

## 1 OLD BUSINESS

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CHAIRMAN JAMES: That takes us up to old business. The first item I have is at the last Commission meeting you remember that Commission Loescher raised the issue of subcommittees. It was certainly a subject that I have thought a great deal about before then and thought about since, in looking at how to get through our full mandate from Congress and as a result of that we have put together, after a lot of trading of committees and trying to figure out how to work around people's interest and their schedules, the Commissioners have in front of them at this particular time the various subcommittee breakdown and structures. You can see how schizophrenic we've been on whether they're subcommittees or committees. I think they're called both on the sheet that you have in front of you even now.

Is there any discussion on that particular issue? I'd like to thank the Commissioners. I have said this repeatedly in interviews in the last few weeks and I will say it again here in this venue, that Commission takes an extraordinary amount of time and an extraordinary amount of commitment and our Commissioners are some of the hardest working federal appointees that I know of right now and it is very much appreciated by me and I'm sure it will be by the American people when we produce our final product.

COMMISSIONER LANNI: Do you need a motion for approval of the committees and subcommittees?

CHAIRMAN JAMES: I don't know that we do.

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1 COMMISSIONER WILHELM: Point of information. Am I  
2 right in understanding that the first listed person in each case  
3 is the chair?

4 CHAIRMAN JAMES: That is correct. I'll defer to the  
5 general counsel. Do you think we need a motion?

6 MR. TERWILLIGER: I'm not sure that we need one. The  
7 rules I don't believe provide for the necessity of a vote.

8 CHAIRMAN JAMES: It won't hurt.

9 MR. TERWILLIGER: It wouldn't hurt, exactly right.

10 CHAIRMAN JAMES: May I hear a motion?

11 COMMISSIONER MC CARTHY: So moved.

12 CHAIRMAN JAMES: Can I get a second?

13 COMMISSIONER LEONE: Second.

14 CHAIRMAN JAMES: Any questions? All in favor?

15 (Chorus of ayes.)

16 CHAIRMAN JAMES: Opposed?

17 (No response.)

18 CHAIRMAN JAMES: Thank you very much. Our second  
19 issue of old business. There were several issues that were  
20 referred to our general counsel at the last meeting. We'd be  
21 happy to hear his report at this point.

22 COMMISSIONER LANNI: Madam Chair, under our rules,  
23 just to show that once in a while I am correct, Roman numeral  
24 number VII, subcommittees. The Chairman shall designate  
25 subcommittees of the Commission subject to the approval of the  
26 Commission.

27 CHAIRMAN JAMES: That works for me. Thank you.

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1 General counsel, there were three issues that were  
2 brought to your attention last time. If you could give us a  
3 report on those at this time.

4 MR. TERWILLIGER: I'd be happy to, Madam Chair, and  
5 I'll be very short since you do have the work product in writing.  
6 The first question was a specific inquiry as to whether or not,  
7 for purposes of a particular statute the Commission was part of  
8 the Judicial branch as a result of us having opined earlier that  
9 the Commission was not part of the Executive branch, an opinion  
10 by the way in which the Department of Justice had earlier so  
11 indicated. We have provided the Commission with an opinion that  
12 for general purposes it would appear that the Commission is part  
13 of the Legislative branch of the government. Since it's not part  
14 of the Executive branch, I think without a great deal of ado,  
15 it's self-evident that it's not part of the Judicial branch.  
16 There are only three branches. Congress was not specific in  
17 passing the legislation that created the Commission as to which  
18 branch of government it is in, so therefore, for general purposes  
19 we conclude that the Commission should consider itself part of  
20 the Legislative branch and specifically for purposes of the  
21 application of 18USC208.

22 We were also asked for our view concerning the  
23 potential practice of Commissioners issuing individual press  
24 releases or otherwise making public statements concerning the  
25 Commission's business. In this case we just provided the  
26 Commission with a letter that makes clear that which I think is  
27 obvious to the entire Commission and that is that the 1st  
28 Amendment applies to the Commission. The Commissioners are free  
29 to express their views and under the 1st Amendment cannot be

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1 subject to restriction by the Commission's rules. Perhaps a  
2 notable exception to that is that Commissioners, Commission staff  
3 and all of us who may be exposed to any confidential information  
4 that comes to the Commission's attention are bound by law to  
5 maintain that confidentiality. What is confidential is defined  
6 by statute.

7           The third issue concerned procedures for the  
8 Commission to sit in executive session. We have provided you  
9 with the authority which is again self-evident in the  
10 Commission's rules for the Commission to sit in executive session  
11 for certain purposes. Those purposes would include but are not  
12 necessarily exclusive to the discussion of internal business,  
13 which is personnel and so forth; the discussion of contracting  
14 issues; and a preliminary discussion of Commissioners' informal  
15 views on issues that are before the Commission to facilitate an  
16 informal exchange going forward. We provided some suggested  
17 procedures for meeting that way.

18           I would note in that context that since we are not  
19 part of the Executive branch and thus, not subject to the  
20 dictates of the Federal Advisory Committee Act, the requirements  
21 of open meeting and so forth do not apply but consistent with the  
22 Chair's expressed views and which I think all the Commissioners  
23 have joined at one time or another, the Commission is making  
24 every effort to meet the goals of conducting all of its business  
25 in the open.

26           Unless there are any questions, that's my report.

27           CHAIRMAN JAMES; Any questions?

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1           COMMISSIONER BIBLE: Because you determined we're in  
2 the Legislative branch, are there any reporting requirements that  
3 we have not been advised of previously?

4           MR. TERWILLIGER: Not that I'm aware of. But if you  
5 have one in mind, I'd be glad to take a look at it.

6           COMMISSIONER BIBLE: Like ethical reporting  
7 responsibilities. Are there reporting responsibilities in terms  
8 of financial transactions, ethical reports, things of that nature  
9 that we need to be apprised of?

10          MR. TERWILLIGER: I refer you back -- no, not  
11 specifically. The question that would arise there is whether we  
12 are subject to the House or Senate ethics rules as part of the  
13 Legislative branch and if so, would there be some reporting  
14 requirements there. Off the top of my head I believe the answer  
15 to that is no, but I'd be glad to check it out.

16          CHAIRMAN JAMES; Any other questions? Any other old  
17 business?

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