OLD BUSINESS

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

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

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

CHAIRMAN JAMES: It won't hurt.

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

CHAIRMAN JAMES: May I hear a motion?

COMMISSIONER MC CARthy: So moved.

CHAIRMAN JAMES: Can I get a second?

COMMISSIONER LEONE: Second.

CHAIRMAN JAMES: Any questions? All in favor?

(Chorus of ayes.)

CHAIRMAN JAMES: Opposed?

(No response.)

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

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

CHAIRMAN JAMES: That works for me. Thank you.
General counsel, there were three issues that were brought to your attention last time. If you could give us a report on those at this time.

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

We were also asked for our view concerning the potential practice of Commissioners issuing individual press releases or otherwise making public statements concerning the Commission's business. In this case we just provided the Commission with a letter that makes clear that which I think is obvious to the entire Commission and that is that the 1st Amendment applies to the Commission. The Commissioners are free to express their views and under the 1st Amendment cannot be
subject to restriction by the Commission's rules. Perhaps a notable exception to that is that Commissioners, Commission staff and all of us who may be exposed to any confidential information that comes to the Commission's attention are bound by law to maintain that confidentiality. What is confidential is defined by statute.

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

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

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

CHAIRMAN JAMES; Any questions?
COMMISSIONER BIBLE: Because you determined we're in the Legislative branch, are there any reporting requirements that we have not been advised of previously?

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

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

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

CHAIRMAN JAMES: Any other questions? Any other old business?