U.S. COMMISSION ON CIVIL RIGHTS

MEETING

FRIDAY, SEPTEMBER 21, 2012

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
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
RICHARD SCHMECHEL
ALISON SOMIN
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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.
CHAIRMAN CASTRO: Are there any amendments? Hearing none, let's vote on this. All in favor, say aye.

(Chorus of ayes.)

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

As you can see, we are today having our first meeting in our beautiful new headquarters space. I don't know how many of the Commissioners have had an opportunity to tour. I know I have both during the last stages of the construction phase and of course, today, and these are spectacular new facilities that we were very pleased to be able to move into at a cost savings. But beyond that, I know it has taken a lot of time and effort and hard work from our staff to get us here today into these great premises, this great new home for the Civil Rights Commission.

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

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

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

II. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

CHAIRMAN CASTRO: The first item we've got, there are two items, but we'll try to deal with them in tandem. One is the establishment of our 2013 Statutory Enforcement Report topic and a related issue of scheduling that as well as our 2013 briefings. It's my understanding that Commissioners have been having discussions about a proposal that can be presented today to the Commission. I know there have been conversations initially between me and
Commissioner Heriot and then Commissioner Gaziano -- I'm sorry, Commissioners Kladney and Kirsanow and also Commissioner Achtenberg. And I do believe that there may be a proposal today that we can bring forward.

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

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

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

COMMISSIONER HERIOT: The proposal is to hold Commissioner Yaki's briefing on Islam in November; to hold Commissioner Kirsanow's Criminal Background briefing in December; to hold the enforcement report, Sexual Assault in the Military which was Commissioner Kladney's topic in January; to hold Commissioner Thernstrom's Entrepreneurship briefing in February; to hold Commissioner Kirsanow's Peaceful Coexistence briefing in March; to hold Commissioner Kladney's NVRA briefing in April; and to hold the Chairman's Veterans topic thereafter. This is a very ambitious schedule, so we're going to need to plan for time for business meetings either on the telephone or to have a very long meeting on Fridays or...
to have a Thursday-Friday meeting now and then. But this is what I think we've got a majority behind.

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

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

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

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

COMMISSIONER KLANDNEY and COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: The Chair recognizes the Vice Chair.

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

COMMISSIONER KLANDNEY: These are just the
informal notes.

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

CHAIRMAN CASTRO: Any other discussion or questions on this?

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

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

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

CHAIRMAN CASTRO: What do you mean? What
was just placed here on the record?

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

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

COMMISSIONER HERIOT: I just emailed it to you.

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

CHAIRMAN CASTRO: Well, these are derivations of schedules that have been circulated among the Commissioners since I believe --
COMMISSIONER YAKI: These are not derivations of schedules.

CHAIRMAN CASTRO: They are.

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

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

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

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

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

COMMISSIONER KIRSANOW: Hello.

CHAIRMAN CASTRO: Yes. Hello. Is that
Commissioner Kirsanow?

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

CHAIRMAN CASTRO: Yes, there is.

(Laughter.)

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

(Pause.)

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

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

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

COMMISSIONER YAKI: Excuse me, Mr. Chair. It's not an Islam paper. It is an Islamophobia.
CHAIRMAN CASTRO: Islamaphobia paper. I stand corrected.

COMMISSIONER YAKI: There's quite a big difference.

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

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

All those -- let me do a vote.

(Off mic comment.)

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

So Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.
CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: I pass.

CHAIRMAN CASTRO: I'll come back to you.

Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

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

Commissioner Yaki, we'll come back to you.

COMMISSIONER YAKI: No.

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

Next we have on the agenda the scheduling
of the 2013 briefings, so we don't need to move forward on that.

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

Commissioner Kladney?

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

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

COMMISSIONER KLADNEY: And I would once again suggest to the body that we take August off, so
I would also ask that we not have a meeting in August.

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

COMMISSIONER KLADEY: I would also suggest that we not have a meeting in August.

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

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

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

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

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

COMMISSIONER YAKI: February 15th?

CHAIRMAN CASTRO: February 15th. The Vice
Chair is checking her calendar now.

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

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

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

COMMISSIONER YAKI: No.

CHAIRMAN CASTRO: Okay.

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

CHAIRMAN CASTRO: Yes.

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

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

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: So January has got to stay on.

Since February is proposed -- sorry, Vice
Chair. I was just about to destroy the electronics here by spilling the water. We want to make sure you're available in February for your briefing.

(Off mic comment.)

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

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

CHAIRMAN CASTRO: I understand. I'm not criticizing. I was waiting once you're up. Okay, right now we'll come back and visit, revisit February. Any other dates on the calendar that are problematic?

COMMISSIONER YAKI: May 10th.

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

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

CHAIRMAN CASTRO: How is May 17th for folks?

COMMISSIONER YAKI: Fine for me.

COMMISSIONER HERIOT: Where are we?

CHAIRMAN CASTRO: May. Commissioner Yaki cannot do May 10th.
COMMISSIONER KLADNEY: Works for me.

COMMISSIONER HERIOT: May 17th?

CHAIRMAN CASTRO: Yes.

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

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

COMMISSIONER KLADNEY: Both work for me.

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

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

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

CHAIRMAN CASTRO: In August?

VICE CHAIR THERNSTROM: Yes.

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

COMMISSIONER KLADNEY: Pardon, excuse me?

CHAIRMAN CASTRO: Commissioner Heriot said the meeting before August is right before we're going
to be approving our enforcement report.

COMMISSIONER Kladney: The meeting before August.

Chairman Castro: The August meeting.

COMMISSIONER Kladney: We would be approving it?

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

COMMISSIONER Kladney: Okay, then what month can we take off?

COMMISSIONER Heriot: Pardon me?

COMMISSIONER Kladney: What month can we take off?

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

COMMISSIONER Kladney: Well, we haven't done a lot of work this last year, that's for sure.
COMMISSIONER HERIOT: And we won't do more if we have fewer meetings.

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

COMMISSIONER YAKI: Mr. Chair?

CHAIRMAN CASTRO: Yes, sir.

COMMISSIONER YAKI: I'm just going to make one more plea about January 4th. If Commissioners wish to go to the Lincoln Cottage event, I think that they should, but I think that we should seriously rethink the date of January 4th for three very important reasons. One, you are asking people who are
witnesses to travel during the time when they might still be spending the holidays with their families, number one. Number two, you're asking staff to try and wrangle all the logistics for the statutory report hearing at a time when I think they should want to be and probably do, spending time with their families. Three, I think that those two combined make for some, I think, last minute issues for this that given that this is the hearing for the statutory report militate pushing it back further in January.

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

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

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

COMMISSIONER ACHTENBERG: Mr. Chairman?

CHAIRMAN CASTRO: Yes, Commissioner Achtenberg.

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

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

CHAIRMAN CASTRO: Any other Commissioners have anything in January?
Commissioner Kladney?

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

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

COMMISSIONER KLADNEY: Oh, right.

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

(Chorus of voices.)

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

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

COMMISSIONER KLADNEY: Pardon?

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

COMMISSIONER KLADNEY: Okay, then the 11th.

COMMISSIONER HERIOT: I can do that.

CHAIRMAN CASTRO: Commissioner Achtenberg, how does that sound to you?
COMMISSIONER ACHTENBERG: What's that?

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

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

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

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

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

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

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

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

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

MS. HEPLER: I'm sorry, I just wanted to address your issue and you brought up some good points. In the Federal government, for example, and I'm in a situation if you don't use your leave, you lose it, and at this time that's usually when people schedule it in December. And that's one thing because people that have that and I'm talking about all across
the government, if they don't use it, they lose it. And they tend to take it. And this year, it's an odd year because the leave year actually ends into the second week of January, so that would cover that period.

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

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

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

Does that address what you were asking?

COMMISSIONER HERIOT: I like David's proposal.

CHAIRMAN CASTRO: I'm just checking with the Vice Chair here on the earlier dates, so just bear with me a second.
Commissioner Achtenberg?

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

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

CHAIRMAN CASTRO: The 11th.

COMMISSIONER HERIOT: I'm fine.

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

COMMISSIONER KLADNEY: May 15th?

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

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

CHAIRMAN CASTRO: Okay.

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

CHAIRMAN CASTRO: Let's see if there are other dates in February that works for folks? We're not trying to exclude you. We're just trying to
figure out a date that works for everybody. What was
the original date we were working with that didn't
work?

So, February 8th?

VICE CHAIR THERNSTROM: Fine with me.

COMMISSIONER KLADNEY: Fine with me.

CHAIRMAN CASTRO: On the phone, February
8th?

Commissioner Yaki, February 8th?

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

I mean --

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

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

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

COMMISSIONER KLADNEY: I'm fine with it.

COMMISSIONER ACHTENBERG: So it's February
8th?

CHAIRMAN CASTRO: February 8th.

Commissioner Yaki?
COMMISSIONER YAKI: Good.

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

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

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

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

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

COMMISSIONER KLADNEY: Maybe we can schedule the meeting and if we do approve the statutory report in July, could I have your vote for getting the August meeting out of the way?
COMMISSIONER HERIOT: Assuming that we haven't scheduled a briefing during that period in the interim, yes. Only a business meeting, write down that I said that I would vote for that this time, this time, because I will forget.

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

(Laughter.)

CHAIRMAN CASTRO: With that caveat --

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

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

MS. TOLHURST: Not on this. So the problem is you have to vote, if you care about meeting our statutory deadline of September 30th. Unless the Commissioners that I noted don't want to shorten their statement time and rebuttal time, the report has to be
approved before August because you want 30 more days
to do statements and 30 more days to do rebuttals.
And you don't do that until the report is approved.

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

CHAIRMAN CASTRO: The Chair recognizes the
Vice Chair.

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

I mean it was automatic, no August
meeting.

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

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

CHAIRMAN CASTRO: -- but I am willing to -
- as long as we can get our work done in July, I'm open to giving us August off.

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

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

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

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

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

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.
CHAIRMAN CASTRO: Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: No.

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

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

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Pass.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

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

COMMISSIONER ACHTENBERG: We couldn't hear anything.

VICE CHAIR THERNSTROM: Just vote “yes.”

(Laughter.)

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

COMMISSIONER KIRSANOW: Yes.
CHAIRMAN CASTRO: Okay. Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes.

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

Commissioner Yaki?

COMMISSIONER YAKI: No.

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

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

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

III. MANAGEMENT AND OPERATIONS

MR. MINARIK: Good morning, Commissioners.

CHAIRMAN CASTRO: Good morning.

MR. MINARIK: As you know, I'm going on to
my fourth year as Acting--

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

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

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

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

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

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

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

And after the CMO does that, then the GSA, who is our oversight body, with respect to the FACA database, then certifies that our data is correct. And then it's locked. And so I wanted to bring to your attention the FACA database, that it exists and that we're facing an operation in October and into
November to get that Federal Advisory Committee Act
database closed out.

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

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

One of the things that you'll notice in
the report is if a SAC is not chartered, there's no
meeting dates. There's no activity going on and
that's because there's a very strict rule about SACs
that are not chartered are no longer active and they
are considered administratively inactive.
So I just wanted to bring your attention to that monthly report that's also done by RPCU, but it's done for your benefit. So you can feel free to change it.

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

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

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

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

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

I know some of my colleagues have specific
questions that I'm sure they'll ask you, but my effort
here is to really begin and hopefully continue a
dialogue between our Regional Directors and the
Commissioners so that we're better informed about what
you're experiencing and you're better informed about
what concerns we have and the things we'd like to see.

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

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

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

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

MR. MINARIK: I get the opportunity to speak as RPCU Chief, so when I talk to my colleagues I
said I would prefer to do less talking and let them do more.

CHAIRMAN CASTRO: Sure, that's fine.

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

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

(Pause.)

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

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

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

CHAIRMAN CASTRO: Now?

MR. MINARIK: Yes, sir.

CHAIRMAN CASTRO: Ms. Davis?

MS. DAVIS: I'm going to go at this a little differently. I just want to talk to you in terms of my background and familiarity with the Commission, both in the years that I was on the House Judiciary Subcommittee which is the authorizing committee for the Commission, so I remember when the Commission was in its heyday and I remember when the Commission lost resources in the early 1980s and the challenges that it was facing. And it was during that time that that language was put in there to designate a proportion of the budget for the Commission to do the work of the Advisory Committees and yes, it has
continued to go down without that information.

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

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

And I think rather than deal with each press release as a first time, let's figure this out, if we had a template and just filled in information that could go a lot more smoothly. But we've also had an opportunity, I think, to do some creative things that if we had an opportunity to talk about best practices could be utilized by the other advisory committees and who knows, the Commission might want to use some of those, for example. I mean we've used webinar to do some work with our advisory committees.
And in fact, we have a webinar scheduled on the 27th that's going to be a training webinar for our committee members.

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

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

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

We've been asked to do more with less. When I started with the Agency six years ago, I had four SACs. I'm up to eight. It's impossible to do eight SACs and do them justice. Add to it that we have various obstacles that are put in our way for a variety of reasons, some bureaucratic, some without a Staff Director; I have two reports that can't be approved now. And the committees are both -- the
committees who have done these reports are very unhappy about that. So, so we face a lot of challenges.

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

So we've worked hard to try and -- we've worked hard and I think the entire Commission has a problem with money. But we worked hard to do the best we can with very limited resources. An example is I just was in Vermont. I was in New Hampshire and because we're so short on funds, I did a meeting in Maine. I did a meeting in Vermont. And I did a meeting in New Hampshire all in three days which meant driving considerable distances just to try and keep these committees energized. And if you don't keep them energized, they don't want to do this work. And it's very important work. And we've had some fairly
good accomplishments when we do our work. So I would encourage the Commissioners to see if there are ways we can collaborate to keep them chartered.

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

(Off mic comment.)

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

(Off mic comment.)

MS. DELAVIEZ: I'm sorry, thanks. Yes, you have to file the charter every two years, but you can make the appointment term longer. You can make it six years. You can make it four years. We went to FACA training and one of the leaders of GSA said why don't you file one charter for all 51? I don't think the
Commissioners and I don't think we're ready to do that, but we certainly could extend the appointment period.

Did you have a question?

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

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

COMMISSIONER HERIOT: How are you defining --

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

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

MS. DELAVIEZ: That's right.

COMMISSIONER HERIOT: And what I was envisioning was having six-year terms. That cuts the amount of work that you're doing by a third. And then also we have these huge SACs from 11 to 18. We've got
eight members here and yet we seem to do just fine. I think more members would make it harder.

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

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

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

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

    MS. DELAVIEZ: Absolutely.

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

    COMMISSIONER HERIOT: I get excited about it.
CHAIRMAN CASTRO: I'm excited about it, too, because when this was raised to me I actually talked to someone from GSA, Kenneth something or other -- Fennell --

COMMISSIONER HERIOT: Fussell.

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

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

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

So if somebody resigns, it should be simply a quorum of whatever, whatever number is our
minimum after attrition that we could say that we're going to charter for a minimum of eight, but we could say that five is the minimum number for a continuing SAC instead of allowing a charter to go into hiatus. And then three people show up out of the five, that's a quorum.

MS. DELAVIEZ: You're singing my song.

COMMISSIONER HERIOT: Okay.

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

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

CHAIRMAN CASTRO: Mr. Mussatt?

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

Going back to the big picture, I know most
of you have probably served on corporate or nonprofit
boards and have done some sort of SWAT analysis of the
organization which is basically looking at the
strengths, weaknesses, opportunities, and threats of
the organization in its environment as it is. And so
although it's not my role to do that, I would assume
that if you did so one of the clear strengths of our
Agency is that we have access to -- if they were all
chartered and active, 700 or so State Advisory
Committee members. And these are people who
volunteer. They work for free to do work for this
Agency and they only ask sometimes, not always, for reimbursement for their travel. These are also, again, these are Democrats, Republicans, Independents, who are African-American, White, Latino, Asian-American, Native American, gay, straight, left and right ideologues, law school professors, social scientists, business people, the list goes on. And they've demonstrated experience and at least a sincere interest in civil rights issues in their state.

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

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

I think that in addition to some of these changes that Commissioner Heriot mentioned about
terms, that could help obviously. But we also just need to work together more. I think that there's common misunderstandings what you want from SAC packages, what we're delivering to you, and I think that together as an Agency we need to take responsibility for SAC charters and together we need to fix it.

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

This report, by the way, was entitled "The Commission Should Strengthen Its Quality Assurance Policies and Make Better Use of Its State Advisory Committees." The report discusses how the Commission
had regrettably significantly reduced regional staff and resources, so I don't have to repeat what the GAO already made clear to you. And I also realize that other departments had experienced cuts since then, so I'm not going to find a whole lot of sympathy.

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

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

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

Also, we need to think about whether publishing bound reports is still viable in an age of technology. I mean we need to think about how we distribute and produce reports. And we also have to
realize that there are now numerous think tanks, university research centers, civil rights advocate groups that do the data-driven reports that we used to do.

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

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

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

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

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

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

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

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

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

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

MS. ROBINSON: I'll go. This is Farella Robinson.
CHAIRMAN CASTRO: Please proceed.

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

CHAIRMAN CASTRO: Thank you.

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

I would also like to express the importance of the SAC. They represent the investigative power and moral authority of the Commission in each State and across this Nation. The Commission is magnified by the presence of vigilant
and active SACs. They are the eyes and ears. They
alert the Commission and the general public for early
warning signs of emerging or serious civil rights
developments across the nation.

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

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

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

Now I will go into the challenges. As you
know, not enough staff to support the core mission and
work of the SACs exists in this Agency. This causes
the Regional Director to serve in dual roles as
manager, supervisor, and civil rights analyst. I
believe the lack of this very important critical
position affects the ability of the Region or at least
the Central Regional Office to achieve its mission or
goals. This is also noted by the IG.

   Since ongoing lack of staff makes
chartering problematic because of the short charter
period that we have already noted during this meeting.
Chartering in the Central Regional Office is ongoing.
Based on the Lean Six process, this includes reaching
out to a whole host of organizations, 12 different
entities.

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

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

   Another challenge in the matter of
charters are that since 2007, SAC appointments, in my
view, have been micromanaged based on political ideology. Of course, balance is important and necessary, but in recent years this has been a real problem in the chartering process. Nine times out of ten, charters are returned back due to issues related to political ideology.

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

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

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

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

CHAIRMAN CASTRO: Ms. Craft?

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

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

One of the challenges for the region is the territory that we need to cover. We have the states of Montana, North Dakota, South Dakota, as example, Wyoming, which are very large states. And then also those states have a minimum number of citizens. Wyoming, the entire state has a population of about 500,000. Montana is around 800,000 for the entire state. South Dakota is a little less. But again, those three states are under one million in
population per state. And that presents a challenge for the Regional Office in that just conducting a meeting is pretty expensive to go Fargo or wherever I might go and then also have the members.

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

So I am in agreement that possibly committee membership numbers should be less. What we ended up doing because we just couldn't get a date to get a fair number of people to participate, our first meeting, two meetings -- are first meeting of those two committees were by telephone. And of course, members were not happy and so we've had our second meeting of each of those two states which was a person-to-person meeting. And at that juncture members were meeting other persons they had never met before. So it just creates some problems with just trying to communicate with members.
Another challenge that I think the Rocky Mountain Office and other offices face is the lack of communication that Faye mentioned and I think David did. I think it would be excellent for the Regional Directors to definitely meet regularly and with possibly the Staff Director where we can share some of the challenges that we do have. We could also share some of the things that we've done that are exciting.

I know that David has used webinar. The Eastern Regional Office has. I am going to be conducting a meeting on Monday in Fargo and the city of Fargo has graciously offered the use of webinar for that meeting at no cost to the Commission and then in the State of North Dakota there is what's called an interactive video networking procedure which is connected to 11 colleges, tribal colleges, universities across the state. And the committee, they want to use that. They would like to possibly set up -- have another meeting and we are going to be addressing civil rights issues in North Dakota and to have meetings in various locations where citizens in that location would be able to go to the university or tribal college and participate and where people could see each other.
So we're using those technologies and wanting to do so more and more. The fact that we have lost staff over the years definitely is detrimental. This office, too, like so many of the other offices have myself as Director and a secretary and no longer a civil rights analyst. So it is a challenge. But I think that we have people in the field who with the help of the Commission, want to do the work and are interested and there are definitely many, many issues within the Region.

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

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

The committees want to be and as they have been told and they believe, the “ears and eyes” of the Commission and they want to get the word out in their respective communities of what the Commission is doing and what the Commission is asked to do.

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

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

I'll ask a first question that I think you've already alluded to this, was a reference to the budget being reduced over a period of time from 35
percent going towards regional programming to 11 percent. In addition to the loss of civil rights analysts and research directors, what other impact has that had on your ability to perform your work?

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

COMMISSIONER KLADNEY: Could you repeat that?

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

COMMISSIONER KLADNEY: Is what?

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

COMMISSIONER KLADNEY: Money?

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

COMMISSIONER KLADNEY: Right.

MS. DELAVIEZ: So we must travel.

MR. MUSSATT: Your question is about money.

CHAIRMAN CASTRO: Yes, my question was in the prior, pre-2007, it was 35 percent going towards regional programming according to your -- as Mr.
Minarik said and now it's down to 11 percent. So my question was in addition to the loss of civil rights analysts and research directors as has been mentioned by virtually all of you, what other impact has that reduction in funding had on your functioning?

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

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

MS. DELAVIEZ: And I would say for the last five years, I have not paid for a venue. They are willing to host us and legislative office
buildings are even willing to put it on their local access TV and so that's been a big advantage as well.

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

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

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

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

COMMISSIONER HERIOT: Yes.
MS. DELAVIEZ: No, absolutely no.

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

MR. MUSSATT: To that point, this enters another area of what the work product is called. For years we would have briefings which didn't require a project proposal to be approved. The SAC chair could just call a meeting and have a briefing on the topic. And it was always used as kind of a precursor to write a project proposal if the SAC therefore decided after hearing the briefing that they wanted to follow up and do more research on the report.

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

COMMISSIONER HERIOT: Who's supposed to approve them?

MR. MUSSATT: The Staff Director. So that we decided we needed to put something out. So we
would take a transcript and actually I think the Fair Housing in Ohio is one like this where we would publish a transcript with an executive summary in the front, so it summarized the proceedings of what happened that day. It would not include findings and recommendations because there was no proposal approved, but it would be a work product that people could access and it would be a report.

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

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

COMMISSIONER HERIOT: How did you find out?

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

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

MS. DELAVIEZ: They called me. They called me.

COMMISSIONER ACHTENBERG: Who was that speaking?

CHAIRMAN CASTRO: That was Barbara deLaViez.

COMMISSIONER ACHTENBERG: Thank you.

COMMISSIONER HERIOT: Another thing that I've always wondered about, there's not very much coordination between the Commission and the SACs. Sometimes we do a report where it would make sense to have, like, as many states as possible to give input and again that's what we tried to do with the Cal SAC a few years ago. They were doing a religious liberty statutory report at the time. So we did like a mini California and how is that working out?
And it seems to me that there is some more room for coordination here. I know that we have to watch or I don't know this, but I have been told that we have to be very careful not to tell the SACs what to investigate. And so assuming that is true, it's not my intention to say to a SAC you must do this. But from the California SAC's standpoint when we heard the Commission was doing the report on religious liberties in prisons we thought swell, you know. We would like to contribute to that. That's an interesting topic, so we can do California on that.

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

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

CHAIRMAN CASTRO: The real question is how can we as a Commission coordinate this with you without violating the stated rule that we've been told
that we can't tell the SACs what to do? So what's the line?

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

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

MR. MINARIK: But if I may, Commissioner Heriot, there has been examples of really good collaboration. The “School Desegregation Report,” the Commission put out, essentially that work came out of the six Advisory Committees in the South. At that time, the Staff Director and the Commissioners did ask the South if we would participate and all the State Advisory Committees did. And not only did they, the
National Office, put out a report, but all six State Advisory Committees put out a report on school desegregation. And that was a very close hand holding.

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

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

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

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

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

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

COMMISSIONER HERIOT: It has to go both ways.

MS. DELAVIEZ: Exactly.

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

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

COMMISSIONER HERIOT: Can I also suggest
something else here?

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

COMMISSIONER KLANDNEY: I'm going to forget my questions.

CHAIRMAN CASTRO: Commissioner Kladney?

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

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


COMMISSIONER HERIOT: Can we clarify what a webinar is?

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

Video conferencing is much more difficult for us.

COMMISSIONER KLANDNEY: And why is that?
MS. DELAVIEZ: Technology.

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

MS. DELAVIEZ: Definitely.

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

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

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

MR. MUSSATT: Yes, I mean I think a lot of the follow up work that needs to be done, for example, in Minnesota, we're close to wrapping up a report and it would be nice to be able to do a video-conference with them over some details.
COMMISSIONER KLADNEY: All business meetings could be done that way, right?

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

COMMISSIONER KLADNEY: It's pretty simple.

MR. MUSSATT: Yes.

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

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

MS. DELAVIEZ: That's correct.

COMMISSIONER KLADNEY: Would that work out well?
MS. DELAVIEZ: We've suggested.

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

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

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

MS. DELAVIEZ: Agreed.

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

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

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

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

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

MR. MUSSATT: No.

COMMISSIONER KLADNEY: No?

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

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

MS. DELAVIEZ: That's right.

COMMISSIONER KLADNEY: Right.

MR. MUSSATT: The way we've always done it
in my office was have a briefing to inform the SAC members of a topic, so we might have a briefing where two or three topics are discussed by experts and then the SAC would have the conversation to decide which project they wanted to take up as a project proposal.

So briefing is very simple for my office.

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

David alluded to the fact that we need different, perhaps different kinds of performance standards now. I mean a webinar could be an example. A briefing could be an example. And I'm sure there are a whole host of other things that we could do, but we need to participate in that discussion. It's not been done at the Staff Director level and quite frankly it hasn't been done at the RPCU level in terms of sharing suggestions for best practices so that people in other Regions can know what we're doing in
our Region. And I'm happy to have that conversation even in the absence of the Staff Director. I think we can have that conversation among ourselves and come up with some suggestions for rewriting our AIs to reflect the new reality of the Commission and the Regional Offices of doing more with less, but accomplishing some meaningful outcomes.

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

(Laughter.)

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

CHAIRMAN CASTRO: Kill a lot of trees.

COMMISSIONER KLADNEY: And then we try to issue findings and recommendations, whatever. That's
my understanding of a briefing. From what you
describe to me is you have a mini-briefing, then you
choose a subject, then you go out and get the facts.

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

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

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

COMMISSIONER KLADNEY: And --

MR. MUSSATT: My bigger issue was
presence, so I think for me to have the SAC engaged,
they need to be involved in the process and that's why
I think the hearings are so important and provide
process for the SAC.

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

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

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

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

COMMISSIONER KLANDNEY: And thank you very
much for answering my questions.

CHAIRMAN CASTRO: So in regards to the
point that Commissioner Kladney just kind of came up
with, identified that you all are doing things similar, but in your own way, we have as Commissioners, as I said at the beginning, had some buffers in terms of our communication. We're supposed to go through a Staff Director and I know we have a RPCU person. So it's really been great to hear directly from you all today.

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

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

CHAIRMAN CASTRO: But we could change the rules.

MR. MINARIK: You could.

CHAIRMAN CASTRO: Ok.

MR. MINARIK: So right now you have to have one. And two, it has been a frustration. My frustration, I know Barbara has had the frustration
that there has to be more coordination between RPCU
and the Regional Offices and --

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

    MR. MINARIK: Too many hats.

    CHAIRMAN CASTRO: Okay.

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

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

    CHAIRMAN CASTRO: I certainly would like
to get your input on those things, but also I know one
area that we're very interested in and we talked about
this before is getting a solid handle on the broader
appointments and the greater charters because that
would help all of us and so maybe one of the action items from here is we get the subcommittee folks to actually come back with a solid recommendation, based on what's legally allowable as to how we can address this.

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

CHAIRMAN CASTRO: That's right.

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

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

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

MS. DELAVIEZ: Absolutely.

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

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

COMMISSIONER HERIOT: I'm willing to put that aside. What I want to do is get this stuff
going. I want it streamlined.

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

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

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

(Laughter.)

MS. DELAVIEZ: Okay.

COMMISSIONER HERIOT: Just teasing.

(Laughter.)

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

MS. DELAVIEZ: And it would also mean rewriting some of our AIs because right now we've got four-year terms.
COMMISSIONER HERIOT: Yes. AIs we can handle.

MS. DELAVIEZ: Okay.

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

CHAIRMAN CASTRO: Any other questions?

COMMISSIONER HERIOT: So we would put together the --

((Off mic comment.))

CHAIRMAN CASTRO: Yes. Would you come forward?

MS. DELAVIEZ: Thank you very much.

CHAIRMAN CASTRO: Who of you would be willing to volunteer on this GSA/FACA committee? Okay, that's Ivy Davis, Barbara deLaViez, who else?
Peter Minarik and David. And so the four of you will come back to us with something. Okay, great. Thank you.

CHAIRMAN CASTRO: Ms. Tolhurst?

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

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

Ms. Tolhurst?

MS. TOLHURST: I think Mr. Kladney, and correct me if I'm wrong, was asking about a regional person talking about their reviews. So while I was Acting SAC Director, plus Acting General Counsel, plus Senior Attorney for 14 months, I'm like the previous Staff Director. I'm told I actually did review people. It's a lot of work on top of the other three jobs I had. I will say that the reason I didn't talk to some of them was because I felt my review was too kind and I'm not going to name them because I don't want to create that record, but when I came on board as Acting Staff Director, I received information on how many SACs, Regional Directors had done reports over the last five years and the answer to some
people, some people here, the number was good, people had done a lot of reports. Some people, the answer was zero, over five years, people being paid at a 14 or 15 level and everyone on this panel has been complaining and I understand it, about the lack of staff. We all lack staff, including at headquarters.

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

Southern Region has done a number of reports one way. The Eastern Region has done a number of reports. They all only have two people. We need
to look strongly at Regions that have done zero reports over the years and make some up.

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

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

COMMISSIONER KLADNEY: I mean absent that.

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

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

MS. TOLHURST: I think that's more fit and
worth maybe having a meeting with the head regional
people and coming up with -- I'm not trying to be
unfair. That's doable, but yes.

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

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

MR. MINARIK: It's about 25 percent.

COMMISSIONER KLANDNEY: Two people can't
talk at the same time.

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

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

COMMISSIONER KLANDNEY: I think it's ten
years.
CHAIRMAN CASTRO: Mr. Minarik.

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

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

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

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

COMMISSIONER HERIOT: We do have some do inappropriate cases.

MS. TOLHURST: Shocking as it may be.

COMMISSIONER HERIOT: Whatever.

COMMISSIONER KLADNEY: Thank you very much.

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

IV. APPROVAL OF STATE ADVISORY COMMITTEE SLATES

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

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

COMMISSIONER HERIOT: Let's just move it.

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

COMMISSIONER HERIOT: You forgot someone.

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

Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRMAN CASTRO: Discussion? The Chair recognizes Commissioner Yaki.

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

CHAIRMAN CASTRO: Does anyone know the
answer to that?

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

CHAIRMAN CASTRO: Commissioner Yaki asked if --

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

COMMISSIONER HERIOT: Would that be a problem?

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

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

COMMISSIONER YAKI: Well, you're the one who reviewed it, Ms. Heriot, so why don't you tell me? If you can't tell me, then I think we need to find that out, number one.

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

But anyway, it just goes to my point which is we've lost a tremendous amount of variety and energy when we instituted these arbitrary term limits if they were simply meant to sweep away years of institutional memory and work that people have contributed to this Commission for years. And now we have a situation where we're simply basically picking people all of whom know each other, work with each other, and in some cases work alongside each other in two of these examples. And because of that, I cannot, one, I cannot support the Colorado SAC as is. And
two, I want questions as to why we may have chosen two
individuals who work in the same law office and why we
choose other individuals who, one was their client and
one was their attorney so.

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

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

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

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

COMMISSIONER HERIOT: Number one, Peck and
Pendley are both reappoints and the argument seems to
be that because Pendley worked on a lawsuit that began
like decades ago, and that she was involved in that
lawsuit as well, a lawsuit that's long over, that
somehow they're too closely related.
For all I know, they haven't seen each other since like the 1990s. I just have no idea.

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

COMMISSIONER KLADNEY: Coleman works for Peck, a subordinate.

COMMISSIONER YAKI: Yes.

COMMISSIONER HERIOT: Peck and Pendley are all reappoints.

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

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

COMMISSIONER YAKI: I didn't -- I never
said that. I simply said here we have a situation where we have the plaintiff and the attorney in one instance, and another one, the attorney and her firm administrator in another.

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

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

COMMISSIONER KIRSANOW: Yes, Mr. Chair.
This is Commissioner Kirsanow.

CHAIRMAN CASTRO: Please proceed.

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

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

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

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

COMMISSIONER YAKI: Yes. Green light on, yes.

COMMISSIONER HERIOT: Are you sure of that?

COMMISSIONER YAKI: I just looked at --

COMMISSIONER ACHTENBERG: I’m sorry, what?
COMMISSIONER YAKI: -- if you'd like Richard to walk to your desk with the website, picture and the name of the person with the same resume as is on his application, he's doing so, he can easily do so right now.

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

COMMISSIONER YAKI: Let me just say this for the record. Let's put it another way. My father, who served this country for 30 years in both the military and the foreign service, who has endured riots in embassies where he has been stationed; where my mother had to use mirrors to go under the car every morning to check whether or not anyone put bombs there, I was told that my father, because he was my father, could not apply for the Arizona State Advisory
Committee because he was my father, notwithstanding the fact that he has been involved in these issues. He was interned. The wonderful ironies that he would be a member of a SAC in a state in which he had actually been interned during the war because of FDR's executive order after the Japanese bombed Pearl Harbor. I was told that relationship disqualified him from even me thinking about nominating him for SAC membership.

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

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

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

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

COMMISSIONER ACHTENBERG: Well, I ask Commissioner Yaki, are you intending to make a motion to sever regarding the employment relationship between two members of the SAC?
COMMISSIONER YAKI: No – I wanted the green light go on -- I wanted to state my objection, hear what other people had to say, because obviously what we decide to do will have an impact on the numbers and whether or not this thing goes forward or has to go back because it goes below the minimum number of people.

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

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

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

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

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

COMMISSIONER KLADNEY: That's right.

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

COMMISSIONER ACHTENBERG: I know.

COMMISSIONER YAKI: The microphones switch
on and off at will. I could be talking and in the middle it will just cut off.

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

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

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

    COMMISSIONER ACHTENBERG: Okay. Got it.

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

        (Laughter.)

    COMMISSIONER Kladney: Regretfully.

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

    MS. EISEMANN: So the only time that the Commission can go into an executive session is if the discussion might disclose ten specific, any one of ten
specific items and listed in 10 of 45 of the Code of Federal Regulations Section 702.53. I can list all those ten.

CHAIRMAN CASTRO: Please do, yes.

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

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

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

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

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

The sixth is the discussion might disclose
information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy.

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

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

The ninth is disclosure of information that might -- that relates -- in the case of information received by the Commission from an agency
that regulates currency, securities, commodities, or financial institutions or be likely to frustrate implementation of a proposed action with regards to currency, securities, commodities, or financial institutions.

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

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

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

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

CHAIRMAN CASTRO: Please proceed then.

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

COMMISSIONER HERIOT: Can I just say something? This was actually not my understanding of
how the subcommittee was going to work. My understanding was that you can't really put balance first and then go knocking particular members off because that's going to then disturb the balance issue. So I did not realize that Commissioner Achtenberg saw it as let's just look at balance and move to sever later.

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

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

COMMISSIONER Kladney: Mr. Chairman, --

CHAIRMAN CASTRO: Yes sir.

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

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

COMMISSIONER Heriot: Let me share this
first --

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

COMMISSIONER Kladney: To me, it just doesn't work this way.

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

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

COMMISSIONER Heriot: Here's what I would propose that the subcommittee should satisfy themselves and between us I think we can do a decent
job if we think there's a red flag candidate, try to come up with a slate that won't have a red flag candidate. And if it turns out that when the Commission looks at it and some other member, a non-subcommittee member of the Commission has a concern and we then vote to sever, then we then go back and figure that it was balance in the first place, unless the Commission votes specifically that it wasn't. So if somebody gets knocked out because the Chairman or Commissioner Kladney or Commissioner Yaki or Commissioner Kirsanow has a concern and we do sever, then we go back and replace that person with someone who was not found to be as objectionable, but we'll nevertheless have basically the same position in terms of the ideological balance. That was my thought that we should be weeding out the ones that we don't think will get through the Commission. But coming up with a slate that we think we'll get through and as balance, if we turn out to be wrong about whether a particular person gets through, they get severed, then we replace that person so the balance is maintained.

CHAIRMAN CASTRO: That sounds fine to me.

COMMISSIONER ACHTENBERG: Is that what other people think as well we should be doing?
CHAIRMAN CASTRO: Let's try that and see how that works. The key here is to try to get these SACs moving and if there was a misunderstanding or a lack of clarity, really, I think it's probably a lack of clarity as to how the process was supposed to work and this is a new process, so I'm not surprised that we didn't get it exactly the way some folks thought.

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

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

CHAIRMAN CASTRO: We'll tweak it again.

COMMISSIONER HERIOT: Okay.

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

COMMISSIONER KLASNEY: Let’s take a vote on it.

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

COMMISSIONER HERIOT: One more. Are there red flag candidates for people on Massachusetts and
South Carolina or can we get those through?

COMMISSIONER ACHTENBERG: Hang on just a second.

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

COMMISSIONER HERIOT: And on Massachusetts?

COMMISSIONER YAKI: Actually, Massachusetts is clear for me.

COMMISSIONER HERIOT: Roberta?

COMMISSIONER KLASTNEY: Alec says that they have a problem.

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

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

COMMISSIONER HERIOT: Second.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLASTNEY: Yes.
CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Sure, why not.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

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

COMMISSIONER ACHTENBERG: I am, yes. Thank you.

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

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

MR. RATCLIFFE: As of today, we are anticipating that Congress will pass a six-month continuing resolution that will provide us funding
through March. That funding level should allow us to continue operations as normal. However, we are facing a potential sequester or reduction, reduction to our appropriation.

(Off mic comments.)

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

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

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

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

CHAIRMAN CASTRO: We would not need to take any action on reducing anything else.
MR. RATCLIFFE: Yes.

COMMISSIONER KLABNEY: How much is that?

MR. RATCLIFFE: $800,000.

COMMISSIONER KLABNEY: The rent credit money?

CHAIRMAN CASTRO: Yes.

COMMISSIONER KLABNEY: The same amount --

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

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

MR. RATCLIFFE: I think it's January.

CHAIRMAN CASTRO: January 1, January 31st?

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

CHAIRMAN CASTRO: Any questions on Fiscal '13?

COMMISSIONER KLABNEY: Yes. I was wondering what kind of documents we can get on a regular basis to show our ongoing budget expenses and any kind of surpluses that we may have?
Mr. Ratcliffe: Typically, the decision of what is provided to the Commission is a Staff Director's decision.

Commissioner Kladney: Right, but we don't have one.

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

Chairman Castro: We'd like to see that because I know we were getting it before. I believe we were getting it on a monthly basis.

Mr. Ratcliffe: Yes, the Staff Director requested that I provide one when it was requested. The Staff Director requested that it was provided.

Chairman Castro: So, then well, as Agency head, let me request it of you and ask you to provide it to me --

Mr. Ratcliffe: I can provide it.

Chairman Castro: -- and I can circulate it to the Commissioners. And to that end, I know that we're close to your end and it's always a moving target as to where we are on our budget, but can you let us know a little bit as to where we think we're
going to end up on Fiscal '12?

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

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

MR. RATCLIFFE: For what?

COMMISSIONER KLADNEY: For the move.

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

CHAIRMAN CASTRO: Once the fiscal year is
concluded, and you know those expenses, you can give
us a report thereafter as to where that went to?
MR. RATCLIFFE: Yes. Basically, what we can do is we can provide you a breakout of where the move money went. However, because we do all this stuff through GSA, some of the details we may not have yet. So we have to wait for GSA to bill us and provide us the detailed information. But we could give you a report that shows you what we spent the money on.

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

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

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

MR. RATCLIFFE: Well, I mean you have to tell me. I don’t have the answer. Are you going to hire a General Counsel or a head of OCRE? All these type of decisions have to be made. Once the decision is made I basically develop the budget based on those decisions.
COMMISSIONER KLASTNEY: Right. I guess what I'm saying is at some time in the future obviously we don't have a Staff Director now. We probably won't have a Staff Director or OGC Chief next month. So at our monthly meetings can you provide us with that information, savings, and what kind of discretionary funds will be left over?

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

COMMISSIONER KLASTNEY: You should know within a week or two, right?

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

CHAIRMAN CASTRO: I think you all are talking about apples and oranges. I think Commissioner Kladney is asking you about Fiscal Year '12 dollars that haven't been expended. And you're talking about Fiscal Year '13.
MR. RATCLIFFE: Yes, I certainly am.

CHAIRMAN CASTRO: Am I correct?

COMMISSIONER KLANDNEY: Yes. I'm just trying to find him some money to get somebody in Atlanta.

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

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

CHAIRMAN CASTRO: In Fiscal '12.

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

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

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

(Off mic comments.)

CHAIRMAN CASTRO: Okay. Commissioner
Commissioner Heriot: I just need some clarification about what the law is here. Can we accept college interns, without paying them anything or law school interns without paying them anything and are they a help?

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

Commissioner Heriot: Is that right?

Chairman Castro: That's my understanding.

Commissioner Heriot: The State Advisory Committees themselves are volunteers, but isn't a college intern considered a volunteer for this purpose?

Chairman Castro: I don't know, maybe our HR Director, Ms. Tinalouise Martin can answer that?

Ms. Martin: Well, yes, there's a CFR regulation that says that we can have unpaid student volunteers.

Chairman Castro: We can?

Ms. Martin: The graduate, undergrad, and high school.
COMMISSIONER HERIOT: And are they a help, do you like them? They're not just a burden. Could we handle more than we have?

(Off mic comments.)

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

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

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

COMMISSIONER YAKI: Right.

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

MS. MARTIN: No.

CHAIRMAN CASTRO: -- bringing interns for ourselves, you’re talking about –

MS. MARTIN: No.

COMMISSIONER HERIOT: Right. I’m talking about the --

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

COMMISSIONER Yaki: But for Commissioners
it's a no go, is that correct? We as Commissioners cannot do that.

MS. MARTIN: No.

CHAIRMAN CASTRO: That's correct.

MS. MARTIN: That's correct.

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

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

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

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

COMMISSIONER HERIOT: It sounds like the balance is ramping up at least some. I mean I'm fully aware of the problem of having too many volunteers around when they not, can't be supervised and then they end up drawing resources away rather than contributing. We can ramp up a little. I mean I know that the law schools are starting to have more of these Washington intern programs. This is in part --
law schools are in the mood for this, guys, because they want to have people placed somewhere, giving them some hope of getting jobs at some point.

CHAIRMAN CASTRO: Ms. Tolhurst?

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

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

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

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

CHAIRMAN CASTRO: Ms. Ostrowsky?

MS. OSTROWSKY: Hi. I just wanted to add
that our experience with interns in OSD has been quite mixed. Often they say they're going to stay for eight weeks and stay maybe six. They really are like extra students, rather than players. OGC, I think has had better experience.

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

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

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

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

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

MS. HEPLER: They should.
COMMISSIONER KIRSANOW: I received an email, but I can't open the PowerPoint.

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

COMMISSIONER KIRSANOW: Why don't you just proceed.

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

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

The big thing is there's public financial disclosure report changes, post-employment negotiations and also, in approach, initial public
offerings. And the major changes I want to go over are reporting certain financial transactions monthly and we're going to be filing reports electronically and I'll go into that.

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

COMMISSIONER KLADNEY: You mean if we got a job?

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

The new form we'll go into is the OGE-278T and there should be a copy of the form somewhere in your packet, but I didn't -- if not I'll get it -- is it in there, you got it, okay. That's the new form. And the other item is posting forms on the internet. And mortgage reporting and electronic filing of the forms.
The first one I want to go over is that periodic transaction report. It's supposed to be done within -- you have to report stocks, bonds, commodity futures and other security transactions, and when I say transactions, I mean, buy, sell, or exchange. Anything that exceeds $1,000 per transaction, even if you have a net loss like, let's say you paid $5,000, sold it for -- paid $5,000, sold it for $3,000, the transaction itself was over $1,000. You still need to report it. And, including individual assets and retirement plans like IRAs, 401ks, etcetera, and that's something I know we've gone over with some of you that those individual assets in those accounts need to be reported.

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

MS. HEPLER: Right.

CHAIRMAN CASTRO: On a monthly basis.

MS. HEPLER: On a monthly basis. Yes?

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

MS. HEPLER: You'll see on the next page it's 30 days, there's an exemption related to that.
And that question has actually come up on the Hill and I'm going to through some proposed changes with them.

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

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

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

MR. FAY: Does that include cash deposits?

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

You will receive the monthly email reminder from me and I included a copy of the form
which you all have in front of you. And on the next page you have what you do not have to report, securities owned by a spouse or child right now. There was a modification on the Hill because how one interpreted. It may change. I'm just leaving that open right now, it's no. Real estate, mutual funds, certified deposits. I'm not sure what the difference is between a deposit, but cash deposits you don't have to report.

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

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

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

MS. HEPLER: Right, currently.

COMMISSIONER KLADNEY: Okay, so I come from a community property state, a couple of us, community property states. So we have a trust account, my wife owns half. I own half. What's the story?
MS. HEPLER: Well, if it's deemed yours, then you have to report it. You own it, right? I've never had community property law, so you have to explain it.

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

COMMISSIONER ACHTENBERG: It's undivided one half interest.

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

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

COMMISSIONER YAKI: Sign it all over to her.

(Off mic comments.)

COMMISSIONER ACHTENBERG: Unfortunately, you have to disclose it.

MS. HEPLER: Okay, the next one is the posting of the forms on the internet. I've sent you some information about that. The 278T and your 278, the law says it will be posted on the internet. The deadline has been moved back. It was supposed to be August and September and now it's October 31st.
CHAIRMAN CASTRO: Is that a deadline for the posting or a deadline for the filing?

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

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

There is some talk on the Hill about revisiting this. I'm not going to say what's going on, but -- so this internet posting provision could change. I mean some things have come out and I'm just going to point this out, because the Defense intelligence community is involved. There have been proposals that maybe those people should be exempt or
maybe who they're going to exempt. How this Act started it was Congressional issues that came up and then they decided to pull the Federal employees in. So for right now, it's October 31, but there is a lawsuit out there and there is potential change. That's what I wanted to bring to your attention.

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

MS. HEPLER: Which ones, the transactions?

CHAIRMAN CASTRO: Yes, the transactions.

MS. HEPLER: July.

CHAIRMAN CASTRO: July.

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

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

The next one is personal mortgage reporting and on your personal mortgage you don't have to report. Some of you do have rental property, so that mortgage is supposed to be reported on the 278 form.
CHAIRMAN CASTRO: 278 or 278T?

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

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

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

The system is called FD Online and I don't know if we'll get it, it depends on the money and all, but what it is it's an internet-based system, so it doesn't affect our IT and Michele sat in the presentation with me. You would fill out the information online like with TurboTax, you could do it
at your desk, wherever, and then it saves the
information from year to year. You would submit it.
You'd do a digital signature on line, send it here and
I could review it from any place, too. I think it
would be easier because we wouldn't have to deal with
paper. It's all in a secure HTTPS secure server and
it is TurboTax, so like Wizard, that's what we'll walk
you through the system, hopefully.

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

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

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

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

COMMISSIONER Yaki: It's a tiny little robot.

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

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

MS. Hepler: It implies --

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

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

COMMISSIONER YAKI: That's insane.

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

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

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

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

COMMISSIONER YAKI: Crazy.

MS. HEPLER: So --

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

COMMISSIONER HERIOT: I have a question.

MS. HEPLER: Yes.
COMMISSIONER HERIOT: Academics frequently visit other institutions. I'm a professor of law at the University of San Diego, but I may be a professor of law, a visiting professor of law at the University of Blah, Blah.

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

COMMISSIONER HERIOT: Do I have to report a visit?

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

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

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

COMMISSIONER HERIOT: Sometimes, yes, sometimes.

MS. HEPLER: You do?

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

MS. HEPLER: Okay.
COMMISSIONER HERIOT: And other times the paycheck is issued by the visiting institution.

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

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

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

COMMISSIONER HERIOT: Certainly still.

MS. HEPLER: Okay.

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

CHAIRMAN CASTRO: Yes.

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

MS. HEPLER: If it's still your business, that's not changing the job, getting a new client. Because some of you that's what your job is, you have
CHAIRMAN CASTRO: And what if you're self-employed, but you start another business that you own?

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

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

(Off mic comments.) (Laughter.)

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

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

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

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

CHAIRMAN CASTRO: You get a lot of questions.

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

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

MS. HEPLER: Well, what I'm worried about is people that have managed accounts because if you
have managed accounts you have someone doing it and this is just, you know, as it is -- it increases my work load dramatically because every month I have this coming in from whatever.

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

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

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

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

MS. HEPLER: Right, so this was a much broader sweep. I mean that's all I can say what the
law did and it is -- it's increasing a big burden. And that's actually one thing, the online system, I just got a notice that they're having a webinar because they have the transaction reporting online now for the monthly report as well because it is creating a lot more work for everybody.

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

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

If you have any questions, you can contact me directly, if they're personal in nature. And that's it. And I just wanted to know it's not on the agenda if you want a little update on the lawsuit.
COMMISSIONER KLADEKY: On what?

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

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

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

I have submitted the complaint to them and since all of you Commissioners are being sued in your official capacity, DOJ is representing you. They have the President and OPM also. I've sent it over there. They've acknowledged receipt that they're going to
handle it. I don't know -- they had a couple different divisions that would handle it, either the District Assistant U.S. Attorney or actually Department of Justice has a Federal Programs Division that just deals with Federal agencies. So if they decide who handles it, if I get any updates or they have any requests for information, we'll go into it, but for right now, I don't think anybody needs to worry because they are taking care of it.

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

V.  ADJOURN MEETING

CHAIRMAN CASTRO: Do we have a second?

COMMISSIONER YAKI: Second.

CHAIRMAN CASTRO: All those in favor, say aye.

(Chorus of Ayes.)

CHAIRMAN CASTRO: All right.

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