

UNEDITED

U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, JULY 22, 2022

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The Commission convened via hybrid Video
Teleconference at 12:00 p.m. EDT, Norma V. Cantu,
Chair, presiding.

PRESENT:

NORMA V. CANTU, Chair

DEBO P. ADEGBILE, Commissioner*

J. CHRISTIAN ADAMS, Commissioner

STEPHEN GILCHRIST, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner*

DAVID KLADNEY, Commissioner*

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

DAVID GANZ, General Counsel & Parliamentarian*

* *Present via telephone*

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STAFF PRESENT:

PAMELA DUNSTON, Chief, ASCD

SUSAN M. GLISSON, Mississippi State Advisory

Committee*

TINALOUISE MARTIN, Director, OM

DAVID MUSSATT, Director, RPCU

JULIAN NELSON, Pathways Intern

ESSENCE PERRY, Pathways Intern

RON RYCHLAK, Chair, Mississippi State Advisory

Committee*

COMMISSIONER ASSISTANTS PRESENT:

JOHN K. MASHBURN

THOMAS SIMUEL

JUANA SILVERIO

MICHELE RAMEY-YORKMAN

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

2 12:01 p.m.

3 OPERATOR: Good day. And welcome to the
4 July Commission Business Meeting. Today's conference
5 is being recorded. At this time, I would like to turn
6 the conference over to Chair Cantu. Please go ahead.

7 CHAIR CANTU: Welcome to the Business
8 Meeting for the U.S. Commission on Civil Rights. The
9 meeting comes to order at 12:01 p.m. Eastern Standard
10 Time on Friday, July 22, 2022.

11 I am Chair Norma V. Cantu. And we thank
12 the staff who completed the public notice needed for
13 this meeting and arranged for today's business meeting.

14 We thank the general public for their interest in
15 attending.

16 Due to respect for health and safety during
17 the ongoing COVID-19 pandemic, the Commissioners are
18 now in attendance in person and also via conference
19 call. We're hosting the general public by phone
20 conference.

21 I'd like to confirm that the Commissioners
22 are present today. And so I'm going to ask both
23 Commissioners in person and online by a roll call vote.

24 Please say present or here when I say your name.
25 Commissioner Adams.

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1 COMMISSIONER ADAMS: Present.

2 CHAIR CANTU: Commissioner Adegbile.

3 We'll come back to you.

4 COMMISSIONER ADEGBILE: Present.

5 CHAIR CANTU: Oh, thank you.

6 Commissioner Gilchrist.

7 COMMISSIONER GILCHRIST: Present.

8 CHAIR CANTU: Commissioner Heriot.

9 COMMISSIONER HERIOT: I'm here.

10 CHAIR CANTU: Commissioner Kirsanow.

11 COMMISSIONER KIRSANOW: Here.

12 CHAIR CANTU: Commissioner Kladney.

13 We'll come back. I know he was here. Commissioner
14 Yaki.

15 COMMISSIONER YAKI: Live and in person for
16 the first time since, what, 2020.

17 CHAIR CANTU: Two years ago, yay.
18 Commissioner Kladney, coming back to you.

19 COMMISSIONER YAKI: Dave, turn off your
20 mute button.

21 CHAIR CANTU: We know he's here.

22 OPERATOR: This is the operator.
23 Commissioner Kladney has disconnected.

24 CHAIR CANTU: We've lost his line. Okay.
25 We're going to hope to hear him soon.

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1 Based on the response, a quorum of the
2 Commissioners is present. Is the court reporter
3 present?

4 COURT REPORTER: I am.

5 CHAIR CANTU: Thank you. Is the staff
6 director present?

7 MR. MORALES: I am present.

8 CHAIR CANTU: Okay. The meeting will now
9 come to order.

10 Before we move on to our first item, which
11 would be amendments to today's agenda, I'm going to
12 take a point of privilege as Chair and withdraw item
13 C from our discussion and vote on the Fiscal Year 2023
14 Briefing Reports and Statutory Enforcement Reports.

15 This withdrawal is because I put it on the
16 agenda. I thought I was going to be ready. And I own,
17 in fact, that we're going to put it on next time's
18 agenda.

19 So now we're going to move on to whether
20 any of the Commissioners have asked for any amendments
21 to today's agenda. Those here present --

22 COMMISSIONER KLADNEY: First, Madam
23 Chair.

24 CHAIR CANTU: Yes, please.

25 COMMISSIONER KLADNEY: Madam Chair.

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1 CHAIR CANTU: Yes, please.

2 COMMISSIONER KLADNEY: Dave Kladney, Dave
3 Kladney. I've rejoined the meeting, and I'm present.

4 CHAIR CANTU: Oh, thank you. Thank you.
5 You're quite welcome. We welcome you here, Dave.
6 So we have a full roll call. Thank you.

7 So, before we go on to asking -- let me
8 ask the people here present, are there any amendments
9 to the agenda today? And let me check now with people
10 on the line. Are there any amendments to today's
11 agenda? Hearing no other amendments, we now move to
12 approve the vote.

13 I. APPROVAL OF AGENDA

14 CHAIR CANTU: Let me ask for those of you
15 on the line to please say aye and those present as well.
16 Those in favor of approving today's agenda, please
17 say aye.

18 (Chorus of aye.)

19 CHAIR CANTU: And online.

20 (Chorus of aye.)

21 CHAIR CANTU: Thank you. Anyone opposed?
22 Anyone opposed? Anyone abstaining? The motion
23 passes.

24 II. BUSINESS MEETING

25 A. PRESENTATIONS BY STATE ADVISORY COMMITTEE CHAIRS

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ON RELEASED REPORTS AND MEMORANDUMS

CHAIR CANTU: For our first order of business, we're going to turn to a presentation from the Advisory Committee. And this will be the Mississippi State Advisory Committee.

We have the current chair and the past chair. The past chair is Ms. Susan Glisson. And the former, the current chair is Ron Rychlak. And the report will be Qualified Immunity and Civil Rights in Mississippi.

So, Chairs, I turn the floor over to you for ten minutes. And I do thank you. Please you have the chair, the floor.

MS. GLISSON: Thank you so much, Chair Cantu. It's an honor to be able to be with you, our esteemed colleagues. We're excited to get to present our report on qualified immunity.

We decided to undertake the impact of qualified immunity on police accountability and the equal protection of civilians in the administration of justice. We specifically examined the impact of qualified immunity on disparities based on race, color, sex, national origin, religion and/or disability status that exist throughout the criminal justice system.

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1 We heard some telling testimony from a
2 range of perspectives on the issue that were
3 informative and quite passionate. And we learned a
4 great deal in our deliberations.

5 The primary concerns that are identified
6 in the report include the continued judicial expansion
7 of qualified immunity protections outside of the
8 legislative process, the stagnation of case law when
9 courts grant immunity without first ruling on the
10 constitutionality of the underlying official conduct,
11 the tension between allowing law enforcement officers
12 the flexibility to confidently fulfill a difficult and
13 dangerous job while also protecting the public from
14 unchecked abuses of application.

15 So I just wanted to share a little bit from
16 our findings. Our first important finding was that
17 qualified immunity is a judicially created doctrine
18 existing outside of the legislative process. And it
19 shields many government officials, including law
20 enforcement officers, from facing personal civil
21 liability for their conduct in the course of their
22 official duties.

23 And our speakers shared, you know,
24 concerning sort of cases where these issues have come
25 up, for example, holding a 14-year-old in solitary

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1 confinement for over a month, hazing a pregnant black
2 woman who was pulled over while taking her 11-year-old
3 son to school, being granted qualified immunity because
4 of a difference between shooting at a dog and instead
5 hitting a child and shooting at a truck and instead
6 hitting a passenger. So there are some complicated
7 cases out there. And we heard testimony about that.

8 So we understand now from our findings and
9 from the testimony that qualified immunity was
10 initially limited to protecting police officers from
11 liability for errors of knowledge or judgement made
12 in good faith, quote, unquote. In 1982 with Harlow
13 v. Fitzgerald, this protection was expanded to protect
14 any law enforcement action that did not violate, quote,
15 clearly established law.

16 And then with Pearson v. Callahan in 2009,
17 courts were granted discretion to consider the question
18 of, quote, fully established law, unquote, before
19 ruling on whether or not the underlying law enforcement
20 conduct was constitutional, which stagnated the
21 further development of civil rights case law. The
22 judicial definition of, quote, clearly established
23 law, unquote, has become increasingly narrow since this
24 time.

25 The Pearson ruling has heightened the need

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1 for non-judicial parts of the criminal justice system,
2 both legislative and executive and at the national,
3 state, and local levels to gather more data and
4 articulate more precise rules to govern officers'
5 conduct. If unclear law remains unclear despite
6 litigation, as Pearson allows, other actors can and
7 should step in to help clarify officers' duties.

8 The second finding is that there's
9 continued tension between the competing priorities of
10 affording law enforcement officers the space to do an
11 often tense and dangerous job without constant fear
12 of personal liability and protecting the public from
13 abuses of unchecked law enforcement authority.

14 Our third finding was that Mississippi's
15 qualified immunity data is extremely limited and does
16 not really indicate the types of civil rights
17 complaints filed.

18 Fourth finding is available data indicate
19 an uneven application of excessive force case law
20 across different circuits. For example, the Fifth
21 Circuit, where Mississippi cases go, upholds qualified
22 immunity at perhaps the greatest rate in the nation,
23 and this rate is rising.

24 And the Fifth Circuit serves the most
25 racially diverse population in the country. However,

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1 Fifth Circuit judges are the least racially and
2 ethnically diverse in the country, so black and
3 Hispanic individuals are disproportionately impacted
4 by qualified immunity.

5 They're more likely to be killed by police,
6 disproportionately incarcerated, and have
7 disproportionately high rates of police contacts.
8 Therefore, they are also disproportionately facing the
9 burden of overcoming the qualified immunity defense
10 when their rights are violated.

11 Our fifth finding, law enforcement
12 officials would continue to benefit from a range, a
13 wide range of protections for reasonable good faith
14 conduct, even in the absence of qualified immunity.

15 Sixth, there are precedents for
16 eliminating or restricting qualified immunity now.
17 They were fairly recent when we were undertaking our
18 testimony. Colorado and New York, in particular,
19 passed laws related to eliminating qualified immunity
20 in cases. These happened before the pandemic. So we
21 know now that there might be more information about
22 how those have played out in those two states.

23 That connects to our recommendation for
24 the Commission. We really think that the U.S.
25 Commission on Civil Rights should conduct a study of

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1 qualified immunity at the national level.

2 Such a study should include exploration
3 of why qualified immunity outcomes diverge so sharply
4 between different Circuit Courts of Appeals, the review
5 of any data regarding the impact of qualified immunity
6 or denial thereof on the ability of police departments
7 to hire and retain qualified officers, particularly
8 in large metropolitan areas, including data from New
9 York and Colorado where those qualified laws have been
10 removed.

11 We also think assessment of differences
12 in officer recruitment, retention, and training
13 efforts across the country and their relation to
14 complaints regarding officer conduct and motions for
15 qualified immunity should be considered as part of the
16 data collection.

17 We think the U.S. Commission should issue
18 the following recommendations to the President and
19 Congress, to require all law enforcement agencies
20 receiving federal funding to collect and report data
21 regarding excessive force complaints, motions for
22 qualified immunity and the outcomes of the same, adopt
23 more detailed codes to govern officer conduct in light
24 of such data, establish a task force to study the
25 differences and the applications, and increase the

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1 fungibility in law enforcement funding so that state
2 and local governments may use such funding to establish
3 and support broader community based social services,
4 such as mental health crisis intervention, to support
5 and reduce risk to officers and the community.

6 We also made recommendations about what
7 we hope the U.S. Department of Justice could hear from
8 the U.S. Commission, requiring all officers to collect
9 data as well on qualified immunity and the use of data
10 to issue guidelines for federal, state, and local law
11 enforcement agencies to address gaps in case law
12 regarding officer conduct.

13 For the state of Mississippi, we hope the
14 U.S. Commission will recommend to the Mississippi
15 governor and legislature the requirement that all state
16 municipalities report civil rights settlement data to
17 the Office of the Attorney General, adopt more detailed
18 codes to govern officer conduct in light of this data,
19 and direct law enforcement funding to be used for
20 broader community based services, as I've already
21 mentioned.

22 We also hope that you would make a
23 recommendation to the Mississippi Administrative
24 Office of the Courts to collect and report on more
25 specific data that can easily be disaggregated by type,

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1 like use of force, search and seizure, et cetera.

2 And finally, we hope that you would
3 recommend to the Mississippi Board of Supervisors and
4 the Mississippi Municipal League that they require
5 municipalities to collect and report on data regarding
6 civil rights case filings and settlements
7 disaggregated by case type as mentioned before.

8 At this important moment in the national
9 conversation about public safety and the role of
10 police, we join with leaders across the country in
11 calling for more data and attention to the crucial issue
12 of qualified immunity. We must know more in order to
13 know how best to move forward in the interest of
14 protecting all communities. Thank you very much.

15 CHAIR CANTU: Thank you, Chair Glisson.

16 I really do appreciate that you've made the time to
17 make this presentation. I read the report. And I was
18 very impressed that there were considerations of other
19 kinds of protections that are already available in
20 addition to the one that you chose to look at, the
21 qualified immunity, and that these are available for
22 law enforcement folks so that they know that they're
23 respected and valued in the jobs that they're
24 performing.

25 Could you talk a little more about the

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1 Fifth Circuit and give us some sense of how that circuit
2 compares to other circuits and how it handles the issue
3 of qualified immunity?

4 MS. GLISSON: I may ask my successor, the
5 amazing Ron Rychlak, to help with that a little bit.

6 But mainly, you know, it's a historic
7 district that is known for so many path-breaking civil
8 rights cases. But in recent years, the sort of ironic
9 shift seems to be that the Fifth Circuit represents
10 the most racially diverse region, but the judges who
11 sit on that circuit don't reflect the folks who live
12 there so well.

13 And that, we are noticing then that there
14 are these increased disproportionate outcomes for
15 people of color. So we just think it's an issue to
16 be raised about why that might be the case compared
17 to other districts.

18 CHAIR CANTU: Chair Rychlak.

19 MR. RYCHLAK: Thank you. First of all,
20 let me just compliment Susan on a great report and her
21 (audio interference) from last year.

22 But in terms of the judicial composition
23 in the Fifth Circuit, it's not merely a matter of the
24 Fifth Circuit Court of Appeals. It's a matter of
25 district courts throughout the Fifth Circuit.

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1 Initially, as Susan indicated, I think
2 these courts were leaders in efforts to overcome civil
3 rights difficulties, amazing acts of bravery by judges
4 throughout the region. I don't see the issue being
5 a matter of race as much as I do think it's the law
6 in order circuit district area.

7 And I think qualified immunity is one of
8 those things where if you're law and order you skew
9 perhaps towards protecting police rights. And that
10 can lead to the expansion of qualified immunity. And
11 it can lead to a situation where we have people feeling
12 put upon by the police and feeling that the police are
13 not held accountable at all times.

14 And I think that's probably where I would
15 be focusing, looking at what's happening in our federal
16 trial courts, the district courts, and are they
17 expanding in situations where perhaps qualified
18 immunity should not expand.

19 CHAIR CANTU: And if I could, please, this
20 is my last question, and I'll turn to my colleagues.

21 But could I have folks speak a little bit about the
22 lack of data or the lack of facts that appear when
23 someone is dismissed from the case because they're
24 immune, so there will not be a trial as to that person's
25 participation in the actions that led up to the court

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1 case? So what facts do you believe are missing or not
2 available because that person was not part of the trial?

3 MR. RYCHLAK: Susan, if you'll allow me,
4 I'll take the first shot.

5 MS. GLISSON: Thanks, Ron.

6 MR. RYCHLAK: I'm a law professor. And
7 we study laws. We study cases. And we need a record.

8 When we have a situation where a case is
9 dismissed because of immunity, whatever kind of
10 immunity it is, you end up not developing the record,
11 not seeing what happened, not having the application
12 of the laws to specific facts. So, if we're trying
13 to work forward, whether it's legislatively, even a
14 theoretical, you know, a professor writing stuff like
15 that, it's hard to know what happened when we don't
16 have a case record.

17 So I think that's what the committee felt
18 was very difficult, because we're trying to come up
19 with concrete approaches to something where we don't
20 have the record that you normally have.

21 If these cases went to trial and at the
22 end of the trial there's a conclusion that there should
23 not be liability, that's one thing. But when we don't
24 have the trial, we don't have the record, it's really
25 hard to understand how to proceed next.

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1 CHAIR CANTU: Thank you. I turn to my
2 colleagues. Do you all have any questions?
3 Commissioner Adams. And then I'll ask Commissioner
4 Yaki.

5 COMMISSIONER ADAMS: Thank you for this
6 report, Chairs. And you indicated in your testimony
7 that the courts have been problematic, the Fifth
8 Circuit, the Mississippi courts, for example. And on
9 the other side of the ledger, you point to New York
10 and Colorado's legislature obtaining sort of a broad
11 democratic consensus on what the standard ought to be.

12 Your report recommended some very good
13 ideas about data collection for the Mississippi
14 legislature. Why didn't you suggest that the
15 Mississippi legislature address the standard like they
16 did in New York and Colorado?

17 MS. GLISSON: You know, I think that's a
18 great question. My sense is that we felt like those
19 laws were fairly young when we were having our
20 discussions. And there wasn't enough of a sense of
21 what the outcomes, the effects of the law were going
22 to be.

23 And so we didn't feel capable of
24 recommending to the Mississippi legislature something
25 to do that was similar because we didn't have the

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1 ability to say this is what it would accomplish. There
2 just hasn't been enough time to see what was out there
3 based on those two laws.

4 COMMISSIONER ADAMS: Thank you.

5 MS. GLISSON: But now there is
6 potentially.

7 CHAIR CANTU: Thank you. Commissioner
8 Yaki.

9 COMMISSIONER YAKI: Yeah, thank you very
10 much, Susan and the Chair, for this really interesting
11 report. I would note that we touched upon the issue
12 of qualified immunity in our 2018 report on modern
13 policing practices, which I know Commissioner Kladney
14 could elaborate on in more detail.

15 I just wanted to say for the record that
16 I found this very illuminating. And the idea of a,
17 sort of an analysis or a disparate impact study of how
18 the circuits have conducted qualified immunity claims
19 is I think very intriguing. And I appreciate your
20 suggestion. And I intend to follow up on that with
21 my colleagues on the Commission.

22 MS. GLISSON: Thank you so much.

23 MR. RYCHLAK: Thank you.

24 CHAIR CANTU: Thank you. Any other
25 Commissioner?

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1 COMMISSIONER GILCHRIST: Madam Chair.

2 CHAIR CANTU: Yes, yes, Commissioner
3 Gilchrist.

4 COMMISSIONER GILCHRIST: Chair Glisson,
5 thank you so much for your report and this analysis
6 today. I just had a quick question for you.

7 You know, sometimes qualified immunity is
8 seen as the silver bullet in many cases for misconduct
9 and more specifically the defense of misconduct.
10 Would you -- do you believe that if qualified immunity
11 was in some ways removed, would that in essence help
12 to satisfy some of the concerns that I read about in
13 your report?

14 MS. GLISSON: So that's a phenomenal
15 question. And I'd just like to say, speaking as Susan
16 Glisson and not as the chair of the committee anymore
17 --

18 COMMISSIONER GILCHRIST: Oh, okay. I'm
19 sorry about that.

20 MS. GLISSON: Yes, no, that's okay. I
21 just want to be clear that I'm, I don't want to
22 misrepresent my colleagues. So I'm speaking for
23 myself.

24 I do racial reconciliation work. I build
25 trust between police and over police communities as

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1 part of my job. So I know that there is a tremendous
2 discrepancy in the amount of trust that, say, white
3 citizens feel about the police versus, say, what black
4 adults feel. So this issue is very important.

5 I've talked to enough really incredible
6 police officers, you know, Chief Lou Dekmar from
7 LaGrange, Lieutenant Eric Stisher, who's the head of
8 the cadet training academy in Birmingham, Scott
9 Meadors, who does the procedural justice training for
10 the State of California and previously was in Stockton
11 in California.

12 I think that they believe that there is
13 some room to adjust how that law, how qualified immunity
14 is interpreted to make it more clear, right, to look
15 at that Pearson case and make sure that it's not just
16 a hurdle for plaintiffs trying to prove their case,
17 that it's not quite so high and not quite so left up
18 to the discretion of the particular judge that they
19 may come before.

20 So, you know, I think it's worth being a
21 little more aggressive in trying to pursue solutions.

22 And what I really was pleased to hear across the range
23 of positions from our testimonies that people were
24 ready to come to the table to try to figure out good
25 faith solutions. And I think we need to take advantage

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1 of that.

2 COMMISSIONER GILCHRIST: Thank you very
3 much. That's all I have, Madam Chair.

4 MS. GLISSON: Yes.

5 CHAIR CANTU: Thank you, thank you. Is
6 anyone on the line that has questions?

7 COMMISSIONER ADEGBILE: Madam Chair,
8 Commissioner Adegbile.

9 CHAIR CANTU: Yes, you have the floor,
10 Commissioner Adegbile.

11 COMMISSIONER ADEGBILE: This question may
12 be best directed at the law professor, though I leave
13 it to the two of you. Do you have an understanding
14 of whether the qualified immunity doctrine is a
15 judicially created doctrine or whether it has a
16 statutory origin?

17 (Simultaneous speaking.)

18 MR. RYCHLAK: Yeah, I believe in our
19 report we indicate that it is, in fact, a judicially
20 created doctrine. There are instances referred to in
21 the report as well where legislatures have gotten
22 involved. But we have seen it certainly expand. And
23 its current situation is in most jurisdictions and
24 certainly where we are focused, it is judicial and not
25 legislative. Susan, do you agree? Is that fair?

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1 MS. GLISSON: Yes, I agree, Ron. Thank
2 you.

3 MR. RYCHLAK: Thanks.

4 COMMISSIONER ADEGBILE: Thank you. And
5 just a follow-up question, my understanding is that
6 recently the Supreme Court had before it petitions for
7 certiorari asking it to revisit the doctrine and that
8 it declined to grant those petitions. Is that your
9 understand?

10 MR. RYCHLAK: I have seen reports that the
11 petitions were there. And I have not seen a cert grant.
12 So I assume you're correct.

13 COMMISSIONER ADEGBILE: So I take it it's
14 fair to say then that the Court is resting on the
15 judicially created doctrine at least for now as it is
16 without expressing a particular interest in revisiting
17 it in the short run, at least as far as the recent cert
18 petitions, maybe two terms ago went.

19 MR. RYCHLAK: I mean, that's entirely
20 possible. It's also entirely possible those cases did
21 not present the right forum to address the issues that
22 have been at the heart of it. So the Court could have
23 probably stepped in if it wanted to be active and done
24 some changes. But it could be that the next case down
25 the pike will present a better situation to address

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1 the problems that exist.

2 COMMISSIONER ADEGBILE: Yeah, it might be
3 a better vehicle.

4 One other question about the substantive
5 issue here, as I'm understanding the balance, the
6 doctrine purports to give cover and protection to law
7 enforcement officers and officials who may in the
8 exercise of their duty make reasonable mistakes in
9 trying to perform their public function.

10 And so it's essentially designed to shield
11 them from things that may have been wrong but within
12 the realm of some reasonable mistake. Is that a
13 layperson's telling, or do I have that wrong?

14 MR. RYCHLAK: No, I think that's
15 essentially correct. And one of our concerns is if
16 -- I guess the committee felt if we would have the
17 hearing and determine, in fact, whether it's wrong or
18 right and then maybe apply the immunity at a later
19 point, we would at least have that factual background
20 that we don't have when it's applied early.

21 COMMISSIONER ADEGBILE: Right, right.
22 And is it fair to say that some of the cases you've
23 pointed to and many others that exist where conduct
24 that a reasonable person might believe to be outside
25 of the range of reasonable conduct is nevertheless

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1 often shielded under the qualified immunity doctrine
2 because there has been no case that is especially
3 identical where the court has held that that particular
4 conduct is outside of the law?

5 MR. RYCHLAK: Right. When we don't have
6 the fact finding -- so, when the determination is made
7 that immunity applies, we don't have the fact finding
8 and the determination that we might down the road
9 determine, you know, that's inappropriate, but we never
10 get to that stage because we apply the immunity early.
11 But, yes, your question, that's a yes.

12 (Simultaneous speaking.)

13 MR. RYCHLAK: Yes, please do, please do.

14 MS. GLISSON: I'm sorry. I mean, just,
15 you know, looking at some of the other examples, right,
16 someone was given qualified immunity for repeatedly
17 kicking a handcuffed person. Someone instructed the
18 police dog to attack a man who had surrendered with
19 his hands in the air.

20 So, outside of the legal precedents, when
21 the public is looking at these kinds of cases and they
22 see somebody, I'm going to use a colloquial, get away
23 with it, right, it increases the distrust that we,
24 that's crucial to public safety. So just we need a
25 lot more attention and a lot more data.

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1 COMMISSIONER ADEGBILE: Thank you for
2 that. You anticipated my penultimate question, which
3 was the cost of having these qualified immunity cases
4 out there where an objective person looking at the
5 conduct would not need to study constitutional law or
6 1983 cases to know that the conduct was inappropriate.

7 And yet we have a judicial doctrine that
8 shields some of this conduct and then maybe regarded,
9 as I understand it, by the public as an absolute
10 impunity rather than a qualified immunity, and that
11 that undermines the rule of law and trust in law
12 enforcement.

13 MS. GLISSON: Absolutely. I think that's
14 the reasonable conclusion to draw. We see it in the
15 protests that have occurred. There is a sense that
16 police are able to get away with anything.

17 And I'm, again, you know, speaking from
18 just the work that I've done. We know that police
19 officers have to make split-second decisions in high
20 stress situations. So, understandably, some mistakes
21 are going to be made. And because it's public safety
22 and those involved, you know, enforcement, that may
23 sometimes mean a lethal outcome, right.

24 So I don't think, I think people reasonably
25 understand that those kinds of things might happen in

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1 good faith. But it's the ones that are just kind of
2 egregious that really make it hard for those of us who
3 are trying to build bridges between the police and the
4 community that they serve, those are opticals that are
5 in the way of building more effective bridges between
6 the two groups.

7 COMMISSIONER ADEGBILE: And do you have
8 any insight in terms of whether, if these cases were,
9 if qualified immunity were to be changed in some way
10 and police officers were to be sued, isn't it the case
11 that in many cases municipalities could provide
12 insurance and the like so that the, so that there would
13 be a source of support and to answer in defense of the
14 officers that are being challenged, meaning not every
15 officer is going to have to go into their pocket to
16 answer these types of cases if there were to be a change?
17 Is that right?

18 MS. GLISSON: Yes, that's exactly right.
19 That's exactly right.

20 COMMISSIONER ADEGBILE: Okay. Thank you
21 very much for your thoughtful analysis and for
22 elevating this decision and highlighting it on the
23 radar for the Commission. We really appreciate your
24 thoughtful work.

25 MS. GLISSON: Thank you so much for the

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1 really compelling and thoughtful questions.

2 CHAIR CANTU: Thank you. Are there other
3 questions?

4 COMMISSIONER ADAMS: Madam Chair, really
5 quick.

6 CHAIR CANTU: Let me just check. If
7 someone who hasn't asked before, and then I'll come
8 back to you, Commissioner. Someone who has not asked
9 a question. Commissioner Adams.

10 COMMISSIONER ADAMS: Thank you. In a
11 nutshell question, I don't know the answer to this.
12 Does qualified immunity -- obviously, I think it is
13 a barrier to a police officer being held personally
14 liable. Is that a fair nutshell description?

15 MR. RYCHLAK: It's not --

16 COMMISSIONER ADAMS: Not absolute, of
17 course, but just generally speaking.

18 MR. RYCHLAK: Yes.

19 COMMISSIONER ADAMS: Okay.

20 MR. RYCHLAK: In a nutshell.

21 COMMISSIONER ADAMS: Does qualified
22 immunity also extend to protecting that police officer
23 from testifying as a third-party witness?

24 MR. RYCHLAK: No, no, I don't think so.

25 COMMISSIONER ADAMS: Okay. So he can

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1 still be called to testify or she be called about what
2 they did that gave rise to the cause of action.

3 MR. RYCHLAK: Right.

4 COMMISSIONER ADAMS: So, as a practical
5 matter, if all the facts get before the court, how does
6 qualified immunity affect damages, potential for
7 getting damages by the plaintiff from the police
8 department?

9 MR. RYCHLAK: I would suggest that among
10 the problems are the ability to prove that there, in
11 fact, has been an actionable tort or problem (audio
12 interference), is there an actionable problem, because
13 if there's immunity -- you're saying -- transferred
14 the possibility to the department (audio interference)
15 the immunity of the police officer usually prohibits
16 or makes it much more difficult (audio interference)
17 sue the department --

18 COMMISSIONER ADAMS: Well, that's exactly
19 what I'm trying to ask is how does it make it more
20 difficult if the actor could be called as a third-party
21 witness and the department remains on the hook for
22 damage liability. If that actor can be called as a
23 third-party witness, how does qualified immunity
24 affect at all, if at all, the ability of a plaintiff
25 to get damages?

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1 MR. RYCHLAK: The actor --

2 MS. GLISSON: Ron, if I may.

3 (Simultaneous speaking.)

4 MS. GLISSON: Go ahead. I'm sorry.

5 MR. RYCHLAK: No, go ahead.

6 MS. GLISSON: I was just going to share
7 from our report, just bringing back in the conversation
8 about the Fifth Circuit Court of Appeals.

9 We had testimony that plaintiffs fared
10 worse in the Fifth Circuit, because as judges followed
11 precedents that favored police and thus granted 64
12 percent of police requests for qualified immunity in
13 excessive force cases. In comparison, the Ninth
14 Circuit Court of Appeals granted immunity to just 42
15 percent of requests. Of the 435 federal district court
16 rulings in relevant excessive force cases from 2014
17 to 2018, judges in Texas, the Fifth Circuit, granted
18 immunity at nearly twice the rate as California judges.

19 The difference is so stark that one of our
20 folks who gave testimony asserted that an unarmed
21 plaintiff in Texas faces a more difficult time
22 overcoming legal hurdles than an armed plaintiff in
23 California.

24 She shared the example of David Collie of
25 Fort Worth, Texas, who was shot and left permanently

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1 paralyzed by police who mistook him for a suspect in
2 a crime that he had nothing to do with. His Fifth
3 Circuit Court of Appeals case was dismissed, while a
4 Ninth Circuit Court of Appeals judge denied immunity
5 to the officers who shot and killed Benny Herrera of
6 Los Angeles, California for alleged assault and
7 provided a \$1 million settlement to his family. So
8 just a list of some examples of how it has been a hurdle.

9 COMMISSIONER ADAMS: So it sounds like
10 your answer to my question is that it can not only
11 immunize the police officer personally, but it also
12 limits liability against the department broadly.

13 MS. GLISSON: Yes.

14 COMMISSIONER ADAMS: Okay.

15 MS. GLISSON: That's my understanding.

16 COMMISSIONER ADAMS: Thank you. I have
17 nothing else.

18 CHAIR CANTU: Commissioners, any other
19 questions? If there are no further questions, then
20 we will move to the next item.

21 I really, really have to express the thanks
22 of our Commission. Thank you, Chair Glisson, for your
23 service and your leadership on the Mississippi State
24 Advisory Committee. Thank you for taking the time to
25 speak with us today.

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1 You took what I thought was a complicated
2 topic when I was a law student and converted it, both
3 of you converted it into something very, very
4 accessible. And you convinced me once again that the
5 work that you do on these advisory committees is very
6 important work in connecting us to matters in each of
7 the states. So thank you both.

8 We're going to move to the next topic.
9 If you'd like to stay on the line, you can listen to
10 the rest of the meeting. But I know you both are very
11 busy. You can also move on to your next
12 responsibilities. So thank you so much.

13 MS. GLISSON: You all take good care.

14 CHAIR CANTU: Thank you.

15 MR. RYCHLAK: Thank you.

16 CHAIR CANTU: Take care.

17 B. DISCUSSION AND VOTE ON ADVISORY COMMITTEE

18 APPOINTMENTS

19 CHAIR CANTU: The second item on today's
20 agenda, as you know, the Commission depends on advice
21 from highly qualified persons who serve in each of our
22 50 states, plus the District of Columbia and most
23 recently the U.S. Virgin Islands, Puerto Rico, Northern
24 Mariana Islands, Guam, and American Samoa. Today we
25 will appoint the members of one advisory committee,

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1 U.S. Virgin Islands.

2 I move to appoint the following persons
3 to serve as advisory committee members in the U.S.
4 Virgin Islands based on the recommendations of the
5 staff director. All are new appointees. This is a
6 brand new advisory committee. So everyone is new.
7 Pamela Colon nominated as chair, Michael Bornn, Vincent
8 Danet, Nash Davis, Arlene Garcia, Eddie Gordon,
9 Antoinette Gumbs-Hecht, Kenny Hendrickson, Molly
10 Perry, Alan Smith.

11 All these individuals will serve as
12 uncompensated government employees. If the motion
13 passes, the Commission will authorize the staff
14 director to execute the appropriate paperwork.

15 Do I have a second for this motion?

16 COMMISSIONER ADAMS: Second.

17 CHAIR CANTU: Thank you, Commissioner
18 Adams. I'll open the floor up for discussion. I only
19 want to say, depending on how this vote happens, we
20 will have made a historic, another historic step for
21 this Commission. All right. Any conversation?
22 Thank you.

23 So, with no further discussion, I'll call
24 the question and take a roll call vote. Commissioner
25 Adams, how do you vote?

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1 COMMISSIONER ADAMS: Aye.

2 CHAIR CANTU: Commissioner Adegbile.

3 COMMISSIONER ADEGBILE: Aye.

4 CHAIR CANTU: Commissioner Gilchrist.

5 COMMISSIONER GILCHRIST: Aye.

6 CHAIR CANTU: Commissioner Heriot.

7 COMMISSIONER HERIOT: I vote yes.

8 CHAIR CANTU: Commissioner Kirsanow.

9 COMMISSIONER KIRSANOW: Yes.

10 CHAIR CANTU: Commissioner Kladney.

11 COMMISSIONER KLADNEY: Yes.

12 CHAIR CANTU: Commissioner Yaki.

13 COMMISSIONER YAKI: Aye.

14 CHAIR CANTU: And I vote yes. This is a
15 unanimous pass.

16 This represents the last of our new
17 territorial advisory committees. And you all did it
18 in record time. And I completely thank each and every
19 one on the Commission, the staff, the staff director.

20 We went from 51 to 56, like a 10 percent increase in
21 the number of advisors. And I'm very, very proud of
22 the Commission. And I'm proud of all of you.

23 Next, we turn to appointing members to the
24 Florida State Advisory Committee due to some recent
25 retirements. We thank the retired members. You all

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1 have provided excellent service as advisors. And we
2 are very, very grateful to you.

3 I move to appoint the following persons
4 to serve as advisory committee members in the Florida
5 State Advisory Committee based on the recommendations
6 of the staff director. Both are new appointees. Zach
7 Smith and Debbie Macon.

8 These individuals will serve as
9 uncompensated government employees. If the motion
10 passes, the Commission will authorize the staff
11 director to execute the appropriate paperwork.

12 Do I have a second for the motion?

13 COMMISSIONER YAKI: Second.

14 CHAIR CANTU: Thank you, Commissioner
15 Yaki. I'll open the floor for discussion or anyone
16 online? Any Commissioners, discussion?

17 Hearing no interventions or discussion,
18 I'm going to call the question and take a roll call
19 vote. Commissioner Adams, how do you vote?

20 COMMISSIONER ADAMS: Aye.

21 CHAIR CANTU: Commissioner Adegbile.

22 COMMISSIONER ADEGBILE: No.

23 CHAIR CANTU: Commissioner Gilchrist.

24 COMMISSIONER GILCHRIST: Aye.

25 CHAIR CANTU: Commissioner Heriot.

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1 COMMISSIONER HERIOT: I vote yes.

2 CHAIR CANTU: Commissioner Kirsanow.

3 COMMISSIONER KIRSANOW: Yes.

4 CHAIR CANTU: Commissioner Kladney.

5 COMMISSIONER KLADNEY: Abstain.

6 CHAIR CANTU: Commissioner Yaki.

7 COMMISSIONER YAKI: Abstain.

8 CHAIR CANTU: And I vote yes. We have two
9 abstentions, one no, and that leaves us with five yes
10 votes. So the motion passes.

11 And that concludes -- we have one last
12 business item.

13 C. MANAGEMENT AND OPERATIONS

14 STAFF DIRECTOR'S REPORT

15 CHAIR CANTU: We now turn to the staff
16 director. Mr. Morales, we'll hear from you for your
17 monthly staff report.

18 MR. MORALES: Thank you, Madam Chair. In
19 the interests of time, I have nothing further to add
20 than what's already contained in the report. But as
21 always, I'm available to discuss any matter in the
22 report that any Commissioner should choose to have a
23 question about.

24 So, with that, thank you. And I do want
25 to commend all the Commissioners and the staff for

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1 putting together all the state advisory committees for
2 the territories. It was a tremendous effort.

3 And I want to thank the regional program
4 staff and the team of special assistants that all got
5 together to get this done, because, you know, Congress
6 gave us this mandate over a year ago, and they're all
7 over the world quite frankly, from Puerto Rico to Guam
8 to American Samoa and the Virgin Islands to just name
9 a few of them. But it's a tremendous amount of work,
10 so thank you all.

11 I have nothing further, Madam Chair.
12 Thank you.

13 CHAIR CANTU: Thank you. Any questions?
14 This concludes the business on the agenda for today's
15 business meeting.

16 COMMISSIONER YAKI: I have one question.

17 CHAIR CANTU: Yes, please.

18 COMMISSIONER YAKI: I want to thank the
19 National Press Club for letting us use their
20 facilities. But, Mr. Staff Director, is there any hope
21 that we'll be able to have the ability to go back into
22 our own chambers and get back online that way?

23 MR. MORALES: There's always hope, Mr.
24 Commissioner. The problem has been that some of the
25 technology required for streaming live has changed in

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1 our capacity in our headquarters office because of the
2 two-year delay. The technology was not up to speed.

3 We're in the process of purchasing and
4 obtaining the equipment. And we're moving as
5 expeditiously as we can. We're hopeful to get the
6 meetings back in the headquarters as quickly as
7 possible, perhaps in the next month. It may be another
8 month after that. We don't know. We're dependent on
9 when the technology becomes available. As you well
10 know, there's supply chain issues that have impacted
11 the world.

12 But we're working on it. And we'll get
13 back to it. We want to be back in our home headquarters
14 hearing room as quickly and as rapidly as we can. So
15 thank you for your question.

16 COMMISSIONER YAKI: Well, thank you. And
17 I hope that when you demo this that you do a TikTok
18 as your first --

19 (Laughter.)

20 COMMISSIONER YAKI: -- beta test.

21 MR. MORALES: Good enough. Thank you.

22 CHAIR CANTU: Thank you. Thank you all.

23 Unless there's further discussion, I'm ready to
24 adjourn.

25 III. ADJOURN MEETING

1 CHAIR CANTU: This meeting is adjourned.

2 Thank you.

3 (Whereupon, the above-entitled matter
4 went off the record at 12:45 p.m.)

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