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 KLANDNEY, Commissioner*

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

DAVID GANZ, General Counsel & Parliamentarian*

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

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

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

We thank the general public for their interest in attending.

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

I'd like to confirm that the Commissioners are present today. And so I'm going to ask both Commissioners in person and online by a roll call vote. Please say present or here when I say your name.

Commissioner Adams.
COMMISSIONER ADAMS: Present.

CHAIR CANTU: Commissioner Adegbile.

We'll come back to you.

COMMISSIONER ADEGBILE: Present.

CHAIR CANTU: Oh, thank you.

Commissioner Gilchrist.

COMMISSIONER GILCHRIST: Present.

CHAIR CANTU: Commissioner Heriot.

COMMISSIONER HERIOT: I'm here.

CHAIR CANTU: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Here.

CHAIR CANTU: Commissioner Kladney.

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

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

CHAIR CANTU: Two years ago, yay.

Commissioner Kladney, coming back to you.

COMMISSIONER YAKI: Dave, turn off your mute button.

CHAIR CANTU: We know he's here.

OPERATOR: This is the operator.

Commissioner Kladney has disconnected.

CHAIR CANTU: We've lost his line. Okay.

We're going to hope to hear him soon.
Based on the response, a quorum of the Commissioners is present. Is the court reporter present?

COURT REPORTER: I am.

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

MR. MORALES: I am present.

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

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

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

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

COMMISSIONER Kladney: First, Madam Chair.

CHAIR CANTU: Yes, please.

COMMISSIONER Kladney: Madam Chair.
CHAIR CANTU: Yes, please.

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

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

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

I. APPROVAL OF AGENDA

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

(Chorus of aye.)

CHAIR CANTU: And online.

(Chorus of aye.)


II. BUSINESS MEETING

A. PRESENTATIONS BY STATE ADVISORY COMMITTEE CHAIRS
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.
We heard some telling testimony from a range of perspectives on the issue that were informative and quite passionate. And we learned a great deal in our deliberations.

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

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

And our speakers shared, you know, concerning sort of cases where these issues have come up, for example, holding a 14-year-old in solitary
confinement for over a month, hazing a pregnant black
woman who was pulled over while taking her 11-year-old
son to school, being granted qualified immunity because
of a difference between shooting at a dog and instead
hitting a child and shooting at a truck and instead
hitting a passenger. So there are some complicated
cases out there. And we heard testimony about that.

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

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

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

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

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

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

And the Fifth Circuit serves the most racially diverse population in the country. However,
Fifth Circuit judges are the least racially and ethnically diverse in the country, so black and Hispanic individuals are disproportionately impacted by qualified immunity.

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

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

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

That connects to our recommendation for the Commission. We really think that the U.S. Commission on Civil Rights should conduct a study of...
qualified immunity at the national level.

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

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

We think the U.S. Commission should issue the following recommendations to the President and Congress, to require all law enforcement agencies receiving federal funding to collect and report data regarding excessive force complaints, motions for qualified immunity and the outcomes of the same, adopt more detailed codes to govern officer conduct in light of such data, establish a task force to study the differences and the applications, and increase the
fungibility in law enforcement funding so that state
and local governments may use such funding to establish
and support broader community based social services,
such as mental health crisis intervention, to support
and reduce risk to officers and the community.

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

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

We also hope that you would make a
recommendation to the Mississippi Administrative
Office of the Courts to collect and report on more
specific data that can easily be disaggregated by type,
like use of force, search and seizure, et cetera.

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

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

CHAIR CANTU: Thank you, Chair Glisson.

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

Could you talk a little more about the
Fifth Circuit and give us some sense of how that circuit compares to other circuits and how it handles the issue of qualified immunity?

MS. GLISSON: I may ask my successor, the amazing Ron Rychlak, to help with that a little bit. But mainly, you know, it's a historic district that is known for so many path-breaking civil rights cases. But in recent years, the sort of ironic shift seems to be that the Fifth Circuit represents the most racially diverse region, but the judges who sit on that circuit don't reflect the folks who live there so well.

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

CHAIR CANTU: Chair Rychlak.

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

But in terms of the judicial composition in the Fifth Circuit, it's not merely a matter of the Fifth Circuit Court of Appeals. It's a matter of district courts throughout the Fifth Circuit.
Initially, as Susan indicated, I think these courts were leaders in efforts to overcome civil rights difficulties, amazing acts of bravery by judges throughout the region. I don't see the issue being a matter of race as much as I do think it's the law in order circuit district area.

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

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

CHAIR CANTU: And if I could, please, this is my last question, and I'll turn to my colleagues. But could I have folks speak a little bit about the lack of data or the lack of facts that appear when someone is dismissed from the case because they're immune, so there will not be a trial as to that person's participation in the actions that led up to the court
So what facts do you believe are missing or not available because that person was not part of the trial?

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

MS. GLISSON: Thanks, Ron.

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

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

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

If these cases went to trial and at the end of the trial there's a conclusion that there should not be liability, that's one thing. But when we don't have the trial, we don't have the record, it's really hard to understand how to proceed next.
CHAIR CANTU: Thank you. I turn to my colleagues. Do you all have any questions? Commissioner Adams. And then I'll ask Commissioner Yaki.

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

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

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

And so we didn't feel capable of recommending to the Mississippi legislature something to do that was similar because we didn't have the
ability to say this is what it would accomplish. There just hasn't been enough time to see what was out there based on those two laws.

COMMISSIONER ADAMS: Thank you.

MS. GLISSON: But now there is potentially.

CHAIR CANTU: Thank you. Commissioner Yaki.

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

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

MS. GLISSON: Thank you so much.

MR. RYCHLAK: Thank you.

CHAIR CANTU: Thank you. Any other Commissioner?
COMMISSIONER GILCHRIST: Madam Chair.

CHAIR CANTU: Yes, yes, Commissioner Gilchrist.

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

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

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

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

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

I do racial reconciliation work. I build trust between police and over police communities as
part of my job. So I know that there is a tremendous
discrepancy in the amount of trust that, say, white
citizens feel about the police versus, say, what black
adults feel. So this issue is very important.

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

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

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

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

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

MS. GLISSON: Yes.

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

COMMISSIONER ADEGBILE: Madam Chair, Commissioner Adegbile.

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

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

(Simultaneous speaking.)

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

MR. RYCHLAK: Thanks.

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

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

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

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

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

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

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

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

COMMISSIONER ADEGBILE: Right, right. And is it fair to say that some of the cases you've pointed to and many others that exist where conduct that a reasonable person might believe to be outside of the range of reasonable conduct is nevertheless
often shielded under the qualified immunity doctrine
because there has been no case that is especially
identical where the court has held that that particular
conduct is outside of the law?

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

(Simultaneous speaking.)

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

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

So, outside of the legal precedents, when
the public is looking at these kinds of cases and they
see somebody, I'm going to use a colloquial, get away
with it, right, it increases the distrust that we,
that's crucial to public safety. So just we need a
lot more attention and a lot more data.
COMMISSIONER ADEGBILE: Thank you for that. You anticipated my penultimate question, which was the cost of having these qualified immunity cases out there where an objective person looking at the conduct would not need to study constitutional law or 1983 cases to know that the conduct was inappropriate.

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

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

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

So I don't think, I think people reasonably understand that those kinds of things might happen in
good faith. But it's the ones that are just kind of egregious that really make it hard for those of us who are trying to build bridges between the police and the community that they serve, those are opticals that are in the way of building more effective bridges between the two groups.

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

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

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

MS. GLISSON: Thank you so much for the
really compelling and thoughtful questions.

CHAIR CANTU: Thank you. Are there other questions?

COMMISSIONER ADAMS: Madam Chair, really quick.

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

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

MR. RYCHLAK: It's not --

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

MR. RYCHLAK: Yes.

COMMISSIONER ADAMS: Okay.

MR. RYCHLAK: In a nutshell.

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

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

COMMISSIONER ADAMS: Okay. So he can
still be called to testify or she be called about what
they did that gave rise to the cause of action.

    MR. RYCHLAK: Right.

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

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

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

MS. GLISSON: Ron, if I may.

(Simultaneous speaking.)

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

MR. RYCHLAK: No, go ahead.

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

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

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

She shared the example of David Collie of Fort Worth, Texas, who was shot and left permanently
paralyzed by police who mistook him for a suspect in a crime that he had nothing to do with. His Fifth Circuit Court of Appeals case was dismissed, while a Ninth Circuit Court of Appeals judge denied immunity to the officers who shot and killed Benny Herrera of Los Angeles, California for alleged assault and provided a $1 million settlement to his family. So just a list of some examples of how it has been a hurdle.

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

MS. GLISSON: Yes.

COMMISSIONER ADAMS: Okay.

MS. GLISSON: That's my understanding.

COMMISSIONER ADAMS: Thank you. I have nothing else.

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

I really, really have to express the thanks of our Commission. Thank you, Chair Glisson, for your service and your leadership on the Mississippi State Advisory Committee. Thank you for taking the time to speak with us today.
You took what I thought was a complicated topic when I was a law student and converted it, both of you converted it into something very, very accessible. And you convinced me once again that the work that you do on these advisory committees is very important work in connecting us to matters in each of the states. So thank you both.

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

MS. GLISSON: You all take good care.

CHAIR CANTU: Thank you.

MR. RYCHLAK: Thank you.

CHAIR CANTU: Take care.

B. DISCUSSION AND VOTE ON ADVISORY COMMITTEE APPOINTMENTS

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

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

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

Do I have a second for this motion?

COMMISSIONER ADAMS: Second.

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

So, with no further discussion, I'll call the question and take a roll call vote. Commissioner Adams, how do you vote?
COMMISSIONER ADAMS: Aye.

CHAIR CANTU: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: Aye.

CHAIR CANTU: Commissioner Heriot.

COMMISSIONER HERIOT: I vote yes.

CHAIR CANTU: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Commissioner Kladney.

COMMISSIONER Kladney: Yes.

CHAIR CANTU: Commissioner Yaki.

COMMISSIONER YAKI: Aye.

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

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

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

Next, we turn to appointing members to the Florida State Advisory Committee due to some recent retirements. We thank the retired members. You all
have provided excellent service as advisors. And we are very, very grateful to you.

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

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

Do I have a second for the motion?

COMMISSIONER YAKI: Second.

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

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

COMMISSIONER ADAMS: Aye.

CHAIR CANTU: Commissioner Adegbile.

COMMISSIONER ADEGBILE: No.

CHAIR CANTU: Commissioner Gilchrist.

COMMISSIONER GILCHRIST: Aye.

CHAIR CANTU: Commissioner Heriot.
COMMISSIONER HERIOT: I vote yes.

CHAIR CANTU: Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Commissioner Kladney.

COMMISSIONER Kladney: Abstain.

CHAIR CANTU: Commissioner Yaki.

COMMISSIONER YAKI: Abstain.

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

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

C. MANAGEMENT AND OPERATIONS

STAFF DIRECTOR'S REPORT

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

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

So, with that, thank you. And I do want to commend all the Commissioners and the staff for
putting together all the state advisory committees for the territories. It was a tremendous effort.

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

I have nothing further, Madam Chair. Thank you.

CHAIR CANTU: Thank you. Any questions?

This concludes the business on the agenda for today's business meeting.

COMMISSIONER YAKI: I have one question.

CHAIR CANTU: Yes, please.

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

MR. MORALES: There's always hope, Mr. Commissioner. The problem has been that some of the technology required for streaming live has changed in
our capacity in our headquarters office because of the
two-year delay. The technology was not up to speed.

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

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

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

   (Laughter.)

   COMMISSIONER YAKI: -- beta test.

   MR. MORALES: Good enough. Thank you.

   CHAIR CANTU: Thank you. Thank you all.
   Unless there's further discussion, I'm ready to
adjourn.

   III. ADJOURN MEETING

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CHAIR CANTU: This meeting is adjourned.

Thank you.

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