

## U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, SEPTEMBER 21, 2012

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

PRESENT:

MARTIN R. CASTRO, Chairman

ABIGAIL THERNSTROM, Vice Chair

ROBERTA ACHTENBERG, Commissioner (via  
*telephone*)

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (via  
*telephone*)

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

VANESSA EISEMANN, Parliamentarian

LOUISE DIBENEDETTO, Inspector General

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STAFF PRESENT:

TERESA BROOKS

MALEE CRAFT, Director, RMRO (*via telephone*)

IVY L. DAVIS, Director, ERO

BARBARA DELAVIEZ, ERO

PAMELA DUNSTON, Chief, ASCD

LATRICE FOSHEE

ALFREDA GREENE

JENNIFER CRON HEPLER, Solicitor

TINALOUISE MARTIN, Director, OM

PETER MINARIK, Director, SRO, Acting Director,

RPCU, Director, WRO

DAVID MUSSATT, Director, MWRO

LENORE OSTROWSKY, Acting Chief, PAU

MICHELE YORKMAN

JOHN RATCLIFFE, Chief, BFD

FARELLA ROBINSON, Director, CRO (*via telephone*)

KIMBERLY TOLHURST, Senior Attorney, OGC

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTON

ALEC DEULL

TIM FAY

JOHN MARTIN

CARISSA MULDER

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

9:33 A.M.

CHAIRMAN CASTRO: I'm calling the meeting to order. I'm Commission Chair Marty Castro and today is September 21st. We're beginning the meeting at 9:33 a.m. This is a business meeting of the U.S. Commission on Civil Rights.

We have several Commissioners who are present with us: Commissioner Heriot, Vice Chair Thernstrom, myself, Commissioner Kladney, and Commissioner Yaki. On the phone with us this morning are Commissioner Achtenberg and Commissioner Kirsanow.

We do expect at some point for Commissioner Gaziano to join the call, however, we do have a quorum of Commissioners present.

Is the court reporter present?

COURT REPORTER: Yes.

CHAIRMAN CASTRO: So the meeting is now called to order. The first item is the approval of the agenda.

**I. APPROVAL OF THE AGENDA**

CHAIRMAN CASTRO: I move that the agenda be approved. Is there a second?

VICE CHAIR THERNSTROM: Second.

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1                   CHAIRMAN    CASTRO:        Are    there    any  
2    amendments?   Hearing none, let's vote on this.   All in  
3    favor, say aye.

4                   (Chorus of ayes.)

5                   Any opposed?   Any abstentions?   Okay, the  
6    motion passes.

7                   As you can see, we are today having our  
8    first meeting in our beautiful new headquarters space.

9                   I don't know how many of the Commissioners have had  
10   an opportunity to tour.   I know I have both during the  
11   last stages of the construction phase and of course,  
12   today, and these are spectacular new facilities that  
13   we were very pleased to be able to move into at a cost  
14   savings.   But beyond that, I know it has taken a lot  
15   of time and effort and hard work from our staff to get  
16   us here today into these great premises, this great  
17   new home for the Civil Rights Commission.

18                  And I want to acknowledge all the staff  
19   members who put a lot of effort into getting us here  
20   today and I especially want to thank Pam Dunston and  
21   her team for a yeoman's effort in getting this done  
22   and also doing it while she was coordinating logistics  
23   for the Alabama briefing.   So Pam, I congratulate you  
24   and your team.   Thank you for all your hard work.

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1 (Applause.)

2 And I know one of our staff members has  
3 announced that she will be leaving us at the middle of  
4 October, Kim Tolhurst, but I believe at our next  
5 meeting you'll still be here, is that right, Kim? We  
6 would like to at that time send you off properly, but  
7 I did want to acknowledge that we received the news.  
8 We're disappointed, but we are very pleased that your  
9 career continues. And we'll say a little bit more  
10 about what you've done for our Commission at our next  
11 meeting. So be prepared.

12 So now we move on to program planning  
13 updates and discussion of projects.

14 **II. PROGRAM PLANNING UPDATE AND**  
15 **DISCUSSION OF PROJECTS**

16 CHAIRMAN CASTRO: The first item we've  
17 got, there are two items, but we'll try to deal with  
18 them in tandem. One is the establishment of our 2013  
19 Statutory Enforcement Report topic and a related issue  
20 of scheduling that as well as our 2013 briefings.  
21 It's my understanding that Commissioners have been  
22 having discussions about a proposal that can be  
23 presented today to the Commission. I know there have  
24 been conversations initially between me and

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1 Commissioner Heriot and then Commissioner Gaziano --  
2 I'm sorry, Commissioners Kladney and Kirsanow and also  
3 Commissioner Achtenberg. And I do believe that there  
4 may be a proposal today that we can bring forward.

5 So Commissioner Kladney or Commissioner  
6 Heriot, which of you would like to proceed?

7 COMMISSIONER HERIOT: Well, let me see  
8 what I've got here.

9 CHAIRMAN CASTRO: You might need to speak  
10 a little louder.

11 COMMISSIONER HERIOT: The proposal is to  
12 hold Commissioner Yaki's briefing on Islam in  
13 November; to hold Commissioner Kirsanow's Criminal  
14 Background briefing in December; to hold the  
15 enforcement report, Sexual Assault in the Military  
16 which was Commissioner Kladney's topic in January; to  
17 hold Commissioner Thernstrom's Entrepreneurship  
18 briefing in February; to hold Commissioner Kirsanow's  
19 Peaceful Coexistence briefing in March; to hold  
20 Commissioner Kladney's NVRA briefing in April; and to  
21 hold the Chairman's Veterans topic thereafter. This  
22 is a very ambitious schedule, so we're going to need  
23 to plan for time for business meetings either on the  
24 telephone or to have a very long meeting on Fridays or

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1 to have a Thursday-Friday meeting now and then. But  
2 this is what I think we've got a majority behind.

3 CHAIRMAN CASTRO: Just one point of  
4 clarification. My Veteran's briefing should be  
5 listed as being held in May. If needed we can push  
6 it off to later that's fine, too.

7 COMMISSIONER HERIOT: Whatever you want.  
8 I suspect there may be a problem with getting these  
9 done.

10 CHAIRMAN CASTRO: I know. I think it's  
11 good to -- as you all have done is at least try to  
12 nail this down so that we can all feel comfortable.

13 So why don't we do that, but let's try to  
14 do this in the form of a motion and then we'll open it  
15 up for questions. So we have a motion, is there a  
16 second?

17 COMMISSIONER KLADNEY and COMMISSIONER  
18 ACHTENBERG: Second.

19 CHAIRMAN CASTRO: The Chair recognizes the  
20 Vice Chair.

21 VICE CHAIR THERNSTROM: So this is a  
22 revision of the document I've got in front of me, the  
23 briefing calendar.

24 COMMISSIONER KLADNEY: These are just the

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1 informal notes.

2 VICE CHAIR THERNSTROM: Oh, those were  
3 just informal notes. Okay. All right, because I have  
4 a slightly different calendar, fine. It doesn't  
5 matter to me.

6 CHAIRMAN CASTRO: Any other discussion or  
7 questions on this?

8 COMMISSIONER YAKI: Yes. This is  
9 Commissioner Yaki. Since this just came with the  
10 dates for next month's meeting within the last week, I  
11 had issues with some of the dates for the next  
12 meeting, so I'm a little loathe to approve these at a  
13 time when I'm still trying to wrestle with the actual  
14 dates for the 2013 meetings.

15 CHAIRMAN CASTRO: Commissioner Yaki, may I  
16 suggest something? The dates for the -- the proposed  
17 dates for the 2013 meeting are just that, proposed  
18 dates. So I'd like to be able to adjust those  
19 accordingly. Hopefully, we'll be able to meet all  
20 Commissioners --

21 COMMISSIONER YAKI: Well, my real  
22 objection, my real objection, Mr. Chair, is that I  
23 don't have any of these -- this order in writing.

24 CHAIRMAN CASTRO: What do you mean? What

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1 was just placed here on the record?

2 COMMISSIONER YAKI: Yes. I mean did  
3 anyone send any email around? Was there any formal  
4 motion that -- usually, I like to see a motion written  
5 up that we can look at because I will tell you that  
6 under the last Commission it was infamous for last-  
7 minute changes to the agenda that had nothing  
8 whatsoever on paper that I could, people could take a  
9 look at. And I don't want us to fall into the same  
10 trap.

11 I appreciate the work that's been done  
12 into it, but I think someone could have taken the  
13 final step of bothering to actually committing to an  
14 email.

15 COMMISSIONER HERIOT: I just emailed it  
16 to you.

17 COMMISSIONER YAKI: Thank you very  
18 much whoever said that to me. But it would be a lot  
19 better if someone who wasn't a party to these  
20 negotiations got this a little bit beforehand rather  
21 than after the fact.

22 CHAIRMAN CASTRO: Well, these are  
23 derivations of schedules that have been circulated  
24 among the Commissioners since I believe --

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1 COMMISSIONER YAKI: These are not  
2 derivations of schedules.

3 CHAIRMAN CASTRO: They are.

4 COMMISSIONER YAKI: It's a derivation as  
5 much as Pi is a derivation of the Pythagorean Theorem.  
6 I mean, it just doesn't, to even say that we talked  
7 about it, but to put actual dates and topic briefings  
8 in specific order, especially six in a row at a time  
9 when -- that deserves a whole other discussion -- is  
10 something that I'm very unhappy about.

11 So let me see if I can find this, except  
12 for the fact that whatever password that they gave us  
13 to connect is not connecting through right now. So I  
14 can't even bring it up on my email.

15 COMMISSIONER KLADNEY: Commissioner Yaki,  
16 what are you looking for, the dates that she just went  
17 over?

18 COMMISSIONER YAKI: I want the dates and  
19 the titles of each of these things.

20 COMMISSIONER KLADNEY: Here are the dates.  
21 Here are the months that Commissioner Heriot just  
22 announced right there.

23 COMMISSIONER KIRSANOW: Hello.

24 CHAIRMAN CASTRO: Yes. Hello. Is that

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1 Commissioner Kirsanow?

2 COMMISSIONER KIRSANOW: Yes. I'm sorry,  
3 the audio keeps fading out. I get just snippets of  
4 what's going on. Maybe there's a loose wire  
5 somewhere.

6 CHAIRMAN CASTRO: Yes, there is.

7 (Laughter.)

8 CHAIRMAN CASTRO: We're giving Commissioner  
9 Yaki an opportunity to take a closer look at the  
10 concept papers and the dates so that he feels  
11 hopefully comfortable with them.

12 (Pause.)

13 COMMISSIONER YAKI: Okay, I reviewed it.  
14 I still can't get on the damn internet.

15 CHAIRMAN CASTRO: Any other questions,  
16 comments? Hearing none, then we will call the  
17 question that -- and let me read this again to make  
18 sure we're all on the same page.

19 Commissioner Yaki's Islam paper will be --  
20 the briefing will be held in November. Commissioner  
21 Kirsanow's Criminal Background Checks, December. The  
22 enforcement report --

23 COMMISSIONER YAKI: Excuse me, Mr. Chair.  
24 It's not an Islam paper. It is an Islamaphobia.

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1 CHAIRMAN CASTRO: Islamaphobia paper. I  
2 stand corrected.

3 COMMISSIONER YAKI: There's quite a big  
4 difference.

5 CHAIRMAN CASTRO: And I don't have the  
6 full titles in front of me, so I apologize,  
7 Commissioner Yaki.

8 Commissioner Kirsanow's Criminal  
9 Background Check paper, December. Commissioner  
10 Kladney's enforcement report topic on Sexual Abuse in  
11 the Military in January. Vice Chair Thernstrom's  
12 concept paper on the SBA and Small Businesses in  
13 February. Commissioner Kirsanow's Peaceful  
14 Coexistence paper in March. Commissioner Kladney's  
15 NVRA paper in April. And my paper on the Civil Rights  
16 Conditions on Veterans in May. So this omnibus motion  
17 includes the approval of those briefings that had not  
18 been approved, as well as setting the schedule.

19 All those -- let me do a vote.

20 (Off mic comment.)

21 CHAIRMAN CASTRO: Yes, the statutory  
22 enforcement report is Sexual Assault in the Military.

23 So Commissioner Heriot, how do you vote?

24 COMMISSIONER HERIOT: Yes.

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1 CHAIRMAN CASTRO: Madam Vice Chair, how do  
2 you vote?

3 VICE CHAIR THERNSTROM: Yes.

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

6 COMMISSIONER KLADNEY: Yes.

7 CHAIRMAN CASTRO: Commissioner Yaki, how  
8 do you vote?

9 COMMISSIONER YAKI: I pass.

10 CHAIRMAN CASTRO: I'll come back to you.  
11 Commissioner Achtenberg, how do you vote?

12 COMMISSIONER ACHTENBERG: Yes.

13 CHAIRMAN CASTRO: Commissioner Kirsanow,  
14 how do you vote?

15 COMMISSIONER KIRSANOW: Yes.

16 CHAIRMAN CASTRO: Is Commissioner Gaziano  
17 on the phone yet? And I vote yes.

18 Commissioner Yaki, we'll come back to you.

19 COMMISSIONER YAKI: No.

20 CHAIRMAN CASTRO: Votes no, so we have  
21 one, two, three, four, five, six yeses; and a no, and  
22 the no being from Commissioner Yaki. So the motion  
23 passes.

24 Next we have on the agenda the scheduling

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1 of the 2013 briefings, so we don't need to move  
2 forward on that.

3 I do have before us and have circulated  
4 earlier this past week some proposed dates for the  
5 2013 business meetings. I did try to take into  
6 account information that I received from some  
7 Commissioners to accommodate their schedules and  
8 suggestion that we try to have the January meeting in  
9 conjunction with the Lincoln Cottage so as to save  
10 some funds in terms of travel, having to come back in  
11 January once, rather than twice. But I would like for  
12 you all to let me know. I know Commissioner Yaki has  
13 indicated there is some problematic dates here for  
14 him, but can anyone identify any dates that are  
15 problematic for you?

16 Commissioner Kladney?

17 COMMISSIONER KLADNEY: Mr. Chair -- Mr.  
18 Chair, is that right? Anyway, February 22nd will not  
19 work for me. The only date in February that would  
20 work for me is the 15th.

21 CHAIRMAN CASTRO: Okay, Commissioners if  
22 you could take a look at that.

23 COMMISSIONER KLADNEY: And I would once  
24 again suggest to the body that we take August off, so

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1 I would also ask that we not have a meeting in August.

2 CHAIRMAN CASTRO: Let's deal with one at a  
3 time.

4 COMMISSIONER KLADNEY: I would also  
5 suggest that we not have a meeting in August.

6 CHAIRMAN CASTRO: Let's check February  
7 dates first so that we make sure that folks who are  
8 available.

9 VICE CHAIR THERNSTROM: Mr. Chairman, I'm  
10 having a little problem with my iPhone here, so I  
11 can't get on my calendar.

12 CHAIRMAN CASTRO: Okay. I see it's  
13 booting up so maybe we'll give you a little time  
14 there. So February 15. Does anyone have an issue  
15 with that while we wait for the Vice Chair to --

16 COMMISSIONER HERIOT: I've got a faculty  
17 meeting on the 15th, but I can miss one faculty  
18 meeting as long as you make sure that I don't have to  
19 miss more than one.

20 CHAIRMAN CASTRO: Okay, well I have  
21 structured the other proposals such that your faculty  
22 meetings have not been compromised.

23 COMMISSIONER YAKI: February 15th?

24 CHAIRMAN CASTRO: February 15th. The Vice

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1 Chair is checking her calendar now.

2 VICE CHAIR THERNSTROM: That's what you  
3 think. This thing is --

4 COMMISSIONER YAKI: I will be away that  
5 day because it happens to coincide on my birthday, so  
6 no.

7 CHAIRMAN CASTRO: We'll have a birthday  
8 cake for you, gluten free. You can't do it?

9 COMMISSIONER YAKI: No.

10 CHAIRMAN CASTRO: Okay.

11 COMMISSIONER YAKI: February 22nd was just  
12 fine for me.

13 CHAIRMAN CASTRO: Yes.

14 COMMISSIONER YAKI: I actually think that  
15 we should just not have a meeting in January and  
16 Commissioners who want to come for the January 4th--  
17 for the Lincoln Cottage event should do it, but I just  
18 think that January 4th is a horrible day.

19 CHAIRMAN CASTRO: Isn't that the day of  
20 the enforcement report?

21 COMMISSIONER HERIOT: Yes.

22 CHAIRMAN CASTRO: So January has got to  
23 stay on.

24 Since February is proposed -- sorry, Vice

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1 Chair. I was just about to destroy the electronics  
2 here by spilling the water. We want to make sure  
3 you're available in February for your briefing.

4 (Off mic comment.)

5 CHAIRMAN CASTRO: So we'll hold off.  
6 We'll come back on the February 15th. Any other dates  
7 while we wait for the Vice Chair to --

8 VICE CHAIR THERNSTROM: Well, the Vice  
9 Chair's software --

10 CHAIRMAN CASTRO: I understand. I'm not  
11 criticizing. I was waiting once you're up. Okay,  
12 right now we'll come back and visit, revisit February.

13 Any other dates on the calendar that are problematic?

14 COMMISSIONER YAKI: May 10th.

15 CHAIRMAN CASTRO: May 10th. Okay. What  
16 do you propose?

17 COMMISSIONER YAKI: I don't care, just not  
18 May 10th.

19 CHAIRMAN CASTRO: How is May 17th for  
20 folks?

21 COMMISSIONER YAKI: Fine for me.

22 COMMISSIONER HERIOT: Where are we?

23 CHAIRMAN CASTRO: May. Commissioner Yaki  
24 cannot do May 10th.

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1 COMMISSIONER KLADNEY: Works for me.

2 COMMISSIONER HERIOT: May 17th?

3 CHAIRMAN CASTRO: Yes.

4 COMMISSIONER HERIOT: No, I can't be  
5 there.

6 CHAIRMAN CASTRO: How about May, either  
7 May 3rd or May 31st.

8 COMMISSIONER KLADNEY: Both work for me.

9 COMMISSIONER HERIOT: The 3rd is not too  
10 great for me.

11 CHAIRMAN CASTRO: So the 31st? Pending  
12 confirmation from the Vice Chair on her schedule. Any  
13 other months where it's a problem?

14 VICE CHAIR THERNSTROM: We -- I'm in  
15 agreement with the idea of not holding a meeting in  
16 August.

17 CHAIRMAN CASTRO: In August?

18 VICE CHAIR THERNSTROM: Yes.

19 COMMISSIONER HERIOT: That's right before  
20 the enforcement report. Chances that we're going to  
21 need that meeting are pretty strong.

22 COMMISSIONER KLADNEY: Pardon, excuse me?

23 CHAIRMAN CASTRO: Commissioner Heriot said  
24 the meeting before August is right before we're going

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1 to be approving our enforcement report.

2 COMMISSIONER KLADNEY: The meeting before  
3 August.

4 CHAIRMAN CASTRO: The August meeting.

5 COMMISSIONER KLADNEY: We would be  
6 approving it?

7 COMMISSIONER HERIOT: No, it's the meeting  
8 in August. It's always possible that we can cancel  
9 it, but I would strongly prefer to schedule it. We  
10 may well need it. I also believe that the August  
11 meeting is perhaps our best shot to get publicity for  
12 a topic that really needs publicity because there's no  
13 other news in August in Washington, so I think we  
14 should always keep that in mind.

15 COMMISSIONER KLADNEY: Okay, then what  
16 month can we take off?

17 COMMISSIONER HERIOT: Pardon me?

18 COMMISSIONER KLADNEY: What month can we  
19 take off?

20 COMMISSIONER HERIOT: Why do we need a  
21 month off? There's a month between -- and it's not  
22 like we get too much work done around here.

23 COMMISSIONER KLADNEY: Well, we haven't  
24 done a lot of work this last year, that's for sure.

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1                   COMMISSIONER HERIOT:  And we won't do more  
2 if we have fewer meetings.

3                   CHAIRMAN CASTRO:  Well, I think we've done  
4 a lot given the fact that we've been down from the  
5 down staff, so it's not like we haven't done a lot.  
6 We've done a lot under the circumstances.  But we -- I  
7 like to be here and do the work that we need.  We've  
8 got an aggressive schedule here of briefing topics and  
9 the more time we have to approve these reports and  
10 move this along the better.  If it turns out that we  
11 have a month where maybe it looks like there's nothing  
12 significant, we can always try to cancel that, whether  
13 it's July or August in advance of the meeting, but I'd  
14 rather have them on calendar with the expectation that  
15 we're going to be rolling up our sleeves and getting  
16 this aggressive schedule.

17                   COMMISSIONER YAKI:  Mr. Chair?

18                   CHAIRMAN CASTRO:  Yes, sir.

19                   COMMISSIONER YAKI:  I'm just going to make  
20 one more plea about January 4th.  If Commissioners  
21 wish to go to the Lincoln Cottage event, I think that  
22 they should, but I think that we should seriously  
23 rethink the date of January 4th for three very  
24 important reasons.  One, you are asking people who are

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1 witnesses to travel during the time when they might  
2 still be spending the holidays with their families,  
3 number one. Number two, you're asking staff to try  
4 and wrangle all the logistics for the statutory report  
5 hearing at a time when I think they should want to be  
6 and probably do, spending time with their families.  
7 Three, I think that those two combined make for some,  
8 I think, last minute issues for this that given that  
9 this is the hearing for the statutory report militate  
10 pushing it back further in January.

11           Again, if Commissioners want to go to the  
12 Lincoln Cottage thing, that is their right and  
13 privilege to do so, but I think that in terms of just  
14 ensuring the quality of briefing that we would want  
15 for this particular hearing, that moving it further  
16 back in January is the more prudent course, especially  
17 considering that we have briefings in November and  
18 December and then another one in February.

19           To ask people to basically work through  
20 the end of year holidays, much less contacting people  
21 who may not be all that available during the holidays  
22 I think is expecting -- the expectations may be a  
23 little bit too optimistic about even their ability to  
24 even contact people who may be not wanting to be

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1 contacted.

2 CHAIRMAN CASTRO: Commissioner Yaki, I  
3 understood your original proposal was to cancel  
4 January, but as you just clarified it, I think that  
5 makes a great amount of sense. And I have absolutely  
6 no problem with us separating our business  
7 meeting/briefing from the Lincoln Cottage until later  
8 in January. I don't know what January 25th looks like  
9 --

10 COMMISSIONER ACHTENBERG: Mr. Chairman?

11 CHAIRMAN CASTRO: Yes, Commissioner  
12 Achtenberg.

13 COMMISSIONER ACHTENBERG: We will have  
14 scheduled it nearly a year -- this is a vote of our  
15 Commission. There's a lot of work and preparation  
16 that has gone into this.

17 We purposely scheduled this so that there  
18 wouldn't be additional costs involved in Commissioners  
19 traveling back and forth. This has been the plan all  
20 along. I would not be in favor of -- the Lincoln  
21 Cottage is not optional, just in the same way that the  
22 other business of this Commission is not optional.

23 CHAIRMAN CASTRO: Any other Commissioners  
24 have anything in January?

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1 Commissioner Kladney?

2 COMMISSIONER KLADNEY: We could schedule a  
3 business meeting on the 4th because of our scheduling  
4 and then perhaps have the briefing; I think it's the  
5 18th.

6 CHAIRMAN CASTRO: That would probably be a  
7 bad time, Commissioner Kladney, only because someone  
8 is going to get inaugurated that weekend.

9 COMMISSIONER KLADNEY: Oh, right.

10 CHAIRMAN CASTRO: And that would be a very  
11 difficult time for us to be here.

12 (Chorus of voices.)

13 COMMISSIONER KLADNEY: Okay, so then the  
14 25th or the --

15 COMMISSIONER HERIOT: I have a faculty  
16 meeting on the 25th. I can't meet miss two.

17 COMMISSIONER KLADNEY: Pardon?

18 COMMISSIONER HERIOT: Faculty meeting  
19 the 25th. I can't meet miss two.

20 COMMISSIONER KLADNEY: Okay, then the  
21 11th.

22 COMMISSIONER HERIOT: I can do that.

23 CHAIRMAN CASTRO: Commissioner Achtenberg,  
24 how does that sound to you?

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1 COMMISSIONER ACHTENBERG: What's that?

2 CHAIRMAN CASTRO: Commissioner Kladney  
3 suggested that we maintain the business meeting of the  
4 Commission on January 4th, but that we conduct the  
5 briefing on the statutory enforcement report on  
6 January 11th.

7 COMMISSIONER KLADNEY: And the reason I  
8 say that is because of the schedule that we've just  
9 approved in terms of briefing. It will give us a  
10 chance to conduct some business on the 4th and then  
11 actually I would assume the West Coast Commissioners  
12 or those Commissioners that travel, if they want to  
13 hang out here for another week, they could, rather  
14 than flying back and forth because it will cost just  
15 as much money practically, air fare versus a room, I  
16 think. They can figure that out.

17 CHAIRMAN CASTRO: Commissioner Achtenberg,  
18 is that something that you find acceptable?

19 COMMISSIONER ACHTENBERG: Well,  
20 Commissioner Kladney can hang out in Washington for a  
21 week. I can't do that. So you're saying put a  
22 business meeting -- conduct business on the 4th and  
23 then have the statutory report hearing on the 11th?

24 CHAIRMAN CASTRO: Right.

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1                   COMMISSIONER ACHTENBERG:        I mean it  
2                   wouldn't be my preference to fly back and forth two  
3                   times, but that's what will be necessary if the  
4                   Commission agrees to this. I'm not saying I wouldn't  
5                   do it because it's the statutory report. It certainly  
6                   is not ideal, but if that's what makes everybody  
7                   happy.

8                   COMMISSIONER HERIOT:    Can we ask a member  
9                   of staff whether or not the 4th is likely to have the  
10                  problem of not being able to contact the witnesses and  
11                  maybe somebody like Ms. Tolhurst?

12                  MS. HEPLER:    I'm Jennifer Cron Hepler and  
13                  I'm an attorney here -- (inaudible.)

14                  CHAIRMAN CASTRO:    You need to come to the  
15                  microphone. Come to the table here, please.

16                  COMMISSIONER YAKI:    Why is it these mics  
17                  pick out every other word?

18                  MS. HEPLER:    I'm sorry, I just wanted to  
19                  address your issue and you brought up some good  
20                  points. In the Federal government, for example, and  
21                  I'm in a situation if you don't use your leave, you  
22                  lose it, and at this time that's usually when people  
23                  schedule it in December. And that's one thing because  
24                  people that have that and I'm talking about all across

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1 the government, if they don't use it, they lose it.  
2 And they tend to take it. And this year, it's an odd  
3 year because the leave year actually ends into the  
4 second week of January, so that would cover that  
5 period.

6 You're right, the air fares are high  
7 because we're looking to flying out West over the  
8 holidays and the flights are high.

9 The other thing is it is going to be hard  
10 to get people, D.C. sort of clears out at certain  
11 times of the year, August is one and the end of  
12 December is another, if you're trying to schedule  
13 people. The mic went out again.

14 Let's see if I can get it to talk. I  
15 think that scheduling it the 11th is much better. The  
16 4th is going to be hard because people will still be  
17 on vacation and some schools don't start and other  
18 people are using their holidays.

19 Does that address what you were asking?

20 COMMISSIONER HERIOT: I like David's  
21 proposal.

22 CHAIRMAN CASTRO: I'm just checking with  
23 the Vice Chair here on the earlier dates, so just bear  
24 with me a second.

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1 Commissioner Achtenberg?

2 COMMISSIONER ACHTENBERG: I am willing to  
3 go along with the 11th provided my colleagues don't  
4 treat the Lincoln Cottage as if it were optional.  
5 Obviously, that's not part of the motion, but that's  
6 my admonition.

7 COMMISSIONER HERIOT: I for one, I  
8 definitely intend to be there. When in January?

9 CHAIRMAN CASTRO: The 11th.

10 COMMISSIONER HERIOT: I'm fine.

11 CHAIRMAN CASTRO: So I confirmed with the  
12 Vice Chair that February 15th, May 31st and January  
13 11th work on her calendar.

14 COMMISSIONER KLADNEY: May 15th?

15 CHAIRMAN CASTRO: I'm sorry, February  
16 15th, May 31st and January 11th. Anything else?

17 COMMISSIONER YAKI: I won't be here on the  
18 15th.

19 CHAIRMAN CASTRO: Okay.

20 COMMISSIONER YAKI: Thank you very much  
21 for arranging it on a date that I can't be here.

22 CHAIRMAN CASTRO: Let's see if there are  
23 other dates in February that works for folks? We're  
24 not trying to exclude you. We're just trying to

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1 figure out a date that works for everybody. What was  
2 the original date we were working with that didn't  
3 work?

4 So, February 8th?

5 VICE CHAIR THERNSTROM: Fine with me.

6 COMMISSIONER KLADNEY: Fine with me.

7 CHAIRMAN CASTRO: On the phone, February  
8 8th?

9 Commissioner Yaki, February 8th?

10 COMMISSIONER KLADNEY: Oh no, actually,  
11 I'm sorry, I was looking -- I was forward looking. I  
12 may have a problem with that date, but if I do, I do.

13 I mean --

14 CHAIRMAN CASTRO: So you're okay with the  
15 8th then?

16 COMMISSIONER KLADNEY: I may not be here,  
17 I just want you to know that.

18 CHAIRMAN CASTRO: Okay. So you're alright  
19 with that?

20 COMMISSIONER KLADNEY: I'm fine with it.

21 COMMISSIONER ACHTENBERG: So it's February  
22 8th?

23 CHAIRMAN CASTRO: February 8th.  
24 Commissioner Yaki?

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1 COMMISSIONER YAKI: Good.

2 CHAIRMAN CASTRO: Okay. So I think we've  
3 -- let me just read back the dates now. January 4th  
4 will be changed to January 11th for the enforcement  
5 report. But January 4th we will have a business  
6 meeting. So we'll have a business meeting January 4th  
7 and enforcement report hearing date on January 11th.  
8 February 8th, March 22nd, April 19th, May 31st, June  
9 14th, July 12th, August 16th, September 20th, October  
10 18th, November 15th, and December 13, 2013.

11 COMMISSIONER KLADNEY: If I may be heard  
12 for a second again about my August request. I  
13 actually believe that we could approve the statutory  
14 report in July.

15 COMMISSIONER HERIOT: But if we don't,  
16 then we don't have it set in the schedule, then we're  
17 in a very bad position.

18 COMMISSIONER KLADNEY: If we don't, then  
19 we could actually schedule something.

20 CHAIRMAN CASTRO: Well, why don't we --

21 COMMISSIONER KLADNEY: Maybe we can  
22 schedule the meeting and if we do approve the  
23 statutory report in July, could I have your vote for  
24 getting the August meeting out of the way?

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1                   COMMISSIONER HERIOT:     Assuming that we  
2 haven't scheduled a briefing during that period in the  
3 interim, yes.     Only a business meeting, write down  
4 that I said that I would vote for that this time, this  
5 time, because I will forget.

6                   CHAIRMAN CASTRO:     And that's Heriot, H-E-  
7 R-I-O-T.

8                   (Laughter.)

9                   CHAIRMAN CASTRO:     With that caveat --

10                  COMMISSIONER HERIOT:     Let me interject  
11 again.     I believe that August is our best month for  
12 getting publicity if we have a briefing, so I think we  
13 should in the future, whether we do it in 2013 or some  
14 other time, try to plan something that we think will  
15 get attention because again, we'll be the only game in  
16 town.

17                  COMMISSIONER KLADNEY:     Perhaps,     Ms.  
18 Tolhurst, am I wrong about -- am I making a big  
19 mistake here?

20                  MS. TOLHURST:     Not on this.     So the  
21 problem is you have to vote, if you care about meeting  
22 our statutory deadline of September 30th.     Unless the  
23 Commissioners that I noted don't want to shorten their  
24 statement time and rebuttal time, the report has to be

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1 approved before August because you want 30 more days  
2 to do statements and 30 more days to do rebuttals.  
3 And you don't do that until the report is approved.

4 COMMISSIONER HERIOT: Yes, I'm not saying  
5 we should plan on approving it in August. I'm saying  
6 you've got to have that meeting in there just in case  
7 we screw up and I don't want to screw up either, but I  
8 really, really, really want to have that enforcement  
9 report done on time.

10 CHAIRMAN CASTRO: The Chair recognizes the  
11 Vice Chair.

12 VICE CHAIR THERNSTROM: I don't know  
13 whether it's pertinent or not, but for many years, and  
14 Commissioner Kirsanow can verify this, for many years  
15 there was no August meeting. And Tolhurst is nodding  
16 her head in agreement. She knows that.

17 I mean it was automatic, no August  
18 meeting.

19 CHAIRMAN CASTRO: And I know for many  
20 years it was a different Chair and I guess under me I  
21 I'd like to have August meetings--

22 COMMISSIONER HERIOT: If I moved there  
23 we have two meetings in August?

24 CHAIRMAN CASTRO: -- but I am willing to -

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1 - as long as we can get our work done in July, I'm  
2 open to giving us August off.

3 VICE CHAIR THERNSTROM: But it is a  
4 vacation month and family month for many of us.

5 CHAIRMAN CASTRO: I know. I took a  
6 vacation in August.

7 COMMISSIONER HERIOT: I'm willing to  
8 stipulate that if we don't have it -- and we haven't  
9 planned a briefing which, of course, we would need a  
10 majority vote for, so I wouldn't be able to do that  
11 unilaterally, in part because we have just scheduled  
12 two meetings for January and so I want a Commission  
13 that gets its work done.

14 COMMISSIONER KLADNEY: I would also like  
15 to take this opportunity to welcome Ms. Tolhurst back  
16 after her medical problem and I'm glad to see that  
17 she's right with us today.

18 CHAIRMAN CASTRO: So we now have a motion  
19 and with the understanding that if we can get our work  
20 done at the July meeting, we will consider forgoing  
21 the August meeting. So I'm going to do a roll call  
22 vote.

23 Commissioner Heriot, how do you vote?

24 COMMISSIONER HERIOT: Yes.

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1 CHAIRMAN CASTRO: Madam Vice Chair, how do  
2 you vote?

3 VICE CHAIR THERNSTROM: No.

4 CHAIRMAN CASTRO: Okay. Commissioner  
5 Kladney, how do you vote?

6 COMMISSIONER KLADNEY: I vote yes, with  
7 the understanding of the August stipulation.

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

10 COMMISSIONER YAKI: Pass.

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

13 COMMISSIONER KIRSANOW: I'm sorry, I  
14 didn't hear anything.

15 COMMISSIONER ACHTENBERG: We couldn't  
16 hear anything.

17 VICE CHAIR THERNSTROM: Just vote "yes."

18 (Laughter.)

19 CHAIRMAN CASTRO: The vote is the schedule  
20 as stated with the possibility that if we can approve  
21 the enforcement report in July, that we would consider  
22 canceling the August meeting since folks would like to  
23 take vacations in August.

24 COMMISSIONER KIRSANOW: Yes.

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1 CHAIRMAN CASTRO: Okay. Commissioner  
2 Achtenberg?

3 COMMISSIONER ACHTENBERG: Yes.

4 CHAIRMAN CASTRO: Is Commissioner Gaziano  
5 on the phone yet? Okay, well, I vote yes.

6 Commissioner Yaki?

7 COMMISSIONER YAKI: No.

8 CHAIRMAN CASTRO: So we have one, two,  
9 three, four, five yeses; and two no's, and those being  
10 Vice Chair and Commissioner Yaki. So the motion  
11 passes.

12 Next on the agenda we have -- we're  
13 supposed to get an update on the planning of the  
14 drafting of the trafficking briefing. I don't know if  
15 Margaret Butler is here yet? I do not see her. Okay,  
16 so we'll pass that for the moment and go on to  
17 management and operations and then we'll come back.

18 So under management and operations, we  
19 have a report from our Chief of Regional Programs, Mr.  
20 Minarik. Please come to the table here.

21 **III. MANAGEMENT AND OPERATIONS**

22 MR. MINARIK: Good morning, Commissioners.

23 CHAIRMAN CASTRO: Good morning.

24 MR. MINARIK: As you know, I'm going on to

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1 my fourth year as Acting--

2 CHAIRMAN CASTRO: Can you speak up a  
3 little more? Use the microphone there.

4 MR. MINARIK: I'm approaching my fourth  
5 year as the -- I'm into my fourth year as the Acting  
6 Chief of the RPCU and I sent you a memo to all of you  
7 about my continuing in those duties. And so this  
8 report will be a little bit more expansive than the  
9 ones in the past.

10 The Inspector General in July asked me  
11 about how many duties there are with the RPCU Chief  
12 and I reported to her that there are 64 duties that  
13 the RPCU Chief does and I tell you that because I  
14 don't necessarily think it's a full-time position, but  
15 it's a critical one.

16 The leading job for the RPCU Chief is to  
17 be the Committee Management Officer for the Agency and  
18 that has to deal with the compliance for the Agency  
19 with the Federal Advisory Committee Act. And I tell  
20 you this because there is a public database under the  
21 Federal - Pam, what's going on here?

22 MS. DUNSTON: Excuse me one second.  
23 Testing, testing. Can you hear me, test one, test  
24 two? Am I picking up? Can you hear me? Test one, test

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1 two?

2 MR. MINARIK: All right, we'll try now.  
3 If you're not familiar with the Federal Advisory  
4 Committee Act, you can go to it by accessing FACA in  
5 the database. There is a public database of all 51  
6 State Advisory Committees. This is scrutinized by the  
7 public and we have been told by members of Congress.  
8 It includes cost data, members, charter data, meeting  
9 minutes, etcetera. And beginning in October, all the  
10 Designated Federal Officials and the Regional  
11 Directors will begin to work to close that database  
12 out for the previous year.

13 A big duty of the RPCU Chief as the CMO is  
14 to make sure that that database is certified and  
15 accurate. And that pretty much is a full-time job in  
16 late October, early November. That is a  
17 responsibility that needs attention in the coming  
18 months.

19 And after the CMO does that, then the GSA,  
20 who is our oversight body, with respect to the FACA  
21 database, then certifies that our data is correct.  
22 And then it's locked. And so I wanted to bring to  
23 your attention the FACA database, that it exists and  
24 that we're facing an operation in October and into

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1 November to get that Federal Advisory Committee Act  
2 database closed out.

3 And the second thing that I wanted to talk  
4 to you about is to draw your attention to a report  
5 that you all received, but you may not know the  
6 details of it. And it's the monthly report. The  
7 monthly report is not an RPCU report per se. It's a  
8 report to you and so it could be in any format you  
9 want and I've been with the Commission for more than  
10 two decades now and it's changed and morphed based on  
11 the Commissioners.

12 At the present time, it's deliberately  
13 brief just to give you the essential information about  
14 what projects are being done, what meetings are being  
15 held and the target status. If you wanted more  
16 information you could easily talk or request it from  
17 the Staff Director or from the RPCU Chief and you  
18 would get further information.

19 One of the things that you'll notice in  
20 the report is if a SAC is not chartered, there's no  
21 meeting dates. There's no activity going on and  
22 that's because there's a very strict rule about SACs  
23 that are not chartered are no longer active and they  
24 are considered administratively inactive.

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1           So I just wanted to bring your attention  
2 to that monthly report that's also done by RPCU, but  
3 it's done for your benefit. So you can feel free to  
4 change it.

5           And those are my two things that I wanted  
6 to report because I know there's another meeting of  
7 regional program activities that's probably going to  
8 trump this one.

9           CHAIRMAN CASTRO: Thank you, Mr. Minarik,  
10 and as you know we're -- with the absence of the Staff  
11 Director, our SAC package approval is backlogged. I'm  
12 very pleased to say that today we actually have a  
13 number of packages, thanks to Commissioners Heriot's  
14 and Achtenberg's efforts to bring us some of these  
15 packages today. So our hope is that we continue to  
16 move forward and get more of those approved. So thank  
17 you.

18           The next item and we're still waiting for  
19 Ms. Butler, so we'll move on to the report from the  
20 regional Directors. So we have -- I think this is  
21 sort of the first time since I've been Chair that  
22 we've invited the Regional Directors to come and  
23 present to us and I know well the work that's done in  
24 the regions, having served as a member and eventually

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1 a chair of the SAC in Illinois.

2 And I know that fellow colleagues on the  
3 Commission have in the past served on SACs. But we  
4 often talk about one of the reasons we've got Mr.  
5 Minarik this last year to come and report to us  
6 directly as opposed to just seeing those reports is to  
7 try to get a better feel for what's going on in the  
8 field, for us as Commissioners to have a better  
9 understanding and a better handle on how a very  
10 important part of our Agency functions.

11 And so my hope is that bringing the  
12 Regional Directors that are here and present and some,  
13 I believe, are on the phone, is for us to be able to  
14 be, in part, educated by you as to the opportunities  
15 that you see out there, the successes you have, but as  
16 well as the challenges and obstacles that exist for  
17 you in the work that you do, and explore how we might  
18 be able to address some of those.

19 I know some of my colleagues have specific  
20 questions that I'm sure they'll ask you, but my effort  
21 here is to really begin and hopefully continue a  
22 dialogue between our Regional Directors and the  
23 Commissioners so that we're better informed about what  
24 you're experiencing and you're better informed about

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1 what concerns we have and the things we'd like to see.

2 So with that in mind, we've got a few  
3 folks here with us in person. We're going to hear  
4 today from Ivy Davis, the Eastern Regional Office  
5 Director. We have Peter Minarik who we'll also be  
6 here from him in his capacity as Southern Regional as  
7 well as Western Regional Office Director. Farella  
8 Robinson from the Central Regional Office. I believe  
9 David Mussatt, we have here from the Midwest Office.  
10 Malee Craft from the Rocky Mountain Regional Office.  
11 And some folks will be on the phone. Is that right?  
12 Or are they all here? Everybody here?

13 So why don't we start with -- let's see,  
14 Mr. Minarik, since you're already at the microphone,  
15 why don't you tell us about the Southern and Western  
16 Regional Offices.

17 MR. MINARIK: I was expecting more of a  
18 group presentation here.

19 CHAIRMAN CASTRO: Would you like to do it  
20 as a group? Do you all want to come up together? Do  
21 we have enough capability for that, Pam? Strength in  
22 numbers of course. Come on up.

23 MR. MINARIK: I get the opportunity to  
24 speak as RPCU Chief, so when I talk to my colleagues I

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1 said I would prefer to do less talking and let them do  
2 more.

3 CHAIRMAN CASTRO: Sure, that's fine.

4 MS. DAVIS: Mr. Chairman, if I may,  
5 Barbara deLaViez is the Deputy Director of ERO and I'd  
6 like to ask if she could come up?

7 CHAIRMAN CASTRO: If you could state your  
8 name for the record when you speak so that the court  
9 reporter can keep an accurate record that would be  
10 great.

11 (Pause.)

12 CHAIRMAN CASTRO: Are we set? Well,  
13 please proceed.

14 MR. MINARIK: Well, under the Federal  
15 Advisory Committee Act, the Agency, and this isn't to  
16 me good or bad, the Agency has the responsibility to  
17 support establishing communications. And I just want  
18 to draw your attention to that and we get questions  
19 about it and I know I've gotten questions about it as  
20 the RPCU Chief about the amount of support that we get  
21 and I tell you that back in the 1990s, 35 percent of  
22 the Commission's support appropriation went to  
23 advisory committee activities.

24 CHAIRMAN CASTRO: How much was that?

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1                   MR. MINARIK:   Thirty-five percent.   That  
2 was in the appropriating language.   That was removed  
3 in the late '90s and the last number that I had I was  
4 asked by former Staff Director Marty Dannenfelser to  
5 give him an estimate as the RPCU Chief of the budget  
6 numbers and I believe that was in response to an  
7 inquiry from my Senator and it was my budget number at  
8 that time, that I think the number is around 11  
9 percent.

10                   CHAIRMAN CASTRO:   Now?

11                   MR. MINARIK:   Yes, sir.

12                   CHAIRMAN CASTRO:   Ms. Davis?

13                   MS. DAVIS:   I'm going to go at this a  
14 little differently.   I just want to talk to you in  
15 terms of my background and familiarity with the  
16 Commission, both in the years that I was on the House  
17 Judiciary Subcommittee which is the authorizing  
18 committee for the Commission, so I remember when the  
19 Commission was in its heyday and I remember when the  
20 Commission lost resources in the early 1980s and the  
21 challenges that it was facing.   And it was during that  
22 time that that language was put in there to designate  
23 a proportion of the budget for the Commission to do  
24 the work of the Advisory Committees and yes, it has

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1 continued to go down without that information.

2 I also came to the Commission as the RPCU  
3 Chief. So I am familiar with the workings of FACA as  
4 well as compliance with FACA and the challenges that  
5 the advisory committees have.

6 I also want to say that there are probably  
7 some things that can be done at the Agency level to  
8 make our jobs a little less stressful in terms of  
9 developing sort of templates that we can use to fill  
10 in information for things such as press releases, for  
11 example. And I say that because we are measured as is  
12 the Commission by certain things and posting things to  
13 the Commission website in terms of press releases is  
14 something that needs to be done.

15 And I think rather than deal with each  
16 press release as a first time, let's figure this out,  
17 if we had a template and just filled in information  
18 that could go a lot more smoothly. But we've also had  
19 an opportunity, I think, to do some creative things  
20 that if we had an opportunity to talk about best  
21 practices could be utilized by the other advisory  
22 committees and who knows, the Commission might want to  
23 use some of those, for example. I mean we've used  
24 webinar to do some work with our advisory committees.

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1 And in fact, we have a webinar scheduled on the 27th  
2 that's going to be a training webinar for our  
3 committee members.

4 And with that said, Barbara may want to  
5 add some more information about other challenges and  
6 opportunities for Eastern Regional Office.

7 MS. DELAVIEZ: Good afternoon. Peter,  
8 thank you for the job that you've done. I know it's  
9 been four years. (Off mic comments.)

10 Although I will say this. I do believe  
11 that the RPCU Chief is a full-time position and has a  
12 lot of work to do and I think it could be an  
13 incredibly valuable resource for the regional staff  
14 and we've been crippled by the fact that Peter is  
15 wearing three hats. It's not fair to him and it's not  
16 fair to us.

17 We've been asked to do more with less.  
18 When I started with the Agency six years ago, I had  
19 four SACs. I'm up to eight. It's impossible to do  
20 eight SACs and do them justice. Add to it that we  
21 have various obstacles that are put in our way for a  
22 variety of reasons, some bureaucratic, some without a  
23 Staff Director; I have two reports that can't be  
24 approved now. And the committees are both -- the

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1 committees who have done these reports are very  
2 unhappy about that. So, so we face a lot of  
3 challenges.

4 When we don't meet, they lose interest.  
5 They don't want to be a part of the committee that  
6 doesn't meet on a regular basis. I've tried by having  
7 phone calls. I've tried to keep them involved by  
8 doing webinars. I've tried to have guest speakers.  
9 I've resorted to many different techniques to try and  
10 keep the committees engaged, but it's very difficult  
11 to keep committees engaged when we are as short  
12 staffed as we are and we are as challenged as we are.

13 So we've worked hard to try and -- we've  
14 worked hard and I think the entire Commission has a  
15 problem with money. But we worked hard to do the best  
16 we can with very limited resources. An example is I  
17 just was in Vermont. I was in New Hampshire and  
18 because we're so short on funds, I did a meeting in  
19 Maine. I did a meeting in Vermont. And I did a  
20 meeting in New Hampshire all in three days which meant  
21 driving considerable distances just to try and keep  
22 these committees energized. And if you don't keep  
23 them energized, they don't want to do this work. And  
24 it's very important work. And we've had some fairly

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1 good accomplishments when we do our work. So I would  
2 encourage the Commissioners to see if there are ways  
3 we can collaborate to keep them chartered.

4 And quickly let me add one other thing.  
5 There are ways to extend the charter and I've talked  
6 with several people about this. There are ways to  
7 extend the charter so that we're not rechartering  
8 every two years. It's not a rule that we charter them  
9 every two years and I think one of the things I have  
10 mentioned to Ivy is I would like to work with the  
11 Special Assistants and with the Commissioners so they  
12 understand the nomenclature. Commissioners appoint.  
13 They don't charter. Chartering is a ministerial  
14 thing.

15 (Off mic comment.)

16 MS. DELAVIEZ: You have to file a charter  
17 every two years.

18 (Off mic comment.)

19 MS. DELAVIEZ: I'm sorry, thanks. Yes, you  
20 have to file the charter every two years, but you can  
21 make the appointment term longer. You can make it six  
22 years. You can make it four years. We went to FACA  
23 training and one of the leaders of GSA said why don't  
24 you file one charter for all 51? I don't think the

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1 Commissioners and I don't think we're ready to do  
2 that, but we certainly could extend the appointment  
3 period.

4 Did you have a question?

5 COMMISSIONER HERIOT: I have lots of  
6 questions on this, actually, because this has been an  
7 area that has really concerned me. I have been told  
8 that FACA requires two-year charters, that that's  
9 their default rule and that therefore we've got one  
10 head shaking yes and one head shaking no.

11 MS. DAVIS: Yes, you have to file the  
12 charter every two years, every state advisory  
13 committee.

14 COMMISSIONER HERIOT: How are you defining  
15 --

16 MS. DELAVIEZ: You appoint. You're going  
17 to appoint for four years --

18 COMMISSIONER HERIOT: The Commission works  
19 on a six-year term.

20 MS. DELAVIEZ: That's right.

21 COMMISSIONER HERIOT: And what I was  
22 envisioning was having six-year terms. That cuts the  
23 amount of work that you're doing by a third. And then  
24 also we have these huge SACs from 11 to 18. We've got

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1 eight members here and yet we seem to do just fine. I  
2 think more members would make it harder.

3 Every thing that you do would be less work  
4 if you had fewer members.

5 MS. DAVIS: You're singing our song,  
6 Commissioner.

7 MS. DELAVIEZ: These are all ideas  
8 that I have talked to several of the Special  
9 Assistants to try and come up with what I think would  
10 be the right number.

11 COMMISSIONER HERIOT: Even scheduling a  
12 meeting if you didn't have like 18 people with 18  
13 schedules. So why are we torturing ourselves by doing  
14 it this way? I think we need to look at our AIs, see  
15 everything that we can do as a Commission to make it  
16 easier on you, so we actually get some reports instead  
17 of knocking ourselves out the way we are.

18 MS. DELAVIEZ: Absolutely.

19 CHAIRMAN CASTRO: Let me suggest, I know  
20 we all have a lot of questions, but I'd like to see if  
21 we could hear from all of the Regional Directors first  
22 and then we can open it up for the Commissioners.

23 COMMISSIONER HERIOT: I get excited about  
24 it.

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1                   CHAIRMAN CASTRO: I'm excited about it,  
2 too, because when this was raised to me I actually  
3 talked to someone from GSA, Kenneth something or other  
4 -- Fennell --

5                   COMMISSIONER HERIOT: Fussell.

6                   CHAIRMAN CASTRO: -- and asked him to  
7 coordinate with our staff to try to get a solid answer  
8 on that that you could bring forward to us.

9                   MS. DELAVIEZ: And can I just quickly add  
10 there are statutorily created FACAs and I can send you  
11 a spreadsheet. They last from, what was it, one day  
12 to ten years. So it's entirely up to the appointing  
13 authority.

14                   COMMISSIONER HERIOT: I want to do  
15 whatever FACA allows us to do that will make this more  
16 efficient. You know another issue we have is when we  
17 specify a minimum for -- I'm still going to use the  
18 word chartering because I'm confused about  
19 nomenclature at this point, but when we charter them  
20 and we say it's got to have at least 11, we should  
21 have a different rule for what allows a SAC to  
22 continue.

23                   So if somebody resigns, it should be  
24 simply a quorum of whatever, whatever number is our

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1 minimum after attrition that we could say that we're  
2 going to charter for a minimum of eight, but we could  
3 say that five is the minimum number for a continuing  
4 SAC instead of allowing a charter to go into hiatus.  
5 And then three people show up out of the five, that's  
6 a quorum.

7 MS. DELAVIEZ: You're singing my song.

8 COMMISSIONER HERIOT: Okay.

9 MS. DELAVIEZ: And there are ways to do  
10 that. And the only requirement from the AI right now  
11 is it be 11 to 19 members. And so if it were really  
12 something where we could say one month before it's  
13 time to file the charter, because it's a two-year  
14 charter, you file the charter, if the DFO, the  
15 Designated Federal Official, could certify that we  
16 comply with the 11 to 19 and yes, I'd like to see it  
17 dropped, then it could go on and they don't lose their  
18 charter, they are running on their four-year  
19 appointment term or six-year appointment term.

20 COMMISSIONER HERIOT: The transition would  
21 be hard because there are people that are already on  
22 the SACs and they want to stay, but we could have --  
23 allow that, but just over time just try to get this  
24 thing done in a way that is manageable for the level

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1 of staff that we have now.

2 CHAIRMAN CASTRO: Mr. Mussatt?

3 MR. MUSSATT: Thank you. I didn't prepare  
4 to talk so much about nuts and bolts, but I'm happy to  
5 do so afterward. I thank you, Mr. Chair, and  
6 Commissioners for inviting us here today. I came and  
7 just prepared something more of a bigger picture  
8 looking at what the Chairman said, I haven't started a  
9 dialogue with you. I think this is part of the big  
10 problem. There's been generally a lack of  
11 communication. I'm glad to have the opportunity to  
12 start the discussion.

13 Going back to the big picture, I know most  
14 of you have probably served on corporate or nonprofit  
15 boards and have done some sort of SWAT analysis of the  
16 organization which is basically looking at the  
17 strengths, weaknesses, opportunities, and threats of  
18 the organization in its environment as it is. And so  
19 although it's not my role to do that, I would assume  
20 that if you did so one of the clear strengths of our  
21 Agency is that we have access to -- if they were all  
22 chartered and active, 700 or so State Advisory  
23 Committee members. And these are people who  
24 volunteer. They work for free to do work for this

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1 Agency and they only ask sometimes, not always, for  
2 reimbursement for their travel. These are also  
3 again, these are Democrats, Republicans, Independents,  
4 who are African-American, White, Latino, Asian-  
5 American, Native American, gay, straight, left and  
6 right idealogues, law school professors, social  
7 scientists, business people, the list goes on. And  
8 they've demonstrated experience and at least a sincere  
9 interest in civil rights issues in their state.

10 Given the wealth of human capital, the  
11 question is why today are there only 27 SACs chartered  
12 and when my office sends up two packages to be  
13 chartered in January and here we are in September and  
14 they're still not approved or disapproved, something  
15 is wrong.

16 And I understand we've had a lot of  
17 changes in the organization, but this has been going  
18 on for a while now. We had consultants look at this  
19 issue years ago and they came back with basically  
20 nothing but check lists that kind of focused on  
21 regional offices filling out blanks on a paper and  
22 that didn't work.

23 I think that in addition to some of these  
24 changes that Commissioner Heriot mentioned about

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1 terms, that could help obviously. But we also just  
2 need to work together more. I think that there's  
3 common misunderstandings what you want from SAC  
4 packages, what we're delivering to you, and I think  
5 that together as an Agency we need to take  
6 responsibility for SAC charters and together we need  
7 to fix it.

8 Further, I think that SAC and Regional  
9 Offices offer much -- greater opportunities may not  
10 provide because their strengths just basically haven't  
11 been leveraged well by the Commission or by the  
12 Regional Offices. Up until the early 2000s, as you  
13 mentioned, every region had an RD and at least one  
14 analyst. Many offices had more than one analyst. I  
15 think the East had three or four. So the primary work  
16 product at that time were published, bound research  
17 reports. The SAC productivity at this time was stated  
18 in the GAO 2006 report where it found that 200 out of  
19 254 Commission reports were done by State Advisory  
20 Committees through Regional Offices.

21 This report, by the way, was entitled "The  
22 Commission Should Strengthen Its Quality Assurance  
23 Policies and Make Better Use of Its State Advisory  
24 Committees." The report discusses how the Commission

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1 had regrettably significantly reduced regional staff  
2 and resources, so I don't have to repeat what the GAO  
3 already made clear to you. And I also realize that  
4 other departments had experienced cuts since then, so  
5 I'm not going to find a whole lot of sympathy.

6 But, despite all of this, we need to  
7 consider whether SACs are still doing in this  
8 environment, again, the most efficient and effective  
9 work that they can to fulfill their mission. I think  
10 it starts partly by looking at our weaknesses and the  
11 environmental threats that are out there.

12 First, in the past ten years, we've lost  
13 all their analysts through attrition, so except for  
14 Barbara, who is actually more of a Deputy Director,  
15 more of an administrator now, we have no analysts, yet  
16 we are still being judged on the performance of when  
17 we had all these analysts to do it.

18 Having no analysts is a huge weakness for  
19 the programs and we must confront it and not pretend  
20 like it doesn't exist.

21 Also, we need to think about whether  
22 publishing bound reports is still viable in an age of  
23 technology. I mean we need to think about how we  
24 distribute and produce reports. And we also have to

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1 realize that there are now numerous think tanks,  
2 university research centers, civil rights advocate  
3 groups that do the data-driven reports that we used to  
4 do.

5 Now all of this is not to mean that the  
6 SACs and Regional Offices have no role. On the  
7 contrary, I think we have a greater role because as a  
8 bipartisan committee, we have tremendous reach into  
9 various constituencies that these other organizations  
10 don't have.

11 Today, even -- so I would argue that today  
12 what we need to do even for the SACs that are  
13 chartered, we need to try to increase their presence  
14 in the local communities because right now when a SAC  
15 is chartered and active, we don't really have methods  
16 to go and make sure that their presence is known. And  
17 I think that is really what is part of what the  
18 strategy needs to be going forward.

19 Since I've been RD -- since Fiscal Year  
20 2009, I have spent a lot of my time trying to nurture  
21 relationships and the connections that the SAC members  
22 bring to the table and I think it's paid off. For  
23 example, in Illinois, we -- I realized early on that  
24 it seemed like the SAC chairs were the ones that were

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1 most engaged.

2           And so what we did in Illinois is we  
3 actually created four subcommittees on four different  
4 topics as you see in the monthly reports and that way  
5 we were able to name four subcommittee -- actually,  
6 seven subcommittee chairs because a number of the  
7 subcommittees have co-chairs. And this immediately  
8 has paid off in dividends because those members are  
9 more active.

10           Just this spring we had one of our  
11 subcommittee co-chairs make -- when we were in  
12 Springfield, make a phone call to the Governor of  
13 Illinois and 30 minutes later, we were in the  
14 Governor's office with a sit down because of the  
15 relationships and connections that this person had and  
16 that we were able to tap into.

17           In Wisconsin just last week, regrettably,  
18 we had a meeting at the Sikh Temple in Oak Creek,  
19 Wisconsin which was the site of that horrible hate  
20 crime and the only reason we were able to get in there  
21 was because of the relationship that our office had  
22 with the Sikh community of Chicago. And so  
23 immediately we called the Sikh Temple of Chicago, is  
24 there anything that we can do in Wisconsin and we got

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1 in that way and had a fabulous powerful meeting last  
2 week there.

3 We also held three meetings of state of  
4 budget committees at universities in the past couple  
5 of years at no cost to the Commission. I mean these  
6 universities want us to be there. They want us to  
7 show up and do things with them. This is good for  
8 them and it's good for us.

9 We also published in Illinois and I'll  
10 conclude here, an omnibus report on food deserts.  
11 There have been tons of research being done on food  
12 deserts in Chicago, but no one had ever put them into  
13 one type of report and synthesized it to make it  
14 accessible. So that was what we did there.

15 Those are just some of the examples. I  
16 don't pretend that those were the answers. I think  
17 this is hopefully the start of discussion, but those  
18 are some of the directions I think we need to go in.  
19 So thank you.

20 CHAIRMAN CASTRO: We have two RDs on the  
21 phone, I believe. Ms. Robinson or Ms. Craft, which  
22 one of you would like to go first?

23 MS. ROBINSON: I'll go. This is Farella  
24 Robinson.

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1 CHAIRMAN CASTRO: Please proceed.

2 MS. ROBINSON: First up, I wanted to thank  
3 Chairman Castro for offering the Regional Directors  
4 the opportunity to speak to the Commissioners  
5 regarding challenges and opportunities so that you may  
6 have a better understanding and sensitivity to the  
7 workings of the Regional Offices.

8 CHAIRMAN CASTRO: Thank you.

9 MS. ROBINSON: I will briefly share with  
10 you about on-going challenges the Central Regional  
11 Office has faced since 2004. Over time, these  
12 challenges have steadily gotten worse with each new  
13 Commission and Staff Director. I will be brief.  
14 However, before I detail the challenges by way of  
15 background you need to know the following. Central  
16 Regional Office is a staff of two, one Regional  
17 Director and secretary. We have jurisdiction over  
18 nine SACs to include approximately 110 SAC members  
19 when all of our SACs are chartered.

20 I would also like to express the  
21 importance of the SAC. They represent the  
22 investigative power and moral authority of the  
23 Commission in each State and across this Nation. The  
24 Commission is magnified by the presence of vigilant

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1 and active SACs. They are the eyes and ears. They  
2 alert the Commission and the general public for early  
3 warning signs of emerging or serious civil rights  
4 developments across the nation.

5 Currently, the Central Regional Office has  
6 33 percent or three of their SACs are chartered at  
7 this time. Arkansas charter expired this past week.  
8 One SAC charter, Iowa, has been languishing in the  
9 Office of the Staff Director since December 16, 2011.

10 During the 2012 funding year, the Central Regional  
11 Office has held ten SAC planning, briefing, and fact-  
12 finding meetings. All have been very productive.

13 Currently, Central Regional Office has two  
14 outstanding unedited draft reports on my desk. To  
15 date, all chartered SACs have on-going civil rights  
16 projects. Recently, we held a two-day fact-finding  
17 meeting in Little Rock, Arkansas, concerning whether  
18 or not there's a need for a state civil rights agency.

19 Now I will go into the challenges. As you  
20 know, not enough staff to support the core mission and  
21 work of the SACs exists in this Agency. This causes  
22 the Regional Director to serve in dual roles as  
23 manager, supervisor, and civil rights analyst. I  
24 believe the lack of this very important critical

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1 position affects the ability of the Region or at least  
2 the Central Regional Office to achieve its mission or  
3 goals. This is also noted by the IG.

4 Since ongoing lack of staff makes  
5 chartering problematic because of the short charter  
6 period that we have already noted during this meeting.

7 Chartering in the Central Regional Office is ongoing.

8 Based on the Lean Six process, this includes reaching  
9 out to a whole host of organizations, 12 different  
10 entities.

11 Other factors that may prevent on time  
12 execution of charters are interest in qualified  
13 applicants may not be located in a timely manner;  
14 candidates may not submit applications on time; late  
15 recommendations from the Staff Director or the  
16 Commissioners may cause a delay. All of these  
17 situations the Central Regional Office has experienced  
18 as well as other Regions, causing chartering to be  
19 problematic.

20 To meet charter deadlines, we never stop  
21 chartering. It's ongoing. It would be a gift to us  
22 to have the charter period extended to four years.

23 Another challenge in the matter of  
24 charters are that since 2007, SAC appointments, in my

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1 view, have been micromanaged based on political  
2 ideology. Of course, balance is important and  
3 necessary, but in recent years this has been a real  
4 problem in the chartering process. Nine times out of  
5 ten, charters are returned back due to issues related  
6 to political ideology.

7 There's also a need for consistent and  
8 competent leadership that contributes to the well  
9 being and superior performance of the Region. We have  
10 been without a Staff Director on an on-going basis.  
11 This is also a deficit to our accomplishing our goals.

12 Also, there's a lack of communication.  
13 Specifically, I find this to be problematic related to  
14 performance evaluations. For the last two evaluation  
15 years, I have not had a conversation with the Staff  
16 Director concerning my performance.

17 Finally, there have always been  
18 differences in performance between Regions and will  
19 continue to be so. A lot of this has to do with the  
20 inequality of SAC alignments among the Regions. For  
21 example, 6 SACs in the Southern Region versus 9 SACs  
22 in the Central Region; 7 SACs in Rocky Mountain versus  
23 14 in Eastern Regional Office. Also, the level of  
24 staffing within Regions and grade levels produce

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1 differences.

2 So with that, my message to the Commission  
3 is that the Regions need qualified civil rights  
4 analysts. This concludes my report.

5 CHAIRMAN CASTRO: Ms. Craft?

6 MS. CRAFT: Good morning. This is Malee  
7 Craft in Denver with the Rocky Mountain Office. I  
8 would also like to thank the Chair for inviting the  
9 Regional Directors to present information.

10 So many of the things that have been  
11 discussed so far today by the Regional Directors I  
12 definitely concur with and won't take the time to kind  
13 of rehash those. But what I'd like to report  
14 regarding the Rocky Mountain Region we do have several  
15 states in our region.

16 One of the challenges for the region is  
17 the territory that we need to cover. We have the  
18 states of Montana, North Dakota, South Dakota, as  
19 example, Wyoming, which are very large states. And  
20 then also those states have a minimum number of  
21 citizens. Wyoming, the entire state has a population  
22 of about 500,000. Montana is around 800,000 for the  
23 entire state. South Dakota is a little less. But  
24 again, those three states are under one million in

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1 population per state. And that presents a challenge  
2 for the Regional Office in that just conducting a  
3 meeting is pretty expensive to go Fargo or wherever I  
4 might go and then also have the members.

5 The SAC members, those people who have  
6 served and those people who are serving are very eager  
7 to participate in the meetings. They would like to  
8 meet each other and one of the other challenges that I  
9 had as an example with Montana, and also North Dakota,  
10 is that we really were struggling to get a date and I  
11 think that also has to do with the number of people on  
12 the committee.

13 So I am in agreement that possibly  
14 committee membership numbers should be less. What we  
15 ended up doing because we just couldn't get a date to  
16 get a fair number of people to participate, our first  
17 meeting, two meetings -- are first meeting of those  
18 two committees were by telephone. And of course,  
19 members were not happy and so we've had our second  
20 meeting of each of those two states which was a  
21 person-to-person meeting. And at that juncture  
22 members were meeting other persons they had never met  
23 before. So it just creates some problems with just  
24 trying to communicate with members.

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1 Another challenge that I think the Rocky  
2 Mountain Office and other offices face is the lack of  
3 communication that Faye mentioned and I think David  
4 did. I think it would be excellent for the Regional  
5 Directors to definitely meet regularly and with  
6 possibly the Staff Director where we can share some of  
7 the challenges that we do have. We could also share  
8 some of the things that we've done that are exciting.

9 I know that David has used webinar. The  
10 Eastern Regional Office has. I am going to be  
11 conducting a meeting on Monday in Fargo and the city  
12 of Fargo has graciously offered the use of webinar for  
13 that meeting at no cost to the Commission and then in  
14 the State of North Dakota there is what's called an  
15 interactive video networking procedure which is  
16 connected to 11 colleges, tribal colleges,  
17 universities across the state. And the committee,  
18 they want to use that. They would like to possibly  
19 set up -- have another meeting and we are going to be  
20 addressing civil rights issues in North Dakota and to  
21 have meetings in various locations where citizens in  
22 that location would be able to go to the university or  
23 tribal college and participate and where people could  
24 see each other.

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1           So we're using those technologies and  
2 wanting to do so more and more. The fact that we have  
3 lost staff over the years definitely is detrimental.  
4 This office, too, like so many of the other offices  
5 have myself as Director and a secretary and no longer  
6 a civil rights analyst. So it is a challenge. But I  
7 think that we have people in the field who with the  
8 help of the Commission, want to do the work and are  
9 interested and there are definitely many, many issues  
10 within the Region.

11           Successes, I believe for our region is  
12 that our committees, the ones that are chartered, they  
13 have topics that they have identified and now we're  
14 just trying to figure out how we can move forward on  
15 those and how we can do so with the limited budget  
16 dollars that we have. Those states that are not  
17 chartered, as an example, Utah, who hopefully will get  
18 the yes vote today, but that particular package has  
19 been with the Commissioners in headquarters since  
20 February. And so again, members -- they do get  
21 frustrated in wanting to know why is it taking so long  
22 to get the package rechartered. So that certainly is  
23 a challenge.

24           I am optimistic with the committees here

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1 in the Region and I feel that they want to work and  
2 they're ready to go. And I believe that if we can  
3 just work out some of the, like, chartering lengths  
4 and communication with other staff and sharing ideas  
5 and then the budget is always an issue because we have  
6 lost so much manpower. But if somehow we can move  
7 forward and get some of those things back in place or  
8 in place, they may look a little different than I  
9 think we can move forward.

10 The committees want to be and as they have  
11 been told and they believe, the "ears and eyes" of the  
12 Commission and they want to get the word out in their  
13 respective communities of what the Commission is doing  
14 and what the Commission is asked to do.

15 And so I think I'll end my report there.  
16 And again, thank you for inviting us to participate.

17 CHAIRMAN CASTRO: Thank you, Ms. Craft.  
18 At this point, I will open up the floor to  
19 Commissioners who may want to ask questions or get  
20 further information from any of our Regional  
21 Directors.

22 I'll ask a first question that I think  
23 you've already alluded to this, was a reference to the  
24 budget being reduced over a period of time from 35

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1 percent going towards regional programming to 11  
2 percent. In addition to the loss of civil rights  
3 analysts and research directors, what other impact has  
4 that had on your ability to perform your work?

5 MR. MUSSATT: For me, travel is a big --  
6 that's where most of my money I try to save travel  
7 for. For example, in the state of Ohio --

8 COMMISSIONER KLADNEY: Could you repeat  
9 that?

10 MR. MUSSATT: SAC travel. I'm sorry.

11 COMMISSIONER KLADNEY: Is what?

12 MR. MUSSATT: That's where the lack of  
13 resources, transcripts, sir.

14 COMMISSIONER KLADNEY: Money?

15 MS. DELAVIEZ: We have to, pardon, we have  
16 to be at meetings. We can't have the meetings unless  
17 we are at the meetings.

18 COMMISSIONER KLADNEY: Right.

19 MS. DELAVIEZ: So we must travel.

20 MR. MUSSATT: Your question is about  
21 money.

22 CHAIRMAN CASTRO: Yes, my question was in  
23 the prior, pre-2007, it was 35 percent going towards  
24 regional programming according to your -- as Mr.

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1 Minarik said and now it's down to 11 percent. So my  
2 question was in addition to the loss of civil rights  
3 analysts and research directors as has been mentioned  
4 by virtually all of you, what other impact has that  
5 reduction in funding had on your functioning?

6 MR. MUSSATT: Yes, so travel and  
7 transcripts are the big thing, but I think, at least  
8 in my office, we've gotten to the point where we can  
9 overcome a lot of that through efficiencies, for  
10 example, partnering and collaborating with  
11 universities for example. So no longer do we have to  
12 pay thousands of dollars for rooms and technology  
13 because we can enter into partnerships with  
14 universities and do it.

15 COMMISSIONER HERIOT: This is just a  
16 comment because I'm on the faculty of a university. I  
17 can't imagine a university that wouldn't want to host  
18 a SAC. There's always some excess capacity somewhere.  
19 You may have to be flexible as to what time and when  
20 you meet, but I think most universities would just be  
21 delighted to host you.

22 MS. DELAVIEZ: And I would say for the  
23 last five years, I have not paid for a venue. They  
24 are willing to host us and legislative office

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1 buildings are even willing to put it on their local  
2 access TV and so that's been a big advantage as well.

3 MR. MUSSATT: But when we're being judged  
4 based on reports, it's important that we still need a  
5 hard transcript of the proceedings. It's more  
6 important than before probably. So that cost is  
7 greater, I would say.

8 COMMISSIONER HERIOT: How often are the  
9 reports just a transcript of a briefing as opposed to  
10 something that's --

11 MS. DAVIS: Well, it's a transcript of the  
12 proceedings, but there are other additional documents  
13 that the committee members rely on as well. I mean  
14 what we do, if there's no more original research, I  
15 mean when we were flush, we had civil rights analysts.  
16 There were attorneys in the Regional Offices. So like  
17 the Commission in many ways, we rely on the expertise  
18 of third parties. And our reports make that clear.  
19 So studies that have been done by others are heavily  
20 footnoted.

21 MS. DELAVIEZ: Let me make sure I  
22 understand your question. Are you saying do we just  
23 put the transcript out and say this is our report?

24 COMMISSIONER HERIOT: Yes.

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1 MS. DELAVIEZ: No, absolutely no.

2 COMMISSIONER HERIOT: That's what happened  
3 to me when I was Cal SAC here. I thought we were  
4 actually going to issue a report and then we had a  
5 briefing and I was then told by the staff member well,  
6 this is it. You're just going to -- that's the end.  
7 And I was quite upset about it.

8 MR. MUSSATT: To that point, this enters  
9 another area of what the work product is called. For  
10 years we would have briefings which didn't require a  
11 project proposal to be approved. The SAC chair could  
12 just call a meeting and have a briefing on the topic.

13 And it was always used as kind of a precursor to  
14 write a project proposal if the SAC therefore decided  
15 after hearing the briefing that they wanted to follow  
16 up and do more research on the report.

17 What happened was that I think because of  
18 resources and trying to produce something, it became  
19 -- and we were having trouble getting project  
20 proposals approved, frankly --

21 COMMISSIONER HERIOT: Who's supposed to  
22 approve them?

23 MR. MUSSATT: The Staff Director. So that  
24 we decided we needed to put something out. So we

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1 would take a transcript and actually I think the Fair  
2 Housing in Ohio is one like this where we would  
3 publish a transcript with an executive summary in the  
4 front, so it summarized the proceedings of what  
5 happened that day. It would not include findings and  
6 recommendations because there was no proposal  
7 approved, but it would be a work product that people  
8 could access and it would be a report.

9 The other reports, more substantive ones,  
10 project proposals and those are more narrative reports  
11 or they are more of an edited transcript, what we call  
12 community forum report and they still have findings  
13 and recommendations and some research usually at the  
14 beginning.

15 MS. DELAVIEZ: And if I could just quickly  
16 add that in New Hampshire, we looked at the women's  
17 prison had no services and the men's prison looked  
18 like a campus. We issued a report that said it was a  
19 violation of equal protection. It was sent over to  
20 the Department of Justice, Civil Rights for  
21 Institutionalized People, and I just found out that  
22 two weeks ago, Legal Aid has used our report and it  
23 was not a transcript. It was a report as a part of  
24 its lawsuit to sue the State of New Hampshire for

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1 violating equal protection.

2 COMMISSIONER HERIOT: How did you find  
3 out?

4 MS. DELAVIEZ: One of the members was, oh,  
5 how did I find out about Legal Aid?

6 COMMISSIONER HERIOT: How did you find out  
7 that they were using your report for this?

8 MS. DELAVIEZ: They called me. They  
9 called me.

10 COMMISSIONER ACHTENBERG: Who was that  
11 speaking?

12 CHAIRMAN CASTRO: That was Barbara  
13 deLaViez.

14 COMMISSIONER ACHTENBERG: Thank you.

15 COMMISSIONER HERIOT: Another thing that  
16 I've always wondered about, there's not very much  
17 coordination between the Commission and the SACs.

18 Sometimes we do a report where it would make  
19 sense to have, like, as many states as possible to  
20 give input and again that's what we tried to do with  
21 the Cal SAC a few years ago. They were doing a  
22 religious liberty statutory report at the time. So we  
23 did like a mini California and how is that working  
24 out?

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1           And it seems to me that there is some more  
2 room for coordination here. I know that we have to  
3 watch or I don't know this, but I have been told that  
4 we have to be very careful not to tell the SACs what  
5 to investigate. And so assuming that is true, it's  
6 not my intention to say to a SAC you must do this.  
7 But from the California SAC's standpoint when we heard  
8 the Commission was doing the report on religious  
9 liberties in prisons we thought swell, you know. We  
10 would like to contribute to that. That's an  
11 interesting topic, so we can do California on that.

12           And the first draft of the report, the  
13 transcript of what we came up with wasn't even  
14 decided. And we thought what's with that, you know?  
15 We did something and we thought our input would  
16 somehow be acknowledged and it eventually was, but I  
17 think it could have been integrated a lot better into  
18 that statutory report than it was.

19           MS. DELAVIEZ: And I think what David  
20 talked about, we form subcommittees and the  
21 subcommittees could address that for you.

22           CHAIRMAN CASTRO: The real question is how  
23 can we as a Commission coordinate this with you  
24 without violating the stated rule that we've been told

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1 that we can't tell the SACs what to do? So what's  
2 the line?

3 MS. DAVIS: My recollection, and my  
4 colleagues can maybe tell me when this stopped, but  
5 there was a period of time after the GAO report was  
6 issued where there was a solicitation from the Staff  
7 Director's office asking the State Advisory Committees  
8 for recommendations about possible projects that the  
9 Commission might consider. That was done on an annual  
10 basis.

11 And then when there were the kinds of  
12 reports that the Commission was contemplating, there  
13 would be a request for the SACs to contribute to that  
14 process as well and I don't recall when that stopped  
15 but I certainly don't -- I can't remember the last  
16 time we've gotten anything on an annual basis.

17 MR. MINARIK: But if I may, Commissioner  
18 Heriot, there has been examples of really good  
19 collaboration. The "School Desegregation Report," the  
20 Commission put out, essentially that work came out of  
21 the six Advisory Committees in the South. At that  
22 time, the Staff Director and the Commissioners did ask  
23 the South if we would participate and all the State  
24 Advisory Committees did. And not only did they, the

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1 National Office, put out a report, but all six State  
2 Advisory Committees put out a report on school  
3 desegregation. And that was a very close hand  
4 holding.

5 COMMISSIONER HERIOT: We need to do  
6 something like that again. I think the topic we've  
7 just picked, enforcement report, since it focuses on  
8 the military that's not really a state thing. There's  
9 one military and there's not the Connecticut militia  
10 sexual assault issue is not really what we're looking  
11 for here. There must be another topic on that list.

12 MS. DELAVIEZ: And I think in terms of  
13 collaboration --

14 COMMISSIONER HERIOT: There must be  
15 another topic on that list.

16 MS. DELAVIEZ: And I think in terms of  
17 collaboration, when you have a meeting you say to the  
18 committee, this is what the Commission is doing. Are  
19 you interested in participating? And the topics and  
20 issues are always immigration, education, all projects  
21 you're doing. And so it would not be a push -- it  
22 would not be coercion to say this is what the  
23 Commission is doing. Do you want to participate in  
24 some format in addition to whatever project you pick

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1 to do on your own.

2 COMMISSIONER HERIOT: I suspect that we  
3 would get much more useful stuff from the SACs if they  
4 were at least were aware of what we were doing and  
5 told that we would encourage participation. So if you  
6 guys could look at this list that we just approved.

7 MS. DELAVIEZ: And we can't be "your eyes  
8 and ears" if you're not -- you know.

9 COMMISSIONER HERIOT: It has to go both  
10 ways.

11 MS. DELAVIEZ: Exactly.

12 COMMISSIONER HERIOT: And so if you could  
13 like look at that list and see whether or not there  
14 are any coordination topics there that would work  
15 well. I can't remember them off the top of my head.

16 MS. DAVIS: I would suggest so that you're  
17 getting apples and apples and not apples and oranges  
18 from the Advisory Committees that as part of your --  
19 for those projects that you're doing where you  
20 contemplate that the states could participate, that  
21 you kind of outline what it is specifically you'd like  
22 them to do, like them to report on. So they would be  
23 kind of a uniform report back to you.

24 COMMISSIONER HERIOT: Can I also suggest

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1 something else here?

2 CHAIRMAN CASTRO: Can I give it over to  
3 Commissioner Kladney? He's got a lot of questions and  
4 then we'll come back to you.

5 COMMISSIONER KLADNEY: I'm going to forget  
6 my questions.

7 CHAIRMAN CASTRO: Commissioner Kladney?

8 COMMISSIONER KLADNEY: Let me start, first  
9 of all, I think it was Ms. Craft talked about  
10 webinars, but I think she was thinking video  
11 conferencing. How many of you do video conferencing?

12 MS. DELAVIEZ: We did a webinar last year  
13 --

14 COMMISSIONER KLADNEY: Not a webinar.  
15 Video conferencing.

16 COMMISSIONER HERIOT: Can we clarify what  
17 a webinar is?

18 MS. DELAVIEZ: Sure. A webinar is where  
19 we use a service and they broadcast it out. Anybody  
20 who had a link to the site could watch. So anybody,  
21 anywhere in the world could watch our webinar.

22 Video conferencing is much more difficult for  
23 us.

24 COMMISSIONER KLADNEY: And why is that?

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1 MS. DELAVIEZ: Technology.

2 COMMISSIONER KLADNEY: Actually, if we  
3 looked into that and was able to -- were able to  
4 figure it out would you all be pretty happy about  
5 that?

6 MS. DELAVIEZ: Definitely.

7 COMMISSIONER KLADNEY: In other words, let  
8 me finish, in other words, you can even sit in your  
9 office and attend the meeting in North Dakota, South  
10 Dakota, Mississippi, whatever. And you could hook up  
11 all those people from their very offices. They  
12 wouldn't even have to go some place. Would that be a  
13 possibility for you?

14 MS. DELAVIEZ: Yes. We've been using "Go  
15 To Meeting," but that's not video. That's all audio.

16 COMMISSIONER KLADNEY: Right. Would that  
17 be a big budget saver for you, because I think Mr.  
18 Mussatt said the biggest issue is travel on budget?  
19 Yes, no?

20 MR. MUSSATT: Yes, I mean I think a lot of  
21 the follow up work that needs to be done, for example,  
22 in Minnesota, we're close to wrapping up a report and  
23 it would be nice to be able to do a video-conference  
24 with them over some details.

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1                   COMMISSIONER KLADNEY:       All business  
2 meetings could be done that way, right?

3                   MR. MUSSATT:     I completely agree.     We  
4 don't have the technology right now. I have no camera  
5 on my computer.

6                   COMMISSIONER KLADNEY:   It's pretty simple.

7                   MR. MUSSATT:     Yes.

8                   CHAIRMAN CASTRO:   My question was in  
9 addition to the civil rights analyst and research  
10 staff, they don't have what's the issue, so I would  
11 imagine staffing probably is your biggest issue, lack  
12 thereof.

13                   COMMISSIONER KLADNEY:   Let's talk about  
14 that for a minute.   That's great, that's great. I  
15 want to bring that up. So you were talking about --  
16 you all were talking about lack of civil rights  
17 analysts. So if we have civil rights analysts and  
18 placed them herein the Central Office, for your use,  
19 you would all be able to use them and forward them  
20 stuff and they could forward you stuff and we could  
21 have the staff right here. Is that correct?

22                   MS. DELAVIEZ:     That's correct.

23                   COMMISSIONER KLADNEY:   Would that work out  
24 well?

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1 MS. DELAVIEZ: We've suggested.

2 COMMISSIONER KLADNEY: Okay, and then the  
3 other thing --

4 MS. DELAVIEZ: Can I just quickly add  
5 because you mentioned something and that would be  
6 video-conferencing. You're much more productive when  
7 you meet in person, the eight of you, and so I would  
8 not want to do that to the exclusion of people meeting  
9 and getting to know each other.

10 COMMISSIONER KLADNEY: I understand that.  
11 I think people can meet and know each other, but I  
12 also think that you become more effective and do more  
13 meetings.

14 MS. DELAVIEZ: Agreed.

15 COMMISSIONER KLADNEY: I mean if we look  
16 at the list of meetings that were held, we look at the  
17 reports that were put out in some of these regions,  
18 there's a lot of business meetings. There's a dearth  
19 of reports and summaries. Okay?

20 So we can put civil rights analysts, your  
21 video-conferencing -- okay, so my next thing is when  
22 it comes to reports, we keep talking about briefings,  
23 briefings, briefings. I've also noticed that you can  
24 do fact-findings. How many of you have done fact-

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1 finding lately?

2 How many fact-finding reports have you  
3 done, Mr. Mussatt?

4 MR. MUSSATT: We published in Illinois  
5 last fall and I'm publishing now one in Minnesota.  
6 There's one in Wisconsin in the works, too.

7 COMMISSIONER KLADNEY: Much easier to do  
8 and productive than doing briefings, is that correct?

9 MR. MUSSATT: No.

10 COMMISSIONER KLADNEY: No?

11 MR. MUSSATT: No. Like I explained earlier,  
12 a briefing for me -- okay, and this is part of the  
13 problem is I think we're using different terms in  
14 different ways. A briefing for me is simply getting  
15 informed on a topic for use towards a fact-finding  
16 report. So it's before we have a project proposal in  
17 our office.

18 Before a SAC can take up a project and  
19 issue a report with findings and recommendations,  
20 according to my understanding, they must have a  
21 project proposal approved by the SAC.

22 MS. DELAVIEZ: That's right.

23 COMMISSIONER KLADNEY: Right.

24 MR. MUSSATT: The way we've always done it

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1 in my office was have a briefing to inform the SAC  
2 members of a topic, so we might have a briefing where  
3 two or three topics are discussed by experts and then  
4 the SAC would have the conversation to decide which  
5 project they wanted to take up as a project proposal.

6 So briefing is very simple for my office.

7 MS. DAVIS: Can I just say that I'm  
8 finding this a very informative meeting for the  
9 Regional Offices as well and it's the concept of best  
10 practices. I would like to suggest that in my tenure  
11 here, there really hasn't been a coordination with the  
12 Regional Offices soliciting suggestions from them of  
13 we're having to do more with less. How can do your  
14 job better?

15 David alluded to the fact that we need  
16 different, perhaps different kinds of performance  
17 standards now. I mean a webinar could be an example.

18 A briefing could be an example. And I'm sure there  
19 are a whole host of other things that we could do, but  
20 we need to participate in that discussion. It's not  
21 been done at the Staff Director level and quite  
22 frankly it hasn't been done at the RPCU level in terms  
23 of sharing suggestions for best practices so that  
24 people in other Regions can know what we're doing in

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1 our Region. And I'm happy to have that conversation  
2 even in the absence of the Staff Director. I think we  
3 can have that conversation among ourselves and come up  
4 with some suggestions for rewriting our AIs to reflect  
5 the new reality of the Commission and the Regional  
6 Offices of doing more with less, but accomplishing  
7 some meaningful outcomes.

8 COMMISSIONER KLADNEY: If I was  
9 understanding Mr. Mussatt, I must have some confusion  
10 because Dr. Minarik, I watched him -- I attend our  
11 Nevada meetings because I'm there.

12 (Laughter.)

13 And his fact finding was the committee  
14 like chose the subjects and now they're out collecting  
15 facts and I would assume they will subsequently write  
16 a report. They didn't have a briefing. My  
17 understanding of a briefing is, is like when we have a  
18 briefing, we have people come up and then we -- they  
19 give testimony and then they summarize the report and  
20 they make findings-- well, we make statements and  
21 counter statements and counter, counter statements.

22 CHAIRMAN CASTRO: Kill a lot of trees.

23 COMMISSIONER KLADNEY: And then we try to  
24 issue findings and recommendations, whatever. That's

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1 my understanding of a briefing. From what you  
2 describe to me is you have a mini-briefing, then you  
3 choose a subject, then you go out and get the facts.

4 MS. DELAVIEZ: No, I think you need to  
5 look --

6 COMMISSIONER KLADNEY: No, no. I'm asking  
7 Mr. Mussatt. I think that's what he said.

8 MR. MUSSATT: I think you're talking about  
9 data collection basically, so where are we getting the  
10 data for our reports from. I have always used the  
11 briefing, the hearing, the fact-finding meeting,  
12 whatever you want to call it, as the main source of  
13 the data for our reports. They are then supplemented  
14 by usually secondary research because we don't -- to  
15 do primary research today is difficult and usually the  
16 primary research you want is already out there, done  
17 by somebody else. So that's how I -- I know that  
18 Peter, I don't think does a lot of meetings where he  
19 collects data and in a hearing type of setting. But  
20 that's the choice of the project of the Regional  
21 Director and the staff.

22 COMMISSIONER KLADNEY: And --

23 MR. MUSSATT: My bigger issue was  
24 presence, so I think for me to have the SAC engaged,

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1 they need to be involved in the process and that's why  
2 I think the hearings are so important and provide  
3 process for the SAC.

4 COMMISSIONER KLADNEY: It sounds to me  
5 like maybe Ms. Davis is correct, maybe you all are  
6 doing things not the same. Is that correct? You all  
7 go about your business your own way with variations on  
8 the theme, let's put it that -- I'm not being  
9 critical. I'm just saying you do variations on the  
10 theme and to collect the information and to gather the  
11 information. Is that correct?

12 MR. MUSSATT: I think there's a lot of  
13 truth to that.

14 COMMISSIONER KLADNEY: Okay. And one more  
15 question. I would just before we get done here today,  
16 I'd like Ms. Tolhurst to address the issue of the  
17 evaluations and things like that.

18 CHAIRMAN CASTRO: Before she does that I  
19 do have a couple of questions for the Regional  
20 Directors.

21 COMMISSIONER KLADNEY: And thank you very  
22 much for answering my questions.

23 CHAIRMAN CASTRO: So in regards to the  
24 point that Commissioner Kladney just kind of came up

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1 with, identified that you all are doing things  
2 similar, but in your own way, we have as  
3 Commissioners, as I said at the beginning, had some  
4 buffers in terms of our communication. We're supposed  
5 to go through a Staff Director and I know we have a  
6 RPCU person. So it's really been great to hear  
7 directly from you all today.

8 But, Mr. Minarik talked about 64, 65  
9 duties that the RPCU person has and how this may or  
10 may not be a full-time position. Is there some role  
11 that a restructured or reconstituted RPCU may play in  
12 providing some of this coordination or alternatively,  
13 do we need one? And this is not a criticism on any  
14 individual, but just is there a better way to do this?

15 MR. MINARIK: First, under the rules, you  
16 do need an RPCU Chief, unless you change the rules and  
17 regulations. That's the Committee Management Officer.

18 CHAIRMAN CASTRO: But we could change the  
19 rules.

20 MR. MINARIK: You could.

21 CHAIRMAN CASTRO: Ok.

22 MR. MINARIK: So right now you have to  
23 have one. And two, it has been a frustration. My  
24 frustration, I know Barbara has had the frustration

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1 that there has to be more coordination between RPCU  
2 and the Regional Offices and --

3 CHAIRMAN CASTRO: And why is that though? Is  
4 there something that prevents it or is it just not  
5 happening?

6 MR. MINARIK: Too many hats.

7 CHAIRMAN CASTRO: Okay.

8 MR. MINARIK: And there was a time when  
9 the RPCU Chief was more engaged. There were monthly  
10 meetings with the staff. There was an active  
11 communication going on between the Staff Director so  
12 things were more coordinated and more uniform and it  
13 isn't as tight as it once was and it should be tighter  
14 in my opinion and it hasn't been.

15 MS. DELAVIEZ: Well, if I may, it sounds  
16 like -- and I've talked with Alison as well, but it  
17 sounds like you're open to us working on the AIs to  
18 try to make them work better for us. Would that be  
19 accurate?

20 CHAIRMAN CASTRO: I certainly would like  
21 to get your input on those things, but also I know one  
22 area that we're very interested in and we talked about  
23 this before is getting a solid handle on the broader  
24 appointments and the greater charters because that

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1 would help all of us and so maybe one of the action  
2 items from here is we get the subcommittee folks to  
3 actually come back with a solid recommendation, based  
4 on what's legally allowable as to how we can address  
5 this.

6 COMMISSIONER HERIOT: The thing I want to  
7 make sure is that when we put our first foot forward  
8 here we know exactly what the law requires us to do.

9 CHAIRMAN CASTRO: That's right.

10 COMMISSIONER HERIOT: So we make sure that  
11 we stay within what the law requires.

12 MS. DELAVIEZ: We have a great  
13 relationship with the FACA people, GSA. I'm sorry,  
14 it's GSA.

15 COMMISSIONER HERIOT: They will make it  
16 clear to us what the law requires.

17 MS. DELAVIEZ: Absolutely.

18 COMMISSIONER HERIOT: There's also an  
19 argument, of course, that it doesn't apply to us at  
20 all.

21 MS. DAVIS AND MS. DELAVIEZ: That's not  
22 their view.

23 COMMISSIONER HERIOT: I'm willing to put  
24 that aside. What I want to do is get this stuff

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1 going. I want it streamlined.

2 MS. DAVIS: And can I just say one, the  
3 charter is filed. We don't even list who the  
4 committee members are. They're not interested in  
5 membership. That is a totally different function. It  
6 is a ministerial function that simply says every two  
7 years; every Federal Advisory Committee that exists  
8 must have an active charter on file.

9 MS. DELAVIEZ: And there are statutory  
10 committees that are one month old and ten years old.

11 COMMISSIONER HERIOT: But, what they need  
12 then is simply some piece of paper has to be filed  
13 somewhere, that's all. Okay, but let's have forty-  
14 year SACs.

15 (Laughter.)

16 MS. DELAVIEZ: Okay.

17 COMMISSIONER HERIOT: Just teasing.

18 (Laughter.)

19 COMMISSIONER HERIOT: But a much longer  
20 period. This is crazy. We have a handful of people  
21 spending too much time --

22 MS. DELAVIEZ: And it would also mean  
23 rewriting some of our AIs because right now we've got  
24 four-year terms.

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1 COMMISSIONER HERIOT: Yes. AIs we can  
2 handle.

3 MS. DELAVIEZ: Okay.

4 COMMISSIONER KLADNEY: I just want to  
5 bring this up before I forget it. Dr. Minarik, he  
6 does the Nevada thing, so I was talking to him and  
7 actually he does two Regions and he has one  
8 administrative assistant in L.A. and he has nobody in  
9 Atlanta. And so I was wondering, I asked him about  
10 that and he was asking if he could -- if there is  
11 budget and when we get to the budget person, the  
12 budget -- if we might, he might look for -- he wanted  
13 some temporary assistance down there and if we could  
14 talk about that. Thank you.

15 CHAIRMAN CASTRO: Any other questions?

16 COMMISSIONER HERIOT: So we would put  
17 together the -

18 ((Off mic comment.))

19 CHAIRMAN CASTRO: Yes. Would you come  
20 forward?

21 MS. DELAVIEZ: Thank you very much.

22 CHAIRMAN CASTRO: Who of you would be  
23 willing to volunteer on this GSA/FACA committee?  
24 Okay, that's Ivy Davis, Barbara deLaViez, who else?

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1 Peter Minarik and David. And so the four of you will  
2 come back to us with something. Okay, great. Thank  
3 you.

4 CHAIRMAN CASTRO: Ms. Tolhurst?

5 COMMISSIONER HERIOT: Roberta and I have  
6 the subcommittee on getting SACS --

7 CHAIRMAN CASTRO: You coordinate with  
8 them. So they will coordinate with the Commissioners  
9 Achtenberg and Heriot's subcommittee.

10 Ms. Tolhurst?

11 MS. TOLHURST: I think Mr. Kladney, and  
12 correct me if I'm wrong, was asking about a regional  
13 person talking about their reviews. So while I was  
14 Acting SAC Director, plus Acting General Counsel, plus  
15 Senior Attorney for 14 months, I'm like the previous  
16 Staff Director. I'm told I actually did review  
17 people. It's a lot of work on top of the other three  
18 jobs I had. I will say that the reason I didn't talk  
19 to some of them was because I felt my review was too  
20 kind and I'm not going to name them because I don't  
21 want to create that record, but when I came on board  
22 as Acting Staff Director, I received information on  
23 how many SACs, Regional Directors had done reports  
24 over the last five years and the answer to some

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1 people, some people here, the number was good, people  
2 had done a lot of reports. Some people, the answer  
3 was zero, over five years, people being paid at a 14  
4 or 15 level and everyone on this panel has been  
5 complaining and I understand it, about the lack of  
6 staff. We all lack staff, including at headquarters.

7           It's hard for everyone, but all need to  
8 find a strategy. While we complain, I would think it  
9 would be better to offer constructive ideas about how  
10 to use people or get more people, but OGC last year,  
11 the topic for the statutory report was changed halfway  
12 through. Two of us had to rewrite the entire report,  
13 hold a briefing, while I was running the Agency. So  
14 we know that two people and I know it's sad for the  
15 SACs, sad for the Regions, to have two people. The  
16 attorneys here at headquarters do that as well and I  
17 think really what we need is a permanent Staff  
18 Director which is clearly at a shortage to enforce  
19 quality and give straightforward reviews. I tried to  
20 be very kind in my reviews, but this notion that I've  
21 seen some regions that can do lots of reports.

22           Southern Region has done a number of  
23 reports one way. The Eastern Region has done a number  
24 of reports. They all only have two people. We need

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1 to look strongly at Regions that have done zero  
2 reports over the years and make some up.

3 COMMISSIONER KLADNEY: Do you believe that  
4 we should have like a minimum number of reports each  
5 Region should turn out per year or not just reports,  
6 but fact-finding or public forums?

7 MS. TOLHURST: I don't know -- while they  
8 probably think I'm sounding harsh, I have worked my  
9 whole time here to be fair. I will say they each do  
10 have different numbers of states, so I don't know --

11 COMMISSIONER KLADNEY: I mean absent that.

12 MS. TOLHURST: An exact number might not  
13 be right, but over five years, there should be one,  
14 don't we think? We're here at headquarters with a  
15 massive shortage able to do several.

16 COMMISSIONER KLADNEY: So, if we could  
17 balance that out, I know the Eastern Region has a lot  
18 of states, a lot of jurisdictions. But I'm not saying  
19 a report per state or five reports per Region or  
20 something like that, but if we could look at that as  
21 minimum requirements per Region on a regional basis,  
22 would that be a good idea to have some kind of  
23 objective standard?

24 MS. TOLHURST: I think that's more fit and

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1 worth maybe having a meeting with the head regional  
2 people and coming up with -- I'm not trying to be  
3 unfair. That's doable, but yes.

4 COMMISSIONER KLADNEY: And what about  
5 their idea of having less people on the SAC or less  
6 required to have a SAC? Twelve people, I think that  
7 is quite a bit to -- oh, that's a question I forgot to  
8 ask. On average, how many people need to be replaced  
9 on a SAC every two years? You guys have been around a  
10 long time. Somebody ought to know.

11 MS. TOLHURST: At least this past year,  
12 it's varied for the areas that have sent me SAC  
13 packages. Sometimes they've only needed two new  
14 people. Sometimes they've needed five, ten.

15 MR. MINARIK: It's about 25 percent.

16 COMMISSIONER KLADNEY: Two people can't  
17 talk at the same time.

18 MS. TOLHURST: It varies. Some SACs only  
19 need two. All their people come back. Some SACs need  
20 almost a whole --

21 COMMISSIONER HERIOT: Term limits. Don't  
22 we -- what are the term limits?

23 COMMISSIONER KLADNEY: I think it's ten  
24 years.

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1 CHAIRMAN CASTRO: Mr. Minarik.

2 MR. MINARIK: In the South and the West  
3 for the past four years, it's been about a 20 percent  
4 turnover.

5 COMMISSIONER KLADNEY: So that would be  
6 two to three people per SAC?

7 MR. MINARIK: In the West and the South,  
8 yes.

9 MS. TOLHURST: It depends. Sometimes  
10 people move, die, do something inappropriate. So  
11 different states have some variety, but -

12 COMMISSIONER HERIOT: We do have some do  
13 inappropriate cases.

14 MS. TOLHURST: Shocking as it may be.

15 COMMISSIONER HERIOT: Whatever.

16 COMMISSIONER KLADNEY: Thank you very  
17 much.

18 CHAIRMAN CASTRO: What I'm going to do and  
19 I'll ask the Commissioners to hopefully agree with me  
20 here, I understand Commissioner Achtenberg has to be  
21 off the phone in a little while. So I would like to  
22 move the State Advisory Committee slates up before the  
23 budget and the Stock Act report so that we can make  
24 sure that she's available to discuss this with us.

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1 Is everyone amenable to that? Okay.

2 **IV. APPROVAL OF STATE ADVISORY COMMITTEE SLATES**

3 CHAIRMAN CASTRO: So the states that we  
4 have before us today are Colorado, Florida,  
5 Massachusetts, New Jersey, South Carolina and West  
6 Virginia. It's my understanding the subcommittee has  
7 presented three of those slates for approval today,  
8 Colorado, Massachusetts, and South Carolina. And I  
9 want to thank Commissioners Heriot and Achtenberg for  
10 working on the subcommittee to try to move these  
11 slates forward so that they don't sit on the runway  
12 like many of them have been.

13 So what I will do is if either of you  
14 would like to say something now or I can begin by  
15 going right into the Colorado slate and make the  
16 formal motion.

17 COMMISSIONER HERIOT: Let's just move it.

18 CHAIRMAN CASTRO: Okay. So I just want to  
19 make sure, give you an opportunity if you wanted to  
20 say something. So I move that the Commission  
21 recharter the Colorado State Advisory Committee.  
22 Under this motion, the Commission appoints the  
23 following individuals to that committee based upon the  
24 recommendations of our SAC Recharter Subcommittee:

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1 Willie Breazell, Sr., Mary Celeste, Shawn Coleman,  
2 Kyle Conrad, Vernard Grant, Elizabeth Espinosa Krupa,  
3 Valery Pech Orr, Jessica Peck, William Pendley, Kelly  
4 Rosati, Cleveland Thompson, Eva Muniz Valdez and Debra  
5 Wilcox.

6 COMMISSIONER HERIOT: You forgot someone.

7 CHAIRMAN CASTRO: Oh, I'm sorry, Karen  
8 Wilde. So pursuant to this motion, the Commission  
9 appoints Vernard Grant as chair of this rechartered  
10 Colorado State Advisory Committee. These members will  
11 serve as uncompensated Government employees under this  
12 motion. The Commission authorizes the subcommittee to  
13 execute the appropriate paperwork for the appointment.

14 Is there a second?

15 COMMISSIONER HERIOT: Second.

16 CHAIRMAN CASTRO: Discussion? The Chair  
17 recognizes Commissioner Yaki.

18 COMMISSIONER YAKI: Yes. I'm trying to  
19 get clarification about the relationship between two  
20 proposed members, Jessica Peck and Shawn Coleman.  
21 It's come to my attention that Mr. Coleman may  
22 actually work in Ms. Peck's law office. I want to  
23 know if that's the case or not.

24 CHAIRMAN CASTRO: Does anyone know the

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1 answer to that?

2 COMMISSIONER ACHTENBERG: Mr. Chairman, we  
3 can't hear anything.

4 CHAIRMAN CASTRO: Commissioner Yaki asked  
5 if --

6 COMMISSIONER YAKI: I have information  
7 that leads me to believe that two of the proposed  
8 members, Jessica Peck and Shawn Coleman work in the  
9 same office.

10 COMMISSIONER HERIOT: Would that be a  
11 problem?

12 COMMISSIONER YAKI: I think when the  
13 former majority was pounding on the desk five, seven  
14 years ago about diversity; they surely were thinking  
15 that perhaps maybe we would go outside someone's own  
16 law office for 20 percent of the members of a  
17 particular State Advisory Committee.

18 COMMISSIONER HERIOT: Was this a large  
19 firm or a small firm, I have no idea.

20 COMMISSIONER YAKI: Well, you're the one  
21 who reviewed it, Ms. Heriot, so why don't you tell me?

22 If you can't tell me, then I think we need to find  
23 that out, number one.

24 Number two, we have -- again, this goes

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1 into the how do we deal with the so-called diversity  
2 viewpoint. And I'm all for diversity of views. I  
3 understand that I am not going to get a committee that  
4 reflects everything that I would want, but I do think  
5 that having people who have a modicum of some  
6 separation would be important. So in addition to the  
7 Jessica Peck/Shawn Coleman nexus, I am also wondering  
8 about the Valery Pech or William Pendley nexus as both  
9 being members of the Adarand lawsuit. And again, this  
10 goes to the issue of can we get people who are -- who  
11 may represent the same views, but not necessarily be  
12 around each other all the time or -- I think Valery  
13 Pech also worked with Ms. Peck on some other issues.

14 But anyway, it just goes to my point which  
15 is we've lost a tremendous amount of variety and  
16 energy when we instituted these arbitrary term limits  
17 if they were simply meant to sweep away years of  
18 institutional memory and work that people have  
19 contributed to this Commission for years. And now we  
20 have a situation where we're simply basically picking  
21 people all of whom know each other, work with each  
22 other, and in some cases work alongside each other in  
23 two of these examples. And because of that, I cannot,  
24 one, I cannot support the Colorado SAC as is. And

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1 two, I want questions as to why we may have chosen two  
2 individuals who work in the same law office and why we  
3 choose other individuals who, one was their client and  
4 one was their attorney so.

5 CHAIRMAN CASTRO: Let me just say to folks  
6 that are on the phone, if you could mute your phone if  
7 you are not speaking.

8 COMMISSIONER ACHTENBERG: I'm sorry, I  
9 can't understand what you just said.

10 COMMISSIONER YAKI: I'd like judicial  
11 notice that on the jpdenver.com website or Jessica  
12 Peck Attorney at Law, Shawn Coleman is noted as her  
13 firm's administrator.

14 CHAIRMAN CASTRO: For those of you on the  
15 phone, we hear a phone ringing from your offices, so  
16 if you could -- when you're not speaking, mute it,  
17 just so that we don't -- the Chair recognizes  
18 Commissioner Heriot.

19 COMMISSIONER HERIOT: Number one, Peck and  
20 Pendley are both reappoints and the argument seems to  
21 be that because Pendley worked on a lawsuit that began  
22 like decades ago, and that she was involved in that  
23 lawsuit as well, a lawsuit that's long over, that  
24 somehow they're too closely related.

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1           For all I know, they haven't seen each  
2 other since like the 1990s. I just have no idea.

3           COMMISSIONER YAKI: Commissioner Heriot, I  
4 was talking about Peck and Coleman, Coleman who  
5 appears on her website as firm administrator for her  
6 law firm.

7           COMMISSIONER KLADNEY: Coleman works for  
8 Peck, a subordinate.

9           COMMISSIONER YAKI: Yes.

10          COMMISSIONER HERIOT: Peck and Pendley are  
11 all reappoints.

12          COMMISSIONER YAKI: But now you bring up  
13 the Pendley point. I just want to stress that now we  
14 have basically people who go around suing all palling  
15 around on the SAC together. Colorado has more than a  
16 couple thousand people in the Rocky Mountain State, if  
17 I recall when I was there in 2008, but somehow it  
18 seemed to manage to find all the people who hang  
19 around in the same room.

20          COMMISSIONER HERIOT: I don't think you  
21 want a rule that people who bring lawsuits on civil  
22 rights matters are not qualified to be on SACs. It  
23 might hurt you more than it hurts me.

24          COMMISSIONER YAKI: I didn't -- I never

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1 said that. I simply said here we have a situation  
2 where we have the plaintiff and the attorney in one  
3 instance, and another one, the attorney and her firm  
4 administrator in another.

5 You were the ones who were going pound,  
6 pound, pound, diversity, diversity, that's our reason  
7 for jettisoning the intent. You have 15, 20 years of  
8 institutional memory from this Commission because you  
9 wanted to get rid of all the people who care about  
10 civil rights on the State Advisory Committees, so now  
11 I'm going to ask you, I'm not in the mood to appoint  
12 people who work, (1) who subordinated for another; and  
13 (2) another one who was the client and another one who  
14 was their attorney. It just doesn't scour in terms of  
15 the kind of diversity I thought you were seeking seven  
16 years ago when you guys did this. And I still believe  
17 right now we should be reversing the term limits and  
18 allowing all those people, maybe who are discouraged  
19 now or who have passed on or whatever, the opportunity  
20 to come back if their energy and enthusiasm is still  
21 there.

22 CHAIRMAN CASTRO: Any comments from folks  
23 on the phone? Commissioners on the phone?

24 COMMISSIONER KIRSANOW: Yes, Mr. Chair.

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1 This is Commissioner Kirsanow.

2 CHAIRMAN CASTRO: Please proceed.

3 COMMISSIONER KIRSANOW: Just by way of  
4 explanation, when I was looking for diversity, I was  
5 looking for diversity of viewpoint and seven, eight,  
6 nine years ago, we had SACs where there was precious  
7 little diversity of viewpoint. I don't care if  
8 somebody lives in the same room with somebody or  
9 shares a bed with them, frankly. I'm looking for  
10 diversity of viewpoint.

11 Second, I take slight umbrage at the  
12 notion that I'm trying to get rid of people who care  
13 about civil rights. That's all I've got to say.

14 CHAIRMAN CASTRO: Commissioner Achtenberg,  
15 do you have anything you want to say?

16 COMMISSIONER ACHTENBERG: Might I ask  
17 Commissioner Yaki, is it the case that one person  
18 works for the other person, is that the situation?

19 COMMISSIONER YAKI: Yes. Green light on,  
20 yes.

21 COMMISSIONER HERIOT: Are you sure of  
22 that?

23 COMMISSIONER YAKI: I just looked at --

24 COMMISSIONER ACHTENBERG: I'm sorry, what?

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1                   COMMISSIONER YAKI:       -- if you'd like  
2 Richard to walk to your desk with the website, picture  
3 and the name of the person with the same resume as is  
4 on his application, he's doing so, he can easily do so  
5 right now.

6                   COMMISSIONER ACHTENBERG: Well, I think if  
7 one person works for another person, I do think that's  
8 problematic in terms of some possibility that one  
9 might wield influence over another. I'm not sure I'm  
10 as sanguine as Commissioner Kirsanow about whether or  
11 not people should be -- I mean I think in most cases  
12 people should be allowed to share the bed of anyone  
13 they care to, but whether or not they're both then  
14 entitled to appointment to a State Advisory Committee  
15 is a questionable version, at least in my opinion.

16                   COMMISSIONER YAKI: Let me just say this  
17 for the record. Let's put it another way. My father,  
18 who served this country for 30 years in both the  
19 military and the foreign service, who has endured  
20 riots in embassies where he has been stationed; where  
21 my mother had to use mirrors to go under the car every  
22 morning to check whether or not anyone put bombs  
23 there, I was told that my father, because he was my  
24 father, could not apply for the Arizona State Advisory

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1 Committee because he was my father, notwithstanding  
2 the fact that he has been involved in these issues.  
3 He was interned. The wonderful ironies that he would  
4 be a member of a SAC in a state in which he had  
5 actually been interned during the war because of FDR's  
6 executive order after the Japanese bombed Pearl  
7 Harbor. I was told that relationship disqualified him  
8 from even me thinking about nominating him for SAC  
9 membership.

10 So to me, someone who works for -- these  
11 other kinds of fiduciary relationships are ones that I  
12 -- that are as close, if not closer, and so if we're  
13 going to draw that line, let's draw the line.

14 CHAIRMAN CASTRO: Any other questions?  
15 We'll call the question then on this.

16 COMMISSIONER ACHTENBERG: Mr. Chairman,  
17 I'm going to have additional potential motions to  
18 sever, so I don't know how you want those considered.

19 CHAIRMAN CASTRO: If you have a motion to  
20 sever, then please proceed.

21 COMMISSIONER ACHTENBERG: Well, I ask  
22 Commissioner Yaki, are you intending to make a motion  
23 to sever regarding the employment relationship between  
24 two members of the SAC?

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1                   COMMISSIONER YAKI:     No - I wanted the  
2 green light go on -- I wanted to state my objection,  
3 hear what other people had to say, because obviously  
4 what we decide to do will have an impact on the  
5 numbers and whether or not this thing goes forward or  
6 has to go back because it goes below the minimum  
7 number of people.

8                   So I want to hear what you have to say  
9 first before I make any motion.

10                   COMMISSIONER ACHTENBERG:   Well, then let  
11 me say first of all, I'm a subcommittee member along  
12 with Commissioner Heriot.  At least what I understood  
13 our mandate, as a subcommittee, was to determine  
14 ideological, political, and other forms of balance  
15 that we were charged with ascertaining, not whether or  
16 not we believed every individual person who was being  
17 put forward was qualified or disqualified, at least in  
18 our individual views from serving on a SAC.  So  
19 although I did agree with Commissioner Heriot that  
20 this Colorado SAC essentially was balanced and  
21 therefore -- we had perfected the SAC's  
22 recommendations to take the slate to the Commission,  
23 that doesn't mean that I think every individual member  
24 being put forward in the Colorado SAC, for example, is

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1 someone that I cared to vote yes for.

2 With that as my preface, I want to explain  
3 that I -- there are three members that I want to raise  
4 some concerns about. I don't want to besmirch  
5 anyone's integrity or anything like that. I don't  
6 know whether or not a discussion of the three members  
7 who are a concern to me is something we do on the  
8 record or we do it in camera. I'm not exactly sure.  
9 But I'd like to some guidance on that score, Mr.  
10 Chairman, if I might.

11 CHAIRMAN CASTRO: I'll ask our  
12 Parliamentarian, Ms. Eisemann, do we need to discuss  
13 this in Executive Session or should we do these  
14 motions to sever in the open session?

15 COMMISSIONER ACHTENBERG: Mr. Chairman, we  
16 need to have this telephone system checked out because  
17 I believe Commissioner Kirsanow and I both are missing  
18 practically half of the discussion.

19 COMMISSIONER KLADNEY: That's right.

20 CHAIRMAN CASTRO: We will have that  
21 reviewed. This is the first time we're using this, so  
22 we've got to work out the bugs and we appreciate that.

23 COMMISSIONER ACHTENBERG: I know.

24 COMMISSIONER YAKI: The microphones switch

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1 on and off at will. I could be talking and in the  
2 middle it will just cut off.

3 CHAIRMAN CASTRO: It's voice-activated.  
4 You have to be at the appropriate decibel.

5 COMMISSIONER ACHTENBERG: Unbelievable.  
6 We're doing our best here to try to figure out what's  
7 going on.

8 COMMISSIONER YAKI: If worst comes to  
9 worst, I'll take it out in Morse Code. (Proceeds to  
10 tap on table.)

11 COMMISSIONER ACHTENBERG: Okay. Got it.

12 MS. TOLHURST: So this is Kim and I'm  
13 going to let Vanessa answer because you need to get  
14 used to other people.

15 (Laughter.)

16 COMMISSIONER KLADNEY: Regretfully.

17 MS. TOLHURST: But the rule is very strict  
18 and if you want things in closed session, there's a  
19 Sunshine Act, particular listings and I'm going to let  
20 her go ahead and explain that in case you have  
21 questions. But I have gone over them with her.

22 MS. EISEMANN: So the only time that the  
23 Commission can go into an executive session is if the  
24 discussion might disclose ten specific, any one of ten

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1 specific items and listed in 10 of 45 of the Code of  
2 Federal Regulations Section 702.53. I can list all  
3 those ten.

4 CHAIRMAN CASTRO: Please do, yes.

5 MS. EISEMANN: The first is matters that  
6 are specifically authorized under criteria established  
7 by executive order to be kept secret in interests of  
8 national defense and foreign policy. Or a fact  
9 properly classified pursuant to an executive order.  
10 That all goes under the first item.

11 The second item is that it might disclose  
12 information relating solely to the internal personnel  
13 rules and practices of the Commission.

14 The third is if the discussion might  
15 disclose matters specifically exempted from disclosure  
16 by statute.

17 The fourth is if the discussion might  
18 disclose trade secrets or commercial or financial  
19 information obtained from a person and is privileged  
20 for confidential.

21 The fifth is if the discussion might  
22 involve accusing any person of a crime or formally  
23 censuring any person.

24 The sixth is the discussion might disclose

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1 information of a personal nature where disclosure  
2 would constitute a clearly unwarranted invasion of  
3 privacy.

4 The seventh is if the discussion might  
5 disclose investigatory records compiled for law  
6 enforcement purposes or information that if written  
7 would be contained in such records, but only to the  
8 extent that the production of such records, or  
9 information -- and it goes on to list a number of  
10 things. And interfere with enforcement proceedings or  
11 deprive a person of a fair trial, the unwarranted  
12 invasion of personal privacy, disclose the identity of  
13 a confidential source, disclose investigative  
14 techniques or procedures injure the life or physical  
15 safety of law enforcement person.

16 The eighth category is if the discussion  
17 might disclose information received by the Commission  
18 and contained in a related examination operating or  
19 condition reports prepared by or on behalf of an  
20 agency responsible for the regulation of -- the  
21 regulation of supervision of financial institutions.

22 The ninth is disclosure of information  
23 that might -- that relates -- in the case of  
24 information received by the Commission from an agency

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1 that regulates currency, securities, commodities, or  
2 financial institutions or be likely to frustrate  
3 implementation of a proposed action with regards to  
4 currency, securities, commodities, or financial  
5 institutions.

6 And then the tenth category is discussions  
7 that specifically concern the Commission's issuance of  
8 a subpoena or the participation in a civil action  
9 proceeding.

10 So those are the ten categories. If the  
11 discussion is going to disclose anything that doesn't  
12 fit into those ten categories, then there's no  
13 authority to go into --

14 CHAIRMAN CASTRO: Commissioner Achtenberg,  
15 is that the case then?

16 COMMISSIONER ACHTENBERG: I don't believe  
17 so, Mr. Chairman. This is all information in the  
18 public domain.

19 CHAIRMAN CASTRO: Please proceed then.

20 COMMISSIONER ACHTENBERG: All right, my  
21 first motion to sever would be for candidate Willie  
22 Breazell. I move to --

23 COMMISSIONER HERIOT: Can I just say  
24 something? This was actually not my understanding of

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1 how the subcommittee was going to work. My  
2 understanding was that you can't really put balance  
3 first and then go knocking particular members off  
4 because that's going to then disturb the balance  
5 issue. So I did not realize that Commissioner  
6 Achtenberg saw it as let's just look at balance and  
7 move to sever later.

8 So I came in here believing that we had an  
9 agreement with regard to Colorado, South Carolina.  
10 The lights just went out. And whatever the third one  
11 was that we agreed to, Massachusetts.

12 So if there are going to be motions to  
13 sever, then it seems to me we need to go back to the  
14 drawing board for the subcommittee for all of them.

15 COMMISSIONER KLADNEY: Mr. Chairman, --

16 CHAIRMAN CASTRO: Yes sir.

17 COMMISSIONER KLADNEY: -- if this is a  
18 problem with the SACs that have been put forth, why  
19 don't we think about tabling them and letting the  
20 subcommittee get back together and work this out.

21 CHAIRMAN CASTRO: That makes a lot of  
22 sense to me. So are folks amenable to that so that we  
23 can -

24 COMMISSIONER HERIOT: Let me share this

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1 first --

2 COMMISSIONER ACHTENBERG: Let me ask the  
3 question. How is it you propose we make those  
4 judgments, accepting our individual capacity? I mean  
5 I thought this was a kind of judgment -- forgive me,  
6 then I completely misunderstood what we were supposed  
7 to be doing. And I'm not trying to backtrack, Gail, I  
8 promise you that. I didn't realize that -

9 COMMISSIONER KLADNEY: To me, it just  
10 doesn't work this way.

11 COMMISSIONER ACHTENBERG: -- our mandate  
12 extended to particular proposed persons that we  
13 thought objectionable in some way or were more  
14 properly put in front of the Commission for their  
15 consideration.

16 I'm fully prepared to win some and lose  
17 some, depending on the judgment of my other  
18 colleagues, but I guess what would be our instruction  
19 then if you're suggesting that Gail and I as the  
20 subcommittee, exercise judgment with regard to  
21 particular appointees?

22 COMMISSIONER HERIOT: Here's what I would  
23 propose that the subcommittee should satisfy  
24 themselves and between us I think we can do a decent

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1 job if we think there's a red flag candidate, try to  
2 come up with a slate that won't have a red flag  
3 candidate. And if it turns out that when the  
4 Commission looks at it and some other member, a non-  
5 subcommittee member of the Commission has a concern  
6 and we then vote to sever, then we then go back and  
7 figure that it was balance in the first place, unless  
8 the Commission votes specifically that it wasn't. So  
9 if somebody gets knocked out because the Chairman or  
10 Commissioner Kladney or Commissioner Yaki or  
11 Commissioner Kirsanow has a concern and we do sever,  
12 then we go back and replace that person with someone  
13 who was not found to be as objectionable, but we'll  
14 nevertheless have basically the same position in terms  
15 of the ideological balance. That was my thought that  
16 we should be weeding out the ones that we don't think  
17 will get through the Commission. But coming up with a  
18 slate that we think we'll get through and as balance,  
19 if we turn out to be wrong about whether a particular  
20 person gets through, they get severed, then we replace  
21 that person so the balance is maintained.

22 CHAIRMAN CASTRO: That sounds fine to me.

23 COMMISSIONER ACHTENBERG: Is that what  
24 other people think as well we should be doing?

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1                   CHAIRMAN CASTRO: Let's try that and see  
2 how that works. The key here is to try to get these  
3 SACs moving and if there was a misunderstanding or a  
4 lack of clarity, really, I think it's probably a lack  
5 of clarity as to how the process was supposed to work  
6 and this is a new process, so I'm not surprised that  
7 we didn't get it exactly the way some folks thought.

8                   And I think let's try this and see if it  
9 works and it may work and then if that works, then we  
10 know that this is the process we can use until we do  
11 get a Staff Director.

12                   COMMISSIONER KLADNEY: And if it doesn't  
13 work, we'll figure another avenue.

14                   CHAIRMAN CASTRO: We'll tweak it again.

15                   COMMISSIONER HERIOT: Okay.

16                   CHAIRMAN CASTRO: So if everyone is okay  
17 we will then table these SACs to the next meeting and  
18 in the interim, pardon me -

19                   COMMISSIONER KLADNEY: Let's take a vote  
20 on it.

21                   CHAIRMAN CASTRO: -- do you want to take a  
22 vote on it? All those in favor --

23                   COMMISSIONER HERIOT: One more. Are there  
24 red flag candidates for people on Massachusetts and

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1 South Carolina or can we get those through?

2 COMMISSIONER ACHTENBERG: Hang on just a  
3 second.

4 COMMISSIONER YAKI: I've got a red flag on  
5 South Carolina.

6 COMMISSIONER HERIOT: And on  
7 Massachusetts?

8 COMMISSIONER YAKI: Actually,  
9 Massachusetts is clear for me.

10 COMMISSIONER HERIOT: Roberta?

11 COMMISSIONER KLADNEY: Alec says that  
12 they have a problem.

13 COMMISSIONER HERIOT: Okay, let the  
14 subcommittee know who the --

15 CHAIRMAN CASTRO: So I will take a formal  
16 vote. I'll make a motion that we table these. Is  
17 there a second?

18 COMMISSIONER HERIOT: Second.

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

21 COMMISSIONER HERIOT: Yes.

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

24 COMMISSIONER KLADNEY: Yes.

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

3 COMMISSIONER YAKI: Sure, why not.

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

6 COMMISSIONER ACHTENBERG: Yes.

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

9 COMMISSIONER KIRSANOW: Yes.

10 CHAIRMAN CASTRO: Is Commissioner Gaziano  
11 on the line? And I vote yes. So it will be tabled to  
12 the next meeting and I understand now that  
13 Commissioner Achtenberg, you are able to stay on the  
14 line, so thank you.

15 COMMISSIONER ACHTENBERG: I am, yes.  
16 Thank you.

17 CHAIRMAN CASTRO: So now we will move back  
18 and get a report from our budget staff on the 2013  
19 budget.

20 Mr. Ratcliffe, if you will come to the  
21 table, please.

22 MR. RATCLIFFE: As of today, we are  
23 anticipating that Congress will pass a six-month  
24 continuing resolution that will provide us funding

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1 through March. That funding level should allow us to  
2 continue operations as normal. However, we are facing  
3 a potential sequester or reduction, reduction to our  
4 appropriation.

5 (Off mic comments.)

6 If Congress does not act, everybody faces a  
7 certain reduction. OMB's report says that non-DoD  
8 activities, Department of Defense activities will  
9 receive about an 8.2 percent reduction. For the  
10 Commission, it's \$800,000.

11 However, because of the fortunate  
12 circumstances with the move, we do have the rent  
13 credits that were available, so some of the items we  
14 had in the 2013 budget such as investments in IT and  
15 limited English proficiency programs, we just have to  
16 push those back until later in the year until Congress  
17 decides what funding level we will have.

18 CHAIRMAN CASTRO: So we wouldn't lose that  
19 rent credit money. We would just not use it?

20 MR. RATCLIFFE: We will not use it. We'll  
21 wait and see what happens. Do we get a reduction or  
22 don't we get a reduction.

23 CHAIRMAN CASTRO: We would not need to  
24 take any action on reducing anything else.

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1 MR. RATCLIFFE: Yes.

2 COMMISSIONER KLADNEY: How much is that?

3 MR. RATCLIFFE: \$800,000.

4 COMMISSIONER KLADNEY: The rent credit  
5 money?

6 CHAIRMAN CASTRO: Yes.

7 COMMISSIONER KLADNEY: The same amount --

8 MR. RATCLIFFE: About that much. As I  
9 said, those are preliminary numbers. It can change.

10 CHAIRMAN CASTRO: What's the date of the  
11 fiscal cliff?

12 MR. RATCLIFFE: I think it's January.

13 CHAIRMAN CASTRO: January 1, January 31st?

14 MR. RATCLIFFE: It's whenever it happens  
15 and by the time they process it; it could be several  
16 months later before we actually know where we're at  
17 because it will require -- OMB would have to do  
18 another calculation.

19 CHAIRMAN CASTRO: Any questions on Fiscal  
20 '13?

21 COMMISSIONER KLADNEY: Yes. I was  
22 wondering what kind of documents we can get on a  
23 regular basis to show our ongoing budget expenses and  
24 any kind of surpluses that we may have?

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1           MR. RATCLIFFE: Typically, the decision of  
2 what is provided to the Commission is a Staff  
3 Director's decision.

4           COMMISSIONER KLADNEY: Right, but we don't  
5 have one.

6           MR. RATCLIFFE: We don't have a Staff  
7 Director. We can provide a monthly report that would  
8 show where we're at and a more detailed report also  
9 which I think Commissioners see what --

10          CHAIRMAN CASTRO: We'd like to see that  
11 because I know we were getting it before. I believe  
12 we were getting it on a monthly basis.

13          MR. RATCLIFFE: Yes, the Staff Director  
14 requested that I provide one when it was requested.  
15 The Staff Director requested that it was provided.

16          CHAIRMAN CASTRO: So, then well, as Agency  
17 head, let me request it of you and ask you to provide  
18 it to me --

19          MR. RATCLIFFE: I can provide it.

20          CHAIRMAN CASTRO: -- and I can circulate  
21 it to the Commissioners. And to that end, I know that  
22 we're close to your end and it's always a moving  
23 target as to where we are on our budget, but can you  
24 let us know a little bit as to where we think we're

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1 going to end up on Fiscal '12?

2 MR. RATCLIFFE: Right now, it's a little  
3 difficult to tell. We've moved as everybody has  
4 noticed. There's still some expenses here that we're  
5 going to incur. We're at a point where we're not  
6 going to have a significant surplus at the end of the  
7 year, but right now I can't really tell you how much  
8 that may be. But that will be within our range of --  
9 our safety range.

10 COMMISSIONER KLADNEY: Can you give us a  
11 list of what the additional expenses were? Can you  
12 provide it to us next month?

13 MR. RATCLIFFE: For what?

14 COMMISSIONER KLADNEY: For the move.

15 MR. RATCLIFFE: We have to say at what  
16 point you want me to talk about additional expenses.  
17 As you notice, there's no signs on the doors. That  
18 sign has to be procured. We have issues with the  
19 microphones. That may be an issue. So there are a  
20 thousand little things that could be out there that  
21 could -- that kind of thing.

22 CHAIRMAN CASTRO: Once the fiscal year is  
23 concluded, and you know those expenses, you can give  
24 us a report thereafter as to where that went to?

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1                   MR. RATCLIFFE: Yes. Basically, what we  
2 can do is we can provide you a breakout of where the  
3 move money went. However, because we do all this  
4 stuff through GSA, some of the details we may not have  
5 yet. So we have to wait for GSA to bill us and  
6 provide us the detailed information. But we could  
7 give you a report that shows you what we spent the  
8 money on.

9                   COMMISSIONER KLADNEY: When can you tell  
10 us if there are any excess funds that we can expend,  
11 for instance, like trying to get Dr. Minarik a part-  
12 time person in Atlanta?

13                   MR. RATCLIFFE: What I can say is we won't  
14 get the apportionment calculation until a little bit  
15 later. There's also a decision that has to be made,  
16 typically a Staff Director can make those decisions.

17                   COMMISSIONER KLADNEY: I understand that.  
18 About how much later, like about when?

19                   MR. RATCLIFFE: Well, I mean you have to  
20 tell me. I don't have the answer. Are you going to  
21 hire a General Counsel or a head of OCRE? All these  
22 type of decisions have to be made. Once the decision  
23 is made I basically develop the budget based on those  
24 decisions.

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1                   COMMISSIONER KLADNEY:     Right.     I guess  
2     what I'm saying is at some time in the future  
3     obviously we don't have a Staff Director now.     We  
4     probably won't have a Staff Director or OGC Chief next  
5     month.     So at our monthly meetings can you provide us  
6     with that information, savings, and what kind of  
7     discretionary funds will be left over?

8                   MR. RATCLIFFE:     Until we get a continuing  
9     resolution or appropriations bill passed, I don't have  
10    a good number to work with.     I don't know what  
11    Congress is going to give us.     It is going to be \$9.4  
12    million dollars as we requested?     Is it \$9.1 which is  
13    consistent with what we got this year?     Is it \$7  
14    million dollars?     I don't know.     That's one of the  
15    problems we have --

16                  COMMISSIONER KLADNEY:     You should know  
17    within a week or two, right?

18                  MR. RATCLIFFE:     No.     Congress is going to  
19    give --

20                  CHAIRMAN CASTRO:     I think you all are  
21    talking about apples and oranges.     I think  
22    Commissioner Kladney is asking you about Fiscal Year  
23    '12 dollars that haven't been expended.     And you're  
24    talking about Fiscal Year '13.

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1 MR. RATCLIFFE: Yes, I certainly am..

2 CHAIRMAN CASTRO: Am I correct?

3 COMMISSIONER KLADNEY: Yes. I'm just  
4 trying to find him some money to get somebody in  
5 Atlanta.

6 CHAIRMAN CASTRO: Is there any money in  
7 Fiscal '12 to help with this?

8 MR. RATCLIFFE: Well, he already has  
9 support right now. And what you need to know is the  
10 history of this is, this is a recurring thing. Every  
11 year, he tends to get a temporary person at some time  
12 through the year. And that's a decision the Staff  
13 Director can make. I mean this is not a budget --  
14 it's not going to bust your budget if we provide him  
15 administrative support.

16 CHAIRMAN CASTRO: In Fiscal '12.

17 MR. RATCLIFFE: In Fiscal '12 or 2013. He  
18 has it now.

19 CHAIRMAN CASTRO: If you have it in Fiscal  
20 '12, it's a question of Fiscal 13? I see.

21 MR. RATCLIFFE: It's not that much money,  
22 if that's your concern.

23 (Off mic comments.)

24 CHAIRMAN CASTRO: Okay. Commissioner

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1 Heriot?

2 COMMISSIONER HERIOT: I just need some  
3 clarification about what the law is here. Can we  
4 accept college interns, without paying them anything  
5 or law school interns without paying them anything and  
6 are they a help?

7 CHAIRMAN CASTRO: And I guess that's a  
8 question as it relates to the Commission versus the  
9 SACs, right, because I know the State Advisory  
10 Committees can accept things for free that we cannot.

11 COMMISSIONER HERIOT: Is that right?

12 CHAIRMAN CASTRO: That's my understanding.

13 COMMISSIONER HERIOT: The State Advisory  
14 Committees themselves are volunteers, but isn't a  
15 college intern considered a volunteer for this  
16 purpose?

17 CHAIRMAN CASTRO: I don't know, maybe our  
18 HR Director, Ms. Tinalouise Martin can answer that?

19 MS. MARTIN: Well, yes, there's a CFR  
20 regulation that says that we can have unpaid student  
21 volunteers.

22 CHAIRMAN CASTRO: We can?

23 MS. MARTIN: The graduate, undergrad, and  
24 high school.

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1 COMMISSIONER HERIOT: And are they a help,  
2 do you like them? They're not just a burden. Could  
3 we handle more than we have?

4 (Off mic comments.)

5 CHAIRMAN CASTRO: Wait, wait. Commissioner  
6 Yaki, do you have a question?

7 COMMISSIONER YAKI: This is news to me. I  
8 had heard prior that, prior, much prior, Staff  
9 Director that the Commission could do it, but that  
10 Commissioners could not.

11 MS. MARTIN: I'm talking about regular  
12 staff within the Commission.

13 COMMISSIONER YAKI: Right.

14 CHAIRMAN CASTRO: You're not talking about  
15 we as Commissioners--

16 MS. MARTIN: No.

17 CHAIRMAN CASTRO: -- bringing interns for  
18 ourselves, you're talking about -

19 MS. MARTIN: No.

20 COMMISSIONER HERIOT: Right. I'm talking  
21 about the --

22 CHAIRMAN CASTRO: -- the OGC, your  
23 management officer, your OCRE.

24 COMMISSIONER Yaki: But for Commissioners

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1 it's a no go, is that correct? We as Commissioners  
2 cannot do that.

3 MS. MARTIN: No.

4 CHAIRMAN CASTRO: That's correct.

5 MS. MARTIN: That's correct.

6 COMMISSIONER HERIOT: Is there a way that  
7 we can get more interns than we have?

8 CHAIRMAN CASTRO: I would imagine there  
9 is, but we also have -- someone has to manage those  
10 folks, too, so we have to keep in mind that --

11 COMMISSIONER HERIOT: That's what I mean,  
12 can we handle them?

13 CHAIRMAN CASTRO: We don't want to  
14 overburden our existing staff with having to manage 20  
15 interns. So there's a balance there somewhere. I  
16 don't know what that balance is.

17 COMMISSIONER HERIOT: It sounds like the  
18 balance is ramping up at least some. I mean I'm fully  
19 aware of the problem of having too many volunteers  
20 around when they not, can't be supervised and then  
21 they end up drawing resources away rather than  
22 contributing. We can ramp up a little. I mean I know  
23 that the law schools are starting to have more of  
24 these Washington intern programs. This is in part --

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1 law schools are in the mood for this, guys, because  
2 they want to have people placed somewhere, giving them  
3 some hope of getting jobs at some point.

4 CHAIRMAN CASTRO: Ms. Tolhurst?

5 MS. TOLHURST: I would just say to that,  
6 we can have interns from college and law school. We  
7 have a duty though; we can't just have them cleaning  
8 floors or making copies all day. We have a  
9 responsibility to make sure they're learning.

10 COMMISSIONER YAKI: They can make popcorn  
11 all day in OGC?

12 MS. TOLHURST: No, they cannot. You have  
13 to have a way to be teaching them, so the job needs to  
14 be a learning experience for undergraduate students or  
15 for law students that we can legitimately say -- OGC  
16 often has two or three summer interns, sometimes  
17 spring and fall. We have an obligation to make sure  
18 that they're actually getting a chance to exercise  
19 their legal skills.

20 COMMISSIONER HERIOT: So that's something  
21 we should be thinking about because if we're short  
22 handed, a good program will attract good students.

23 CHAIRMAN CASTRO: Ms. Ostrowsky?

24 MS. OSTROWSKY: Hi. I just wanted to add

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1 that our experience with interns in OSD has been quite  
2 mixed. Often they say they're going to stay for eight  
3 weeks and stay maybe six. They really are like extra  
4 students, rather than players. OGC, I think has had  
5 better experience.

6 CHAIRMAN CASTRO: Thank you. Any other  
7 budget-related questions? Thank you, Ms. Martin and  
8 Mr. Ratcliffe.

9 At this point, I'd like to ask Ms. --  
10 Counsel Hepler to come forward. She's going to give  
11 us some training on the Stock Act.

12 MS. HEPLER: I'm going to give you a  
13 choice, although I think you want to stay here. We  
14 did a PowerPoint and actually I used my legal intern  
15 help from G.W. on it, but we cannot do it in here. I  
16 can hand out paper and we can do it here or we can go  
17 to the raining Room and do the PowerPoint, it's up to  
18 you.

19 Okay, I'm going to give you a signature  
20 sheet to sign.

21 CHAIRMAN CASTRO: And do the Commissioners  
22 on the phone, do they have this electronically or can  
23 we get it to them right now so they can follow along?

24 MS. HEPLER: They should.

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1 COMMISSIONER KIRSANOW: I received an  
2 email, but I can't open the PowerPoint.

3 MS. HEPLER: Yes, I think they all got it.  
4 I don't know what to say, Commissioner Kirsanow. Can  
5 you put it on another computer that has a PowerPoint  
6 site or something?

7 COMMISSIONER KIRSANOW: Why don't you just  
8 proceed.

9 MS. HEPLER: I'm going to talk about the  
10 Stock Act and this is part of as Commissioners and  
11 Special Assistants, you're required by law to have an  
12 hour a year ethics training. I'm parsing it out. And  
13 this is an Act that just was enacted this year and it  
14 affects some major things.

15 Sure, does anyone else want a copy? I've  
16 got some here if they want one. And it was passed in  
17 April and there's requirements in it for both agencies  
18 and for filers and that's all of you, the Special  
19 Assistants and the Commissioners and it's an OG-278,  
20 the Public Financial Disclosure Report for filers and  
21 all of you have done it.

22 The big thing is there's public financial  
23 disclosure report changes, post-employment  
24 negotiations and also, in approach, initial public

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1 offerings. And the major changes I want to go over  
2 are reporting certain financial transactions monthly  
3 and we're going to be filing reports electronically  
4 and I'll go into that.

5 Also, there's a new one that you have to  
6 disclose all post-employment negotiations within three  
7 business days. That applies to everybody even if  
8 you're a Commissioner and there's a standard form to  
9 do that on.

10 COMMISSIONER KLADNEY: You mean if we got  
11 a job?

12 MS. HEPLER: Before you get the job. It's  
13 not -- I'll get into that part in this presentation.  
14 But if you submit a resume, that doesn't matter, but  
15 once you're into final negotiations, you're supposed  
16 to notify me within three days and file a form. So  
17 that's a very important new item.

18 The new form we'll go into is the OGE-278T  
19 and there should be a copy of the form somewhere in  
20 your packet, but I didn't -- if not I'll get it -- is  
21 it in there, you got it, okay. That's the new form.  
22 And the other item is posting forms on the internet.  
23 And mortgage reporting and electronic filing of the  
24 forms.

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1           The first one I want to go over is that  
2 periodic transaction report. It's supposed to be done  
3 within -- you have to report stocks, bonds, commodity  
4 futures and other security transactions, and when I  
5 say transactions, I mean, buy, sell, or exchange.  
6 Anything that exceeds \$1,000 per transaction, even if  
7 you have a net loss like, let's say you paid \$5,000,  
8 sold it for -- paid \$5,000, sold it for \$3,000, the  
9 transaction itself was over \$1,000. You still need to  
10 report it. And, including individual assets and  
11 retirement plans like IRAs, 401ks, etcetera, and  
12 that's something I know we've gone over with some of  
13 you that those individual assets in those accounts  
14 need to be reported.

15           CHAIRMAN CASTRO: So let me understand.  
16 So in our IRA or 401k there's a transaction that  
17 exceeds \$1,000, we have to report that?

18           MS. HEPLER: Right.

19           CHAIRMAN CASTRO: On a monthly basis.

20           MS. HEPLER: On a monthly basis. Yes?

21           COMMISSIONER HERIOT: Is that ours only or  
22 our individual spouse's IRA?

23           MS. HEPLER: You'll see on the next page  
24 it's 30 days, there's an exemption related to that.

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1 And that question has actually come up on the Hill and  
2 I'm going to through some proposed changes with them.

3 You have to file the 278 one month after  
4 the transaction or 45 days after you know of it,  
5 because I know of you have managed accounts. What I  
6 have done is set up a monthly reminder, so you  
7 actually get an automatic extension and my goal is to  
8 get it, have it in about the 10th or 15th of the  
9 month. You should get your monthly reports statement,  
10 or you can get it on line through the past month to  
11 see what happened.

12 MR. FAY: This means that any time I make  
13 a deposit into my IRA, I've got to file a report?

14 MS. HEPLER: It depends what your IRA is.  
15 If it's stocks, bonds, commodities, not for mutual  
16 funds. I mean I have a --

17 MR. FAY: Does that include cash deposits?

18 MS. HEPLER: Cash, no. Cash you don't  
19 have to worry about. If you're just putting in cash,  
20 it depends on what your IRA is in. It can be in a  
21 variety of different assets. That's coming up, what  
22 you don't have to report, okay?

23 You will receive the monthly email  
24 reminder from me and I included a copy of the form

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1 which you all have in front of you. And on the next  
2 page you have what you do not have to report,  
3 securities owned by a spouse or child right now.  
4 There was a modification on the Hill because how one  
5 interpreted. It may change. I'm just leaving that  
6 open right now, it's no. Real estate, mutual funds,  
7 certified deposits. I'm not sure what the difference  
8 is between a deposit, but cash deposits you don't have  
9 to report.

10 Treasury bills or Thrift Savings Plans  
11 which brings an issue. Your Federal Government Thrift  
12 Savings Plan, you don't need to report that on any  
13 financial disclosure form if it's Federal government.  
14 Same with your federal salary.

15 So are there any other questions on the  
16 278T before I go on? Yes, Commissioner Kladney?

17 COMMISSIONER KLADNEY: So it says do not  
18 report securities owned by a spouse or child.

19 MS. HEPLER: Right, currently.

20 COMMISSIONER KLADNEY: Okay, so I come  
21 from a community property state, a couple of us,  
22 community property states. So we have a trust  
23 account, my wife owns half. I own half. What's the  
24 story?

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1 MS. HEPLER: Well, if it's deemed yours,  
2 then you have to report it. You own it, right? I've  
3 never had community property law, so you have to  
4 explain it.

5 COMMISSIONER KLADNEY: Right, Commissioner  
6 Heriot will correct me if I'm wrong -- I don't know if  
7 it's undivided one half interest.

8 COMMISSIONER ACHTENBERG: It's undivided  
9 one half interest.

10 COMMISSIONER KLADNEY: Right. So I own  
11 the whole thing for purposes of the 278T.

12 MS. HEPLER: Right. So any other  
13 questions and I'll go on.

14 COMMISSIONER YAKI: Sign it all over to  
15 her.

16 (Off mic comments.)

17 COMMISSIONER ACHTENBERG: Unfortunately,  
18 you have to disclose it.

19 MS. HEPLER: Okay, the next one is the  
20 posting of the forms on the internet. I've sent you  
21 some information about that. The 278T and your 278,  
22 the law says it will be posted on the internet. The  
23 deadline has been moved back. It was supposed to be  
24 August and September and now it's October 31st.

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1                   CHAIRMAN CASTRO: Is that a deadline for  
2 the posting or a deadline for the filing?

3                   MS. HEPLER: That's the posting of -- all  
4 of you have filed your OG-278 for this year and some  
5 have some revisions they're working on. But the  
6 forms, the 278 itself is supposed to be posted right  
7 now by Halloween and the 278Ts that have been filed to  
8 date and will be required for this month should be --  
9 are supposed to be filed at that date.

10                   I wanted to give you advice. There is a  
11 lawsuit going on right now and if you want some  
12 strange bedfellows it's the ACLU, former Defense  
13 employees, the Senior Executive Association, and NIH  
14 scientists are suing to have this internet posting  
15 provision reversed. It's been -- that's why the date  
16 is now October 31 because it's been enjoined to that  
17 date.

18                   There is some talk on the Hill about  
19 revisiting this. I'm not going to say what's going  
20 on, but -- so this internet posting provision could  
21 change. I mean some things have come out and I'm just  
22 going to point this out, because the Defense  
23 intelligence community is involved. There have been  
24 proposals that maybe those people should be exempt or

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1 maybe who they're going to exempt. How this Act  
2 started it was Congressional issues that came up and  
3 then they decided to pull the Federal employees in.  
4 So for right now, it's October 31, but there is a  
5 lawsuit out there and there is potential change.  
6 That's what I wanted to bring to your attention.

7 CHAIRMAN CASTRO: When did the obligation  
8 to begin reporting start?

9 MS. HEPLER: Which ones, the transactions?

10 CHAIRMAN CASTRO: Yes, the transactions.

11 MS. HEPLER: July.

12 CHAIRMAN CASTRO: July.

13 MS. HEPLER: July. So there was a report,  
14 I sent it out. There was a report due in August and  
15 there should have been one for September. If anyone  
16 needs to file it, let's get it now because we can mark  
17 an extension if need be.

18 Any questions on the internet posting or  
19 the lawsuit? I'm trying to get through.

20 The next one is personal mortgage  
21 reporting and on your personal mortgage you don't have  
22 to report. Some of you do have rental property, so  
23 that mortgage is supposed to be reported on the 278  
24 form.

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1 CHAIRMAN CASTRO: 278 or 278T?

2 MS. HEPLER: 278T, no, I mean the 278, the  
3 main form that you file once a year. If you have a  
4 mortgage on rental property, it should be on there.  
5 And I know some of you do.

6 Okay, the electronic filing. And Section  
7 11 of the Act sets forth electronic filing  
8 requirements. I have looked into getting a system. I  
9 came from a place where I was used to doing everything  
10 on line and we had an electronic system. I have come  
11 up with one that I think would work for the Commission  
12 and I have submitted a purchase request. I have to  
13 get a few other quotes.

14 The system I'm proposing comes from the  
15 Commerce Department. It's very interesting. Federal  
16 procurement requires different quotes although the  
17 only places that sell these are other Federal  
18 agencies, so it's one versus the other.

19 The system is called FD Online and I don't  
20 know if we'll get it, it depends on the money and all,  
21 but what it is it's an internet-based system, so it  
22 doesn't affect our IT and Michele sat in the  
23 presentation with me. You would fill out the  
24 information online like with TurboTax, you could do it

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1 at your desk, wherever, and then it saves the  
2 information from year to year. You would submit it.  
3 You'd do a digital signature on line, send it here and  
4 I could review it from any place, too. I think it  
5 would be easier because we wouldn't have to deal with  
6 paper. It's all in a secure HTTPS secure server and  
7 it is TurboTax, so like Wizard, that's what we'll walk  
8 you through the system, hopefully.

9 And they do have the 278T online, too, so  
10 the good thing of that is that they have them all  
11 there, then when you have to do the regular form, you  
12 have everything right in front of you. We'll see if  
13 we get it, but that's -- if we do get it, they will  
14 come in and train you on how to use it and -- whoops,  
15 it went out again, a session like this on how to train  
16 you on how to use the form. Any questions on that  
17 one.

18 COMMISSIONER KLADNEY: So what we would do  
19 is get on line, file our report, hit the button and  
20 not have to sign the document?

21 MS. HEPLER: You would have a digital  
22 signature. You wouldn't have to deal with sending  
23 pages back and it would go blink and it walks you  
24 through the form. If you've ever used TurboTax, it's

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1 like that.

2 COMMISSIONER KLADNEY: I've never  
3 understood what a digital signature is, but that's  
4 okay. I'm sure I will.

5 COMMISSIONER YAKI: It's a tiny little  
6 robot.

7 MS. HEPLER: That's the proposal of the  
8 electronic system. The next one is one of the  
9 important ones I wanted to go over was the post-  
10 employment. And you should have the form for that.  
11 When you submit a resume for another job, don't worry  
12 about that, but once you start -- if you interview,  
13 that's not an issue, too, because you just interview.  
14 It's once they call you back and you start  
15 negotiating, then you need to fill out the form.

16 COMMISSIONER YAKI: I have a question on  
17 this one. Doesn't this relate to post-employment from  
18 government employment?

19 MS. HEPLER: It implies --

20 COMMISSIONER YAKI: I mean why if -- I'll  
21 go back five years of my life. When I was leaving my  
22 law firm and wanting to do something else, I don't  
23 know why that would be covered because my commission  
24 wasn't expiring and was still continuing on. But that

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1 would be covered?

2 MS. HEPLER: It says it applies to SGEs as  
3 well.

4 COMMISSIONER YAKI: That's insane.

5 MS. HEPLER: What it is is they want to  
6 make sure -- and here there isn't that much problem,  
7 but if an SGE goes from one job to another that  
8 there's going to be a conflict of interest when they  
9 take the new job. You've already been approved with  
10 your current job. And if we get a new job, and Kim  
11 and I have discussed the possible conflicts of  
12 interest, but that is what the provision is.

13 You have to remember this isn't aimed just  
14 at this Agency. It was like a universal --

15 COMMISSIONER YAKI: I know. That's why  
16 I'm trying to figure out why it applies to SGEs.

17 MS. HEPLER: But it does. That's what the  
18 ruling has said. It applies to SGEs.

19 COMMISSIONER YAKI: Crazy.

20 MS. HEPLER: So --

21 COMMISSIONER YAKI: Where are our  
22 Libertarian members when we need them?

23 COMMISSIONER HERIOT: I have a question.

24 MS. HEPLER: Yes.

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1                   COMMISSIONER HERIOT: Academics frequently  
2 visit other institutions. I'm a professor of law at  
3 the University of San Diego, but I may be a professor  
4 of law, a visiting professor of law at the University  
5 of Blah, Blah.

6                   MS. HEPLER: But you're still the employee  
7 at the University of San Diego, right?

8                   COMMISSIONER HERIOT: Do I have to report  
9 a visit?

10                  MS. HEPLER: You're not negotiating for  
11 another job. You have your same job, right?

12                  COMMISSIONER HERIOT: You negotiate for  
13 some things, what class am I going to teach and like,  
14 you know, little things like that.

15                  MS. HEPLER: Do you negotiate like for  
16 salary or anything?

17                  COMMISSIONER HERIOT: Sometimes, yes,  
18 sometimes.

19                  MS. HEPLER: You do?

20                  COMMISSIONER HERIOT: Sometimes not. I  
21 mean sometimes these visitorships are held to where  
22 the home institution actually issues the paychecks.  
23 There's clearly no change in employment.

24                  MS. HEPLER: Okay.

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1 COMMISSIONER HERIOT: And other times the  
2 paycheck is issued by the visiting institution.

3 MS. HEPLER: Okay. I have to look into  
4 that. I know if you get your paycheck from your  
5 regular institution there is no problem because you're  
6 still an employee. If you get into a situation like  
7 that, let's look at it, how about that? Or do you  
8 have one pending?

9 COMMISSIONER HERIOT: I don't plan on  
10 doing any of this. I hate this.

11 MS. HEPLER: Okay, just in case. If  
12 you're still the employee of your original  
13 institution, it should be no problem because that's  
14 already been approved.

15 COMMISSIONER HERIOT: Certainly still.

16 MS. HEPLER: Okay.

17 COMMISSIONER ACHTENBERG: Mr. Chairman,  
18 may I ask a question?

19 CHAIRMAN CASTRO: Yes.

20 COMMISSIONER ACHTENBERG: What if you're  
21 self employed and you take on a new client?

22 MS. HEPLER: If it's still your business,  
23 that's not changing the job, getting a new client.  
24 Because some of you that's what your job is, you have

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1 clients that come in.

2 CHAIRMAN CASTRO: And what if you're self  
3 employed, but you start another business that you own?

4 MS. HEPLER: I'll have to look into that.  
5 You're not negotiating for employment if you start  
6 your own. Technically, it's negotiations. Starting  
7 your own, I would think --

8 COMMISSIONER HERIOT: What if I want to  
9 earn a little bit extra money and so I go to my  
10 neighbors and I say I'll clean your house every other  
11 week for so much.

12 (Off mic comments.)(Laughter.)

13 COMMISSIONER ACHTENBERG: The answer is do  
14 you have to disclose, Gail's housekeeping business or  
15 you do not?

16 MS. HEPLER: I mean no, that's not  
17 negotiating if she's setting up her own business.

18 COMMISSIONER HERIOT: That's more than  
19 negotiating. If I go to the neighbors and say I'll do  
20 it for \$40, but I won't do it for \$35. I'm really  
21 concerned there's a huge number of Federal employees  
22 who I assume are covered by this and we're making them  
23 non-entrepreneurial agents by telling them if you  
24 start a business and you've got to jump through a

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1 bunch of hoops immediately.

2 MS. HEPLER: The provision specifically  
3 says it's negotiations and it does go to post  
4 employment, but what you're doing, starting your own  
5 business, and that's a whole other issue here. We  
6 have some outside employment rules at the Agency and  
7 I'm not addressing those right now, starting your own  
8 housecleaning business, that I don't think this was  
9 at. This was that if you're working at some place and  
10 you go and you're negotiating behind the scenes for a  
11 job that you could be working on the same thing right  
12 now, how you would catch that, to check to see if  
13 there's any problem. If you're looking at the reason  
14 for the provision. But I can look into it more.

15 CHAIRMAN CASTRO: You get a lot of  
16 questions.

17 MS. HEPLER: This is one of the biggest  
18 provisions of it.

19 COMMISSIONER HERIOT: My guess is that  
20 stockbrokers will be going crazy here because no  
21 Federal employee that's covered by this is going to  
22 want to have any transactions any more.

23 MS. HEPLER: Well, what I'm worried about  
24 is people that have managed accounts because if you

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1 have managed accounts you have someone doing it and  
2 this is just, you know, as it is -- it increases my  
3 work load dramatically because every month I have this  
4 coming in from whatever.

5 We joked about this being the full  
6 employment for ethics officials because this has  
7 created such a work load.

8 COMMISSIONER HERIOT: It's like the anti-  
9 employment for stockbrokers who are going to be  
10 getting instructions from their principals, don't  
11 trade anything ever, any time. It's just bizarre.

12 MS. HEPLER: Well, just to say we have --  
13 I came from NIH and we had that requirement for these  
14 filers, but it was only for pharmaceutical or health-  
15 related stocks. They had to report within 30 days if  
16 they bought them because we had to review it and  
17 determine if there was a conflict because we were  
18 dealing with doctors and researchers. So on a limited  
19 version, it was just directed towards stocks related  
20 to --

21 COMMISSIONER HERIOT: Yes, because there  
22 have been genuine problems in that area.

23 MS. HEPLER: Right, so this was a much  
24 broader sweep. I mean that's all I can say what the

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1 law did and it is -- it's increasing a big burden.  
2 And that's actually one thing, the online system, I  
3 just got a notice that they're having a webinar  
4 because they have the transaction reporting online now  
5 for the monthly report as well because it is creating  
6 a lot more work for everybody.

7 Anything else on that? Initial public  
8 offerings, this was because they thought some people  
9 were getting special treatment. If you can only  
10 participate in initial public offerings, offered in  
11 terms presented to the general public.

12 And the major recaps are for this is I  
13 want you to remember the 278T back there that you need  
14 to report those transactions monthly within the time  
15 frame that I sent out in the email, and all post-  
16 employment negotiations, the negotiating part needs to  
17 be reported within three days and you got the form for  
18 that and that electronic filing is in the future,  
19 hopefully in the near future. The Act calls for that  
20 as well.

21 If you have any questions, you can contact  
22 me directly, if they're personal in nature. And  
23 that's it. And I just wanted to know it's not on the  
24 agenda if you want a little update on the lawsuit.

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1 COMMISSIONER KLADNEY: On what?

2 MS. HEPLER: A little update on the  
3 lawsuit. I don't have much information.

4 CHAIRMAN CASTRO: I think we would need to  
5 go into executive session for that, wouldn't we, for  
6 litigation?

7 MS. HEPLER: It's a public lawsuit. You  
8 can pick up pretty much what I'm going to tell you on  
9 PACER which is the -- okay, there was a lawsuit and it  
10 was Mr. Daly versus the President, the Director of the  
11 Office of Personnel Management, and the eight  
12 Commissioners here in their official capacities. Mr.  
13 Daly was an employee here -- a short-term employee,  
14 Special Assistant in 2005 and it's regarding that  
15 matter. The Commission does not have authority to  
16 represent itself, legal authority to represent itself  
17 in Court. The U.S. Department of Justice is the  
18 Federal Government's attorneys and they represent the  
19 Commission if it comes to a Court matter.

20 I have submitted the complaint to them and  
21 since all of you Commissioners are being sued in your  
22 official capacity, DOJ is representing you. They have  
23 the President and OPM also. I've sent it over there.  
24 They've acknowledged receipt that they're going to

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1 handle it. I don't know -- they had a couple  
2 different divisions that would handle it, either the  
3 District Assistant U.S. Attorney or actually  
4 Department of Justice has a Federal Programs Division  
5 that just deals with Federal agencies. So if they  
6 decide who handles it, if I get any updates or they  
7 have any requests for information, we'll go into it,  
8 but for right now, I don't think anybody needs to  
9 worry because they are taking care of it.

10 CHAIRMAN CASTRO: Any other questions? If  
11 not, thank you very much, very informative. I will  
12 now make a very important motion and that is to  
13 adjourn.

#### 14 V. ADJOURN MEETING

15 CHAIRMAN CASTRO: Do we have a second?

16 COMMISSIONER YAKI: Second.

17 CHAIRMAN CASTRO: All those in favor, say  
18 aye.

19 (Chorus of Ayes.)

20 CHAIRMAN CASTRO: All right.

21 (Whereupon, the above-entitled matter went  
22 off the record at 12:23 p.m.)

23  
24

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