not? He's probably off xeroxing or running errands.

Tim is a recent graduate of Georgetown Law School and worked for the House Crime Subcommittee. Allison Flatt is a policy analyst who's seated right over here. Allison, also an attorney, worked for the National Association of Attorneys General where she edited the newsletter for states on Internet gambling.

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

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

At this point on our agenda we're prepared to discuss old business, and that would bring us to the point in the discussion about our rules. Shortly after the last meeting I asked GSA, as instructed by the Commission, to review the rules proposed for the
operation of our Commission. And you have received,
commissioners, a copy of the response from GSA, and
for your information it's included in your briefing
books behind Tab 6.

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

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

The draft I developed was initially
circulated among those Commissioners who submitted
rules for their review. During that time, Dr. Moore
submitted some additional comments based on the GSA
review, and these were included as well. Later drafts
were circulated among the entire Commission and
individual comments were incorporated into each
subsequent draft.

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

While it has been somewhat akin to a real
estate negotiation, I must say that every commissioner
participated in such a way as to make this a
meaningful and not unpleasant process at all. I
suspect that like me, along the way each of you came
to understand the issues better as a result of having
gone through the process.
Yesterday, Commission Loescher submitted an additional set of rules. My initial review of those rules suggest that he was attempting to create a consensus document as well, and I do want to thank him for that and I do appreciate that. However, many of the issues included in his draft have either been eliminated or are no longer necessary, but the spirit of them are included in the draft that you have before you. I'd like to open this issue up for discussion or a motion at this time.

COMMISSIONER LOESCHER: Madam Chairman?

CHAIRPERSON JAMES: Commissioner Loescher.

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

And then there are at least 12 items that I am concerned about that are not included in the Chairman's mark. And if that would be an acceptable
procedure I think that would be a good procedure to follow.

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

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

CHAIRPERSON JAMES: Hearing no second, the Motion --

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

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

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

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

COMMISSIONER McCARTHY: Oh, okay. I'm
sorry. I did hear a Motion and I did not hear a
d second for that particular Motion. I think it would
be appropriate if he would like to amend that Motion
or offer --

COMMISSIONER LEONE: Could somebody
restate it or read it back? I didn't understand the -
-
CHAIRPERSON JAMES: Certainly. Allison,
were you able to get it down?

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

CHAIRPERSON JAMES: Go through line by
line.

COMMISSIONER LOESCHER: No, section by
section.

CHAIRPERSON JAMES: Section by section.

And I'm waiting on a -- that's the Motion that's
before you.

COMMISSIONER LANNI: I'll second that.

COMMISSIONER LEONE: Can we discuss it?

CHAIRPERSON JAMES: Yes, now it's
appropriate for discussion.

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

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

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

CHAIRPERSON JAMES: Let me see, Mr.
Loescher, if I understand the Motion, so that as we take a vote on it we can all be clear about what we're voting for.

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

Does everyone understand the Motion? Would you like to have a vote? All in favor?

(Chorus of ayes.)

Opposed?

COMMISSIONER DOBSON: Opposed.

COMMISSIONER MOORE: Opposed.

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

COMMISSIONER LOESCHER: Madam Chairman.

CHAIRPERSON JAMES: I'd like to start with Section 1. Is that what you're suggesting -- to see if there are any amendments or changes to that particular section? Or would you like to just take
them all in a general -- how would you like to --

COMMISSIONER LANNI: Madam Chair for the -

CHAIRPERSON JAMES: Commissioner Lanni.

COMMISSIONER LANNI: If I may, Madam Chair. I think we should maybe for the record, designate that this is the revised draft dated 10/31/97, time 9:08 a.m.

CHAIRPERSON JAMES: That's correct.

COMMISSIONER LANNI: Just for the record.

CHAIRPERSON JAMES: There are a series and for the record, we want to be clear what we're operating off of, and that's 10/31/1997, 9:08 a.m.

That would be this morning.

COMMISSIONER LOESCHER: Madam Chairman?

CHAIRPERSON JAMES: Commissioner Loescher.

COMMISSIONER LOESCHER: I move to adopt Sections 1 through 4 on page 1.

CHAIRPERSON JAMES: Well, would you like through -- Commissioner Leone?

COMMISSIONER LOESCHER: I'd like to --

well, I guess there's a Motion on the floor -- because
I was going to move the document -- approve the
document. Then if people want to propose amendments
to that Motion they can be specific about what they'd
like to amend.

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

COMMISSIONER LOESCHER: Second the Motion.

COMMISSIONER LEONE: Then we can move the
discussion.

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

COMMISSIONER WILHELM: I would just like
to commend Dr. Moore and the Chair and Mr. Bible and
Mr. Lanni and no doubt others, whose contributions I'm
not directly familiar with -- Dr. Dobson. To all of
the people who contributed to putting together what I believe was a consensus document that will enable the Commission to move forward, and I appreciate those efforts on the part of all of those and others.

COMMISSIONER LANNI: Madam Chair?

CHAIRPERSON JAMES: Commissioner Lanni.

COMMISSIONER LANNI: I move the question.

CHAIRPERSON JAMES: The question is before us. Vote?

COMMISSIONER LOESCHER: Madam Chairman?

CHAIRPERSON JAMES: Commissioner Loescher.

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

CHAIRPERSON JAMES: Where are we in the Motion process?

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

CHAIRPERSON JAMES: We are at the point
for discussion. Is it appropriate to receive
amendments at this point? Do we need to vote on the
Motion that's before --

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

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

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

CHAIRPERSON JAMES: Well, that was my
question.

MR. TERWILLIGER: May I have a moment?

CHAIRPERSON JAMES: The Chair recognizes
general counsel.

MR. TERWILLIGER: I think where we are is,
there was a Motion made by Commissioner Leone to adopt
the draft of the rules that was presented this
morning. That was seconded. That Motion is now in
its discussion phase. It seems to me if the Chair so
rules that the various aspects of the rules as drafted
can be discussed at this point.
I don't think it's appropriate to move to
amend this draft right now, but it is certainly
appropriate to discuss parts of it and then you would
have to take a vote on the pending Motion to adopt
this --

CHAIRPERSON JAMES: Before --

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

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

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

COMMISSIONER LOESCHER: Point of order.

CHAIRPERSON JAMES: -- as a suggestion.

The Chair recognizes Commissioner Loescher.

COMMISSIONER LOESCHER: A point of order.
I disagree with legal counsel's opinion in that it's wholly in order to present the Chairman's mark as has been presented as the action contemplated by the Commission, and it's wholly in order for us to advance amendments to the document as a part of this Motion.

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

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

The Motion that's on the floor right now for discussion is whether or not to adopt this document as submitted to the Commission. And certainly, substantive aspects of the document can be
discussed in that discussion, and perhaps that might
identify for the commissioners as a body, whether or
not they want to either adopt it as is or not adopt it
as is, and then open it up for amendments and so
forth.

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

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

COMMISSIONER LOESCHER: Madam Chairman,
I'll agree to proceed but I will still maintain my
objection to legal counsel's advice that this Motion
is not open for amendment. But let's proceed.

CHAIRPERSON JAMES: Thank you.

COMMISSIONER LOESCHER: Madam Chairman,

for the record I have advanced to you yesterday, a
memoranda dealing with the applicability of the
Federal Advisory Committee Act to the National Impact
Gambling Study Commission. And I believe that there
is consensus with you and a number of the
commissioners and the legal advisors, that there is
some doubt as to whether or not FACA does apply to
this body.

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

Additionally, there are good points to
FACA and then there are negative points to FACA, and
we must deal with those risks, hopefully through the
rules. And one -- for example, one is the issue of
commissioner's advisors and volunteers that work with
each commissioner.
It's important for us to make sure that those people, for example, are covered under the confidentiality rule and so that the proprietary data and other data that's offered to this Commission are protected. And I just raise that as an example of one of the issues that needs to be dealt with in the rules.

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

For my purpose, I have drafted my suggestions to the commissioners within the context of FACA; that the rules that I have advanced are within the context of FACA. So I just want to, for the record, offer this memorandum to the minutes of this meeting.

CHAIRPERSON JAMES: Thank you.

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

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

(Applause from another room.)

COMMISSIONER LEONE: We're in the wrong
meeting.

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

(Laughter.)

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

Confidentiality. I honestly believe,
Madam Chairman, that in the Chairman's mark that that
provision is incomplete and inadequate to deal with
the confidentiality aspects of data and materials that
are submitted to this Commission, and I urge the
Commission to put a high priority in looking at adding
a confidentiality provision other than what's in the
Chairman's mark, and consider the provision that I
have advanced.

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

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

Hiring of staff, other than the executive
director, on our draft page 12, I thought was an
important aspect to have. And then the issue of
representation by counsel is an important provision --
for a witness to be able to have representation by
counsel -- and that's excluded from the Chairman's
draft.

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

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

The other is the business about subpoenas,
we would like to advance the notion that they be
handled under the Federal Rules, Rule 45, in terms of
enforcement. And also the fact that people who are
not wanting to be responsive to subpoenas have the
protections of the Federal Rule and that process. I
really believe that it's important to do that.

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

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

CHAIRPERSON JAMES: Any other discussion?

Any other discussion on the Motion that we have before
us?

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

CHAIRPERSON JAMES: It's been a while.

Allison, could you re-read the motion?

MS. FLATT: The Motion to adopt the
Commissioner's marked document?
CHAIRPERSON JAMES: That's correct.

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

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

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

CHAIRPERSON JAMES: -- before we vote.

COMMISSIONER LANNI: If I may?

CHAIRPERSON JAMES: The Chair recognizes Commissioner Lanni.

COMMISSIONER LANNI: In working with your draft -- the 9:08 a.m. draft as so designated -- I have some questions actually, and comments.
And I'll do it by -- paragraph 2 is the first question I have; under "Authority" I have a question. In the first three drafts which were submitted to us, line 2 did not include the words "in general". And I was just wondering why that was added to this.

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

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

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

But at the same time, to make a part of the operating rules of this Commission, that the Commission will, to the extent appropriate and not
inconsistent with the enabling legislation that
created the Commission, act in accord with the Federal
Advisory Committee Act.

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

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

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

The same would pertain to roman number
IV.C under "Agenda"; "A notice of Commission
meetings." I think it should be "or hearings".

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

COMMISSIONER LANNI: Does counsel confirm?

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

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

MR. TERWILLIGER: Exactly.
CHAIRPERSON JAMES: That's correct.

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

CHAIRPERSON JAMES: I'm -- IV where?

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

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

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

CHAIRPERSON JAMES: Right.

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

CHAIRPERSON JAMES: It reads better.

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

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

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

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

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

COMMISSIONER LEONE: Well, you know, I hate to do this, but in fact, you can ask the person who made the Motion whether they are willing to accept
an amendment to their Motion, which could include such
language. But let's get through it all first --

CHAIRPERSON JAMES: Yes.

COMMISSIONER LEONE: -- and then ask me.

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

CHAIRPERSON JAMES: The Chair recognizes
Commissioner Bible.

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

CHAIRPERSON JAMES: That's what is
intended there. And we have, in the last two
transcripts, needed to do that. I think Senator
Laxalt was Senator Faxalt or something. You know, we
just need the ability to make those kinds of minor,
technical spellings, and that's what's intended by
COMMISSIONER LANNI: Which I might add, is a normal process in depositions. One has a chance to review one's particular testimony. And with all due respect, I think sometimes people taking these transcripts may have other thoughts in their mind at the moment and they're not necessarily as accurate as they might want to be at all times.

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

COMMISSIONER LANNI: Section V, roman numeral V.

CHAIRPERSON JAMES: Page?

COMMISSIONER LANNI: Page -- I'm sorry, I've got to go to your new one; I was working from the old one. I think it should be page 4; that didn't change. Relative to the line 7, there's a reference to Section V(b)(1). I think there's a reference to subpoenas in two sections: V(b)(1) and V(b)(2). And I would respectfully request that the (1) be removed and that (1) and (2) -- (1) and (2) be included;
insert (2) as an addition I guess would be the effect
of that.

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

CHAIRPERSON JAMES: Certainly.

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

COMMISSIONER LANNI: That would work, too.

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

COMMISSIONER LANNI: Yes, V(b) would be
fine with me. On Section VII, on page 5, line 1 --
and this may be more of a point of clarification.

When it indicates, "A chairman shall designate
subcommittees", I am assuming -- maybe correctly,
maybe not -- that that would include the make-up of
those subcommittees as well as the designation of the
subcommittees themselves, for Commission approval.

CHAIRPERSON JAMES: Correct.
COMMISSIONER LANNI: So that the idea of having a Research Committee and the make-up of the members of that committee would be included there.

CHAIRPERSON JAMES: Correct.

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

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

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

CHAIRPERSON JAMES: Commissioner Bible, I
believe that was your suggestion. Do you have any --

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

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

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

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

COMMISSIONER LANNI: I want you to know I
did not memorize this; this was provided to me. It
says: "As stated in Section V(d) of the Act,
information obtained by the Commission, other than
information available to the public, shall not be
disclosed to any person in any manner, except: 1) to
Commission employees or employees of any individual
entity or organization under contract to the
Commission, under Section VII for the purpose of
receiving, reviewing, or processing such information,"
2) upon court order, or 3) when publicly released by
the Commission in an aggregate or summary form that
does not directly or indirectly disclose the identity
of any person or business entity; or 2) any
information which could not be released under Section
1905 of Title 18, United States Code".

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

CHAIRPERSON JAMES: You certainly may.

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

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

MR. TERWILLIGER: No, I think there's
actually -- I think the Commissioner has raised a
further intent than the confidentiality that was
intended here, and I think the explanation for the
difference is that the statute that the Commissioner just read speaks for itself in terms of the Commission's information being confidential.

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

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

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

CHAIRPERSON JAMES: Let me review,
Commissioner Lanni, just to be sure that I have -- or that you have, so that you can be prepared to make that amendment. My understanding is that the language on page 1 of meetings takes care of your concern of the subsequent items here.

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

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

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

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

And that under the Confidentiality section, although we've not done it in any other place because the, sort of the rule has been, we certainly intended to obey the law but if it's important to
restate the law right here where issues of confidentiality are concerned, we're certainly prepared to do that.

COMMISSIONER WILHELM: Madam Chair?

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

MR. TERWILLIGER: Thank you, Madam Chair.

I just wanted to point out to the Commission that immediately -- the last two lines of Section IX on page 6 address the confidentiality provisions of V(d) of the enabling legislation which Mr. Lanni just made reference to.

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

COMMISSIONER LANNI: I would certainly agree with that.
CHAIRPERSON JAMES: So if we included language in Section X that says, "information or data obtained by the Commission from", and the particular --

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

CHAIRPERSON JAMES: Right; "by the Commission".

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

MR. TERWILLIGER: Both.

COMMISSIONER BIBLE: Because there may be different standards.

CHAIRPERSON JAMES: Both.

COMMISSIONER LANNI: Both.

COMMISSIONER BIBLE: So if it's protected information from the agency it will not lose its character if the Commission collects it?
CHAIRPERSON JAMES: Correct.

COMMISSIONER WILHELM: And along -- oh,

I'm sorry.

CHAIRPERSON JAMES: Commissioner Wilhelm.

COMMISSIONER WILHELM: And as a follow-up

to that, I would also assume counsel, that the term
"legally confidential" in number X would encompass the
definition of confidential under our own law.

MR. TERWILLIGER: That's right.

Information which may not be legally confidential
could become legally confidential as a result of it
having been obtained by the Commission. For
Commission purposes.

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

But I thought I understood you to say
earlier that the confidentiality section of our law
doesn't apply to information that comes from
governmental entities and that's why you had it in
here. I don't read the --

CHAIRPERSON JAMES: No.

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

COMMISSIONER WILHELM: Okay. Thank you.

COMMISSIONER McCARTHY: Madam Chair? A
question --

CHAIRPERSON JAMES: Commissioner McCarthy.

COMMISSIONER McCARTHY: -- to Mr.

Terwilliger. We're talking about legally confidential
under Federal authority, under Federal statute?

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

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

MR. TERWILLIGER: Well, I think --

COMMISSIONER McCARTHY: Whether --

MR. TERWILLIGER: I'm sorry.

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

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

COMMISSIONER WILHELM: I guess the only clarification I'm seeking is that confidentiality
MR. TERWILLIGER: I think that's a fair characterization, although I'm not trying to think, sort of the implications of the point through. Virtually anything the Commission gets under the enabling legislation becomes confidential under the confidentiality provisions of the Act. So how it is characterized or what its legal confidentiality characteristics might be under some other law, is really not relevant. As I see it.

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

Then our enabling statute says,
"Information obtained by the Commission, other than that which is available to the public, shall not be disclosed to any person in any manner except" -- and then there are the exceptions that Commissioner Lanni read into the record earlier.

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

CHAIRPERSON JAMES: Are we clear on that?

COMMISSIONER BIBLE: Yes, and my concern in suggesting this particular rule is that this information, which may be categorized as confidential by a governmental entity other than the Federal Government or say a Tribal Government, would not lose its confidentiality characteristic when it was transmitted to this Commission. This Commission would
in turn, protect its confidentiality. That's what I
was interested in doing.

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

          CHAIRPERSON JAMES: We're there.

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

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

          COMMISSIONER BIBLE: But we're going to
need some copies prepared so we can take a look at the
language. If we get to that point.

COMMISSIONER MOORE: Excuse me,

Commissioner Bible. What did you just say?

CHAIRPERSON JAMES: Commissioner Bible?

COMMISSIONER BIBLE: We're going to need

some copies made so if we're going to -- if you get to

the point of considering this -- we've not received

copies.

COMMISSIONER LANNI: But I think we're

just striking --

CHAIRPERSON JAMES: Yes, it's not that

complicated, what he's suggesting.

COMMISSIONER LANNI: It's very simple.

Are you just talking about X?

CHAIRPERSON JAMES: Well, what I have that

you have suggested at this point is --

COMMISSIONER LANNI: Five?

CHAIRPERSON JAMES: Yes.

COMMISSIONER LANNI: Roman numeral V is

merely, on line 7 -- this is page 4, roman numeral V,

line 7 where it reads currently, Section V(b)(1), we

would delete the "1" and the parens; and on page 6,
roman numeral X, Confidentiality, we would strike the
three words in line 1: "from governmental entities".

CHAIRPERSON JAMES: That's it.

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

COMMISSIONER LEONE: Not on that, no.

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

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

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

CHAIRPERSON JAMES: The Motion that is
before us is to adopt the Chairman's mark. Now, that
-- who offered that amendment? Was that Commissioner
-- yes. Commissioner Leone would have to entertain an
amendment to his Motion.

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

COMMISSIONER LANNI: The number "1".

CHAIRPERSON JAMES: Strike number "1".

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

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

I'm not petitioning Commissioner Leone at
all; I'm petitioning this body to amend the Motion --
which belongs to the Commission.

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

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

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

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

possibility.

CHAIRPERSON JAMES: That's correct.

COMMISSIONER LEONE: May I? In practical
terms, what I was seeking to do is if there were more
areas of consensus we could incorporate them into the
basic Motion on the floor and move closer to a
consensus and be more precise about the areas of
difference and then deal with first one and then the
other.

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

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

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

So I would have no trouble restating my
Motion to incorporate those suggestions with regard to
that section. But again, I'm not proposing that we
cut off discussion or debate; I think it's healthy.

This is obviously very important to people.

CHAIRPERSON JAMES: Right. Absolutely.

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

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

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

COMMISSIONER LEONE: Mr. Loescher.

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

COMMISSIONER LOESCHER: Of course I agree, but I don't agree with your process. Why can't we make a Motion to Amend, and add Mr. Lanni's Motion?

If he wants to adopt it, fine. We've got lots more
amendments to go.

CHAIRPERSON JAMES: That has been done.

Yes, the offerer did --

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

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

COMMISSIONER LOESCHER: I accept the amendment.

CHAIRPERSON JAMES: Thank you.

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

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

COMMISSIONER WILHELM: Or unfriendly.

CHAIRPERSON JAMES: Or unfriendly.

COMMISSIONER WILHELM: I don't want to get bogged down here, but I think clearly Commissioner
Loescher or any other commissioner has the right before the Motion as a whole is voted upon, to move an amendment.

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

COMMISSIONER MOORE: Madam Chairman.

CHAIRPERSON JAMES: Commissioner Moore.

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

(Laughter.)

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

(Laughter.)

CHAIRPERSON JAMES: All right. I think we
are clear on Commissioner Lanni's. It is procedurally correct to entertain other amendments. And so at this time Commissioner Loescher, if you would like to offer some amendments, this would be the appropriate time to do that.

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

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

"Additionally, any individual entity or organization providing any goods or services to the Commission, shall be considered an employee of the Commission for purposes of keeping information
confidential under Section V(d) of the Act."

I'd like to move this amendment.

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

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

MR. TERWILLIGER: Well, subject to correction by Mr. Loescher, I don't see any, because what's in our draft says, "all staff, including employees of entities or individuals contracted by the Commission to carry out its business shall comply with
the confidentiality provisions of V(d)". And I think
that covers everybody that has access to the
information.

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

COMMISSIONER LEONE: Oh, who are employees
of commissioners?

COMMISSIONER BIBLE: Correct.

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

CHAIRPERSON JAMES: Again, I'd like to
raise a point of clarity for process -- to keep the
process orderly. Could we go back, do Commissioner
Lanni's and then start with Commissioner Loescher's
and go through them one at a time? Or we can do
Commissioner Loescher's first and then do Commissioner
Lanni's. I really don't care, but I do believe that
we ought to know what the process is as we go through
it.
COMMISSIONER DOBSON: Madam Chairman. I think that would be very helpful. We've got so much on the table --

CHAIRPERSON JAMES: Absolutely.

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

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

COMMISSIONER WILHELM: Yes.

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

CHAIRPERSON JAMES: You certainly may.

COMMISSIONER McCARTHY: I think we can avoid being entangled in a lot of Motions and votes if we just approach this with a little bit of informality, allow Commissioner Loescher to present his substantive case, and then he can find out after
he does that whether he has a second for his Motion or not; rather than producing a lot of votes that may be totally unnecessary.

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

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

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

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

CHAIRPERSON JAMES: Any further discussion

on the Confidentiality issue?

COMMISSIONER McCARTHY: I think I heard

Mr. Bible making a point. I'd like to hear it
discussed a little bit more as to what he was
addressing.

CHAIRPERSON JAMES: Mr. Bible.

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

For instance, that would be anybody doing
a research contract, a legal contract, something of
that nature, are also bound by that. And I believe
Mr. Loescher's attempt -- although this might not
necessarily do it -- to also apply this
confidentiality provision to employees of
organizations that provide services to individual
Commission members.
COMMISSIONER LEONE: Excuse me. I think -

- 

COMMISSIONER BIBLE: Aide-de-camps or

something of that nature.

COMMISSIONER LEONE: Excuse me, though.

I think that the language that strikes me in the

Loescher version is, "at no charge".

COMMISSIONER BIBLE: I'd agree with that,

too.

COMMISSIONER LEONE: Which seems to me --

I think I understand what Commissioner Loescher is

trying to get at, because some of the commissioners

have people assisting them who are obviously not on

the payroll of the Commission -- whether they're doing

it in their spare time or they're in the employ of any

of these -- let's take MGM Grand at random -- who

might be assisting Terry, whether they're being paid

or not.

The "no charge" it seems to me, is language that

makes me uncomfortable. Does that mean that somebody

volunteers information to me or talks to me about some

aspect of the gambling business? That I have to
caution them that by telling me about it they're covered by whatever the appropriate section of the Federal Act is?

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

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

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

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

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

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

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

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

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

COMMISSIONER WILHELM: Exactly.

CHAIRPERSON JAMES: And if there's any
doubt about that, this is probably as good a time to
mention that as any.

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

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

Commissioner McCarthy.

COMMISSIONER McCARTHY: You've addressed
the point that's been troubling me the last few
minutes during his conversation. For confidentiality
to have any meaning, it requires that each member of this Commission understand they will be held accountable for complying with the spirit and the letter of those laws.

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

CHAIRPERSON JAMES: Correct.

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

I'll tell you one thing that would concern me as one of three people that have been working hard on the research side of this; we're going to have to
go to people who aren't going to be really
enthusiastic about sharing the information with us,
and I would want them to be confident that we take
seriously, confidentiality provisions.

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

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

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

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

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

Did you want to add anything to that?

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

CHAIRPERSON JAMES: Commissioner Loescher.

COMMISSIONER LOESCHER: I move my amendment.

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

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

CHAIRPERSON JAMES: Excuse me just a
minute, Commissioner Loescher. There are two versions
of your rules that I think are --

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

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

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

COMMISSIONER WILHELM: I don't have it.

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

COMMISSIONER DOBSON: Does this replace
the 29th?

CHAIRPERSON JAMES: This will replace 29.

COMMISSIONER LOESCHER: Madam Chairman, on
page 12, at the bottom of the page under Section XX
called "Subpoenas", if I could just read what I'm
trying to propose here. There's a subsection (a),
"Issuing. If a person fails to supply voluntary
information requested by the Commission, the
Commission may, by a majority vote of all members,
require by subpoena the production of any written or
recorded information, document report, answer, record,
account, paper, computer file, or other data or
documentary evidence necessary to carry out its duties
under Section IV of the Act.

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

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

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

And then (b): "Procedure. Any subpoena
issued by the Commission under rule 6 of the
Commission rules shall comply with the requirements
for subpoenas issued by the United States District
Court under Federal Rules of procedure. Subpoenas
shall not seek disclosure of privilege or protected
matters, including trade secrets and other
confidential research, development, or commercial
information that are protected under rule 45 of the
Federal Rules of Civil Procedure."

I so move.

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

COMMISSIONER McCARTHY: There is no
second.

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

COMMISSIONER McCARTHY: Madam Chair, may
I suggest we follow the same procedure that we did in
the last instance? A little flexibility. Let's see
if we can have some discussion on this and then the
members will have an opportunity to look at the merits
or demerits of the proposal, and --
CHAIRPERSON JAMES: That's what the Chair is suggesting, Mr. McCarthy.

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

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

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

In terms of the procedure regarding
Commission subpoenas, the statute spells out that the Commission may apply to a United States District Court for an order requiring that the person comply with the subpoena. That brings us within the Federal Rules of Civil Procedure.

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

The subpoena enforcement authority of the court is again spelled out by Congress in our statute which says that any failure to obey the order of the court may be punished by the court as a civil contempt. I know there's a number of lawyers here. Congress is being redundant because most Federal judges consider the failure to obey their orders contemptible in a Congress, Senate or not.
So the short answer to your question,
Commissioner Leone, is that there's nothing in here
other than some -- there's nothing in Mr. Loescher's
offering that is not covered in substance by what is
already in the statute and in our rule, with the
exception of his Section (b) that says, "Subpoena
shall not seek the disclosure of privilege or
protected matters including trade secrets or other
confidential research, development, or commercial
information".

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

COMMISSIONER DOBSON: Madam Chair?

CHAIRPERSON JAMES: Commissioner Dobson.

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

time discussing something that is not on the table.

COMMISSIONER LOESCHER: Madam Chairman.

CHAIRPERSON JAMES: Commissioner Loescher.

COMMISSIONER LOESCHER: If that is the

opinion of counsel and it's on record, I'm satisfied

with his comments, but for his last comment dealing

with my language that deals with disclosure,

privilege, and protected matters, including trade

secrets, other confidential research, development, or

commercial information.

I think that's a matter for lawyers to

interpret and as to what's included in that rule. But

if that is counsel's position that's on the record,

I'm satisfied.

CHAIRPERSON JAMES: I have not heard a

second for that so I would assume -- Commissioner

McCarthy.

COMMISSIONER McCARTHY: I hear

Commissioner Loescher withdrawing this proposed

amendment.

CHAIRPERSON JAMES: Did you withdraw that
Motion?

COMMISSIONER LOESCHER: Yes, Madam Chairman.

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

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

(Laughter.)

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

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

MR. SNOWDEN: It's true. We don't have a designated official in the National League, but we're working on that. The reason why there's a designated official is, unlike this Commission, generally there
have been times when Commissions have met and there
has been -- to give you a bit of the history -- there
has been -- the Chair has lost control. And the
meetings tend to get unruly and unmanageable.

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

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

    CHAIRPERSON JAMES: And for the record,
our designated Federal Officer is Mark Bogdan, and
Mark Bogdan has many years of experience with doing
Commissions and previously was with the Immigration
Commission, and has served in this -- have you served
in this capacity before on previous Commissions, Mark?

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

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

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

CHAIRPERSON JAMES: No.

MR. BOGDAN: No.

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

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

MR. BOGDAN: Yes.

CHAIRPERSON JAMES: Yes.

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

CHAIRPERSON JAMES: All right.
COMMISSIONER LOESCHER: Madam Chairman,

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

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

COMMISSIONER LOESCHER: Madam Chairman,

I'm satisfied. I just got your last draft. Madam
Chairman, could we have a 3-minute recess?

CHAIRPERSON JAMES: It is at the will of
the Commission. If you feel like you need to do that,
that would be fine. Why don't we take a 3-minute
recess and we will come back to order at approximately
11:05. Thank you.

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

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

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

I would like to ask counsel the question --
or the GSA representative -- the question: under
the rules of the FAC A a person has to be designated by
a Federal agency or the President, and I'm wondering --
- and he certainly cannot be an employee of the
Commission; he's got to be an employee of the
government. Could you clarify that feature for the
record?

MR. SNOWDEN: Yes, let me clarify that.

In fact, the designated Federal Official must be an employee of the Commission -- must be an employee of that agency. That person is appointed generally, by the Chairperson or the chief -- head of the Advisory Group, whether it's the executive director or the chair of the organization. But that person is in fact, an employee -- must be an employee of the Commission or the government organization.

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

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

CHAIRPERSON JAMES: That would be me.

COMMISSIONER LOESCHER: So you're the
CHAIRPERSON JAMES: That's correct.

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

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

As a general matter, FOIA contains exceptions for the confidentiality of certain Federal
records, and obviously there are certain limitations on the applicability of FOIA that have to be taken into account as well. So I'm not prepared at this point to say FOIA applies or FOIA doesn't apply or that it might affect one type of record but not another.

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

COMMISSIONER LOESCHER: Madam Chairman,

I'm happy with the comments of counsel for the record, and I would like at some point or have the Chair direct that we do get a legal opinion on this matter from our counsel.

CHAIRPERSON JAMES: I certainly have no problem with that and would ask counsel if he could provide that kind of information for us at our next meeting.
At this point I think we have a Motion
before us with an amendment, and I'd like to -- it has
been moved and it has been seconded that we adopt the
Chair's mark with the two amendments suggested by
Commissioner Lanni. Are you ready for the vote?

COMMISSIONER LOESCHER: Call for the
question on the vote.

CHAIRPERSON JAMES: Beg your pardon?

COMMISSIONER LOESCHER: Vote.

CHAIRPERSON JAMES: Yes. All in favor?

(Chorus of ayes.)

Any opposed?

(None.)

Motion carries.

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

There has been some question -- the vote
on the executive director will be done publicly; this
is just to answer any questions or go over any details
that the Commission needs to discuss of a personnel

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

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

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

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

COMMISSIONER McCARTHY: I would so move.

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

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

CHAIRPERSON JAMES: It has been moved.

UNIDENTIFIED: Second.