to

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1 create a program that will be worthy of the Commission  
2 and the commemoration of the passage of the 13th  
3 amendment. And so we'll continue to advise you as we  
4 get more.

5 I'm going to be meeting with the staff  
6 assistants early next week on continuing planning. So  
7 I just wanted to put that forward and let everybody know  
8 what we're doing. Thank you, Mr. Chairman.

9 **IV. ADJOURN MEETING**

10 CHAIRMAN CASTRO: All right, anything  
11 else? Any questions on that? If not, then that  
12 concludes our agenda and the meeting is hereby adjourned  
13 at 10:56 Eastern Time. Thank you.

14 (Whereupon, the above-entitled matter went  
15 off the record at 10:56 a.m.)

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