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CHAIRPERSON JAMES :

1 Under old business Commissioner Wilhelm?

2 COMMISSIONER WILHELM: I would like to
3 request the Commissioners to ask Mr. Terwilliger our
4 counsel for an opinion which I hope will have the
5 results of laying to rest an issue we've talked about
6 off and on. This Commission was obviously designed by
7 Congress to bring together people of diverse viewpoints
8 to do a job. And I know that we're all trying to do
9 that job in the best way that we can with a minimum of
10 bureaucratic paper shuffling.

11 If I understood, and I may not have, if I
12 understood Mr. Terwilliger's earlier memo it did not
13 appear to definitively opine on whether or not this
14 Commission is part of the legislative branch of the
15 government. I am advised by our union's counsel that
16 if we are part of the legislative branch the Conflict
17 of Interests provision of Section 208 would not apply
18 and therefore we can avoid what appears to me an
19 unworkable waiver procedure. Because if I understand
20 the waiver procedure you have to ask for it from the

1 appointing authority on each and every issue. Which is
2 obviously not practical.

3 So I am hopeful that conclusive legal
4 opinion on this issue would settle this for the
5 duration of the Commission's life. And so I would
6 propose that we ask Mr. Terwilliger to provide us with
7 such a legal opinion, I don't mean at this moment, but
8 perhaps over the next several weeks, or by the time of
9 the next meeting. And in doing so certainly, perhaps,
10 he would be open to consulting with any interested
11 Commissioners and or counsel for any of the interested
12 Commissioners.

13 And so to that end, I would move that the
14 Commission authorize Mr. Terwilliger or request Mr.
15 Terwilliger or request to the Chair, if that is
16 appropriate, to provide with us with a legal opinion
17 addressing specifically the question of whether this
18 Commission is part of the legislative branch and
19 therefore exempt from the provisions of Section 208.

20 CHAIRPERSON JAMES: Second?

1 COMMISSIONER LOESCHER: Second.

2 CHAIRPERSON JAMES: All in favor?

3 COMMISSIONERS: Aye.

4 CHAIRPERSON JAMES: Any opposed?

5 (No verbal response)

6 CHAIRPERSON JAMES: Thank you, well the
7 Chair will ask our general counsel if he will review
8 that information for us. In conjunction with that I
9 would refer commissioners to Tab 4 of their briefing
10 books that does have the report that Mr. Terwilliger
11 provided for us. Are there any questions for him or
12 any discussion of that at this particular time?

13 COMMISSIONER LOESCHER: Madam Chairman?

14 CHAIRPERSON JAMES: Mr. Loescher.

15 COMMISSIONER LOESCHER: As you know I share
16 the opinion exactly with our legal counsel and that has
17 been my position since, from day one.

18 CHAIRPERSON JAMES: Let the record show.

19 COMMISSIONER LOESCHER: But now the
20 question is so what. What does it change in terms of

1 the conduct of the Commission as opposed to when we
2 first started.

3 MR. TERWILLIGER: I'm not sure, because of
4 the Commission's adoption in its rules and by
5 resolution to adhere as closely as possible to the
6 dictates of the Federal Advisory Committee Act, that it
7 makes all that much difference as a practical matter.

8 As a legal matter I think it makes
9 substantial difference in terms of the, the so-called
10 designated federal official and the role of the General
11 Services Administration, these would be the operations
12 of the Commission. If you're not subject to the
13 Federal Advisory Committee Act then the Commission is
14 freed of the requirements of the Federal Advisory
15 Committee Act and therefore to the extent that the
16 Commission may feel that taking some action or going
17 about something in a certain way would tend to
18 introduce an unnecessary level of bureaucracy or be
19 inconsistent with the Charter of the Commission as you

1 all see necessary to carry it out. You do not need to
2 feel that the Advisory Committee Act would control.

3 CHAIRPERSON JAMES: Any other questions? I
4 want to thank our General Counsel and thank our
5 commissioners on that.