

1 not? He's probably off xeroxing or running errands.  
2 Tim is a recent graduate of Georgetown Law School and  
3 worked for the House Crime Subcommittee. Allison  
4 Flatt is a policy analyst who's seated right over  
5 here. Allison, also an attorney, worked for the  
6 National Association of Attorneys General where she  
7 edited the newsletter for states on Internet gambling.

8           Amy Ricketts -- is Amy in the room? Amy  
9 is in the back right over here -- is our  
10 communications assistant, and Amy has worked on  
11 Capitol Hill for a number of years, including the  
12 House Republican Conference and the Heritage  
13 Foundation.

14           I hope that all of you have had the  
15 opportunity to meet or talk with them individually by  
16 now, and appreciate all of their hard work in getting  
17 us to this point.

18           At this point on our agenda we're prepared  
19 to discuss old business, and that would bring us to  
20 the point in the discussion about our rules. Shortly  
21 after the last meeting I asked GSA, as instructed by  
22 the Commission, to review the rules proposed for the

1 operation of our Commission. And you have received,  
2 commissioners, a copy of the response from GSA, and  
3 for your information it's included in your briefing  
4 books behind Tab 6.

5           To facilitate the process and ensure that  
6 each commissioner's viewpoint was incorporated, I  
7 developed a set of rules based upon the issues raised  
8 by those commissioners who submitted rules, and the  
9 model rules recommended by GSA. This draft was  
10 intended to provide simple, common sense guidance to  
11 the Commission and to the Commission staff.

12           Wherever possible, I avoided restating the  
13 law or including things that were more appropriately  
14 addressed elsewhere. An example of this was the  
15 concern expressed by a couple of commissioners that  
16 press releases would be managed appropriately and in  
17 a professional manner. Press releases from the  
18 Commission office will be limited to factual  
19 information unless a policy statement is authorized by  
20 the Commission. So that is how we intend to operate,  
21 but that was not, as an example, included as a rule.

22           The draft I developed was initially

1 circulated among those Commissioners who submitted  
2 rules for their review. During that time, Dr. Moore  
3 submitted some additional comments based on the GSA  
4 review, and these were included as well. Later drafts  
5 were circulated among the entire Commission and  
6 individual comments were incorporated into each  
7 subsequent draft.

8           The later versions were reviewed by Mr.  
9 Terwilliger for legal soundness and consistency with  
10 Federal law. The document you have in front of you  
11 represents the final version of many iterations. I  
12 believe that we got to this point by working to  
13 include or address every comment made by a  
14 commissioner, and resolve issues where two or more  
15 commissioners wanted contrary items.

16           While it has been somewhat akin to a real  
17 estate negotiation, I must say that every commissioner  
18 participated in such a way as to make this a  
19 meaningful and not unpleasant process at all. I  
20 suspect that like me, along the way each of you came  
21 to understand the issues better as a result of having  
22 gone through the process.

1           Yesterday, Commission Loescher submitted  
2 an additional set of rules. My initial review of  
3 those rules suggest that he was attempting to create  
4 a consensus document as well, and I do want to thank  
5 him for that and I do appreciate that.

6           However, many of the issues included in  
7 his draft have either been eliminated or are no longer  
8 necessary, but the spirit of them are included in the  
9 draft that you have before you.

10           I'd like to open this issue up for  
11 discussion or a motion at this time.

12           COMMISSIONER LOESCHER: Madam Chairman?

13           CHAIRPERSON JAMES: Commissioner Loescher.

14           COMMISSIONER LOESCHER: I'd like to offer  
15 a couple of things. One, comments on FACA, and also  
16 comments on a process to work through these rules. I  
17 would like to suggest that we work from the Chairman's  
18 mark and go through them, acknowledging those that we  
19 agree on and those that may need to be modified.

20           And then there are at least 12 items that  
21 I am concerned about that are not included in the  
22 Chairman's mark. And if that would be an acceptable

1 procedure I think that would be a good procedure to  
2 follow.

3 CHAIRPERSON JAMES: Would you like to  
4 offer that in the form of a Motion?

5 COMMISSIONER LOESCHER: I'd like to move  
6 that we use the Chairman's mark as the document we  
7 work through, and that there be modifications and  
8 amendments added by a Motion. I so move.

9 CHAIRPERSON JAMES: Hearing no second, the  
10 Motion --

11 COMMISSIONER McCARTHY: I'm not sure we  
12 need a Motion to do this. I'm agreeable to letting  
13 Commissioner Loescher proceed with his presentation  
14 and where he thinks there ought to be a modification,  
15 if you can get a second in support around --

16 CHAIRPERSON JAMES: We do have a Motion on  
17 the table and that Motion does need to be addressed.

18 COMMISSIONER McCARTHY: I'm sorry. I  
19 thought you just indicated it failed, Chair.

20 CHAIRPERSON JAMES: I had not gotten to  
21 that point. You cut me off before I got there.

22 COMMISSIONER McCARTHY: Oh, okay. I'm

1 sorry. I did hear a Motion and I did not hear a  
2 second for that particular Motion. I think it would  
3 be appropriate if he would like to amend that Motion  
4 or offer --

5 COMMISSIONER LEONE: Could somebody  
6 restate it or read it back? I didn't understand the -  
7 -

8 CHAIRPERSON JAMES: Certainly. Allison,  
9 were you able to get it down?

10 MS. FLATT: I think so. He moved that we  
11 use the chair's mark as the document for review and  
12 discuss amendments and modifications added by Motion.

13 CHAIRPERSON JAMES: Go through line by  
14 line.

15 COMMISSIONER LOESCHER: No, section by  
16 section.

17 CHAIRPERSON JAMES: Section by section.  
18 And I'm waiting on a -- that's the Motion that's  
19 before you.

20 COMMISSIONER LANNI: I'll second that.

21 COMMISSIONER LEONE: Can we discuss it?

22 CHAIRPERSON JAMES: Yes, now it's

1 appropriate for discussion.

2           COMMISSIONER LEONE: I just raise this  
3 question about whether we -- I presumed that the way  
4 we would approach this document is to go through it  
5 and have people discuss it and offer changes if they  
6 disagree with it, and that that would be the normal  
7 procedure.

8           It doesn't sound to me like this Motion is  
9 any more than saying we would proceed in the  
10 conventional fashion. Obviously, if there's more to  
11 this Motion then I might have a different reaction,  
12 since I also think we should proceed expeditiously.  
13 And as perhaps the only commissioner who has not  
14 suggested a single rule this year, I really appreciate  
15 how many have been offered by others, and I know I'm  
16 not holding up my end.

17           I just -- the Motion sounds procedural,  
18 and in that sense if that's all it is I don't have a  
19 problem with it. If it carries the import that we're  
20 going to start from scratch again I would be very  
21 troubled.

22           CHAIRPERSON JAMES: Let me see, Mr.

1 Loescher, if I understand the Motion, so that as we  
2 take a vote on it we can all be clear about what we're  
3 voting for.

4           And what you're suggesting is that we  
5 bring up a particular section of the document, you  
6 want to introduce amendments for that particular  
7 section, and discussion, and we move through the  
8 document that way. I certainly have no objection to  
9 that.

10           Does everyone understand the Motion?

11 Would you like to have a vote? All in favor?

12           (Chorus of ayes.)

13           Opposed?

14           COMMISSIONER DOBSON: Opposed.

15           COMMISSIONER MOORE: Opposed.

16           CHAIRPERSON JAMES: Okay. With that in  
17 mind, then let's proceed with the document.

18           COMMISSIONER LOESCHER: Madam Chairman.

19           CHAIRPERSON JAMES: I'd like to start with  
20 Section 1. Is that what you're suggesting -- to see  
21 if there are any amendments or changes to that  
22 particular section? Or would you like to just take

1 them all in a general -- how would you like to --

2 COMMISSIONER LANNI: Madam Chair for the -

3 -

4 CHAIRPERSON JAMES: Commissioner Lanni.

5 COMMISSIONER LANNI: If I may, Madam

6 Chair. I think we should maybe for the record,

7 designate that this is the revised draft dated

8 10/31/97, time 9:08 a.m.

9 CHAIRPERSON JAMES: That's correct.

10 COMMISSIONER LANNI: Just for the record.

11 CHAIRPERSON JAMES: There are a series and

12 for the record, we want to be clear what we're

13 operating off of, and that's 10/31/1997, 9:08 a.m.

14 That would be this morning.

15 COMMISSIONER LOESCHER: Madam Chairman?

16 CHAIRPERSON JAMES: Commissioner Loescher.

17 COMMISSIONER LOESCHER: I move to adopt

18 Sections 1 through 4 on page 1.

19 CHAIRPERSON JAMES: Well, would you like

20 through -- Commissioner Leone?

21 COMMISSIONER LOESCHER: I'd like to --

22 well, I guess there's a Motion on the floor -- because

1 I was going to move the document -- approve the  
2 document. Then if people want to propose amendments  
3 to that Motion they can be specific about what they'd  
4 like to amend.

5 But I don't want to cut off another  
6 Motion. But I would move we approve the document as  
7 admitted, and I know 9:08 a.m. Motion.

8 COMMISSIONER LOESCHER: Second the Motion.

9 COMMISSIONER LEONE: Then we can move the  
10 discussion.

11 CHAIRPERSON JAMES: Good. Well, we do  
12 have a Motion on the floor. You had just moved that  
13 we adopt Sections 1 through 4. I did not hear a  
14 second for that Motion so that Motion died. We're now  
15 entertaining the Motion from Commissioner Leone who  
16 has moved that we adopt the document. It has received  
17 a second, and we are now at the point of discussion  
18 for this particular document. Commissioner Wilhelm.

19 COMMISSIONER WILHELM: I would just like  
20 to commend Dr. Moore and the Chair and Mr. Bible and  
21 Mr. Lanni and no doubt others, whose contributions I'm  
22 not directly familiar with -- Dr. Dobson. To all of

1 the people who contributed to putting together what I  
2 believe was a consensus document that will enable the  
3 Commission to move forward, and I appreciate those  
4 efforts on the part of all of those and others.

5 COMMISSIONER LANNI: Madam Chair?

6 CHAIRPERSON JAMES: Commissioner Lanni.

7 COMMISSIONER LANNI: I move the question.

8 CHAIRPERSON JAMES: The question is before  
9 us. Vote?

10 COMMISSIONER LOESCHER: Madam Chairman?

11 CHAIRPERSON JAMES: Commissioner Loescher.

12 COMMISSIONER LOESCHER: At this point of  
13 discussion your package, the Chairman's mark, is on  
14 the floor, and I agreed to the Motion to introduce  
15 that, but I was hoping that the commissioners would  
16 allow some composed amendments to the document, and  
17 I'm hoping that we could do so.

18 CHAIRPERSON JAMES: Where are we in the  
19 Motion process?

20 MR. TERWILLIGER: Discussion of the Motion  
21 to adopt the rules.

22 CHAIRPERSON JAMES: We are at the point

1 for discussion. Is it appropriate to receive  
2 amendments at this point? Do we need to vote on the  
3 Motion that's before --

4 COMMISSIONER LEONE: I think if we want to  
5 be strict Robert's, Terry can withdraw his call for  
6 the question and we can entertain, if you so choose,  
7 and I think the sentiment is people probably ought to  
8 have an opportunity to propose amendments rather than  
9 --

10 CHAIRPERSON JAMES: Right. So we will  
11 withdraw that Motion and we are prepared to receive  
12 any amendments that any commissioner may have at this  
13 point.

14 COMMISSIONER DOBSON: Excuse me, Madam  
15 Chair. Don't we need to vote on the Motion itself,  
16 before you start amending it.

17 CHAIRPERSON JAMES: Well, that was my  
18 question.

19 MR. TERWILLIGER: May I have a moment?

20 CHAIRPERSON JAMES: The Chair recognizes  
21 general counsel.

22 MR. TERWILLIGER: I think where we are is,

1 there was a Motion made by Commissioner Leone to adopt  
2 the draft of the rules that was presented this  
3 morning. That was seconded. That Motion is now in  
4 its discussion phase. It seems to me if the Chair so  
5 rules that the various aspects of the rules as drafted  
6 can be discussed at this point.

7 I don't think it's appropriate to move to  
8 amend this draft right now, but it is certainly  
9 appropriate to discuss parts of it and then you would  
10 have to take a vote on the pending Motion to adopt  
11 this --

12 CHAIRPERSON JAMES: Before --

13 MR. TERWILLIGER: -- before taking  
14 amendments. Why don't we --

15 COMMISSIONER LOESCHER: Madam Chairman, a  
16 point of order --

17 CHAIRPERSON JAMES: Why don't we proceed  
18 this way --

19 COMMISSIONER LOESCHER: Point of order.

20 CHAIRPERSON JAMES: -- as a suggestion.

21 The Chair recognizes Commissioner Loescher.

22 COMMISSIONER LOESCHER: A point of order.

1 I disagree with legal counsel's opinion in that it's  
2 wholly in order to present the Chairman's mark as has  
3 been presented as the action contemplated by the  
4 Commission, and it's wholly in order for us to advance  
5 amendments to the document as a part of this Motion.

6           If you vote on the Motion to adopt the  
7 Chairman's mark there's no further discussion; it's  
8 adopted. And it doesn't help those of us who want to  
9 advance amendments to be amending the document later.  
10 It's part and parcel of the Motion. And under  
11 Robert's Rules of Order you can amend the Motion. So  
12 I disagree with counsel's advice.

13           MR. TERWILLIGER: I think under Robert's  
14 what would have to happen, Madam Chairwoman, is that  
15 the Motion that's on the floor would have to -- there  
16 would have to be a Motion to amend that to permit  
17 discussion of -- permit Motions to amend this  
18 document.

19           The Motion that's on the floor right now  
20 for discussion is whether or not to adopt this  
21 document as submitted to the Commission. And  
22 certainly, substantive aspects of the document can be

1 discussed in that discussion, and perhaps that might  
2 identify for the commissioners as a body, whether or  
3 not they want to either adopt it as is or not adopt it  
4 as is, and then open it up for amendments and so  
5 forth.

6 CHAIRPERSON JAMES: Commissioner Loescher,  
7 I would like to recommend that since that's where we  
8 are at this particular stage in the discussion, that  
9 we proceed in the discussion phase of this Motion by  
10 your entering into the discussion at this point to  
11 talk about the issues that you have, the problems that  
12 you have.

13 And if at the end of that you would like  
14 to offer an amendment then perhaps something -- you  
15 know, we could make a decision at that particular  
16 time. But we are at the discussion phase of the  
17 Motion. And if you would like to proceed with your  
18 discussion of this Motion that is currently before the  
19 Commission?

20 COMMISSIONER LOESCHER: Madam Chairman,  
21 I'll agree to proceed but I will still maintain my  
22 objection to legal counsel's advice that this Motion

1 is not open for amendment. But let's proceed.

2 CHAIRPERSON JAMES: Thank you.

3 COMMISSIONER LOESCHER: Madam Chairman,  
4 for the record I have advanced to you yesterday, a  
5 memoranda dealing with the applicability of the  
6 Federal Advisory Committee Act to the National Impact  
7 Gambling Study Commission. And I believe that there  
8 is consensus with you and a number of the  
9 commissioners and the legal advisors, that there is  
10 some doubt as to whether or not FACA does apply to  
11 this body.

12 And my memoranda goes through a legal  
13 analysis of that situation, and coupled with the legal  
14 analysis and also coupled with the Department of  
15 Justice letter to us, I believe that we could conclude  
16 that FACA does not indeed, apply to this Commission.

17 Additionally, there are good points to  
18 FACA and then there are negative points to FACA, and  
19 we must deal with those risks, hopefully through the  
20 rules. And one -- for example, one is the issue of  
21 commissioner's advisors and volunteers that work with  
22 each commissioner.

1           It's important for us to make sure that  
2 those people, for example, are covered under the  
3 confidentiality rule and so that the proprietary data  
4 and other data that's offered to this Commission are  
5 protected. And I just raise that as an example of one  
6 of the issues that needs to be dealt with in the  
7 rules.

8           I'm not against outside advisors. I just  
9 believe that they need to be incorporated within the  
10 rules, as an example. Anyway, for the record, I offer  
11 this letter to the Chair and to the Commission for the  
12 record, dealing with FACA. I believe that we can  
13 advance rules that could not include FACA, or we can  
14 include FACA.

15           For my purpose, I have drafted my  
16 suggestions to the commissioners within the context of  
17 FACA; that the rules that I have advanced are within  
18 the context of FACA. So I just want to, for the  
19 record, offer this memoranda to the minutes of this  
20 meeting.

21           CHAIRPERSON JAMES: Thank you.

22           COMMISSIONER LOESCHER: Additionally, in

1 the spirit of your handling of this Motion, issues not  
2 included in the Chairman's mark -- which I feel are  
3 important, that need to be considered in the rules --  
4 are in my draft that advanced to each commissioner.

5 I had provisions dealing with the budget  
6 and work plan. Those are on page 3 and 4 of my draft.  
7 Explanation of decision to close meetings; that was on  
8 page 5 of my draft. The issue of annual report,  
9 having the open and closed meetings.

10 (Applause from another room.)

11 COMMISSIONER LEONE: We're in the wrong  
12 meeting.

13 COMMISSIONER LOESCHER: I think I'm going  
14 to get more support over there for my --

15 (Laughter.)

16 The annual report was a provision that  
17 provided to the public a record of our open and closed  
18 meetings and the reasons therefore; the non-  
19 deliberative meeting's provisions on page 5 and 6.  
20 Communications information sent to commissioners was  
21 a rule on page 6 of my draft.

22 Confidentiality. I honestly believe,

1 Madam Chairman, that in the Chairman's mark that that  
2 provision is incomplete and inadequate to deal with  
3 the confidentiality aspects of data and materials that  
4 are submitted to this Commission, and I urge the  
5 Commission to put a high priority in looking at adding  
6 a confidentiality provision other than what's in the  
7 Chairman's mark, and consider the provision that I  
8 have advanced.

9           The collection procedure I have advanced  
10 on our draft, pages 7 and 8. The media. We had some  
11 provisions offered by other commissioners and there  
12 are about three or four rules that we thought the  
13 media could honor, and also protects their interests  
14 as well as ours.

15           The definition of a meeting on page 10 of  
16 my draft, I thought was an important idea to define  
17 what a meeting is as opposed to hearings and other  
18 events that the Commission had. The issue of press  
19 releases and how they're handled by the Commission I  
20 believe is an important thing.

21           Hiring of staff, other than the executive  
22 director, on our draft page 12, I thought was an

1 important aspect to have. And then the issue of  
2 representation by counsel is an important provision --  
3 for a witness to be able to have representation by  
4 counsel -- and that's excluded from the Chairman's  
5 draft.

6           The key things that, in addition to  
7 confidentiality, is the issue of subpoenas and how  
8 they're handled. We honestly believe that -- I would  
9 ask the commissioners to really look hard at our  
10 offering on subpoenas.

11           Also, the fact that subpoenas and  
12 information derived through subpoenas and whatnot, are  
13 not accessible under the Freedom of Information Act;  
14 that those people who offer data on a confidential  
15 basis in subpoenaed hearings and whatnot, are not  
16 back-doored by information going out under the Freedom  
17 of Information Act. And we have an offering there and  
18 I hope the commissioners would give high priority to  
19 that business.

20           The other is the business about subpoenas,  
21 we would like to advance the notion that they be  
22 handled under the Federal Rules, Rule 45, in terms of

1 enforcement. And also the fact that people who are  
2 not wanting to be responsive to subpoenas have the  
3 protections of the Federal Rule and that process. I  
4 really believe that it's important to do that.

5           That covers the items that are not  
6 included in the Chairman's rules, but there are --  
7 Madam Chairman, I believe that in summary, those are  
8 the items that I'd like to advance by Motion, if  
9 permitted at some point, and I think they would be  
10 positive and have merit and the commissioners would  
11 see the merit of those amendments.

12           In summary, that's my contribution to this  
13 part of the discussion.

14           CHAIRPERSON JAMES: Any other discussion?  
15 Any other discussion on the Motion that we have before  
16 us?

17           COMMISSIONER LANNI: And the Motion again,  
18 Madam Chairman? It's been a while.

19           CHAIRPERSON JAMES: It's been a while.  
20 Allison, could you re-read the motion?

21           MS. FLATT: The Motion to adopt the  
22 Commissioner's marked document?

1                   CHAIRPERSON JAMES: That's correct.

2                   COMMISSIONER LANNI: A point of  
3 clarification. If we vote on such Motion and it's  
4 passed, will we still have an opportunity to discuss  
5 some issues relative to it, with the potential of  
6 changing?

7                   CHAIRPERSON JAMES: Well, my understanding  
8 is -- and one of the rules that's there -- is that you  
9 can amend these rules at any point, anyway. So  
10 certainly we could. But I think if there are issues  
11 here that we need to discuss, we should probably do  
12 that. If you have a point of discussion you should  
13 bring it up --

14                   COMMISSIONER LANNI: Thank you, Madam  
15 Chair. If I may?

16                   CHAIRPERSON JAMES: -- before we vote.

17                   COMMISSIONER LANNI: If I may?

18                   CHAIRPERSON JAMES: The Chair recognizes  
19 Commissioner Lanni.

20                   COMMISSIONER LANNI: In working with your  
21 draft -- the 9:08 a.m. draft as so designated -- I  
22 have some questions actually, and comments.

1                   And I'll do it by -- paragraph 2 is the  
2 first question I have; under "Authority" I have a  
3 question. In the first three drafts which were  
4 submitted to us, line 2 did not include the words "in  
5 general". And I was just wondering why that was added  
6 to this.

7                   CHAIRPERSON JAMES: I'd like to ask  
8 counsel if you would address that particular issue.

9                   MR. TERWILLIGER: Sure. I think Mr.  
10 Loescher identifies what clearly is a legal issue as  
11 to whether or not the Federal Advisory Committee Act  
12 applies to this Commission or not. And I don't feel  
13 either prepared or confident, or think I would do the  
14 Commission justice, by opining off the top of my head  
15 about that now. We haven't been asked to do that.

16                   I do think he raises some important  
17 points. So the intent of the rule as stated is not to  
18 make a legal determination as to whether the Advisory  
19 Committee Act applies or not.

20                   But at the same time, to make a part of  
21 the operating rules of this Commission, that the  
22 Commission will, to the extent appropriate and not

1 inconsistent with the enabling legislation that  
2 created the Commission, act in accord with the Federal  
3 Advisory Committee Act.

4           CHAIRPERSON JAMES: And from the Chair's  
5 perspective, Commissioner Lanni, it was simply to say  
6 that it is our intention to operate this Commission in  
7 an open and balanced and fair process. And wherever  
8 possible, to adhere to those particular guidelines.

9           COMMISSIONER LANNI: Thank you, Madam  
10 Chair. Relative to roman numeral IV, capital B as in  
11 "boy", again referring to my understanding of the  
12 legislation in the law -- signed into law by the  
13 President -- reference here is only to meetings and  
14 not to hearings.

15           And it would seem to me that in instances  
16 where it says "all meetings" we should add, "all  
17 meetings and hearings" in line 1. In line 4, "an  
18 ongoing and open Commission or Subcommittee or  
19 hearings". I think there should be a reference to  
20 each of these rather than just to meetings.

21           The same would pertain to roman number  
22 IV.C under "Agenda"; "A notice of Commission

1 meetings." I think it should be "or hearings".

2 CHAIRPERSON JAMES: If you look on the  
3 previous page, meetings are defined to include all of  
4 those, and if you wanted, for a point of  
5 clarification, I would certainly not object. But I  
6 think you will see that by definition on the first  
7 page.

8 COMMISSIONER LANNI: Does counsel confirm?

9 MR. TERWILLIGER: Yes, the idea was to  
10 make B, in terms of the open and closed issue, be  
11 clear -- just in terms of the open and closed issue.  
12 The point of "IV General" which is on the bottom of  
13 page 1, was to make it clear that any time the  
14 Commission gathers -- whether it be for purposes of a  
15 hearing, a business meeting, or any other purpose --  
16 that IV(B) would apply.

17 COMMISSIONER LANNI: So I should assume  
18 that on all matters, that the operative factor will be  
19 -- under for "meetings" that "meetings" means  
20 hearings, means subcommittee meetings, means all  
21 meetings?

22 MR. TERWILLIGER: Exactly.

1                   CHAIRPERSON JAMES: That's correct.

2                   COMMISSIONER LANNI: With that said, I  
3 don't think it needs a change. Relative to IV(E) on  
4 "Minutes and Transcripts", this is more substantive to  
5 me. I do have a concern. With all due respect to the  
6 --

7                   CHAIRPERSON JAMES: I'm -- IV where?

8                   COMMISSIONER LANNI: I'm sorry, IV(E) as  
9 in "Elizabeth".

10                  CHAIRPERSON JAMES: I should tell you that  
11 what you're looking at was collated by the hotel and  
12 some of the pages are out of order.

13                  COMMISSIONER LANNI: Right, exactly; IV is  
14 ahead of III --

15                  CHAIRPERSON JAMES: Right.

16                  COMMISSIONER LANNI: I assumed that that  
17 would just be removing a staple and changing it; it's  
18 not a terribly difficult process.

19                  CHAIRPERSON JAMES: It reads better.

20                  COMMISSIONER LANNI: It does; it reads a  
21 lot better.

22                  COMMISSIONER WILHELM: Maybe for you.

1                   COMMISSIONER LANNI: Under IV(E), I think  
2 there should be a substantive edition here, and I  
3 suggest that relative to the transcripts that they may  
4 be reviewed for accuracy by any commissioner prior to  
5 the distribution, rather than just the executive  
6 director -- with all due respect to the executive  
7 director.

8                   CHAIRPERSON JAMES: Just as a logistical  
9 matter that may be complicated, but I think if any  
10 commissioner wants to review the transcripts, that  
11 certainly is -- we would certainly operate that way.  
12 If you'd like to insert it in the rules I have no  
13 objection.

14                   COMMISSIONER LANNI: I would like to see  
15 it submitted and added to the rules, and I don't know  
16 what procedure that requires at this point; where  
17 we're discussing another Motion.

18                   MR. TERWILLIGER: Hold on just a second,  
19 Kay.

20                   COMMISSIONER LEONE: Well, you know, I  
21 hate to do this, but in fact, you can ask the person  
22 who made the Motion whether they are willing to accept

1 an amendment to their Motion, which could include such  
2 language. But let's get through it all first --

3 CHAIRPERSON JAMES: Yes.

4 COMMISSIONER LEONE: -- and then ask me.

5 COMMISSIONER BIBLE: Before we leave that  
6 point -- Madam Chairwoman, before we leave that point.

7 CHAIRPERSON JAMES: The Chair recognizes  
8 Commissioner Bible.

9 COMMISSIONER BIBLE: There's apparently  
10 some correction procedure that the executive director  
11 may make to transcripts. Now, the transcripts are  
12 prepared by a certified court reporter; they certify  
13 according to their professional standards as to the  
14 accuracy and completeness of those transcripts, so I  
15 don't know what the correction procedure is, unless  
16 it's spelling of names and things of that nature.

17 CHAIRPERSON JAMES: That's what is  
18 intended there. And we have, in the last two  
19 transcripts, needed to do that. I think Senator  
20 Laxalt was Senator Faxalt or something. You know, we  
21 just need the ability to make those kinds of minor,  
22 technical spellings, and that's what's intended by

1 that.

2                   COMMISSIONER LANNI: Which I might add, is  
3 a normal process in depositions. One has a chance to  
4 review one's particular testimony. And with all due  
5 respect, I think sometimes people taking these  
6 transcripts may have other thoughts in their mind at  
7 the moment and they're not necessarily as accurate as  
8 they might want to be at all times.

9                   CHAIRPERSON JAMES: That is absolutely  
10 standard procedure in court and Congressional  
11 Hearings, and that's all that's intended by that.

12                   COMMISSIONER LANNI: Section V, roman  
13 numeral V.

14                   CHAIRPERSON JAMES: Page?

15                   COMMISSIONER LANNI: Page -- I'm sorry,  
16 I've got to go to your new one; I was working from the  
17 old one. I think it should be page 4; that didn't  
18 change. Relative to the line 7, there's a reference  
19 to Section V(b)(1). I think there's a reference to  
20 subpoenas in two sections: V(b)(1) and V(b)(2). And  
21 I would respectfully request that the (1) be removed  
22 and that (1) and (2) -- (1) and (2) be included;

1 insert (2) as an addition I guess would be the effect  
2 of that.

3           There should be a reference -- because  
4 both reference -- V(b)(1) and (2) refer to subpoenas  
5 and it would seem to me that the intent would be to  
6 include all aspects of subpoenas under that  
7 determination.

8           CHAIRPERSON JAMES: Certainly.

9           MR. TERWILLIGER: Maybe the easiest thing  
10 to do is just make it V(b).

11           COMMISSIONER LANNI: That would work, too.

12           CHAIRPERSON JAMES: Why don't we just say  
13 V(b) and that would --

14           COMMISSIONER LANNI: Yes, V(b) would be  
15 fine with me. On Section VII, on page 5, line 1 --  
16 and this may be more of a point of clarification.  
17 When it indicates, "A chairman shall designate  
18 subcommittees", I am assuming -- maybe correctly,  
19 maybe not -- that that would include the make-up of  
20 those subcommittees as well as the designation of the  
21 subcommittees themselves, for Commission approval.

22           CHAIRPERSON JAMES: Correct.

1           COMMISSIONER LANNI: So that the idea of  
2 having a Research Committee and the make-up of the  
3 members of that committee would be included there.

4           CHAIRPERSON JAMES: Correct.

5           COMMISSIONER LANNI: So if that's the  
6 intent I don't think anything needs to be done on  
7 that.

8           The last point is on roman numeral X on  
9 page 6. If I read the Act correctly -- and I know a  
10 lot of these things are written for people to  
11 understand, like the tax codes, but I wonder sometimes  
12 how people understand the tax codes -- but if I read  
13 there in line 1 it says, "Information or data obtained  
14 by the Commission from government entities", the law  
15 does not limit this to information received from  
16 government entities; it's all information received by  
17 the Commission, and I think this is much too limiting.

18           I would suggest there that "government  
19 entities" be dropped. It says, "Information or data  
20 obtained by the Commission from all sources which is  
21 legally confidential shall be".

22           CHAIRPERSON JAMES: Commissioner Bible, I

1 believe that was your suggestion. Do you have any --

2 COMMISSIONER BIBLE: No, I intended it to  
3 be as broad as possible.

4 CHAIRPERSON JAMES: And so, some suggested  
5 language to replace that, I think you offered some.  
6 You would strike "from government entities" and --

7 COMMISSIONER LANNI: Well, I think it  
8 follows the language of the statute -- which I have  
9 written here somewhere.

10 CHAIRPERSON JAMES: Would you read that  
11 language from the statute for the benefit of the  
12 Commission?

13 COMMISSIONER LANNI: I want you to know I  
14 did not memorize this; this was provided to me. It  
15 says: "As stated in Section V(d) of the Act,  
16 information obtained by the Commission, other than  
17 information available to the public, shall not be  
18 disclosed to any person in any manner, except: 1) to  
19 Commission employees or employees of any individual  
20 entity or organization under contract to the  
21 Commission, under Section VII for the purpose of  
22 receiving, reviewing, or processing such information,

1 2) upon court order, or 3) when publicly released by  
2 the Commission in an aggregate or summary form that  
3 does not directly or indirectly disclose the identity  
4 of any person or business entity; or 2) any  
5 information which could not be released under Section  
6 1905 of Title 18, United States Code".

7 I'm learning a lot more about this than I  
8 ever intended or cared to. May I pass that?

9 CHAIRPERSON JAMES: You certainly may.

10 COMMISSIONER LANNI: Can that be entered  
11 as evidence under --

12 CHAIRPERSON JAMES: I think of course, you  
13 know, we've said repeatedly as we've gone through this  
14 process, that the intent is that where possible, that  
15 we would insert the language from the legislation or  
16 from the Code. And at the appropriate time, if you'd  
17 like to offer that I'm sure -- unless general counsel  
18 has any further guidance for us on that subject.

19 MR. TERWILLIGER: No, I think there's  
20 actually -- I think the Commissioner has raised a  
21 further intent than the confidentiality that was  
22 intended here, and I think the explanation for the

1 difference is that the statute that the Commissioner  
2 just read speaks for itself in terms of the  
3 Commission's information being confidential.

4           The point here was that information that  
5 might be obtained from a governmental entity which is  
6 say, confidential investigative data or something of  
7 that sort, was to give some comfort to those agencies  
8 that in fact, the Commission would maintain it that  
9 way.

10           But there is certainly, absolutely no  
11 reason not -- that I can think of -- to take the  
12 confidentiality requirements of the statute and mirror  
13 them in our rules in addition to our rules that we  
14 would maintain confidential -- Federal information as  
15 confidential with the Commission. So I think it's  
16 fine.

17           In terms of the procedure on this which  
18 you just raised, Madam Chair, it seems to me that we  
19 need to sort of note these comments and if there is to  
20 be a Motion to amend the Chairman's mark, it might be  
21 best to take those all at once.

22           CHAIRPERSON JAMES: Let me review,

1 Commissioner Lanni, just to be sure that I have -- or  
2 that you have, so that you can be prepared to make  
3 that amendment. My understanding is that the language  
4 on page 1 of meetings takes care of your concern of  
5 the subsequent items here.

6 COMMISSIONER LANNI: Based upon counsel's  
7 advice, it does.

8 CHAIRPERSON JAMES: Based upon counsel's  
9 advice. And that you would, however, like under  
10 Section V on page 4, to have it simply stated Section  
11 V, so that that would include everything that's under  
12 that section as --

13 COMMISSIONER LANNI: Right. I think it's  
14 V(b).

15 CHAIRPERSON JAMES: Yes, V(b), that's  
16 correct. So that you don't need to designate the (1)  
17 and (2). But that would be everything that relates to  
18 subpoenas. So that would be one.

19 And that under the Confidentiality  
20 section, although we've not done it in any other place  
21 because the, sort of the rule has been, we certainly  
22 intended to obey the law but if it's important to

1 restate the law right here where issues of  
2 confidentiality are concerned, we're certainly  
3 prepared to do that.

4 COMMISSIONER WILHELM: Madam Chair?

5 CHAIRPERSON JAMES: I'll recognize you in  
6 just a minute, Commissioner Wilhelm.

7 MR. TERWILLIGER: Thank you, Madam Chair.  
8 I just wanted to point out to the Commission that  
9 immediately -- the last two lines of Section IX on  
10 page 6 address the confidentiality provisions of V(d)  
11 of the enabling legislation which Mr. Lanni just made  
12 reference to.

13 The difference between the end of IX and  
14 X is that the end of IX addresses what staff must do  
15 in order to comply with the confidentiality  
16 provisions; X addresses the confidentiality of the  
17 information itself. So I do think that simply by  
18 striking from governmental entities there and making  
19 it apply to all information, makes it abundantly clear  
20 what we're doing.

21 COMMISSIONER LANNI: I would certainly  
22 agree with that.

1                   CHAIRPERSON JAMES:  So if we included  
2  language in Section X that says, "information or data  
3  obtained by the Commission from", and the particular  
4  --

5                   COMMISSIONER LANNI:  No, I think as  
6  counsel suggested, if you just delete the words "from  
7  governmental entities", that will be more than  
8  sufficient.

9                   CHAIRPERSON JAMES:  Right; "by the  
10 Commission".

11                  COMMISSIONER BIBLE:  The term "legally  
12 confidential" applies to what -- the releasing agency  
13 if it's another governmental entity, or to this  
14 Commission?

15                  MR. TERWILLIGER:  Both.

16                  COMMISSIONER BIBLE:  Because there may be  
17 different standards.

18                  CHAIRPERSON JAMES:  Both.

19                  COMMISSIONER LANNI:  Both.

20                  COMMISSIONER BIBLE:  So if it's protected  
21 information from the agency it will not lose its  
22 character if the Commission collects it?

1                   CHAIRPERSON JAMES: Correct.

2                   COMMISSIONER WILHELM: And along -- oh,  
3 I'm sorry.

4                   CHAIRPERSON JAMES: Commissioner Wilhelm.

5                   COMMISSIONER WILHELM: And as a follow-up  
6 to that, I would also assume counsel, that the term  
7 "legally confidential" in number X would encompass the  
8 definition of confidential under our own law.

9                   MR. TERWILLIGER: That's right.  
10 Information which may not be legally confidential  
11 could become legally confidential as a result of it  
12 having been obtained by the Commission. For  
13 Commission purposes.

14                   COMMISSIONER WILHELM: That clarifies the  
15 other earlier question I was going to ask which may  
16 not be mooted, but just for my own clarity counsel --  
17 and let me acknowledge in advance that I have either  
18 the disadvantage or the advantage, depending on how  
19 you look at it, of not being a lawyer, so I may be  
20 missing a point here.

21                   But I thought I understood you to say  
22 earlier that the confidentiality section of our law

1 doesn't apply to information that comes from  
2 governmental entities and that's why you had it in  
3 here. I don't read the --

4 CHAIRPERSON JAMES: No.

5 MR. TERWILLIGER: No, no. And if I  
6 misspoke or didn't make that clear I apologize. What  
7 I was saying was that the purpose of writing what is  
8 Section X was so that if the Commission decided to  
9 obtain information that was confidential -- not in the  
10 national security sense but confidential government  
11 data, say from an investigating agency -- that that  
12 information would not lose its confidential character  
13 by virtue of its coming to the Commission.

14 COMMISSIONER WILHELM: Okay. Thank you.

15 COMMISSIONER McCARTHY: Madam Chair? A  
16 question --

17 CHAIRPERSON JAMES: Commissioner McCarthy.

18 COMMISSIONER McCARTHY: -- to Mr.  
19 Terwilliger. We're talking about legally confidential  
20 under Federal authority, under Federal statute?

21 MR. TERWILLIGER: Well, as originally  
22 drafted, that was the limitation. I think that's a

1 fair characterization.

2 COMMISSIONER McCARTHY: Well, I haven't  
3 heard any discussion that changes that.

4 MR. TERWILLIGER: Well, I think --

5 COMMISSIONER McCARTHY: Whether --

6 MR. TERWILLIGER: I'm sorry.

7 COMMISSIONER McCARTHY: Whether we're  
8 talking about legally confidential information we  
9 obtained from Federal agencies or from private  
10 sources, we're saying the protection we're talking  
11 about is the protection granted under Federal law?

12 MR. TERWILLIGER: I think with Mr. Lanni's  
13 suggested change, what we're basically acknowledging  
14 in X now if this -- the Chairman's mark were to be  
15 redrafted by striking "governmental entities", what  
16 we're basically saying is that the confidentiality  
17 provisions concerning information obtained by the  
18 Commission, pursuant to the enabling legislation, are  
19 recognized in our rules. And we're not saying  
20 anything more or less than that.

21 COMMISSIONER WILHELM: I guess the only  
22 clarification I'm seeking is that confidentiality

1 granted under State law or any other level of law, is  
2 not what we're talking about here.

3 MR. TERWILLIGER: I think -- I think  
4 that's a fair characterization, although I'm not --  
5 I'm trying to think, sort of the implications of the  
6 point through. Virtually anything the Commission gets  
7 under the enabling legislation becomes confidential  
8 under the confidentiality provisions of the Act. So  
9 how it is characterized or what its legal  
10 confidentiality characteristics might be under some  
11 other law, is really not relevant. As I see it.

12 Let's look -- if I may for just a second.  
13 You see, what the statute -- which is what really  
14 controls here and we can't, obviously, change the  
15 statute or do anything less than that; we could do  
16 more than that -- what the statute says is that the  
17 Commission is an agency of the Federal government for  
18 purposes of Section 1905 of Title 18. Section 1905 of  
19 Title 18 makes it a crime for an employee of a Federal  
20 agency or Commission to, without authorization,  
21 release confidential data.

22 Then our enabling statute says,

1 "Information obtained by the Commission, other than  
2 that which is available to the public, shall not be  
3 disclosed to any person in any manner except" -- and  
4 then there are the exceptions that Commissioner Lanni  
5 read into the record earlier.

6           So what that means in conjunction with  
7 this rule is simply that it's an operating rule. We  
8 are recognizing the obligation to keep the information  
9 we obtain that is not publicly available when we  
10 obtain it, confidential. So anything that comes to us  
11 that's not publicly available when we obtain it, will  
12 be a confidential record pursuant to Section V(d) --  
13 just so we're clear -- V(d) of our enabling  
14 legislation.

15           CHAIRPERSON JAMES: Are we clear on that?

16           COMMISSIONER BIBLE: Yes, and my concern  
17 in suggesting this particular rule is that this  
18 information, which may be categorized as confidential  
19 by a governmental entity other than the Federal  
20 Government or say a Tribal Government, would not lose  
21 its confidentiality characteristic when it was  
22 transmitted to this Commission. This Commission would

1 in turn, protect its confidentiality. That's what I  
2 was interested in doing.

3 MR. TERWILLIGER: That's presumptively  
4 correct, but our statute says our confidential is that  
5 which is not publicly available. No matter where we  
6 get it from, how it is characterized on the outside,  
7 if it's not publicly available it falls into that  
8 category of information that we are required -- the  
9 Commission is required to keep confidential. If it is  
10 publicly available, it is outside of the universe of  
11 our confidential data.

12 CHAIRPERSON JAMES: We're there.

13 COMMISSIONER LOESCHER: Madam Chairman, is  
14 Commissioner Lanni's amendment available so we can  
15 look at the words?

16 CHAIRPERSON JAMES: I don't think we have  
17 formed it into any such formal document at this point.  
18 We're still at the discussion phase. It may be  
19 helpful though, as we're discussing, that you go ahead  
20 and formulate that into a --

21 COMMISSIONER BIBLE: But we're going to  
22 need some copies prepared so we can take a look at the

1 language. If we get to that point.

2 COMMISSIONER MOORE: Excuse me,  
3 Commissioner Bible. What did you just say?

4 CHAIRPERSON JAMES: Commissioner Bible?

5 COMMISSIONER BIBLE: We're going to need  
6 some copies made so if we're going to -- if you get to  
7 the point of considering this -- we've not received  
8 copies.

9 COMMISSIONER LANNI: But I think we're  
10 just striking --

11 CHAIRPERSON JAMES: Yes, it's not that  
12 complicated, what he's suggesting.

13 COMMISSIONER LANNI: It's very simple.  
14 Are you just talking about X?

15 CHAIRPERSON JAMES: Well, what I have that  
16 you have suggested at this point is --

17 COMMISSIONER LANNI: Five?

18 CHAIRPERSON JAMES: Yes.

19 COMMISSIONER LANNI: Roman numeral V is  
20 merely, on line 7 -- this is page 4, roman numeral V,  
21 line 7 where it reads currently, Section V(b)(1), we  
22 would delete the "1" and the parens; and on page 6,

1 roman numeral X, Confidentiality, we would strike the  
2 three words in line 1: "from governmental entities".

3 CHAIRPERSON JAMES: That's it.

4 COMMISSIONER LANNI: So I don't think that  
5 we need --

6 COMMISSIONER LEONE: Not on that, no.

7 CHAIRPERSON JAMES: Now, where we are,  
8 just to be clear, we are still in the discussion  
9 stage. I have not yet entertained a Motion to amend  
10 the Motion that is before us. So we are still in the  
11 discussion phase. Are there other points of  
12 discussion that commissioners would like to bring  
13 forward on this particular document?

14 Okay, this is where we are, and I'm going  
15 to ask general counsel to carefully listen to make  
16 sure that I get this correct. We need to have, if  
17 Commissioner, either Loescher or Lanni would like to  
18 offer an amendment to the Motion that is currently  
19 before us. And that Motion is?

20 MS. FLATT: To adopt the Chairman's  
21 document.

22 CHAIRPERSON JAMES: The Motion that is

1 before us is to adopt the Chairman's mark. Now, that  
2 -- who offered that amendment? Was that Commissioner  
3 -- yes. Commissioner Leone would have to entertain an  
4 amendment to his Motion.

5 And so I think we have a clear  
6 understanding of what your Motion would be: it's  
7 simply to strike those three words and to --

8 COMMISSIONER LANNI: The number "1".

9 CHAIRPERSON JAMES: Strike number "1".

10 Commissioner Loescher, I think it would be helpful at  
11 this point for us to consider, if you're going to  
12 offer an amendment, what that would be, and whether or  
13 not Commissioner Leone would be willing to accept that  
14 as an amendment to his Motion. Is that correct?

15 COMMISSIONER LOESCHER: Madam Chairman,  
16 you know, you have a strange concept of what Robert's  
17 Rules is. When a Motion is on the table, advanced by  
18 Commissioner Leone, it belongs to the Commission once  
19 he makes it. We can amend it any which way we want.  
20 And that's the notion that I understand of Robert's  
21 Rules of Order.

22 I'm not petitioning Commissioner Leone at

1 all; I'm petitioning this body to amend the Motion --  
2 which belongs to the Commission.

3 CHAIRPERSON JAMES: Why don't I ask  
4 general counsel for a read on that?

5 MR. TERWILLIGER: I think what's operative  
6 under Robert's Rules of Order here are two things.  
7 One, the Motion that is on the floor is to adopt this  
8 document as it was submitted by the Commission. And  
9 that's basically an up or down vote.

10 Any time a Motion is on the floor, you're  
11 correct that it may be amended. But I don't --  
12 there's no basis to amend that Motion without also  
13 amending the document.

14 In terms of the Chair's question as to Mr.  
15 -- whether Commissioner Leone would accept an  
16 amendment, a friendly amendment to a Motion can be  
17 accepted at any time and the Motion thereby, recast.  
18 And that's what the Chair is suggesting as a  
19 possibility.

20 CHAIRPERSON JAMES: That's correct.

21 COMMISSIONER LEONE: May I? In practical  
22 terms, what I was seeking to do is if there were more

1 areas of consensus we could incorporate them into the  
2 basic Motion on the floor and move closer to a  
3 consensus and be more precise about the areas of  
4 difference and then deal with first one and then the  
5 other.

6           And just commenting on the discussion so  
7 far, nothing that Mr. Lanni has suggested seems to me  
8 to be a problem or to change the direction of my  
9 initial Motion.

10           I think counsel has been skillful in not  
11 coming right out and saying that we're back again to  
12 promising that we'll obey the law, and I am certainly  
13 -- I think that we're all prepared to do that, with  
14 confidentiality and every other issues that comes  
15 before the Commission.

16           I think that amendment to X is  
17 particularly good in terms of clearing up any  
18 confusion about whether there are two standards or two  
19 sets of rules.

20           So I would have no trouble restating my  
21 Motion to incorporate those suggestions with regard to  
22 that section. But again, I'm not proposing that we

1 cut off discussion or debate; I think it's healthy.

2 This is obviously very important to people.

3 CHAIRPERSON JAMES: Right. Absolutely.

4 COMMISSIONER LOESCHER: Madam Chairman, I  
5 think we should move Mr. Lanni's amendment.

6 CHAIRPERSON JAMES: Well, I think  
7 Commissioner Leone has suggested that he would  
8 entertain that. Since that is the Motion that is  
9 before us, I'd like to call for the vote.

10 And to be clear, we are voting that we  
11 accept the Chairman's mark with the amendment  
12 suggested by Commissioner Lanni. That does not cut  
13 off the debate, however, and we would -- ah, who  
14 seconded your Motion?

15 COMMISSIONER LEONE: Mr. Loescher.

16 CHAIRPERSON JAMES: Mr. Loescher. Would  
17 you agree to the change that has been made by  
18 Commissioner Lanni in the second of your Motions?

19 COMMISSIONER LOESCHER: Of course I agree,  
20 but I don't agree with your process. Why can't we  
21 make a Motion to Amend, and add Mr. Lanni's Motion?  
22 If he wants to adopt it, fine. We've got lots more

1 amendments to go.

2 CHAIRPERSON JAMES: That has been done.

3 Yes, the offerer did --

4 COMMISSIONER LOESCHER: This is really a  
5 weird operation you have here.

6 CHAIRPERSON JAMES: The offerer did amend  
7 his Motion and that is what in fact, is before us  
8 right now.

9 COMMISSIONER LOESCHER: I accept the  
10 amendment.

11 CHAIRPERSON JAMES: Thank you.

12 COMMISSIONER LOESCHER: Madam Chairman,  
13 I'd like to offer another one in the Confidentiality  
14 section.

15 CHAIRPERSON JAMES: Well, let's deal with  
16 this Motion and then we will entertain a Motion at  
17 that time. Okay, well, we can entertain more than one  
18 friendly amendment --

19 COMMISSIONER WILHELM: Or unfriendly.

20 CHAIRPERSON JAMES: Or unfriendly.

21 COMMISSIONER WILHELM: I don't want to get  
22 bogged down here, but I think clearly Commissioner

1 Loescher or any other commissioner has the right  
2 before the Motion as a whole is voted upon, to move an  
3 amendment.

4 CHAIRPERSON JAMES: Oh, absolutely, and  
5 that's the intent of the chair; to make sure that  
6 that's the process that's followed.

7 COMMISSIONER MOORE: Madam Chairman.

8 CHAIRPERSON JAMES: Commissioner Moore.

9 COMMISSIONER MOORE: So that I can  
10 understand this, I thought, in my ignorance, that as  
11 Mr. Loescher went through all of these things he told  
12 what he liked and what he didn't like. Maybe I  
13 misunderstood him, but I would like to see us all get  
14 together here and anyone that doesn't like anything  
15 just to say it shortly and briefly, where that all of  
16 us can understand it -- even us from Mississippi --

17 (Laughter.)

18 -- and then let's vote on it. Hey, this  
19 has been dragging on for an hour, and all we've  
20 changed is V(a)(b) to V(a).

21 (Laughter.)

22 CHAIRPERSON JAMES: All right. I think we

1 are clear on Commissioner Lanni's. It is procedurally  
2 correct to entertain other amendments. And so at this  
3 time Commissioner Loescher, if you would like to offer  
4 some amendments, this would be the appropriate time to  
5 do that.

6 COMMISSIONER LOESCHER: Thank you, Madam  
7 Chair. If you could use my document, I have an  
8 amendment dealing with the Confidentiality section,  
9 the same section that we're currently on. And I'd  
10 like to advance, and again, I'll make the Motion. The  
11 language that I have on page 6 of my draft deals with  
12 the applicability of confidentiality provisions.

13 And I have language here that says,  
14 "Professional and clerical staff of the Commission,  
15 all persons employed by entities contracted by the  
16 Commission to carry out its business, shall comply  
17 with the confidentiality provisions of Section V(d) of  
18 the Act and this rule.

19 "Additionally, any individual entity or  
20 organization providing any goods or services to the  
21 Commission, shall be considered an employee of the  
22 Commission for purposes of keeping information

1 confidential under Section V(d) of the Act."

2 I'd like to move this amendment.

3 CHAIRPERSON JAMES: As a point of clarity  
4 for the commissioners, how would you like to proceed?  
5 And it is really at the will of the Commission. It  
6 would be easier I think, if we act on them  
7 individually for points of clarity, rather than -- and  
8 that's what I was attempting to do earlier; not to cut  
9 off the debate but to deal with Commissioner Lanni's  
10 and vote on that, and then go through each of these  
11 one at a time.

12 COMMISSIONER LEONE: I have a question on  
13 this one. There is language in the draft that I've  
14 moved that I thought covers this -- is I guess, to  
15 keep counsel in the spotlight -- is there any  
16 substantive difference between this proposed amendment  
17 and the language that's already in the draft?

18 MR. TERWILLIGER: Well, subject to  
19 correction by Mr. Loescher, I don't see any, because  
20 what's in our draft says, "all staff, including  
21 employees of entities or individuals contracted by the  
22 Commission to carry out its business shall comply with

1 the confidentiality provisions of V(d)". And I think  
2 that covers everybody that has access to the  
3 information.

4 COMMISSIONER BIBLE: No, I think Mr.  
5 Loescher's is a little bit broader in that it would  
6 include people that are employees of commissioners or  
7 people of that nature.

8 COMMISSIONER LEONE: Oh, who are employees  
9 of commissioners?

10 COMMISSIONER BIBLE: Correct.

11 COMMISSIONER LOESCHER: Madam Chairman, if  
12 I would expand for a second on my Motion, but if  
13 there's an opportunity to comment on this feature --

14 CHAIRPERSON JAMES: Again, I'd like to  
15 raise a point of clarity for process -- to keep the  
16 process orderly. Could we go back, do Commissioner  
17 Lanni's and then start with Commissioner Loescher's  
18 and go through them one at a time? Or we can do  
19 Commissioner Loescher's first and then do Commissioner  
20 Lanni's. I really don't care, but I do believe that  
21 we ought to know what the process is as we go through  
22 it.

1                   COMMISSIONER DOBSON: Madam Chairman. I  
2 think that would be very helpful. We've got so much  
3 on the table --

4                   CHAIRPERSON JAMES: Absolutely.

5                   COMMISSIONER DOBSON: -- we're getting  
6 confused, and I think it would be helpful to take them  
7 one at a time.

8                   CHAIRPERSON JAMES: Okay. Well let's  
9 start with -- let's do Commissioner Loescher's first,  
10 and we are now on the Confidentiality. And I would  
11 ask that the Commissioner make a motion for an  
12 amendment to Commissioner Leone's Motion which is  
13 currently before us. Is that procedurally correct?

14                   COMMISSIONER WILHELM: Yes.

15                   COMMISSIONER McCARTHY: May I make a  
16 suggestion, Madam Chair?

17                   CHAIRPERSON JAMES: You certainly may.

18                   COMMISSIONER McCARTHY: I think we can  
19 avoid being entangled in a lot of Motions and votes if  
20 we just approach this with a little bit of  
21 informality, allow Commissioner Loescher to present  
22 his substantive case, and then he can find out after

1 he does that whether he has a second for his Motion or  
2 not; rather than producing a lot of votes that may be  
3 totally unnecessary.

4 CHAIRPERSON JAMES: I absolutely concur,  
5 but we've already done that. Commissioner Loescher  
6 went through each of his points. If you'd like to do  
7 them again --

8 COMMISSIONER McCARTHY: Well, what I was  
9 proposing -- at your invitation he's now proposing  
10 specific language.

11 CHAIRPERSON JAMES: Okay, so you're  
12 suggesting that we do specific language on each of his  
13 points?

14 COMMISSIONER McCARTHY: Yes. That's what  
15 he's begun to do; he's addressing the Confidentiality  
16 section. We're now reached a point of difference with  
17 what Mr. Lanni offered earlier, that it has broader  
18 applicability than Mr. Lanni's language. And I think  
19 if we could just take a minute further to discuss that  
20 so everybody understands the implications of it, then  
21 we'll decide whether there's even a second for the  
22 Motion or not; whether we even have to cast a vote on

1 this. Mr. Loescher will get --

2 CHAIRPERSON JAMES: Any further discussion  
3 on the Confidentiality issue?

4 COMMISSIONER McCARTHY: I think I heard  
5 Mr. Bible making a point. I'd like to hear it  
6 discussed a little bit more as to what he was  
7 addressing.

8 CHAIRPERSON JAMES: Mr. Bible.

9 COMMISSIONER BIBLE: Well, it would appear  
10 to me that Mr. Loescher's language is broader than the  
11 language in proposed rule IX. As I read proposed rule  
12 IX it indicates "staff of the Commission, including  
13 employees of the entities or individuals contracted by  
14 the Commission to carry out its business".

15 For instance, that would be anybody doing  
16 a research contract, a legal contract, something of  
17 that nature, are also bound by that. And I believe  
18 Mr. Loescher's attempt -- although this might not  
19 necessarily do it -- to also apply this  
20 confidentiality provision to employees of  
21 organizations that provide services to individual  
22 Commission members.

1                   COMMISSIONER LEONE: Excuse me. I think -

2 -

3                   COMMISSIONER BIBLE: Aide-de-camps or  
4 something of that nature.

5                   COMMISSIONER LEONE: Excuse me, though.  
6 I think that the language that strikes me in the  
7 Loescher version is, "at no charge".

8                   COMMISSIONER BIBLE: I'd agree with that,  
9 too.

10                  COMMISSIONER LEONE: Which seems to me --  
11 I think I understand what Commissioner Loescher is  
12 trying to get at, because some of the commissioners  
13 have people assisting them who are obviously not on  
14 the payroll of the Commission -- whether they're doing  
15 it in their spare time or they're in the employ of any  
16 of these -- let's take MGM Grand at random -- who  
17 might be assisting Terry, whether they're being paid  
18 or not.

19                  The "no charge" it seems to me, is language that  
20 makes me uncomfortable. Does that mean that somebody  
21 volunteers information to me or talks to me about some  
22 aspect of the gambling business? That I have to

1 caution them that by telling me about it they're  
2 covered by whatever the appropriate section of the  
3 Federal Act is?

4           It seems to me that that's broad language  
5 and quite different from employees of commissioners.  
6 I would also be troubled by the confidentiality rules  
7 applying to the employees of the 20th Century Fund who  
8 I guess in some sense, are employees of a commissioner  
9 -- although I wouldn't claim to be the fund  
10 personified.

11           So I don't know -- I think this gets us  
12 into unnecessarily deep waters. Again, I think the  
13 Act is quite explicit and puts a burden on the  
14 Commission and those with whom it is contracted and on  
15 its employees, to maintain whatever confidentiality is  
16 legal and appropriate, and it seems to me that  
17 language is satisfactory.

18           And the minute we get into these other  
19 questions I think we open up -- I hate to get into the  
20 -- open up a whole question about, who are these  
21 people at no charge? And no charge is, you know, an  
22 awful lot of people. At least in my case.

1                   CHAIRPERSON JAMES: Commissioner Loescher?

2                   COMMISSIONER LOESCHER: Yes, Madam

3 Chairman, I need to make a clarification. Speaking  
4 exactly to the point Commissioner Leone is making, in  
5 my language that I have here, on the second sentence  
6 starting with the word "Additionally" -- "any  
7 individual entity or organization providing any goods  
8 or services, with or without consideration" -- I need  
9 to add those words -- "with or without consideration  
10 to the Commission shall be considered an employee of  
11 the Commission for the purposes of keeping information  
12 confidential under Section V(d) of the Act".

13                   I think that clarifies the point that  
14 Commissioner Leone is making. And madam Chairman, I  
15 don't know if I have a second to my Motion yet, but I  
16 really believe that we need to protect ourselves and  
17 those people who are working behind each commissioner.

18                   There are volunteers, there are people  
19 working behind, and we need to emphasize that they're  
20 covered by this rule if they are going to be advisors.  
21 Otherwise there may be some risk that information will  
22 not be confidential and people won't be willing to

1 provide information to this Commission.

2           Madam Chairman, I don't have an additional  
3 language in my Motion, but I even went so far as to  
4 think that commissioners should disclose who their  
5 advisors are, people who are providing them input, and  
6 whatnot, in order to make sure that we don't end up  
7 like they're ending up in the Congress right now with  
8 their hearings. People are worrying about who does  
9 things and who assists people behind the scenes.

10           But I think we're at risk by the way we're  
11 doing -- I think each commissioner needs advisors and  
12 technical people to carry out their function, but I  
13 want to make sure that they understand that they're  
14 subject to the confidentiality rule as well. And  
15 that's --

16           CHAIRPERSON JAMES: Just as a point of  
17 clarification -- and I know that many commissioners  
18 have individuals who serve in that capacity -- those  
19 individuals should not have access to confidential  
20 information that this Commission has, anyway.

21           COMMISSIONER WILHELM: Exactly.

22           CHAIRPERSON JAMES: And if there's any

1 doubt about that, this is probably as good a time to  
2 mention that as any.

3           COMMISSIONER WILHELM: As a commissioner  
4 who has asked a staff member -- whose organization I'm  
5 employed by -- to assist with this, I fully agree with  
6 that.

7           CHAIRPERSON JAMES: Yes. And so I've  
8 asked our general counsel just to address that issue.  
9 But from the Chair's perspective, I think it's very  
10 important for us to understand that people who may be  
11 assisting or helping us get our jobs done, for those  
12 of us who wear three, and four, and five different  
13 hats and need that kind of assistance, that those  
14 individuals should not have, or could not -- I mean,  
15 have access to that kind of proprietary and  
16 confidential information. And if any commissioner is  
17 not clear about that, this is a good time to make that  
18 clear.

19           Commissioner McCarthy.

20           COMMISSIONER McCARTHY: You've addressed  
21 the point that's been troubling me the last few  
22 minutes during his conversation. For confidentiality

1 to have any meaning, it requires that each member of  
2 this Commission understand they will be held  
3 accountable for complying with the spirit and the  
4 letter of those laws.

5 To open this up to an unlimited number of  
6 people that we, individually, will make judgments or  
7 our advisors, is to shred the meaning of the  
8 confidentiality provision.

9 CHAIRPERSON JAMES: Correct.

10 COMMISSIONER McCARTHY: It is one thing to  
11 share information fully with any advisors, any people  
12 we intend to go to. All of us will seek opinions of  
13 a wide range of people and rely upon a few quite a  
14 bit, but that doesn't mean we require when it's  
15 obviously confidential information -- we need to  
16 figure out how to frame issues to pass that -- to try  
17 to still get the benefit of the wisdom of people whose  
18 advice we might be seeking without really sharing the  
19 essence of confidential information.

20 I'll tell you one thing that would concern  
21 me as one of three people that have been working hard  
22 on the research side of this; we're going to have to

1 go to people who aren't going to be really  
2 enthusiastic about sharing the information with us,  
3 and I would want them to be confident that we take  
4 seriously, confidentiality provisions.

5           CHAIRPERSON JAMES: That's right. You  
6 make --

7           COMMISSIONER McCARTHY: It will measure  
8 the level of their cooperation.

9           CHAIRPERSON JAMES: You may remember,  
10 commissioners, that I addressed it at I believe, our  
11 first meeting when I expressed shock that within 30  
12 minutes of my having sent information to  
13 commissioners, I was getting calls from reporters  
14 about that information.

15           And if you look back at the transcript I  
16 said -- as we move to handling confidential  
17 information -- I said, this is no big deal and it  
18 really isn't a problem at this point, but this  
19 Commission is going to move to the point where we are  
20 handling confidential and proprietary information. So  
21 if anyone has a mix-up with their fax machines going  
22 to reporters let's fix it now, before we get to that

1 point.

2                   And so all of us, I think, need a  
3 heightened awareness of this, but a clear  
4 understanding that confidential and proprietary  
5 information should not be handled by anyone but staff  
6 and Commission members, period.

7                   Did you want to add anything to that?

8                   MR. TERWILLIGER: I think you've stated it  
9 about as clear as it can be.

10                  CHAIRPERSON JAMES: Commissioner Loescher.

11                  COMMISSIONER LOESCHER: I move my  
12 amendment.

13                  CHAIRPERSON JAMES: Not hearing a second,  
14 I would ask if you have an additional amendment you'd  
15 like to offer at this time.

16                  COMMISSIONER LOESCHER: Madam Chairman,  
17 different subject. On the issue of subpoenas I'd like  
18 to draw the Commission member's attention to my mark-  
19 up on page 12, Section XX, as opposed to the  
20 Commissioner's mark on page 4, subsection (b),  
21 Subpoenas.

22                  CHAIRPERSON JAMES: Excuse me just a

1 minute, Commissioner Loescher. There are two versions  
2 of your rules that I think are --

3 COMMISSIONER LOESCHER: We're looking at  
4 October 30th, 1997.

5 CHAIRPERSON JAMES: The October 30th  
6 version is what we're operating on.

7 COMMISSIONER BIBLE: I don't have such a  
8 version.

9 COMMISSIONER WILHELM: I don't have it.

10 CHAIRPERSON JAMES: Okay, we will get  
11 staff to make -- I'd like to go ahead and proceed, but  
12 we will get copies of that version and distribute  
13 them.

14 COMMISSIONER DOBSON: Does this replace  
15 the 29th?

16 CHAIRPERSON JAMES: This will replace 29.

17 COMMISSIONER LOESCHER: Madam Chairman, on  
18 page 12, at the bottom of the page under Section XX  
19 called "Subpoenas", if I could just read what I'm  
20 trying to propose here. There's a subsection (a),  
21 "Issuing. If a person fails to supply voluntary  
22 information requested by the Commission, the

1 Commission may, by a majority vote of all members,  
2 require by subpoena the production of any written or  
3 recorded information, document report, answer, record,  
4 account, paper, computer file, or other data or  
5 documentary evidence necessary to carry out its duties  
6 under Section IV of the Act.

7           "The Commission shall transmit to the  
8 attorney general, a confidential written notice at  
9 least ten days in advance of the issuance of any  
10 subpoena. A subpoena under this paragraph may require  
11 the production of materials from anyplace within the  
12 United States.

13           "(1) The procedures and standards  
14 requiring Commission subpoenas including matters  
15 pertaining to issuance, objections, Motions to Quash  
16 or Modify, and Motions to Compel shall be governed by  
17 the Federal Rules of Civil Procedure." -- I believe  
18 that's rule 45.

19           "(2) All subpoenas issued by the  
20 Commission shall contain on their face, the language  
21 of subsection (1) of this rule."

22           And then (b): "Procedure. Any subpoena

1 issued by the Commission under rule 6 of the  
2 Commission rules shall comply with the requirements  
3 for subpoenas issued by the United States District  
4 Court under Federal Rules of procedure. Subpoenas  
5 shall not seek disclosure of privilege or protected  
6 matters, including trade secrets and other  
7 confidential research, development, or commercial  
8 information that are protected under rule 45 of the  
9 Federal Rules of Civil Procedure."

10 I so move.

11 CHAIRPERSON JAMES: Would you like to have  
12 some discussion before you move?

13 COMMISSIONER McCARTHY: There is no  
14 second.

15 CHAIRPERSON JAMES: I was trying to give  
16 him a chance for discussion before it dies.

17 COMMISSIONER McCARTHY: Madam Chair, may  
18 I suggest we follow the same procedure that we did in  
19 the last instance? A little flexibility. Let's see  
20 if we can have some discussion on this and then the  
21 members will have an opportunity to look at the merits  
22 or demerits of the proposal, and --

1                   CHAIRPERSON JAMES: That's what the Chair  
2 is suggesting, Mr. McCarthy.

3                   COMMISSIONER LEONE: Let me ask a  
4 question, then. I ask again if -- it sounds to me  
5 like this is stating the fact that our subpoenas will  
6 be in compliance with existing Federal laws of  
7 procedures. Am I missing something about this? I'd  
8 like to ask counsel. I don't see this as an extension  
9 of what would happen anyway.

10                  MR. TERWILLIGER: I think everything that  
11 is in here -- well, let me be as accurate as I can.  
12 In the current rule and in the statute, the legal  
13 authority of the Commission to issue subpoenas and the  
14 procedure that it will utilize -- have to utilize to  
15 issue subpoenas, is spelled out. And obviously, we  
16 can't do anything in a rule that changes the law.

17                  In terms of the -- if I may take this by  
18 the key points -- what's in Mr. Loescher's draft  
19 mirrors the statute and the rule as we have it in  
20 terms of the circumstances under which the subpoena  
21 may be issued by the Commission.

22                  In terms of the procedure regarding

1 Commission subpoenas, the statute spells out that the  
2 Commission may apply to a United States District Court  
3 for an order requiring that the person comply with the  
4 subpoena. That brings us within the Federal Rules of  
5 Civil Procedure.

6           With all due respect to Mr. Loescher, I  
7 don't believe rule 45 applies. Rule 45 governs  
8 subpoenas to third parties by one of the parties to  
9 litigation. It's inapposite in my view, to our  
10 situation. If we were to go to court and apply for  
11 subpoena enforcement, we would be a party and the  
12 respondent would be the other party, and the  
13 applicable Federal Rules of Civil Procedure would  
14 apply.

15           The subpoena enforcement authority of the  
16 court is again spelled out by Congress in our statute  
17 which says that any failure to obey the order of the  
18 court may be punished by the court as a civil  
19 contempt. I know there's a number of lawyers here.  
20 Congress is being redundant because most Federal  
21 judges consider the failure to obey their orders  
22 contemptible in a Congress, Senate or not.

1                   So the short answer to your question,  
2 Commissioner Leone, is that there's nothing in here  
3 other than some -- there's nothing in Mr. Loescher's  
4 offering that is not covered in substance by what is  
5 already in the statute and in our rule, with the  
6 exception of his Section (b) that says, "Subpoena  
7 shall not seek the disclosure of privilege or  
8 protected matters including trade secrets or other  
9 confidential research, development, or commercial  
10 information".

11                   There is no such limitation in the statute  
12 in terms of the type of data that the Commission may  
13 seek. So that would be a further restriction on the  
14 subpoena authority of the Commission that is not in  
15 the statute.

16                   COMMISSIONER DOBSON: Madam Chair?

17                   CHAIRPERSON JAMES: Commissioner Dobson.

18                   COMMISSIONER DOBSON: In the interest of  
19 moving along this process -- we've got a lot of ground  
20 to cover today -- I don't think we ought to spend time  
21 discussing and debating Motions that do not have a  
22 second. If eight other members decline to second a

1 Motion, that ought to end it and we shouldn't waste  
2 time discussing something that is not on the table.

3 COMMISSIONER LOESCHER: Madam Chairman.

4 CHAIRPERSON JAMES: Commissioner Loescher.

5 COMMISSIONER LOESCHER: If that is the  
6 opinion of counsel and it's on record, I'm satisfied  
7 with his comments, but for his last comment dealing  
8 with my language that deals with disclosure,  
9 privilege, and protected matters, including trade  
10 secrets, other confidential research, development, or  
11 commercial information.

12 I think that's a matter for lawyers to  
13 interpret and as to what's included in that rule. But  
14 if that is counsel's position that's on the record,  
15 I'm satisfied.

16 CHAIRPERSON JAMES: I have not heard a  
17 second for that so I would assume -- Commissioner  
18 McCarthy.

19 COMMISSIONER McCARTHY: I hear  
20 Commissioner Loescher withdrawing this proposed  
21 amendment.

22 CHAIRPERSON JAMES: Did you withdraw that

1 Motion?

2 COMMISSIONER LOESCHER: Yes, Madam

3 Chairman.

4 CHAIRPERSON JAMES: Good. That takes care  
5 of two. Let's get to the next one.

6 COMMISSIONER LOESCHER: Madam Chairman,  
7 just a point of clarification. I'm curious about the  
8 designated Federal Official -- and who that is and has  
9 some awesome powers. He can even close this meeting  
10 if he doesn't like where it's going. I want to be the  
11 designated Federal Official.

12 (Laughter.)

13 So if we could have some clarification  
14 from yourself and maybe a little from the counsel as  
15 to that feature of our organization, I'd like that.

16 CHAIRPERSON JAMES: I'm going to ask Mr.  
17 Snowden to address that since he has experience on  
18 this.

19 MR. SNOWDEN: It's true. We don't have a  
20 designated official in the National League, but we're  
21 working on that. The reason why there's a designated  
22 official is, unlike this Commission, generally there

1 have been times when Commissions have met and there  
2 has been -- to give you a bit of the history -- there  
3 has been -- the Chair has lost control. And the  
4 meetings tend to get unruly and unmanageable.

5           In the interest of ensuring the integrity  
6 of discussions of issues and to ensure that the  
7 Commissions meet their legislative or executive order  
8 mandate, the designated Federal Official can stand and  
9 say it is in the best interest of the government that  
10 this meeting should be closed. Only he or she can do  
11 that, other than the Chair, and move it.

12           It is part of the Federal Advisory Act.  
13 It says, there must be a designated Federal Official -  
14 - who really acts as a referee -- who really acts as  
15 a referee to make sure that the Commission and  
16 Advisory Group is meeting its stated agenda. That's  
17 the reason why there is such a provision.

18           CHAIRPERSON JAMES: And for the record,  
19 our designated Federal Officer is Mark Bogdan, and  
20 Mark Bogdan has many years of experience with doing  
21 Commissions and previously was with the Immigration  
22 Commission, and has served in this -- have you served

1 in this capacity before on previous Commissions, Mark?

2 MR. BOGDAN: I have not been a designed  
3 official.

4 CHAIRPERSON JAMES: He does that for us,  
5 and that's what it's there for. It's a part of our  
6 operating rules.

7 COMMISSIONER BIBLE: And this employee is  
8 currently, and will continue to be an employee, of the  
9 GSA?

10 CHAIRPERSON JAMES: No.

11 MR. BOGDAN: No.

12 MR. SNOWDEN: That person must be an  
13 employee of the Commission, not of GSA.

14 COMMISSIONER BIBLE: So then the  
15 designation will change -- you're an employee of the  
16 Commission at this point?

17 MR. BOGDAN: Yes.

18 CHAIRPERSON JAMES: Yes.

19 COMMISSIONER LOESCHER: Madam Chairman,  
20 I'm satisfied. I had a Motion but I'll nod out with  
21 that clarification.

22 CHAIRPERSON JAMES: All right.

1                   COMMISSIONER LOESCHER: Madam Chairman,  
2 one other -- on my draft on page 14, the very last  
3 page -- and it may have been an inadvertent leave-out  
4 -- maybe it's in your last version, I haven't checked.  
5 But it has to do with representation by counsel. My  
6 language is, "Witnesses may be represented by counsel  
7 at all Commission proceedings". I would like to offer  
8 that as an amendment.

9                   MR. TERWILLIGER: If I could have your  
10 indulgence for just a second. I would simply point  
11 out that at the bottom of page 3 and the top of page  
12 4 of the Chairman's mark -- the draft of this morning  
13 -- it says, "Testimony before a Commission hearing  
14 shall be conducted under oath. The Commission may  
15 question witnesses who may be represented by counsel  
16 at all Commission proceedings".

17                   COMMISSIONER LOESCHER: Madam Chairman,  
18 I'm satisfied. I just got your last draft. Madam  
19 Chairman, could we have a 3-minute recess?

20                   CHAIRPERSON JAMES: It is at the will of  
21 the Commission. If you feel like you need to do that,  
22 that would be fine. Why don't we take a 3-minute

1 recess and we will come back to order at approximately  
2 11:05. Thank you.

3 (Whereupon, the foregoing matter went off  
4 the record at 11:02 a.m. and went back on  
5 the record at 11:10 a.m.)

6 CHAIRPERSON JAMES: Let's see, we're only  
7 missing Commissioner Wilhelm. Commission Loescher,  
8 did you have anything else?

9 COMMISSIONER LOESCHER: Madam Chairman, I  
10 just have two humble matters and then I will sign off  
11 on this business. First of all, in the Chairman's  
12 mark on page 5, under Section VIII, subsection (a),  
13 Chairman: "The Chairman selects the designated  
14 Federal Officer and works with that individual to  
15 establish", etc.

16 I would like to ask counsel the question -  
17 - or the GSA representative -- the question: under  
18 the rules of the FACA a person has to be designated by  
19 a Federal agency or the President, and I'm wondering -  
20 - and he certainly cannot be an employee of the  
21 Commission; he's got to be an employee of the  
22 government. Could you clarify that feature for the

1 record?

2                   MR. SNOWDEN: Yes, let me clarify that.  
3 In fact, the designated Federal Official must be an  
4 employee of the Commission -- must be an employee of  
5 that agency. That person is appointed generally, by  
6 the Chairperson or the chief -- head of the Advisory  
7 Group, whether it's the executive director or the  
8 chair of the organization. But that person is in  
9 fact, an employee -- must be an employee of the  
10 Commission or the government organization.

11                   COMMISSIONER LOESCHER: Madam Chairman,  
12 just for the record, you know, and I accept  
13 clarification, but there's seems to be contrast to the  
14 language in the Fact of Business 101-6.1019, Duties  
15 for the designated Federal Officer. And maybe it's  
16 just the words I don't understand.

17                   It says, "The agency head, or in the case  
18 of independent, Presidential Advisory Committee, the  
19 administrator shall designate a Federal Officer  
20 employee.

21                   CHAIRPERSON JAMES: That would be me.

22                   COMMISSIONER LOESCHER: So you're the

1 administrator?

2 CHAIRPERSON JAMES: That's correct.

3 COMMISSIONER LOESCHER: Okay. Well, that  
4 helps. Thank you, Madam Chairman on that point. I  
5 have one other question and then I'll be happy with  
6 these rules. It has to do with FOIA and I'd like to  
7 ask counsel for the Commission to clarify again, in  
8 words that I can understand, that FOIA will not be  
9 used as a back door to confidential information that's  
10 provided by other means to this Commission. And could  
11 you clarify that again?

12 MR. TERWILLIGER: The only answer I can  
13 give you on that at this point, Mr. Loescher -- and I  
14 suppose if the Commission as a whole or the Chair as  
15 representing the Commission wants to formally get a  
16 legal opinion on this we could do it. FOIA says what  
17 it says, and there's nothing that we can do in our  
18 rules to either render our information subject to FOIA  
19 or not subject to FOIA. If it is, it is; if it isn't,  
20 it isn't.

21 As a general matter, FOIA contains  
22 exceptions for the confidentiality of certain Federal

1 records, and obviously there are certain limitations  
2 on the applicability of FOIA that have to be taken  
3 into account as well. So I'm not prepared at this  
4 point to say FOIA applies or FOIA doesn't apply or  
5 that it might affect one type of record but not  
6 another.

7 I would expect -- I would anticipate --  
8 that the result of a FOIA analysis would be that since  
9 Congress by law, designated certain information of  
10 this Commission to be confidential in nature, that  
11 FOIA would not override that law. But I can't state  
12 that as an opinion at this point because I don't --  
13 haven't done the work to get to it.

14 COMMISSIONER LOESCHER: Madam Chairman,  
15 I'm happy with the comments of counsel for the record,  
16 and I would like at some point or have the Chair  
17 direct that we do get a legal opinion on this matter  
18 from our counsel.

19 CHAIRPERSON JAMES: I certainly have no  
20 problem with that and would ask counsel if he could  
21 provide that kind of information for us at our next  
22 meeting.

1           At this point I think we have a Motion  
2 before us with an amendment, and I'd like to -- it has  
3 been moved and it has been seconded that we adopt the  
4 Chair's mark with the two amendments suggested by  
5 Commissioner Lanni. Are you ready for the vote?

6           COMMISSIONER LOESCHER: Call for the  
7 question on the vote.

8           CHAIRPERSON JAMES: Beg your pardon?

9           COMMISSIONER LOESCHER: Vote.

10          CHAIRPERSON JAMES: Yes. All in favor?

11          (Chorus of ayes.)

12          Any opposed?

13          (None.)

14          Motion carries.

15          At this point in our agenda we need to go  
16 into closed session to discuss the issue of our  
17 executive director. I would ask that all members of  
18 the public please give us time to have this  
19 discussion. We will call you back in.

20          There has been some question -- the vote  
21 on the executive director will be done publicly; this  
22 is just to answer any questions or go over any details

1 that the Commission needs to discuss of a personnel  
2 nature.

3 I would ask all reporters to please take  
4 all bags and recording devices with you. We're going  
5 to come back before lunch. Don't go far.

6 (Whereupon, the foregoing matter went off  
7 the record at 11:18 a.m. and went back on  
8 the record at 11:25 a.m.)

9 COMMISSIONER McCARTHY: Madam Chair, one  
10 point of order. Now that we've adopted the rules,  
11 should we not confirm the subcommittees that have been  
12 created prior to this? Formally?

13 CHAIRPERSON JAMES: I think we can do  
14 that, if that would be appropriate. We can make you  
15 official.

16 COMMISSIONER McCARTHY: I would so move.

17 COMMISSIONER WILHELM: Leo does pretty  
18 good when he's unofficial.

19 COMMISSIONER McCARTHY: I want him on the  
20 record in an official capacity.

21 CHAIRPERSON JAMES: It has been moved.

22 UNIDENTIFIED: Second.