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Draft Agenda for Business Meeting of the FCIC on 12-6 through 12-7-2010

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**Agenda for Financial Crisis Inquiry Commission Meetings
Monday, December 6, 2010 and Tuesday, December 7, 2010**

5:00-8:00pm ET and 9:00-5:00pm ET

Location: FCIC Office, Large Conference Room

1717 Pennsylvania Avenue, Suite 800

Washington DC 20006

or

Conference Dial-In Number: 866-692-3582

Participant Access Code: 3387529

SEE Typo and Fix on Minutes!

Agenda Item 1: Call to Order: PA at 5:14am (business and meeting as a whole)

Agenda Item 2: Roll Call

Phil Angelides (all present)

Bill Thomas

Brooksley Born

Byron Georgiou

Bob Graham

Keith Hennessey

Doug Holtz-Eakin

Heather Murren

John W. Thompson

Peter Wallison

Also present: Wendy, Gary, Gretchen, Scott, Courtney

Agenda Item 3: Approval of Minutes of Telephonic Meeting of November 17, 2010 (attached)

PA: introduced and referenced transcripts. Byron – motion to approve with amendment to Agenda Item 7 – Thomas voted Nay and Graham voted Aye. Thompson seconds. Includes the transcripts (see page 8 – typo in timing)

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Discussion: none

Motion passes 10-0.

Agenda Item 4: Chairman and Vice Chairman's Report
(attached/PDF)

PA: brief report – observations about two items 1) basic schedule to meet printing and publishing requirements and get out as expeditiously as possible. At meeting on 15th and 16th – review of the report, clearing of documents (Commission to act on certain document disputes). Anticipate on the 15th – issue a 7 day notice per the rules for a vote on the report on the 22nd of December (vote on the report telephonically or by email *or in person*). Ms. Edelberg to address the schedule of the report. Additional subsequent vote after the report comes back from copy editing if changes are at all beyond technical grammatical changes – vote on the 5th, 6th, or 7th. This would be a confirmation vote. December 22nd – final approval subject to review of the copy editing. BT: when do you think we're going to get what we're going to get for final approval. Under the rules, on December 15th - a draft of the as it sits that day – between the 15th and 22nd, staff will continue to iterate and fact check – redlining of the report. JWT: 9 days to comment on sections we haven't seen. JWT: seems like whatever we've gotten we need to get ASAP. PW: on the 15th we get an opportunity to look at the report - confused on dates. PA: meet on the 15th and 16th – full version of the report as it sits . BT: as it sits – the whole thing – everything we're going to see we're seeing. Are we through with production on the 16th? PA: some members have commented – Section 2.3 ready to go. JWT: get it today? WE: not approved to be sent. JWT: release it as they come? JWT: change the process – we're out of time. JWT: as you get them done, get them to us. PA: as Chairman, I do think I should be able to sign off on and then get it out as expeditiously as possible. WE: you can have 2.3 now. 2.4 will be sent to the Chair and Vice Chair (hopefully now) for their review.

Hardcopies for 2.3 tonight

Keith: question – form the 15th/16th to the 22nd – get it 7 seven days in advance. Document in front of us – spend the 15th and 16th discussing it. Presumes discussion will require staff to make changes. Doesn't it mean that it's the 17th or 18th wherein we have a version of the document that reflects our changes? How can we vote on the 22nd?

PA: staff already doing best to incorporate comments. Evolutions as staff edits between 15th/16th and 22nd and see clear changes to the document (edit down in size and edit away duplications).

Keith: include iterations discussed in this room?

PA: I assume yes.

BT: how much does it need to be cut down?

WE: 20%. Good news is half of that will be trivial

BT: If we say December 22nd is final final for us everything has to happen before that. BT has some edits to offer (re: stylistically) – would like to vote on them tomorrow (to not squeeze at next meeting).

BB: can we see them tonight?

BT: I don't have them all done. I thought I had more time – schedule just announced – not printed – I was just told – trying to be reasonable.

PA: generally what they?

BT: terminology – still trying to work it out.

JWT: give me an example

BT: What is Wall Street

JWT: refers to the financial center of the US

BT: even if they are headquartered in California? Some terminology has gotten overly broad – like the bin called Wall Street – most wouldn't say. Another example is shadow banking – we should to the best of our ability talk about what it is and its development.

BB: I wonder about the process. We've had a process that've been following – I go through as we get chapters and provide Wendy with my comments.

BT: we have also been offering our comments in a positive way. At some point you notice that some phraseology continues – only notice when you look at broader context of how it is used?

PA: Scott has actually, along with Bill, some of these comments have been submitted

BT: – some could follow category that staff rejected them. Staff product goes back to the Chairman for final version not withstanding our desire- final product is Chairman's product.

PA: some interest by the members to prepare offerings before the 15th? How much time?

BT: Timewise – not more than a half hour.

PA: telephonic meeting before the 15th?

BT: not inclined for a telephonic meeting

PA: offer things up before the 15th.

JWT: we've got 4 maybe 5 chapters we haven't seen yet. (All chapters by Monday the 13th – turn around well before the 15th.) Wants everything before the 15th. – gve us the final final as it sits on that day. **PA:** include as many comments as possible from Commissioners that should be incorporated.

Byron: we're in final stages of producing the report. Its time for the staff to get us the first draft of everything they have done or are about the finish. Monday doesn't really help – one day to get back to you - won't be here

on the 15th. Point is - we need to start sharing with one another everything there is to share. Off change report is not adopted unanimously – see those (dissents) well in advance.

PA: dissents (we'll get to that in a minute) – 5 days before the meeting

Byron: then try to see whatever additional views by the 17th so we can respond – dissent will also be redlined. Just set the dates.

JWT: seems to me that the structure will become complex – massive body of the report plus some number of points of view (majority minority) – no where we say, here is what the Commission concluded in each section/chapter. What conclusions do we want people to draw from that? Hopefully draw some unanimity among us. On Lehman, on Bear, etc – looking at the facts, here is what we conclude.

BT: I assume on December 15th – the final draft will include findings and conclusions.

JWT: each chapter should have concluding thoughts.

PA: those would have to be offered up by Commissioners.

KH: so we won't see proposed findings/conclusions in the final product on the 15th? We start with an original text. We'll see an original text for findings and conclusions?

PA: yes – these “boxes” will be provided prior to the 15th so people can evaluate it?

BB: draft on the 13th? PA: maybe before.

BT: statute – 22 specific listings respective to find findings and conclusions? Are we following structure of the statute?

Byron: we gave up on that – we didn't significantly address. One was a question on the tax policy....

BT: if we are looking for a kind of a structure, we get removed if we wait for staff report – stitch in what we were supposed to address by statute.

PA: I would be shocked if those 22 items aren't dealt with in the report. Do a verification. Maybe do that in the preface.

HM: early on we came to the meetings with that list - agree that we should address the fact that thought on each one.

BT: can't throw it at Congress

Byron: maybe we covered more than I thought.

PA: the preface should deal with that

PW: index in the back – where in the report we covered this?

PA: ask staff to look into where we covered this?

BT: can cover it by saying we didn't think BLANK was relevant. Republicans weren't allowed to submit their list

JWT: staff shouldn't divert too much attention to this over the final product. (BT/PA: of course)

BB: explicit – there probably will be short conclusions at the end of the relevant chapters and there will be findings and conclusions in the introduction of the report. Those should be provided to the Commission in draft form before the 15th. **PA:** and they will evolve until the 22nd. (no one raised conflicts)

PA: There are certain things like title pages that we should authorize the staff to placement of dissent. ...like the title page, - delegate to the staff. **BT:** the publisher will help us a lot on this point. **BT:** Something as simple as pagination – things could get thrown out – pros deal with that and it comes under corrections – then we don't focus on the mechanical stuff. No one disagreed.

BT: we're talking about mid-to late January. Go back to December 22 – we're done. Gap . Everything after the 22nd is final vote.

PA: would not be surprised if there are many edits between 15th-22nd – **BT:** oh yeah.

PA: example: extent that there are findings and conclusions offered up by the majority.

BT: direct question – when we're finished on the 22nd – it is the staff's work product from then on?

PA: here is my understanding - ...

BT: as the Chair, you don't get to come in to modify this or that.

PA: on the report itself, our work is done on the 22nd. I do not intend to be involved in copy editing. **PW:** copy editing can be very evolved.

Byron: we should see the redline.

BT: that means continued whole sale changes.

Most: no.

PA: expectation is post the 22nd, - 22nd through the reconfirmation vote on the 7th is copy editing – requires someone at the Commission level required to work with you on it is grammer, commas, tense, ...post 22nd actions necessitated are such things as the website.

BT: we can create a statement of what constitutes copy editing.

PA: again, does not think he will be involved in that process unless Wendy needs to consult with him. Thinks this will be solved by the reconfirmation vote.

PA: if I am consulted for some reason that can't wait till the reconfirmation vote – send to everyone on the Commission. BT: show the way it was originally and the revised version.

PA: Senator Graham request: don't want to get the fully edited version – do a rolling process of the copy edits.

KH: suppose we're not ready to put our pens down until the 29th – what are the consequences?

WE: then we wouldn't publish in January.

BT: the motion that was passed – not date specific. Got to be a week or two here – PA: current delivery is 1/26. BT: ok . No fudge room. Gary: need it on January 7th for type setting.

PW: official report done by the GPO – scheduled to come out the same day?

PA: yes – the book, the GPO report, and the website will be released on the same day..

BT: open ended on the GPO report and web. Not on the book. You're cutting down 20% is to hit the limit for the book. WE: no, there is no two versions. PA: no – the only differentiation between the two is length of the dissent. Hm: Report is just a bound version of the report and the dissent. BT: No, GPO is cannot be the commercial book because the GPO prints the report. PA: this is the authorized edition. BT: this will not be the official report. It's against the law.

PA wait to discuss until dissent agenda item.

PA: we received a letter from Issa (ranking member of House Government and Oversight) – posed some questions to us – let Gary pick up on this item. Gary: sent letter on November 22nd – earlier sent letter with 15-18 questions. Most recent letter is re confidentiality agreement. GC sent letter back re: busy working on report – and we have robust document preservation

Gary - not his expertise. Would like to seek outside counsel from Washington counsel who deals with congressional investigations. Deals with subpoenas or additional requests.

BT: what was the Commission policy on confidentiality policy? Was each person hired? Gary: yes – condition of employment or consultant work. BT: was their a time limit? Gary: confidentiality part last forever – expressly lasts forever. PA: important to act appropriately and professionally. BT: our counsel needs to be able to get expertise from someone with credentials on this – you throw it that person. BB: any need for us to give you authorization? Pa: delegated to me to authorize but I think it is advisable to bring it back to the Commission for decision.

Agenda Item 5: Executive Director's Report

You stole my thunder. You have received 16 chapters so far – the 17th coming tonight. Over the next couple of days – 4 more chapters. 60,000 words to come.

Agenda Item 6: Procedures re: Dissents and Additional Views (attached)

PA: distributed back out something we had discussed at last meeting. First matter related to this – is GPO two volumes – redlined draft eliminates that – GPO will figure it out to issue one volume. Second- keith proposed a timing issue – clarification. Additional views (final redline) due on the 23rd. The length can't vary. Gives the additional and dissenting view people to make additional changes (as long as it doesn't change the length). Gary: you can increase size of dissent for GPO past the 17th –

BT: for the GPO – it can be pretty much open ended. So you create two packages on the 23rd– one to the GPO and one to the publisher – complete. Gary: everything goes to the GPO and publisher at the same time. ...**PA:** I would not advocate copy editing dissents. **BT:** some problems that could easily occur...off record.

PW: simple question on confidentiality. Publisher is having a tight window to send out books. Publisher sending it overnight. **PW** – we see all the time wherein a reporter get an early copy. (gally) **WE:** our gallies will not be circulated. **PA** directive to Gary – make sure you are satisfied with publisher security. And make sure books are delivered the day of our announcement. **HM:** the last item on the sheet on the back – our job is over on the 26th of January. – Up until February 4th – people can add to the website – what about notification process. **PA:** if someone is going to post additional information, people be notified.

BT: now has a real problem – we are going to have the legal report printed by GPO with additional pages of the dissent. The GPO is the report. The book is less than that report. And now a website that has more than the GPO report and the book. I need to understand how long the website lives. Gary: it doesn't grow beyond February 4th. **PA:** let's do this – this was offered as an accommodation to someone that failed to submit dissent on time. **HM:** my understanding – part of my job was to reach a consensus – this is the report. The adopted the report is adopted by the majority – not the dissents. **Byron:** huge mistake to permit – everyone – strike 4D.

Additional actions required by the Commission before February 14th – archive agreement; might have to be actions related to Government Oversight Committee; actions required re: website (up and ready for January 26th); clearance of documents not part of the report but art of the website resource library (**BT** clarification – resources utilized).

BB: report is the report approved by the majority vote.

PA: now the blanks/page budgets on this pages.

KH: 12,000 words plus 10 pages of charts and footnotes, just him. Might be joined by others. (37 pages total)

BT: my goal is to not have a separate dissent – present as broad base of dissent as possible – not separate.

DHE: my intention to join a dissent that has all 4 or a majority of dissent as possible.

PW: estimate on how much needed? No – a lot more than Keith. Will be separate from that. Can shorten for the book to 15,000 words.

WE: we have approximately 200,000 words. About 500 pages including everything.

PA: I think we should ...

JWT: would someone state what

HM; on the notion that the commercially available book – significant – to American people – comply to some degree on how it it dealt with

BT: censoring dissent is far more onerous for the commercial

PA: website will give people the ability to order either version of the product.

PW: book should say it is truncated report

PA: no – don't agree – the report is the report adopted by the majority of the report. I think it can direct people to additional views on the web.

PW: in the commercial book – that will be all that it saying – just the Report – that is the report – same in the Book, the GPO, and the web – all – yes.

KH: I need up to 37 pages. PW said he would limit himself to 33 pages. What is most you can accept?

RECESS for 10 minutes ...

Back in session at 7:31pm – absence of DHE and Byron Georgiou noted. .

PA: all agree that Section 4D will be removed. We are on adopting it. Need a motion on 3B – Bob moves in accordance to the aggregation- Commissioners may have up to 35 pages of words, charts, footnotes in the commercial report. . Thompson seconds that. GC – ok – with parenthetical – just a page number.

PW: so you guys get 400+ pages of the report

Bob: we are not submitting recommendations – assume less controversial - I think the bulk of the report will be the history outlining the details of the information we have received from a variety of sources.

PW: I guess I have this view. We were asked to provide a report on the causes of the financial crisis – I have read almost everything that has come out so far – they do not yet talk about the causes of the financial crisis – just factual presentations without explanation to the financial crisis. Think spending bulk of the report on what happened rather than cause of the financial crisis is a waste if it reduces Commissioners ability to write what the causes were.

Bob: WWII causes

PW: quite unfair. When we first started out on all this – Keith asked if anyone could file a dissent – now told yes you can file a dissent but it has to be truncated to the size the majority thinks is appropriate – not in the spirit of how we started out.

Bob: is in the spirit – on the web and the GPO report- no limitation.

PW: my cooperation met with a new kind of compromise – take what you offered and cut it in half.

Bob: going back to what greenspan said – everyone has right to opinion and no one has right to facts. As presented – the report are facts.

PW: the facts are wrong as I see them.

Bob: go over the report tomorrow and let's discuss where the report has inaccuracies.

Keith: surprised we are disagreeing on this. This doesn't have to be disagreed upon. From understanding Bob's proposal – the substance of the document approved by the majority of the report will total 480 pages – and minority . 500 page constraint - based on commercial publisher – additional 35 pages of document dismissed because of the publisher – worth creating a split amongst the commission – established unanimously a year ago.

PA: the book itself goes through rigorous editing - dissents don't . It is a report of facts – a reflection of what we discovered in our investigation – notion that it is the weighting ...

KH: trying to offer a constructive solutions – legthening the document to 535 pages. – dispute disappears. No process issue – no changing the process

JWT: if we had hired a publishing professional on what would make the product most attractive to the American people and then ignored – would be odd

KH: who interacted with publisher re: 500 pages.

WE: its not a range – there is a hard limit – partly because books go in 32 page increments. They thought it was important enough that if we went over the 500 pages limit – it would change the price. Actual 498.

KH: one additional 32 page increment – even if it assumes it adds a dollar to the price point of the book that you're going to truncate additional or dissenting views.

PA: web and GPO not limited. Sees this as a matter of accessibility. We could say 700 pages and keep the 00 pages of material we are cutting – there needs to be discipline

****DOUG joins****(7:52pm)

BT: how much are we paying to distribute the book?

WE/GC: \$29,000-\$40,000 for shipping. (security reasons) get the book distributed overnight.

BT: How much does it cost for a page?

JWT: that is an end user cost.

WE: when the book gets larger – they can no longer sell the book for \$14.99. It would be \$16.20.

BT: do we have a deal? I wasn't in on this deal.

WE: they have said if the book are over 500 pages....we might have wiggle room. They will publish whatever we give them.

KH: Then we're saving potential customers \$1 and cutting off KH and PW ability to voice their opinions.

HM: one of the issues worth thinking about is collective effort to distill down to most important items. The dissents don't do that – the report and the dissents should be narrowed down to the most important. – collective editing.

Bob: the aggregate amount for all dissents is 35 pages – 9 pages each

BT: that means we will be sharpening our comments – by 4 votes. By 6 votes – it is decided what goes in the main report. Some facts will be deemed irrelevant and not included.

(PA and Keith having sidebar)

BT: earlier discussion about taking the majorities conclusions at the end of each chapter - ...

PA: major findings and specific findings throughout the book.

BT: if we have 35 places – how many places are you going to place the majority findings and conclusions. How can we create a reasonable reaction to this. Question of minority rights and minimum privileges.

Bob: more significant thing is why can't we come together on this? Chaired WMD – more controversial. One additional view – not in conflict – he signed final report – I have not given up on reaching a consensus. Willing to talk about where they think there are errors or gaps or surpluses.

Gary: proposed contract has 500 pages in brackets in contract. We haven't signed it.

Keith: let's get the publisher on the phone and ask about 535 pages.

PA: there is an characterization that the bulk of the report is the majority view – but bulk is factual reports. Then if we do Keith's proposal – squeeze out information from the book – attempts to be frugal

KH: absurd to censor additional views because we think commercial publisher is right.

PA: or we make the judgement that the Commission decides as a whole what is reasonable (check recording)

JWT: censorship is too strong of a word / constrained as we all are.

HM: one of the arguments is the discipline we need to whittle down our views.

PA: if there is information, Keith, that you think needs to be included in the book – make that comment that it should be included in the book – no one censored in ability to offer comments

JWT: I thought a year ago we were going to hammer out our differences and reach a consensus on the report. My understanding of how we are operating.

BB: this is not censorship. Unlimited on website and the GPO.

KH: as long as they know to go to the web and the GPO

PA: I think it should be amply clear on the web what is available and where to get it.

BT: understanding that the dissents will be a part of the GPO report. Dissenting views are not part of the report. They will be published with the report. I want to establish this clearly. The official report of this Commission is adopted by the majority. Attached to it is other stuff such as dissenting views. I succeeded through compromise and accomdation.

Bob: call the final vote

PA: any one with any one else to say?

Bob: wiling to amend motion to make it 36 – 9 each with ability to aggregate as members choose.

PA: Motion recap: adopt agenda item 6 – in 2A – contains changes to timing of the proposal (Hennessey) – motion on 3B – additional or dissenting views of up to 9 pages per Commissioner and aggregate up to 36 pages; elimination of Item 4D on item that was distributed.

BT: what is encompassed by additional or dissenting views – **PA:** I disagree or I think this isn't covered – come within the 9 pages.

BT: additional pages available to members if not offering a dissent? Which means – what ever you guys do – you will offer additional or dissenting views by the majority. You won't have additional views – you will approve them by the a majority vote. **BB:** they will be part of the Commission's report and voted on.

JWT: if anyone wants additional views – let's put them on the table.

BT: offer a positive comment. If you wanted to spend revenue – you must cut. If you want additional views in addition to this – there must be subtraction in equal to the addition. Spend a dollar, find a dollar – be disciplined.

Bb: clarification on the vote – type set pages – which includes footnotes and charts. **All:** yes.

BT: will we be allowed to pick the type size? **Gary:** doubtful. **PA:** we will check into that.

STRIKE 4D of the proposal. 36 pages.

Phil Angelides Yes

Bill Thomas No

Brooksley Born Yes
Byron Georgiou Absent
Bob Graham Yes
Keith Hennessey No
Doug Holtz-Eakin No
Heather Murren Yes
John W. Thompson Yes
Peter Wallison No

Motion: 5-4-1 (5 ayes, 4 nays, 1 absence)

**PW: there will be no decision by the rest of the commission on what the content of the dissents are
Motion to the affect that there will be no modification by the Commission as a whole in whatever is said in the separate or dissenting statements - Commission will express no views – PA let’s agendize that . I want to say what we want - Gary – only caveat – is document clearance process. BB: thinks the Commission as a whole –**

**PA: let’s agendize this properly and vote on something clear and that is in front of people.
Gary – do a first draft of this language/resolution – apply to majority and minority? Bill – no the kinds of things you can say.**

Talk about process.

PA: no intent to overwhelm you – something informative and civil.

PA: agendize for the 15th - unanimous consent? Do this by email. Intent will be to allow people to express their views.

PA: let’s have a frank discussion – one intent was to talk about chapters in the book. Candidly – is tomorrow’s discussion productive or best left to written comments that can be absorbed by the staff?

BT: shared structure in person helpful – you can put time limits

PA: suggest the following – if there are major points that people want to put on the table so everyone can here them. Let’s meet for a couple hours in the morning – and go as long as its productive. Bill –in terms of motions for tomorrow ?

**BT: structure in terms of discussion. Are people’s suggested changes going to be discussed, and voted on?
Written discussions take into consideration for next draft. BT: no - o**

BT: you have had the last shot on every document we look at. When we work with Wendy – you change it. Wall Street – misnomer – goal is to employ the staff to focus on terms -

Motion to adjourn by BB; second by John. All those in favor – motion passes.

Agenda Item 7: Comments and Questions from Commissioners

Agenda Item 8: Other Items of Business

Agenda Item 9: Adjournment of Business Meeting

Monday, December 6, 2010,

FCIC MEETING – DAY 1

Time: 5:00-8:00pm ET

Location: FCIC Office, Large Conference Room (1717 Pennsylvania Avenue NW, Suite 800)

5:00-6:00pm Session One: Business Meeting

Agenda Item 1: Call to Order

Agenda Item 2: Roll Call

Agenda Item 3: Approval of Minutes of Telephonic Meeting of November 17, 2010 (attached)

Agenda Item 4: Chairman and Vice Chairman's Report (attached/PDF)

Agenda Item 5: Executive Director's Report

Agenda Item 6: Procedures re: Dissents and Additional Views (attached)

Agenda Item 7: Comments and Questions from Commissioners

Agenda Item 8: Other Items of Business

Agenda Item 9: Adjournment of Business Meeting

6:00-6:15pm Break (Dinner and Beverages served in the conference room)

6:15-6:30pm Overview of Discussion of Report

6:30-8:00pm Session Two: Discussion of Report

Background materials: See draft chapters distributed by FCIC Staff under separate cover. Other materials may be forthcoming.

Tuesday, December 7, 2010,

FCIC MEETING – DAY 2

Time: 9:00am-5:00pm

**Location: FCIC Office, Large Conference Room
1717 Pennsylvania Avenue NW, Suite 800
Washington, D.C. 20006**

9:00-9:15am Overview of Meeting

9:15-10:30am Session One: Discussion of Report

Background materials: See draft chapters distributed by FCIC Staff under separate cover. Other materials may be forthcoming.

10:30-10:45am Break

(Beverages served in the conference room for those attending in person.)

10:45-12:00pm Session Two: Discussion of Report

Background materials: See draft chapters distributed by FCIC Staff under separate cover. Other materials may be forthcoming.

12:00-12:30pm Break

(Lunch and Beverages served in the conference room for those attending in person.)

12:30-2:45pm Session Three: Discussion of Report

Background materials: See draft chapters distributed by FCIC Staff under separate cover. Other materials may be forthcoming.

2:45-3:00pm Break

(Beverages served in the conference room for those attending in person.)

3:00-4:45pm Session Four: Discussion of Report

Background materials: See draft chapters distributed by FCIC Staff under separate cover. Other materials may be forthcoming.

4:45-5:00pm Wrap Up and Next Steps

December 7, 2010 – FCIC Meeting

**Phil Angelides
Bill Thomas
Brooksley Born
Byron Georgiou**

Bob Graham
Keith Hennessey
Doug Holtz-Eakin – ABSENT (joins at 10:57am)
Heather Murren
John W. Thompson
Peter Wallison

Also present: Wendy, Gary, Gretchen, Scott, Courtney

PA: Gary wanted to raise an item

Gary: number of Commission decisions related to the website and the release of material – currently have 7 day notice with 48 hour notice by the Chair and Vice Chair – recommends that the Chair OR the Vice Chair be allowed to call a meeting with 48 hour notice.

BT: substance is to remove the Vice Chairman- Oh, I can call it? Ok

Gary: second – I gave Hennessey the revised thing we adopted yesterday – wants to make sure we have it correct.

PA: Wendy – you distributed a timeline for review by Commissioners – feedback – quick discussion

PA: in the context of the book – a proposed timeline of 300 items for the book – it had a lot of material of stuff that is in the book (like an email that was sent on date) – thinks it should be major events and not necessarily duplicative of material in book – example is Lehman files for bankruptcy, GSE's put into conservatorship;

HM: would like a chance to review all the material/market indicators that will be included in the timeline

WE to distribute the ENTIRE timeline to the Commissioners for review (still needs to be fact checked/ duplication)

WE: for the 300 – we'll strip down to just the basic story (maybe 80 events) – highlights of the big chronology.

BT: People in Sacramento losing home – Nia Lavulo. Gary to call the General Counsel of Fannie Mae. Gary to follow up at the Vice Chairman's request.

BT: Nominate a website team to make decisions. (Wall Street sign on top blue part)

PA: let's think about creating a committee.

Gary: another valuable subcommittee is objection to documents.

Bob: let's discuss the book

PA: ok – to approach this...Bill, wants to wait to discuss his deal until Doug is able to join.

HM: I already made my comments in writing – do I need to repeat them?

KH: productive to instead focus on the new chapter?

BB: not ready to discuss it.

BT/Scott and I - tried to categorize things – items of relevance – degrees in which something has been over emphasized and under emphasized. Scott: I organized my thoughts by book segment.

Scott: mostly nets – the boarder comments not incorporated.

Scott: for Section 2 (not going to break it out by chapter because they all get pushed together) –

- **We have a lot of information on how the mortgage finance process operated – given the fact that the dynamic of the bubble is difficult to understand in totality – and bubble result from supply and demand factors – intermediation chain overemphasized compared to the supply and demand chain.**
- **The Role in which predatory or misleading practices played in the inflation of the bubble is over emphasized – unclear on whether it inflated the bubble or forced more foreclosures – housing crisis or foreclosure crisis.**

PW: predatory lending horrible but explanation not offered on its relation to the cause of the financial crisis.

HM: I agree we need to better define some of these terms. Put somewhere on how Commission defines these things – such as “risky”. Predatory lending is unbalanced – needs to also touch upon personal responsibility.

PA: haven't we defined in 2.1 or 2.2 in someplace what constitutes jumbo, alt-a, etc.

BT: Agree with Heather on being fairly clear on definitions. Somebody has defined this - should we cite who it is we agree with – body of work that backs up our definition.

WE: on the definition of sub prime loan – there is no dictionary definition – guidelines from regulators say the same thing. We’ve reflected that in the definitions we offer up.

BB: Thought 2.1 and 2.2 were very good and did a good job of defining terms

WE: we as a staff don’t know why we had a bubble – we have offered up the facts we think are relevant as to why we had a housing a bubble.

BT: securitization - we write too much.

KH: we need to explain the 2-3 major theories on what caused the housing bubble and explain the unanswered questions.

JWT: it was the collapse of the bubble that is important – what caused the collapse – not what caused the bubble? There is interest in what caused the housing bubble – we could add a few sentences.

BB: seems to me its pretty clear that certain things contributed to the housing bubble – such as the securitization train – assumes that

PA: on the supply demand side – we touch upon low interest rates/global gut – capital flow – on the supple demand imbalance - WE – we could include language on bubble formation – not good data on home owners expectation ...we could lay out the various arguments on bubble

Byron: is there any chance that we’re going to get everyone is going vote on this? Worthy of evaluating – dropped bomb on discussion.

Bill: coalition of the willing. If the Commission’s goal is to produce a scholarly report that can be respected, you need our feedback. Pelosi regime. There is an area of legitimate argument – black hole – we lose 90% of the argument. Basically we weaseled.

PA: reject extremes that you presented/did not embrace. I also want to say that Scott has been very active and productive staff member that has made a tremendous number of comments. One of the most active in pointing out things that were omitted/wrong/etc. I will reflect the fact that the supply/demand issue not really talked to Phil about.

Scott: this specific issue was presented to the staff in a proposed framework – discussed over and over again – this particular issue of insinuation that the mortgage securitization process created the housing bubble – response received – the Commission will determine its relevance – I’ve submitted on behalf of the Vice Chairman – his opinion that the main drive of the bubble is supply and demand – not securitization.

PA: interest rates clearly mattered – so did global savings glut – so did supply and demand – have an effect.

HM: I do have one question that relates to real estate in the book – securitization is complex and should be afforded more

BT: purge the group

Byron: no – inappropriate – want this report to be as thoughtful as possible; obligations to submit comments to staff – polyanna – 10 of us could come around a report together.

BT: I can see why you would see it is not productive. This commission was structured politically – we were going to try to overcome that. We have put enormous hours into transmitting our comments – it gets transmitted – the Chairman gets the last pen rather than the Executive Director. Doesn't come out in the final document. Court of Appeals. We are very very frustrated – accommodation and compromise.

PA: my understanding – you're right – as Chair I had given final direction to the Executive Director. My comments are ranging from "this doesn't make sense" or "flesh this out". I do not deny that I play an active role. I don't want to leave impression that Scott's comments are omitted. I wouldn't put a percentage on which are kept

BT: it's all in your opinion. I called this court of appeals – you have controlled this process and the pen.

PA: I disagree. For securitization – construction of the attention on securitization fed into the housing bubble....If there are things of value that haven't come forward – then put together a list

BT: we should shrink the securitization section.

KH: we have two competing theories on relative importance on what caused the housing bubble – securitization or supply/demand.

BB: It seems to me this is an issue that different people have different conclusions on this – shouldn't force the staff – you two are writing dissents/ majority writing findings and conclusions. Don't skew the report.

JWT: I only care about what caused the collapse, not the creation of the housing bubble. **KH:** I agree in terms of relative prioritization – but that is not what we have

PW: we should have had a discussion like this in January. We started this a little in February. The hypotheses. Abandoned until July – too late. I have a different view of the bubble – it was the government. It is what was in the bubble that caused the crisis – toxic mortgages. There was no investigation of this. What are we accomplishing here? It’s too late.

BT: per what BB said – any discussion we continue to happen is an attempt to skew the report – we have said we are very concerned that we get only 9 pages – and the bulk the report is factual – if we get our point made here we will “skew the report – your majority view skews the report.

PA: when I read these chapters, I did not walk away with “securitization caused the bubble. We shouldn’t rehash opinions and disagreements. I think staff can look to insert a sentence or paragraph on supply and demand. If you think something is omitted

KH: I’m trying to understand your vision of this – just list the factors – when will we discuss findings and conclusions.

10:57am: Doug joins/ 11:00am – Scott distributes 10 copies of MOTIONS

BB: Commission has not been ignoring evidence or issues

WE: where I definitely see we dropped the ball –

Keith: findings and conclusions – when will see a draft of the findings and conclusions.

1) Bill: I move that Wall Street be removed in all cases....; Wallison seconds it.

I move that “Wall Street” be replaced in cases where a more accurate or granular description of an entity or group of entities in question...is available.

Staff examine the usage of Wall Street (104) to see if it includes group that that are part of a different group. (wall street and other ..) clarify.

MOTION: I move that direct the staff to look at 104 usages of Wall sTreet to see if in a pmore preceise deinfition of Wall Street, it has been stretched to encompass more insituitions to (CHECK the ROECORDING)

JWT: be more precise on term of Wall Street.

BT: Wendy, are there more Wall Street references as the drafts progress?

WE: staff use the term to make it more readable.

DHE: must leave the call – can’t call back in for 2 hours. I vote in favor of this one.

HM: if desire is clarity – why not take these terms and define them robustly in the glossary

PW: accurate case in this instance is “Countrywide and others”

BT: narrow the definition of Wall Street, but don’t preclude – let other entities fall out.

PA: I can’t support any kind of broad motion on this.

BB: ridiculous. Pointless- just makes it wordy.

Phil Angelides - NO
Bill Thomas - yes
Brooksley Born - no
Byron Georgiou - no
Bob Graham - no
Keith Hennessey - yes
Doug Holtz-Eakin – yes (absent)
Heather Murren – no
John W. Thompson - no
Peter Wallison - yes

PA: I don't think you can do this globally – staff can look at this

Graham: allow three minutes for the presenter of the motions and - Everyone OK – no opposes. Ok to yield time.

1. I move that “interconnections” or “interconnectedness” be removed in all cases and replaced with a more accurate description of the linkage being described.

Section 1, Intro, p. 1: **“Distress in one area of the financial markets led to failures in other areas by way of interconnections and vulnerabilities that bankers and government officials had missed or dismissed.”**

WE: we spend a lot of real estate

BB: interconnectedness has been defined in our materials – to remove the use of interconnectedness – describing in some detail would be

PW: have to be able to show that the failure

Phil Angelides - no
Bill Thomas - yes
Brooksley Born - no
Byron Georgiou - no
Bob Graham - no
Keith Hennessey - yes
Doug Holtz-Eakin – yes
Heather Murren – no
John W. Thompson - no
Peter Wallison - yes

2. I move that “shadow banking system” and “shadow banks” be removed in all cases and replaced with a more accurate or granular description of the entity, group of entities or market in question.

Phil Angelides - no
Bill Thomas - yes
Brooksley Born - no
Byron Georgiou - no
Bob Graham - no
Keith Hennessey - yes
Doug Holtz-Eakin – yes
Heather Murren – no
John W. Thompson - no
Peter Wallison - yes

WE: staff has offered up “debt markets”

KH: hence – there is not a common definition of shadow banking.

Section 1, Intro, p. 2: **“First, we explain the phenomenal growth of the shadow banking system—the investment banks, most prominently, but other financial institutions, too—which freely operated in the capital markets that were beyond the reach of the regulatory apparatus that had been put in place in the wake of the Crash of 1929 and the Great Depression.”**

Section 1, Ch. 1, p. 1, speaking of money market mutual funds: “Business boomed; a key player in the shadow banking industry was born.” However, money market mutual funds are highly regulated by the SEC.

Section 1, Ch. 1, p. 9: “... the main participants in the shadow banking industry – the money market funds and the securities firms that sponsored them – were not subject to the same safety-and-soundness supervision as were banks and thrifts.”

3. I move that that the words “magic” or “alchemy” be removed related to product structuring and replaced with a more accurate description of the process by which mortgages were pooled, tranced and rated.

Phil Angelides - no
Bill Thomas - yes
Brooksley Born - no
Byron Georgiou - no
Bob Graham - no
Keith Hennessey - yes
Doug Holtz-Eakin – yes
Heather Murren – no
John W. Thompson - no
Peter Wallison - yes

PA: if there are places where this needs to be examined –

BT: it’s simply pejorative

On Section 1, Ch. 4, p. 9: **“In the structure of this Citigroup deal, which was typical in this regard, over 85% of the \$x billion deal – or \$737 million - was rated triple-A. It was magical, nothing less.”**

4. I move that we remove all references to financial intermediaries earning “fee” income except for the first mention, unless it is explicitly connected to a cause of the crisis, given the self-evident fact that all financial services are provided for a fee.

Bill moves/Peter (Peter seconds all previous motion – stipulation)

Phil Angelides - no
Bill Thomas - yes
Brooksley Born - no
Byron Georgiou - no
Bob Graham - no
Keith Hennessey - yes
Doug Holtz-Eakin – yes
Heather Murren – no
John W. Thompson - no
Peter Wallison - yes

Section 1, Chapter 1, p. 4 the report says: “These were the conduits through which Merrill Lynch, Morgan Stanley, and other Wall Street securities firms were able to broker and provide, **for a fee of course**, short-term financing to large, established corporations.”

Section 1, Chapter 1, p. 6: “It was deemed a win-win-win deal: the mutual funds could earn a solid rate of return, the stable companies could borrow at lower rates, and Wall Street could earn fees on putting the deals together.”

On p. 7 of Section 3, Ch. 1: “Critically, Bank of America guaranteed those deals with a traditional liquidity put—**for a fee, of course.**”

5. I move that the terms “deregulation” or “governing model known as deregulation” with regards to a summary of the history of banking regulation from 1970 through 2005 be removed as not to mislead the reader, given the variety of legislative actions over the time period that increased regulation, decreased regulation, and/or changed existing regulations.

Bill moves-Keith seconds

Phil Angelides - no
Bill Thomas - yes
Brooksley Born - no
Byron Georgiou - no
Bob Graham - no
Keith Hennessey - yes
Doug Holtz-Eakin – yes
Heather Murren – no

John W. Thompson - no
Peter Wallison - yes

Section 1, Ch. 1, p. 17: “Despite the S & L crisis and the passage of legislation to subject thrifts to bank like supervision, the impulse toward deregulation continued apace, focusing on dismantling the existing regulatory framework to allow regulated depository institutions to engage in more activities in the capital markets.”

On Section 1, Ch. 3, p. 4: “In practice, the governing model that became known as deregulation was not just about dismantling regulations that had previously been in place but also about a disinclination to challenge the financial services industry on the potential risks of new innovations and practices.”

Phil Angelides - no
Bill Thomas - yes
Brooksley Born - no
Byron Georgiou - no
Bob Graham - no
Keith Hennessey - yes
Doug Holtz-Eakin – yes
Heather Murren – no
John W. Thompson - no
Peter Wallison - yes

PA: any other matters to bring before the board – no. none raised – any other issues.

Gary: will email Peter’s draft motion/language

Thompspn: I move that we recess this meeting until Doug Holtz-Eakin and will be adjourned at such time as when Mr. Holtz-Eakin can vote – no other business can be conducted during this time and meeting be immediately adjourned following that meeting.

Phil Angelides - yes
Bill Thomas - no
Brooksley Born - yes
Byron Georgiou - yes
Bob Graham - yes
Keith Hennessey -no
Doug Holtz-Eakin – absent
Heather Murren – yes
John W. Thompson - yes
Peter Wallison – present – not voting

DOUG immediately join.

Circulate a master schedule (15th and 16th) (22nd for telephonic vote/email vote) (they requested that nothing be recorded after the adjournment of the meeting, which includes discussion of the schedule)

JWT: this is bullshit.



**Financial Crisis Inquiry Commission
Agenda Item 3 for FCIC Meeting of December 6, 2010
Minutes of Telephonic Business Meeting of
November 17, 2010**

Agenda Item 1: Call to Order

Chairman Angelides called the telephonic business meeting to order at 12:02pm ET.

Agenda Item 2: Roll Call

Chairman Angelides asked Gretchen Newsom to call the roll of the Commissioners. Present were Phil Angelides, Bill Thomas, Brooksley Born, Byron Georgiou, Heather Murren, John W. Thompson, and Peter Wallison. Commissioner Bob Graham joined the call during Agenda Item 4 and Commissioner Keith Hennessey joined the call during Agenda Item 5. Commissioner Doug Holtz-Eakin was absent.

Also participating in the meeting were: Wendy Edelberg, Executive Director; Gary Cohen, General Counsel; Gretchen Newsom, assistant to Chairman Angelides, Rob Bachmann, assistant to the Chair; Scott Ganz, assistant to Vice Chairman Thomas; and Courtney Mayo, assistant to the Vice Chair.

Agenda Item 3: Approval of Minutes of Meeting, November 4, 2010

Chairman Angelides introduced the minutes from the FCIC meeting of November 4, 2010.

MOTION: Murren moved and Born seconded a motion to adopt the meeting minutes (See Attachments 1-3).

APPROVED: 7-0 (Commissioners Graham, Hennessey and Holtz-Eakin were absent.)

Agenda Item 4: Chairman's and Vice Chairman's Report

Chairman Angelides and Vice Chairman Thomas informed the Commission that their respective reports would be covered within the agenda items of the meeting. Chairman Angelides later informed the Commission to mark their calendars for Commission meetings on December 6th and 7th and December 15th and 16th.

Agenda Item 5: Executive Director's Report and Progress on Report

Executive Director Wendy Edelberg informed the Commission that staff members are hard at work producing chapters of the report for Commission review. Commissioners have already received the entirety of Section III for their review and feedback, and Section I will be forthcoming by the end of the week, followed soon by Section A.

Agenda Item 6: Document and Interview Review/Clearance Process

Chairman Angelides and General Counsel Gary Cohen introduced Mr. Cohen's memo on suggested procedures for review and approval with respect to the public release of confidential documents and materials in the Report, the E-Book, and the Website. Discussion ensued among Commissioners on this matter. Mr. Cohen clarified that if there are unresolved matters concerning the release of confidential documents and materials that have been objected to by the submitting party and have not been resolved, these matters will come before the Commission for review and action prior to public release. It was further clarified that no confidential items can be publicly released except in accordance with Commission rules and, where there are confidentiality agreements, under the terms of those agreements. Mr. Cohen was directed to inform the Commission in a timely and regular fashion of items that have been objected to, and Commissioners were asked to inquire about the status of documents that hold specific interest to themselves through Mr. Cohen.

Mr. Cohen also briefly touched upon issues related to the archiving of Commission documents and informed the Commission that a detailed memo will come before the Commission for consideration.

MOTION: Born moved and Thompson seconded a motion to approve review and clearance process as outlined in Gary Cohen's memo (attached).

APPROVED: 9-0 (Commissioner Holtz-Eakin was absent.)

Agenda Item 7: Timing of Submission and Release of Report to Congress

Chairman Angelides informed the Commission of his opinion that in order to wrap up ongoing FCIC investigations and research and to document our work properly, accurately, and thoroughly in a report that meets our obligations, he believes it is necessary for the Commission to delay the issuance of our report and to deliver the report in January. Chairman Angelides recommended proposed changes to Commission rules to effectuate the issuance of the report in January. Discussion and debate of this matter ensued among Commissioners (see Attachment 4 for a transcript of this discussion).

MOTION: Born moved and Graham seconded a motion that the Commission determines that it shall deliver its report in January 2011, and that the Commission adopt the changes to the rules proposed by the Chairman as the Commission received under Agenda Item 7(attached) and further

move that the Chairman be authorized to inform the President and Congress of this action immediately and that the information be made public.

APPROVED: 6-3 (Commissioner Holtz-Eakin was absent.)

AYE: 6- *Angelides; Born; Georgiou; Graham
Murren; Thompson*
NAY: 3 – *Thomas, Hennessey, Wallison*
ABSENT: 1- *Holtz-Eakin*

For the record, Commissioner Hennessey informed the Commission that Commissioner Holtz-Eakin indicated to Commissioner Hennessey that he opposes the measure to delay the issuance of the report.

Agenda Item 8: Procedures re: Separate and Additional Views

Chairman Angelides introduced a draft process for consideration by the Commission on a process for incorporating and publishing additional or dissenting views. A discussion among Commissioners ensued on this matter (see Attachment 4 for a transcript of this discussion).

Commissioner Born requested that the Commission postpone action on this matter until the following meeting wherein the Commission would consider revisions to the proposal. Vice Chairman Thomas agreed that he and Commissioners Hennessey, Holtz-Eakin, and Wallison would return to the Commission with an estimate for a word budget on separate or dissenting views for the commercial report within a few days.

Agenda Item 9: Update on Archive Process

This agenda item was already covered during earlier discussion.

Agenda Item 10: Discussion of the Report

This agenda item was already covered during earlier discussion. Additional comments and discussion was requested and none was offered.

Agenda Item 11: Comments and Questions

No comments were brought up or questions asked by the Commissioners.

Agenda Item 12: Other Items of Business

No other items of business were brought up by the Commissioners.

Agenda Item 13: Adjournment

Chairman Angelides requested a motion to adjourn the meeting at 10:29am.

MOTION: Georgiou moved and Graham seconded a motion to adjourn the meeting.

APPROVED: 9-0 (Commissioner Holtz-Eakin was absent)



**Financial Crisis Inquiry Commission
Agenda Item 3 for FCIC Meeting of December 6, 2010
Minutes of Telephonic Business Meeting of
November 17, 2010**

**ATTACHMENT 1
Approved Minutes of Telephonic Business Meeting of
November 4, 2010**

Agenda Item 1: Call to Order

Chairman Angelides called the telephonic business meeting to order at 10:05am ET.

Agenda Item 2: Roll Call

Chairman Angelides asked Gretchen Newsom to call the roll of the Commissioners. Present were Phil Angelides, Bill Thomas, Brooksley Born, Byron Georgiou, Doug Holtz-Eakin, and Heather Murren. Commissioner Wallison joined the call during Agenda Item 3 and Commissioner Graham joined the call during Agenda Item 6. Commissioners Hennessey and Thompson were absent.

Also participating in the meeting were: Wendy Edelberg, Executive Director; Gary Cohen, General Counsel; Gretchen Newsom, assistant to Chairman Angelides, Rob Bachmann, assistant to the Chair; Scott Ganz, assistant to Vice Chairman Thomas; and Courtney Mayo, assistant to the Vice Chair.

Agenda Item 3: Approval of Minutes of Meeting, October 12, 2010

Chairman Angelides introduced the minutes from the FCIC meeting of October 12, 2010.

MOTION: Holtz-Eakin moved and Georgiou seconded a motion to adopt the meeting minutes (attached).

APPROVED: 7-0 (Commissioners Graham, Hennessey and Thompson were absent.)

Agenda Item 4: Amendment to Commission Rules re: Report Approval Procedures

Chairman Angelides introduced the amendment. Discussion ensued on the topic of the amendment as well as the production status and schedule of the report, and the process and procedures of submitting differing or separate views. A process for consideration of separate or dissenting views will be sent to the Commission for consideration at the next Commission meeting. Vice Chairman Thomas recommended a friendly amendment to the proposed amendment by inserting “grammatical” into the last sentence of the amended language.

MOTION: Georgiou moved and Wallison seconded a motion to approve the amendment with the insert of the word “grammatical” (attached).

APPROVED: 7-0 (Commissioners Graham, Hennessey and Thompson were absent.)

Agenda Item 5: Comments and Questions from Commissioners

No comments were brought up or questions asked by the Commissioners.

Agenda Item 6: Other Items of Business

Chairman Angelides informed the Commission that our publisher, Little Brown, was unable to meet a revised production schedule and would no longer serve as our publisher. Our replacement publisher will be Public Affairs and our royalty agreement will be the same as our former agreement with Little Brown except that there will not be an advance. Public Affairs guaranteed a December 15th delivery date if the report is delivered to them by December 7th, and has requested FCIC’s assistance with expedited shipping costs, estimated to be \$29,000-\$40,000 so the report can be available in bookstores when it is released. Chairman Angelides indicated that he would approve the shipping costs to ensure the book is widely and timely received by the American public. Chairman Angelides also informed the Commission that as there is not an advance with the Public Affairs agreement, our book agents have requested that the FCIC advance them a portion of their fee of approximately \$17,000 to be recouped by the Commission from royalties which would otherwise go to the agents. Chairman Angelides indicated his approval of the request given the needed services the agents are providing to assist in the publication of the report. To recoup the shipping expenses and the advance, an estimated 50,000 copies of the report would need to be sold. Discussion ensued among the Commission on these matters, and no objections were indicated. Commissioners also discussed the production and review schedule of the report.

Agenda Item 7: Adjournment

Chairman Angelides requested a motion to adjourn the meeting at 10:29am.

MOTION: Graham moved and Born seconded a motion to adjourn the meeting at 1:10pm.

APPROVED: 8-0 (Commissioners Hennessey and Thompson absent)



**Financial Crisis Inquiry Commission
Agenda Item 3 for FCIC Meeting of December 6, 2010
Minutes of Telephonic Business Meeting of
November 17, 2010**

**ATTACHMENT 2
Approved Document and Interview Review/Clearance Process**

Memo To: Commissioners of the FCIC

From: Gary J. Cohen
General Counsel, FCIC

cc: Wendy Edelberg
Maryann Haggerty
Cassidy Waskowicz

Date: November 16, 2010

Re: Considerations with Respect to the Public Release of Confidential Documents and Materials in the Report, the E-Book and Website.

The FCIC was created by the Fraud Enforcement and Recovery Act of 2009, which was signed into law on May 20, 2009. The FCIC's mission is "to examine the causes, domestic and global, of the current financial and economic crisis in the United States." Congress empowered the Commission to "hold hearings,... take testimony,

receive evidence,... and require, by subpoena or otherwise, the attendance and testimony of witnesses and the production of books, records, correspondence, memoranda, papers, and documents.”

In connection with its mandate, the Commission has received millions of pages of documents, conducted numerous surveys, interviewed hundreds of witnesses, held 19 days of hearings, compiled video records of testimony before the Commissioners, and completed numerous reports, both confidential and public, on various aspects of the financial crisis. The Commission has received or created approximately 15 terabytes of data, some of which remains to be examined.

It is our intent to use in the Report and our e-book both public and nonpublic documents and to create on our website a resource of public and nonpublic documents relevant to the Commission's Report and inquiry, all with the purpose of meeting our statutory mandate to report to the President, Congress and the public on the causes of the financial and economic crisis.

This Memorandum proposes a process to make the Commission's work available to the public in a meaningful and useful way. To this end I consider documents (with a focus on nonpublic documents) that may be made available in the Commission's Report and e-book (Report Elements), or website (Web Elements). Release of Commission internal materials (e.g., Commissioner and staff e-mails, Preliminary Investigative Reports (PIRs) and other work product and documents), will be the subject of a separate memorandum addressing National Archives issues. You will note below that I have recommended that all nonpublic material for use in the final Report and the website be run through an approval process.

A. I recommend that Report Elements include:

all documents,¹ both physical and electronic, e-mails, video files, audio files, transcripts, and materials prepared or compiled by the FCIC staff, such as the timeline, surveys and staff memoranda that have been made public, that are included, referenced or footnoted in the written Report, or included in the e-book and e-book apps.

B. I recommend that Web Elements for immediate inclusion in the website on the date the Report is released (in addition to all material previously posted) include:

i) all Report Elements,

¹ As used in this memorandum documents should be broadly construed to include paper documents, electronic documents, audio files, video files, compilations of data and the like, unless the context clearly indicates otherwise.

- ii) all documents that previously have been cleared in connection with prior hearings (whether or not used at the hearings),
- iii) all preliminary staff reports,
- iv) the expanded timeline and documents referenced in the expanded timeline,
- v) all video and testimony from the Commission hearings, and
- vi) all MFRs, audio tapes and transcripts of interviews for which confidentiality was not requested (or which have already been cleared).

C. In addition, in addition to material that was previously dealt with pursuant to clause A and B above, I recommend that Web Elements also include (when and after cleared, if necessary) the following documents:

- i) all of the documents referenced in PIRs and similar staff documents,
- ii) all of the documents and follow-up answers to questions asked at public hearings ,
- iii) all MFRs, audio tapes and transcripts of interviews for which clearance is obtained,
- iv) all surveys upon which conclusions referenced in the Report were based, and
- v) materials relevant to our inquiry and the Report which were requested, received and reviewed or prepared by the staff during the course of our investigation and which are not otherwise included in any of the above categories.

D. However, it is my recommendation that no Report Elements or Web Element be released unless:

- i) they are reviewed by appropriate Commission staff and approved by the Executive Director or General Counsel as appropriate to release (documents already cleared for prior use in hearings do not have to be re-cleared or authorized),
- ii) when dealing with documents covered by confidentiality agreements or understandings, after consultation with (and if required, occasional approval by) the document providers, and
- iii) approved or deemed approved by the Commission (in accordance with the procedures below).

I. Process.

A. Choice of Documents for the Report

If there is an e-book with embedded material, at most 1 GB of supplemental material chosen by the FCIC can be included. The two forms of e-books that include supplemental material, an e-book application (iPad and Droid) and an enriched e-pub, are each capable of including this amount of supplemental data, although the choice of data for each platform can differ slightly because of their different capabilities. (In addition to embedded data, e-book platforms can

include hotlinks pointing to external web content. This requires that, at the very least, the portion of the Commission's website to which the hotlinks point be "live" when the e-book is published.)

Thus the task ahead for the Report and e-book suggests the following steps:

1. Staff identifies and physically segregates in electronic form all Report Elements".²
2. Staff determines the source of each Report Element and, where these were produced pursuant to confidentiality or other agreement notifies and seeks (generally as per these agreements 14 days in advance) comment from the Report Element provider to the use of the Report Element. (While the FCIC does not need affirmative consent pursuant to most of our Confidentiality Letters, either receiving no response to the notice letter or an affirmative consent should eliminate any concerns regarding release of trade secret or business proprietary information.) (This process is already underway, and has resulted in a number of questions and requests for clarification, objections to disclosure, and requests for further discussion from the recipients.) As a courtesy, we are also telling providers of Report Elements that we might also use their previously cleared materials in the Report.
3. Staff determines if any Report Elements require special affirmative consent due to special terms of any confidentiality agreements or other previously agreed-upon use restrictions, and pulls the document if the same is not forthcoming.
4. Where a request for comments elicits objections to disclosure or a required consent is not forthcoming, Staff determines if release of the Report Elements raises trade secret, personal privacy, or regulatory or statutory restrictions on disclosure, collectively "special concerns." If the staff determines that the special concerns are not valid, subject to the other requirements herein, the documents will be released. If valid, the staff will consider applicable legal requirements, and will weigh the benefit of disclosure by the Commission against the potential harm to the provider caused by disclosure of the special concerns, negotiate redactions if the same will be helpful in resolving disclosure issues and if the Report Element would still be worthy of disclosure after the redactions, and raise the matter to the Commission if the special concern issues cannot be resolved by staff and the document provider. Once resolved, the staff will then adjust the composition of the Report Elements accordingly. The decision about whether to release or redact Report

² This Memorandum primarily addresses electronic release of documents, but as these items will likely constitute documents used as the basis for footnotes, the same considerations as to care in checking and clearance applies to use in the printed Report.

Elements after valid objection must be made on a case-by-case basis depending upon the nature of the material under consideration.

B. Choice of Documents for the Website

Documents released via the website make up the next subset. (Choice of the location/hosting of the permanent website will be the subject of a separate memorandum.) Website decisions for material hot-linked to the web from the e-book must be made when the e-book is "printed." As a practical matter other website decisions can be delayed until the end of January 2011 (to allow time to implement the decisions by February 13, 2011), and so the Commission will have additional time to consider and clear documents not included, or referred to, in the Report.

Thus the task ahead for the Web suggests the following steps (of course in all cases modified to the extent that items have already been cleared as part of Report Elements):

1. Staff identifies and physically segregates in electronic form all Web Elements.³
2. Staff determines the source of each Web Element and, where these were produced pursuant to confidentiality or other agreement notifies and seeks (generally as per these agreements 14 days in advance) comment from the Web Element provider to the use of the Web Element. (While the FCIC does not need affirmative consent pursuant to most of our Confidentiality Letters, either receiving no response to the notice letter or an affirmative consent should eliminate any concerns regarding release of trade secret or business proprietary information.) Staff also determines after consultation with the Web Element provider if there are any needed redactions. (This process is already underway, and has resulted in a number of questions, objections to disclosure and requests for clarification and further discussion from the recipients.) As a courtesy, we are also telling providers of Web Elements that we might also place their previously cleared materials on the Web.

³ Clearing MFRs and interviews is a very labor intensive process. The highest priority will be given to MFRs and audio tapes or transcripts of individuals quoted in the Report. Next, the staff will determine which interviews should have priority for clearance, although as a practical matter we are seeking clearance for all of them at this time, and prioritization will come into play when dealing with objections. Some interviewees were assured by FCIC staff that the interviews would be private, or were for background purposes only, and that, of course, will be respected. However, even in those cases, people may change their views and we should ask about release anyway. If promised confidentiality is not waived, the interview materials should be left to the National Archives unless there is a compelling reason to disclose documents and override the promise where circumstances permit. (Virtually all interviewees were informed that the interview materials would be delivered to the National Archives.)

3. Staff determines if any Web Elements require special consent due to special terms of any confidentiality agreements or other previously agreed-upon use restrictions, and seeks consent where needed and pulls the document if the same is not obtained.

4. Where a request for comments elicits objections to disclosure or a required consent is not forthcoming, Staff determines if release of the Web Elements raises special concerns. If the staff determines that the special concerns are not valid, subject to the other requirements herein, the documents will be released. If valid, the staff will consider applicable legal requirements, and will weigh the benefit of disclosure by the Commission against the potential harm to the provider caused by disclosure of the special concerns, negotiate redactions if the same will be helpful in resolving disclosure issues and if Web Element would still be worthy of disclosure after the redactions, and raise the matter to the Commission if the special concern issues cannot be resolved by staff and the document provider. Once resolved, the staff will then adjust the composition of the Web Elements accordingly. The decision about whether to release or redact Web Elements after valid objection must be made on a case-by-case basis depending upon the nature of the material under consideration.

C. Commission Approval Process

The decision to release publicly confidential documents is one which should be made by the full Commission, either directly or through a process of delegation. It is unwieldy and impractical to expect that the full Commission will review all of the Web Elements and Report Elements, so a procedure for approval should be considered. Currently, the Commissioners are governed by the following:

The Ethics Guidelines for Commissioners provide that the Chairman or the Commission may release confidential information.

Many of the Commission's Confidentiality Agreements provide that documents may be released upon the agreement of the Chairman and the Vice Chairman, or upon a majority vote of the Commission.

In addition, the Commission must approve the Report, which includes the Report Elements and, for our purposes, Web Elements as well.

As noted above, in those few cases where there is staff discretion (such as under clause C(v) above), I recommend that the Executive Director or General Counsel determine which documents should be recommended to the Commission for a determination in accordance with its processes for inclusion in Report Elements or Web Elements. This will primarily occur in situations where the staff has received objections to disclosure and the determination to override the objections must be made.

II. Legal Considerations for the Release of Documents Received by the Commission

There Are Statutory and Regulatory Prohibitions on the Release of Confidential Information, but Congress has investigative powers which have been held to override these provisions, and the Commission has the benefit of those powers as a creation of Congress.

18 USC §1905. Disclosure of confidential information generally --

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Federal Housing Finance Agency, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311–1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

In addition, 12 CFR part 261 creates similar limitations on the disclosure of "confidential supervisory information" of the Federal Reserve Board, 12 CFR part 4 protects "non-public OCC information," 12 CFR part 309 protects "non-public information" of the FDIC and so forth.

The Commission is formed under Congress, and is entitled to the benefit of Congress's authority and power to obtain information, including but not limited to proprietary information, is extremely broad. The Commission's inextricably related ability to release this information arises out of the objectives of the Commission, to issue a report. While there is no express provision of the Constitution or specific statute authorizing the conduct of congressional investigations, the Supreme Court has firmly established that such power is so essential to the legislative function as to be implied from the general vesting of legislative powers in Congress. *McGrain v. Daugherty*, 273 U.S. 135 (1927); *Watkins v. United States*, 354 U.S. 178 (1957); *Barenblatt v. United States*, 360 U.S. 109 (1959); *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491 (1975); *Nixon v. Administrator of General Services*, 433 U.S. 435 (1977). Even the pendency of civil or criminal litigation cannot delay a committee inquiry. *Sinclair v. United States*, 279 U.S. 263 (1929).

The federal courts, when applying Congress's broad investigatory power to obtain access to documents containing confidential or proprietary information, have expressly held that executive agencies and private parties may not deny Congress access to such documents, even if they may contain trade secrets or other sensitive information whose disclosure to the public is otherwise statutorily barred. See, e.g., *FTC v. Owens-Corning Fiberglass Corp.*, 626 F. 2d 966, 970 (D.C. Cir. 1980); *Exxon Corp. v. FTC*, 589 F. 2d 582, 585-86 (D.C. Cir. 1978), cert. denied, 441 U.S. 943 (1979); *Ashland Oil Co., Inc. v. FTC*, 548 F. 2d 977, 979 (D.C. Cir. 1976). Specifically, courts have held that release of information to a congressional committee is not considered to be disclosure to the general public, see *Owens-Corning Fiberglass Corp.*, 626 F. 2d at 970; *Exxon Corp.*, 589 F. 2d at 589; *Ashland Oil*, 548 F. 2d at 979; *Moon v. CIA*, 514 F. Supp. 836, 840-41 (D.D.C. SDNY 1981), and once documents are in congressional control, the courts will presume that committees of Congress will exercise their powers responsibly and with proper regard to the

rights of the parties. See, Owens-corning Fiberglass, 626 F.2d at 974; Exxon Corp., 589 F. 2d at 589; Ashland Oil, 548 F. 2d at 979; Moon v. CIA, 514 F. Supp. at 849-51.

In addition, our statute expressly requires the Commission to seek testimony or information from principals and other representatives of government agencies and private entities that were significant participants in the United States and global financial and housing markets during the time period examined by the Commission. As the Commission's enabling legislation manifests the clear congressional intent to establish an independent legislative branch entity with investigative powers, authorities and prerogatives equivalent to those of past and present standing and special investigatory committees, the decision to release confidential documents or materials as part of its statutory duty to report on the causes of the crisis rests in the Commission's discretionary determination that such public release will further fulfillment of its mandated statutory mission, a decision that cannot be limited by any court ruling or regulatory or statutory standard. Such decisions must be made responsibly and with proper regard to the rights of the parties involved. As such,, the disclosure of relevant information by the Commission as part of its Report should be protected as outlined above.

This broad power to receive and disclose confidential and proprietary information is limited by the purpose for which the information is obtained, however, and while the use of that information in the report to be delivered to Congress and the President, and therefore to the American public would be within the powers described above, there is a question as to whether the same standard would be applied should that information be disclosed in a commercially released book without express or implied consent of the information provider. While this is an issue for the publisher and not the Commission, I nonetheless recommend that the FCIC take special care to insure compliance with the appropriate clearance procedures for all documents referenced or quoted in the Report or included in the enhanced e-books.

Finally, it appears, based on a 5th Circuit Court of Appeals case, United States v. Wallington, 889 F.2d 573 (5th Cir. 1989) that violations of 18 USC §1905 require *mens rea*, a guilty mind or conscious intent, and inadvertent violations are not actionable. (There are very few reported cases referencing §1905.)

The FCIC Has Entered into Confidentiality Letters Pursuant to Which It Has Received Confidential Information

The FCIC has entered into at least 69 confidentiality agreements of various forms pursuant to which it has committed to a process concerning the Commission's use of documents and other information submitted to it by document providers, including federal agencies and departments, state and local government entities, and business organizations and individuals. (A list of the parties to those agreements is attached as Appendix A.)

While the confidentiality agreements vary, virtually all of them contain provisions that require the FCIC to maintain in confidence the documents designated as confidential and to consult with the document provider prior to disclosing the information (and often specify a 14 day consultation period). The agreements all allow the FCIC to disclose the confidential information it determines appropriate in any interim or final report or in connection with public hearings upon the agreement of the Chairman and the Vice Chairman or upon a majority vote of the FCIC. Many of the agreements specifically reference, for example, certain bank regulatory reports confidentiality provisions, trade secrets and similar items protected from disclosure by statute or regulation as examples of the types of the

documents entitled to confidential treatment in accordance with the letters. But that does not override the Commission's ability to release the documents if it so determines. In many of the earlier Confidentiality Letters, the FCIC has stated that it will ask the National Archives not to release confidential documents submitted to the Commission for at least five years after the conclusion of the Commission's work (in keeping with a pattern set by the 9/11 Commission).

A typical corporate Confidentiality Letter provides:

In accordance with its statutory mandate and its duty to the American public, the Commission, if it determines it is in the public interest, may release to the public non-public information obtained from XXX as part of any interim or final report to the President and Congress, or in any public hearings, if the Commission determines to do so by a majority vote, or by the decision of the Chairman and Vice Chairman acting together on behalf of the Commission.

Prior to any release of non-public information under the above paragraph, the Commission will give written notice to XXX, and allow XXX to consult with the Commission before the Commission uses any of the XXX's non-public information in any interim or final report to the President and Congress, or in any public.

With respect to interviews and related MFRs, it has generally been the practice of counsel to financial institutions and departments and agencies to note either by e-mail as part of the process by which the interviews were arranged, or during the interview, that the interviews would also be covered by the confidentiality agreements between the FCIC and the respective financial institution or agency or department. Interviews conducted with industry observers who are not affiliated with organizations subject to confidentiality agreements have usually not contained those types of restrictions, but even in these situations an FCIC staffer should review the tapes to be certain. Some interviews were conducted with assurances of a confidential treatment or under the explanation that they were "for background purposes." For these interviews, I would notify the interviewee (and we are trying to notify all interviewees) and see if he or she objects to disclosure before making a final release decision. And if there is no objection then disclosure should be appropriate.

Not all entities and agencies have entered into Confidentiality Letters with the FCIC. Some have instead submitted documents or consented to interviews pursuant to individual requests, letters or e-mails requesting confidentiality of the applicable material.

Internally, the FCIC recognizes the sensitive nature of its work and has taken precautions to ensure the confidentiality of nonpublic information that it receives. These steps include requiring all FCIC personnel to sign a confidentiality and non-disclosure agreement, which protects all nonpublic information and specifically restricts the dissemination of any trade secrets or other proprietary information.

Given the nature of the Confidentiality Letters into which the FCIC has entered, I believe there may be a distinction between public release via the Commission's Report or website (which the FCIC will treat as ancillary to the Report) and public release through the National Archives. As to the former, compliance with the consultation or consent process described above should eliminate most concerns regarding the disclosure of trade secrets and other

confidential information. As to the latter, delivery to the National Archives with a Commission suggested release schedule is only the beginning of the analysis to be addressed at a later date.

Appendix A

Confidentiality Letters [to be updated]

TAB	NAME
1	SEC- Mark Cahn
2	Board of Governors of the Federal Reserve System- Ben Bernanke
3	OCC- Julie Williams
4	FDIC- Michael Bradfiel
5	FHFA- Alfred Pollard
6	DOL- Deborah Greenfield
7	CFTC- Dan Berkovitz
8	OTS- Deborah Dakin
9	DOJ- Ronald Weich
10	Treasury- George Madison
11	Citi- Brad Karp
12	LexisNexis- Kara Hinrichs

13	HUD- Heather Kanovsky
14	FINRA- James Shorris
15	State Street- David Phelan
16	NY State Banking- Marjorie Gross
17	Goldman Sachs- Richard Klapper
18	Morgan Stanley- Raul Yanes
19	PIMCO- John Sopko
20	Vanguard- Nathan Will
21	Fannie Mae- Jeff Kilduff
22	UBS- John Moon
23	Barclays- Caroline de Onis
24	S&P- Brian Markley
25	CT AG- George O'Connell
26	OH AG- Doreen Johnson
27	omitted
28	AIG- Mitchell Berger
29	Cornwall Capital- William Gussman
30	Magnetar- Steven Ross
31	Moody's- Steven Ross
32	MKP- Patricia Alcamo
33	GSC Group- Daniel Ross
34	NIBC- Albert Lambert
35	Laura Schwartz- Robin Alperstein

36	Scion- Michael Burry
37	ACA- Nathan Erickson
38	UBS- Maite Quino
39	Alan Roseman- Robert Bennett
40	Charles Gates- Daniel Zinman
41	Markit- Mark Davidson
42	Eric Dinallo- John Kenny
43	TCW - Michael Cahill
44	Andrew Forster- David Brodsky
45	Joe Cassano- Jim Walden
46	Credit Suisse- Daniel Zinman
47	Wachovia- Robert Kelner
48	NCRC- Josh Silver
49	Ally Financial- John Hromy
50	S&P (Special)- Brian Markley
51	PIMCO –
52	Moody's (Special)- Sharon Nelles
53	Wendy Ruberti
54	Fremont General- Jim Caroll
55	NCUA- Robert Fenner
56	Maryland Insurance Administration- Neil Miller
57	David Sambol- Walt Brown
58	ICAP North America Inc.

59	RMIC- John Heitkamp
60	Greg Levine
61	Aladdin Capital- Sharad Samy
62	Stone Tower- Robert Carangelo
63	Vanderbilt Capital- Peter Simmons
64	PMI- Andrew Cameron
65	Alliance Bernstein- Mark Manley
66	Tim Harkness- BlackRock
67	ING- Gerald Lins
68	Deerfield Capital- Jonathan Polkes
69	MGIC- Jeffrey Lane

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**Financial Crisis Inquiry Commission
Agenda Item 3 for FCIC Meeting of December 6, 2010
Minutes of Telephonic Business Meeting of
November 17, 2010**

ATTACHMENT 3

Approved Revisions to Timing of Report Submission

IX. Reporting to the President and Congress

A. Submission of Report and Testimony

The report of the Commission and appearance before and consultations with Congress are governed by FERA § 5(h), which provides that the FCIC's report is due to the President and Congress on December 15, 2010, and that the Chairperson shall, within 120 days after the date of the report's submission, appear before the Senate Banking, Housing and Urban Affairs Committee and the House Financial Services Committee. The Commission has resolved that the Commission shall deliver its report to the President and Congress at such time in January 2011 as determined by the Commission.

B. Vote on Report

The full Commission shall vote on approval and submission to the President and Congress of the Commission's report. The Chairman shall set the time and date for a meeting of the Commission for the

purpose of voting on approval and submission of the report, which date shall be no later than two days before the approved report is anticipated to be delivered to the Government Printing Office, as the Chairman shall determine. Notice of this meeting must be provided to all Commissioners no less than one week prior to the date of the meeting, along with a draft copy of the report in its then current form, and any material changes to the report thereafter shall promptly be delivered to the Commissioners in redlined form from time to time prior to the meeting. Commissioners who are unable to attend the meeting at which the vote on approval and submission is scheduled may vote telephonically or by email by transmitting their vote in either manner to a staff member designated by the Chairman. Approval and submission requires a majority of the votes of those Commissioners physically present and voting and those who vote telephonically or by email. After the meeting and vote, absent another vote, (which may be called for by the Chairman on 48 hours notice), only grammatical, and technical, non-substantive changes, as determined by the Executive Director may be made to the report.

C. Additional or Dissenting Views

Commissioners may submit additional or dissenting views for publication in the report submitted to the President and Congress. They may be submitted by one or more Commissioners. They are to be provided to the staff member designated by the Chairman by a time designated by the Chairman (that shall be prior to the final deadline for completion of all report material), and the staff member shall promptly circulate to all Commissioners all additional and dissenting views that are received. Additional or dissenting views not provided by the time specified by the Chairman will not be included in the report submitted to the President and Congress.



**Financial Crisis Inquiry Commission
Agenda Item 3 for FCIC Meeting of December 6, 2010
Minutes of Telephonic Business Meeting of
November 17, 2010**

**ATTACHMENT 4
Transcript of Discussion of Agenda Items 7 and 8 of the Business Meeting on
November 17, 2010**

United States of America

Financial Crisis Inquiry Commission

Business Meeting

(Partial Transcript

Re Agenda Item 7 and Item 8)

Wednesday, November 17, 2010

***** Confidential *****

Financial Crisis Inquiry Commission

Wednesday, November 17, 2010

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CHAIR ANGELIDES: Let's move on to Item 7, which is the timing of submission and release of report to Congress.

Let me make just a quick opening comment on this, which is that -- and I think I'll make it short and sweet -- which is, at least in my opinion, to deliver -- to be able to complete our ongoing investigative -- or wrap up our ongoing investigative and research work and to document that properly in a report that meets our obligations, I believe it's necessary for us to determine as a commission, as other commissions have done before, to deliver our report to the President and Congress in January, prior to the end of January, at a date determined by the Commission.

I'm not going to make a long speech about it, except to say, this is just where we are, given the volume of information, the pace at which the work is going, and also the need to ensure that the work is absolutely accurate and thorough.

And so what I did present with members today is, on Item 7, some suggested change to our rules which would effectuate that.

So I will stop there and open the discussion.

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Is there any discussion?

COMMISSIONER MURREN: I have no problem with the specific, if it helps us to get this -- get the job done.

CHAIR ANGELIDES: Others?

COMMISSIONER BORN: Well, I think it's very important that we complete our investigation and our documentation of that investigation properly and appropriately.

CHAIR ANGELIDES: Bill?

VICE CHAIR THOMAS: Let me ask you some questions.

CHAIR ANGELIDES: Uh-huh.

VICE CHAIR THOMAS: This -- this requires us to change our rules and change the date in which we are going to be submitting this to the Congress and the President, correct?

CHAIR ANGELIDES: Correct.

VICE CHAIR THOMAS: We have a statutory date that was provided to us by the Congress and the President --

CHAIR ANGELIDES: Correct.

VICE CHAIR THOMAS: -- right?

CHAIR ANGELIDES: Yes.

VICE CHAIR THOMAS: How are we able to change the statute by changing our rules?

CHAIR ANGELIDES: I don't think we are. I think what we're doing is making a determination that the report is best delivered in January. And in this regard, I did ask staff to look at historical precedent. And there's a number --

VICE CHAIR THOMAS: Okay, you don't have to go any farther than that.

So we're going to vote on this, and then you're going to notify or send a letter to Congress and the President that we want the date changed in the statute?

CHAIR ANGELIDES: No. What we're informing them is that we plan to deliver our report in January.

VICE CHAIR THOMAS: What happens if they say, "That's unacceptable. We want you to meet the statutory date"?

CHAIR ANGELIDES: Well, then, I guess that's an issue.

COMMISSIONER BORN: We'll discuss it then.

VICE CHAIR THOMAS: Why don't we inquire, through back-channels, if they would be receptive to this so we don't get egg all over our face?

CHAIR ANGELIDES: Well, I will tell you that over the course of a period of time, I've asked this question in -- I have asked this question not

specifically with respect to this motion today; and the answer has been that if more time is needed -- as you know, you and I spoke some about the schedule. I made some back-channel requests, and was told essentially to everyone that I made, that this would not be an issue from their perspective. At least the people I spoke with, meaning, leadership on both sides of -- at least on the House and Senate side.

VICE CHAIR THOMAS: I don't -- I can't tell you that I've had the same high comfort level with discussions that I did not initiate but were proffered to me.

And so my question is -- we miss the date, we miss the date. That's not the most infrequent violation of all of the commissions and folks dealing with regulations and all the rest. They are almost a strong suggestion and sometimes aren't even a strong suggestion.

I'm trying to figure out how we minimize our damage to us, because if this comes out -- if we actually take a vote and we're on record, you know we're going to be inundated with phone calls, wanting to know why, with all kinds of speculation, and all we're going to get is a bunch of press with a bunch of stories by a bunch of people, none of whom I think are *[unintelligible]* what we're going to be doing and how difficult it is.

CHAIR ANGELIDES: Well, I will let other members weigh in; but my view on that is -- and, Bill, you and I talked about this -- my view is that absent taking an action and just floating and missing the date would be much more damaging; and I think we need to say it, put out our rationale versus, as

I think I told you this morning, there's already a couple reporters calling, saying, "Gee, we heard you're thinking of doing findings in December and a report in January." And I just think we ought to grab the bull by the horns, lay it out so, in fact, we're not embarrassed by missing the date. We just say clearly, because of the importance of the investigation, the importance of having the best facts for the American people, we intend to deliver in January.

At least the back-channel I have done indicates there will be -- there is very strong support for that approach.

But I think it would be a mistake to not take an action and then just let the date float by. I think that would be the worst of circumstances, because in the meantime, there will be rumors that will be swirling, there will be leaks, and then it will be like, these clods never even told anyone. That's my view.

COMMISSIONER HENNESSEY: And, Phil, do you think it would also be a mistake to go ask Congress to change the statute?

CHAIR ANGELIDES: My indication is, is that, at least from the folks I've spoken to, that the best route to take, is to inform the date -- I think we could do both -- say, we intend to deliver. But I think given their schedule right now, which is they intend to leave in -- I think on Thursday of this week and then come back after Thanksgiving; and I just don't think it's practicable.

I would have -- without going over history, I think that might have

been a preferable route earlier in the year, yes.

But I will say -- and I don't want to just say that there's ample precedent for commissions that have not missed their date by a year; but, you know, for example, the many, many commissions here -- I have a list of them, if people are interested -- where they, in fact, submitted, instead of, you know, in March, they submit at the end of March, instead of March 1st; or, you know, instead of March 1st, June 10th, without seeking law changes; instead of an original date of December, there is an amended date of April, and then the submission was actually made May 6th.

I've identified at least seven commissions over the past, I guess it would be seven or eight years or ten years that have done exactly this, and that was just a cursory search.

VICE CHAIR THOMAS: Phil?

COMMISSIONER THOMPSON: Well, Phil, is the debate or difference of opinion on whether or not, or the form in which we could take and notify?

CHAIR ANGELIDES: Is that a question for me, John?

COMMISSIONER THOMPSON: It's a question, quite frankly, for Bill, more so, because --

VICE CHAIR THOMAS: Yeah. Yeah, let me respond, John.

My question to Phil, first, would be, you had mentioned all of those commissions that made shifts in their dates.

Did all of them also ask for a 20 percent additional increase in their budget?

CHAIR ANGELIDES: Well, I don't know.

VICE CHAIR THOMAS: Well, see, that's part of my real worry, because one of the reasons I think we argued, to a certain extent, that we wanted the money, was to be able to bring on enough people to get the job done.

CHAIR ANGELIDES: Or to do the --

VICE CHAIR THOMAS: So they gave us the money, and now we're pushing the date -- or we're asking to push the date back.

My assumption is, the letter will go to more than one member of Congress and more than one member in each House.

Are we certain that the names that we place on that letter will all be comfortable and say "Yes"? Because if you get someone who says, "No. You know, we gave you the money and now you're not going to go with the date," you're going to get people -- all you need -- I will just tell you, I have a little understanding of the culture -- all you need is one person to say, "No, you have a statutory date, and you'd better meet it." No one else will stand up and defend us on pushing the date back, I can assure you of that.

COMMISSIONER THOMPSON: Well, Bill, with all due respect, it seems to me that no one on the Hill would want us to put forth a document of poor quality. And so my assertion would be, we don't necessarily ask for an

extension. We inform them that in order to produce a quality document, it's going to take an extra couple weeks. So be it. And if they want to make political fodder out of that, so be that as well.

But I think our goal here -- at least my impression of our goal -- is to create a quality report that we can all stand behind, independent of how people on the Hill might react to the fact that we're deferring the thing a couple, three weeks.

VICE CHAIR THOMAS: That -- I don't have a problem with your argument. My point would be, I don't know why we go on record and vote to create a change of the date in our rules.

And, Phil, I know your argument on that.

I'm just saying, we can get closer to the due date; not talk about the fact that we aren't going to make the due date; and then, John, take your argument when it's closer, and say, "You know, it looks like we're not going to make it, and it's going to be..." -- you know, I hope you can say nothing like, "It will be by the end of the year or something." Because if you go past January 3rd, you're now delivering a product to an entirely different-looking Congress than approved the statute that created us in the first place.

COMMISSIONER BORN: Phil?

VICE CHAIR THOMAS: And I don't know why we have to go on record as a commission; and if we don't go on record unanimously, that itself is going to create additional problems for us.

If you're going to do this, I'm trying to get you to think about how we minimize the ability to have people to make something out of this.

COMMISSIONER BORN: Well, this is Brooksley --

COMMISSIONER HENNESSEY: Phil -- Phil, this is Keith.

CHAIR ANGELIDES: Okay, and then Brooksley.

COMMISSIONER HENNESSEY: Brooksley. Yes, Brooksley, please, go ahead.

COMMISSIONER BORN: Well, I just have to say that I feel very strongly that we need to complete the investigation appropriately, and we need to document that investigation in our report appropriately.

And I've become convinced by what I've heard from Phil and the staff and Bill, that we're not there yet, and that we need the extra time in order to do the kind of job that we owe to the public and to the Congress and to the President.

I think we need to change our rules which currently seem to read that we'll provide our report on December 15; and I think we need to be open and frank with Congress, with the President, and with the American people, that the report should be expected in January, and that that's necessary in order for us to accomplish our mission.

So I would like to move --

COMMISSIONER GEORGIU: Well, let's -- I mean you have one more

person --

CHAIR ANGELIDES: Okay, before the motion --

COMMISSIONER BORN: All right.

CHAIR ANGELIDES: Okay, why don't we hold on the motion?

Keith?

COMMISSIONER HENNESSEY: Yes. Thanks, Phil.

I appreciate the point that people think we need more time to get the work done.

I also appreciate, Phil, your point, about wanting to rip the press Band-Aid off this off and just sort of be straight and direct about it, and say, "Look, we need more time, it's taking more time." But I think there's a fatal flaw in this option, which is that it requires us, as commissioners, to take an explicit action.

As I understand it, it either violates the law or is highly inconsistent with the law. And to me, that's just a legal nicety; but I am really uncomfortable with the idea of voting to change the Commission's rules in a way that is inconsistent with the statute.

That problem would not exist if we were going to Capitol Hill and saying, "Please change the statutory date," because everything we would be doing would be legal and above-board.

And I appreciate that they don't want to do that. But what this does is, this puts us, as commissioners, in a position where, because -- background work done by the deadline and because we anticipate that Congress is likely to say "No" when we ask them to change the law, that we would be taking an action that, as best I can tell, is us deciding not to follow the law. And that causes me extreme discomfort, no matter how many times it's been done before.

CHAIR ANGELIDES: All right, does anyone else have a comment?

COMMISSIONER THOMPSON: Keith, what are they going to do, put us in jail? Come on.

COMMISSIONER HENNESSEY: That's not the point.

The point is -- the point is not what are the consequences. The point is, I'm not going to -- I'm not going to make a decision that I know is a violation of the law.

COMMISSIONER THOMPSON: Gary, would you please comment?

MR. COHEN: Well, the statute -- you know, the statute says what it says.

I've made inquiries. There doesn't appear to be any penalty, and this is a fairly -- this is not an unusual event. I'd just --

VICE CHAIR THOMAS: What, missing the deadline or sending a formal notice that we voted as a group to violate the statute?

MR. COHEN: Missing a deadline. I haven't made an inquiry as to the process.

CHAIR ANGELIDES: Well, Bill --

VICE CHAIR THOMAS: That's my point.

CHAIR ANGELIDES: But, Bill, can I -- can I say something?

VICE CHAIR THOMAS: *[Unintelligible]* --

CHAIR ANGELIDES: But at the National Medicare Commission, you guys sent a letter a few days in advance saying, "We're not going to make March 1st," which is the statutory deadline. And you sent a letter prior to that, saying that you intended to keep working because the issues were difficult and of great importance. It's not -- this has been done before.

VICE CHAIR THOMAS: Yes, but let me tell you, since you quoted that commission. We had a supermajority that we had to reach. We had to find solutions. We had to come up with options.

That is not the case with us. We were simply to examine and report what happened. It's an entirely different situation.

If we had to come to a political agreement, in a stacked committee, with a supermajority required to report back solutions to solve the Medicare problem, no one would argue that we would take a few more days to do that.

CHAIR ANGELIDES: Well, I --

COMMISSIONER MURREN: If I could comment. I personally think that the level of difficulty associated with any Commission is in the eye of the beholder. And I'm not sure that it's relevant, necessarily, to this discussion.

I think what's relevant to it is determining the legality of it, and also the degree to which there is precedent.

COMMISSIONER BORN: Well, I -- this is Brooksley. I know -- for example, I don't know what's on Phil's list; but I know from my own time as the chair of a federal commission, that I tried to meet our deadlines, and generally did. But I remember that the SEC had a number of studies with particular deadlines that they missed by as much as a year, and nothing was ever said.

So I think it's terribly important that we do our job well. I've become convinced that to do our job well, we won't be able to get the report published and to Congress and the President by December 15. And, therefore, to ensure that the investigation is appropriately completed and the report documents it appropriately, I move that the Commission determine that it shall deliver its report in January 2011 and that the Commission adopt the changes to the rules proposed by the chairman as we have received under Agenda Item 7.

CHAIR ANGELIDES: And in terms of the ability to inform?

COMMISSIONER BORN: I further the Chair should be authorized to inform the President and Congress of this action immediately and that the

information be made public.

CHAIR ANGELIDES: All right.

There's a motion on the floor.

Is there a second?

COMMISSIONER GRAHAM: Second. Second.

CHAIR ANGELIDES: The second was from Bob Graham. All right.

I think we will -- Bill, any more discussion on this matter?

COMMISSIONER WALLISON: Yeah, I have some discussion, Phil.

CHAIR ANGELIDES: All right.

COMMISSIONER WALLISON: This is Peter.

And I worked to the deadline of December 15th. I take it seriously, as Keith does, the statutory requirement. And I'm going to be prepared on December 15 to release what I have written because I think that's what we originally agreed.

In addition, I'm influenced in this by the fact that you have also proposed that a vote of the Commission could separate a dissenting or a separate statement of some kind from the report of the Commission, and publish it in different volumes.

CHAIR ANGELIDES: That's a separate -- that's a separate item, but

you're free to --

COMMISSIONER WALLISON: I understand it's a separate item. I understand it's a separate item, but I have to take that into account.

I am not sure that there will be a report at the rate things are going. We were first promised a draft in April. We don't -- we haven't seen the full report yet. So I am not prepared at this moment to say that I will not release what I have written on December 15th.

CHAIR ANGELIDES: But, of course, you would be subject to any compliance with our confidentiality restrictions.

COMMISSIONER WALLISON: I will. And, of course, if I am at that point, I will have to say that there are certain things that are not in my report because the Commission has refused to agree to allow them to be made public. But that's a different question right now. We'll see what happens.

But I am not prepared to say, whatever the Commission votes now, that that can overcome a statutory requirement and bind me.

CHAIR ANGELIDES: All right.

I'm going to leave -- I should probably leave this well enough alone.

We still have distributed the drafts to all members; and comments on the drafts are welcome, I might add.

We have not received them from any members who appear to be very

anxious to meet the deadline.

All right, but I think we've said --

VICE CHAIR THOMAS: Phil?

CHAIR ANGELIDES: Yeah.

VICE CHAIR THOMAS: Phil?

CHAIR ANGELIDES: I mean, it's a frustration, Bill.

VICE CHAIR THOMAS: Yeah, I know.

CHAIR ANGELIDES: I mean, Bill, I think everyone's worked here in good faith; but also we've had no comments on drafts, we've had people unable to make meetings. So I don't think this -- I think what we ought to try -- I think we're trying to lay out what we think is best for a good commission result; and I respect also the views I've heard on the other end. But I just at least have to say that there's been an honest effort here to try to move this timely. And so when someone says that we haven't, the absence of participation in the document doesn't necessarily lend to moving it timely. I just had to say that for the record.

VICE CHAIR THOMAS: That's fine.

And for the record, when did we get the hard copy of the language that you now have in front of us, which has been moved without, I consider, a complete debate?

CHAIR ANGELIDES: If there's more members who want to comment, let's hear it.

COMMISSIONER BORN: Usually, you make --

VICE CHAIR THOMAS: The hard copy --

COMMISSIONER BORN: -- a motion and then debate it.

VICE CHAIR THOMAS: There's been no discussion, to any real extent, about the position that we're going to formally take, that was moved when there was still discussion available.

CHAIR ANGELIDES: Well, let's --

VICE CHAIR THOMAS: So, Phil, if you want something for the record, this looks to me like this was all prestructured, and everybody's got a role to play. And if that's the case, then, fine, go ahead with what you're going to do.

CHAIR ANGELIDES: No, if there's any debate --

COMMISSIONER BORN: Bill -- Bill, I made the motion on the understanding, when I've participated in, for example, the American Bar Association House of Delegates, we make motions and then we debate them. That's the way that procedure goes.

And I assume that my making the motion just framed the question to be debated. I'm not calling for a vote before all discussion has been completed.

CHAIR ANGELIDES: All right, but having said that, is there more discussion? Any comments by members? Any --

VICE CHAIR THOMAS: Let me tell you that if we are going to vote on this, Phil, in my opinion -- and I haven't talked to other people about it, or structured it in any way -- that there are a number of options that we can take. This can be taken at any time.

I don't know the reaction on the Hill. I don't know what's going to happen. It's an entirely different environment than when we started, as you well know. And, now, we're carrying it over to a new Congress, with new chairmen, and a new party majority. I don't know what's going to happen.

Why in the world would we pull the trigger right now, at this telephonic meeting, when we have a month before that deadline occurs? We know what our timeline for working is, we know the difficulty that it's going to be, and we know we probably wouldn't be able to do it.

Why do you telegraph it now?

CHAIR ANGELIDES: Well, I actually believe --

VICE CHAIR THOMAS: The time that is appropriate --

CHAIR ANGELIDES: -- I believe that's to the benefit of Congress.

But, Bill, if there's a --

VICE CHAIR THOMAS: I had no chance to make calls, really, because this didn't come up.

When did we get the written copy as to what the specific was in Item Number 7?

CHAIR ANGELIDES: Okay, yesterday. You and I, though, discussed last week different approaches. And I told you that I believe that what we needed to do was extend it --

VICE CHAIR THOMAS: But I never saw the preparation of the paper, Phil; and I did not involve myself in that discussion, nor did you choose to involve me in working with Gary to complete this piece of paper.

The piece of paper, which is your position, was shown to us yesterday. And we're taking a formal vote to lock us in to not honor the statute, to send off a letter to X number of members of Congress, who we don't know how they're going to react.

I just don't like doing this without having an understanding of what the terrain is that you're asking the troops to take.

That's my position. Thank you.

CHAIR ANGELIDES: Go ahead -- Yes, the floor is open to all members.

COMMISSIONER GEORGIU: Bill -- Bill, let me ask you a question. It's Byron.

VICE CHAIR THOMAS: Yeah. Yeah, Byron.

COMMISSIONER GEORGIU: Would you -- would you -- if you were to add -- make back-channel calls, would you support the continuance of the

delivery of the report until January?

VICE CHAIR THOMAS: My question would be, "What do you think of us, Senator, about us formally changing the rules and then sending you a letter, informing you of what we were going to do?"

COMMISSIONER GEORGIU: Right. But how realistic is that in light of the lame-duck session?

VICE CHAIR THOMAS: It's actually going to happen, unless the senator or the congressman or -woman react based upon what is an anticipated action.

They might say, "Well, you know, do what you think you gotta do, but how come you're doing it formally now?"

COMMISSIONER GEORGIU: Well, but I guess my question to you is, how realistic do you think it is to modify a statute here in a lame-duck session, where people are really not even around? I mean...

VICE CHAIR THOMAS: I would never, ever suggest to you that we ought to try to modify the statute. That's an impossible thing to do, and it makes us look even more removed from an understanding of --

COMMISSIONER GEORGIU: Okay --

VICE CHAIR THOMAS: -- how to *[unintelligible]*.

COMMISSIONER GEORGIU: I mean, I agree with you there; but I guess I misunderstood you. I thought you -- somebody was suggesting that it would be

appropriate to pursue the modification of the statute.

So assuming that that's not realistic, or not practicable, then what are you -- what -- what do you propose as a solution that might pull us all together with regard, at least to this mod- -- relatively moderate procedural determination of when we deliver this report? What would you suggest?

VICE CHAIR THOMAS: I guess in part, Byron, I don't think we can undo the rung bell, because it's in print, people know about it, it's on the schedule; and I guess we ought to just go ahead and vote.

But I'm telling you, the manner in which this --

COMMISSIONER GEORGIU: Well, whose --

VICE CHAIR THOMAS: -- has been exposed, is going to put this Commission inundated with press calls.

COMMISSIONER GEORGIU: When, where --

VICE CHAIR THOMAS: I don't know why we couldn't wait at least until that December 6 or 7 meeting to make the decision. We would have got clear past Thanksgiving without having this schism, which is clearly going to occur in public of the Commission.

COMMISSIONER GEORGIU: When was this -- when did the press --

VICE CHAIR THOMAS: And it's being forced here by a formal vote.

COMMISSIONER GEORGIU: Is the press -- you say the press has

already got this so they're writing about it?

CHAIR ANGELIDES: I'm telling you, John McKinnon from *The Wall Street Journal* already has a question in about, understands the Commission is thinking about splitting its report between findings in December and a report in January. It's not something I put on the table, and certainly I haven't talked to that reporter about. So, I don't know, it seems to me that it's already traveling out of these rooms.

COMMISSIONER MURREN: Phil, it's Heather.

CHAIR ANGELIDES: Yes, Heather?

COMMISSIONER MURREN: For me -- perhaps not for everyone -- but the essential question is really the fundamental as to what our charge is, which is queued, in each one of us' best opinion, do the best work we can, make sure it's thorough, it's complete, and it's articulated in a manner that's understandable to the American people.

And it is my feeling that having another few weeks would be enormously beneficial in making sure that that outcome comes to pass and that we have an excellent, thorough, comprehensive, high-quality report.

I can't speak to the practical realities of it, I can't speak to the press, and I can't speak to the politics of it. But in my mind, all three of those things are less relevant to this discussion than the report itself.

And I think, ultimately, I do think that if we had some more time,

we could do much better work, even with, you know, a small amount of pushing back of our deadline. And I don't think that we necessarily are pressured by time.

And, you know, as I mentioned to you earlier, Phil, this isn't Apollo 13. We're not trying to bring people back from the moon. I mean, time is not the essential characteristic of what we're doing. That's my opinion.

CHAIR ANGELIDES: All right, thank you.

And I just want to say something, Members, as a point of personal privilege. This is not a position I like finding ourselves in, but given that I share Heather's view that the most essential thing is to make sure we can do this well. I am as anxious to get this done in a time frame expected of us; and on a personal note, I know how much commitment of time everyone has put into this. And I know that the team is also anxious, even though we're not Apollo 13, to get the ship back home.

All right, is there any more discussion on this matter by anyone? Because I want to make sure everyone has their say.

(No response)

CHAIR ANGELIDES: All right, I think we have a roll call.

MS. KINNEY NEWSOM: I'm sorry, I wasn't prepared for that one.

Phil Angelides?

CHAIR ANGELIDES: Yes.

MS. KINNEY NEWSOM: Bill Thomas?

VICE CHAIR THOMAS: No.

MS. KINNEY NEWSOM: Brooksley Born?

COMMISSIONER BORN: Yes.

MS. KINNEY NEWSOM: Byron Georgiou?

COMMISSIONER GEORGIU: Yes.

MS. KINNEY NEWSOM: Keith Hennessey?

COMMISSIONER HENNESSEY: No.

MS. KINNEY NEWSOM: Is that a "no"?

COMMISSIONER BORN: We couldn't hear you.

MS. KINNEY NEWSOM: I couldn't hear you. I'm sorry.

CHAIR ANGELIDES: We couldn't hear you, but we think we heard you.

No?

COMMISSIONER HENNESSEY: No.

CHAIR ANGELIDES: Okay, thank you.

COMMISSIONER HENNESSEY: Hennessey. No.

CHAIR ANGELIDES: I'm sorry, it just didn't come through, Keith.

MS. KINNEY NEWSOM: Bob Graham?

COMMISSIONER GRAHAM: Yes.

MS. KINNEY NEWSOM: John W. Thompson?

COMMISSIONER THOMPSON: Yes.

MS. KINNEY NEWSOM: Heather Murren?

COMMISSIONER MURREN: Yes.

MS. KINNEY NEWSOM: Peter Wallison?

COMMISSIONER WALLISON: No.

MS. KINNEY NEWSOM: And Doug Holtz-Eakin, absent.

COMMISSIONER HENNESSEY: Are proxy votes permitted? Doug gave me his proxy.

CHAIR ANGELIDES: I don't believe they are under our rules. But I think we can note for the record in our minutes here, that --

COMMISSIONER HENNESSEY: Okay, so please record "No," it's Doug by proxy, if that's permitted, or as --

CHAIR ANGELIDES: Well, not as a vote. But we can certainly reflect in the minutes, Keith -- and we will -- that you indicated that Mr. Holtz-Eakin told you that he opposed it, all right?

COMMISSIONER HENNESSEY: Correct. Thank you.

CHAIR ANGELIDES: Absolutely.

All right, let's -- let's move on to Item --

(Loud static noise)

CHAIR ANGELIDES: I don't know whose phone that is, but let's try to get through it, huh?

(Loud static noise)

COMMISSIONER BORN: It's not ours.

(Loud static noise)

CHAIR ANGELIDES: Huh?

COMMISSIONER BORN: It's not our phone.

(Loud static noise)

COMMISSIONER BORN: Somebody is making a great deal of static.

(Loud static noise)

COMMISSIONER BORN: Maybe put your cell phones on mute or something like that.

CHAIR ANGELIDES: Can someone who is working on a cell phone be on mute just in case there's wind or something?

MS. KINNEY NEWSOM: Star-six.

(Loud static noise)

CHAIR ANGELIDES: Huh?

MS. KINNEY NEWSOM: Star-six.

(Loud static noise)

COMMISSIONER HENNESSEY: Phil, this is Keith.

It's not me. It might be *[unintelligible]*.

CHAIR ANGELIDES: It might be what, Keith?

(Telephonic tone)

COMMISSIONER BORN: Hello?

(Loud static noise)

UNIDENTIFIED MALE: *[Unintelligible.]*

(Loud static noise)

CHAIR ANGELIDES: Hello?

MS. KINNEY NEWSOM: I'm taking them all off, one at a time, to allow them to speak.

CHAIR ANGELIDES: What are you doing?

MS. EDELBERG: She can mute everybody, and then --

MS. KINNEY NEWSOM: I can mute everybody and then I can unmute them

all.

MS. EDELBERG: -- unmute -- can you unmute one by one?

MS. KINNEY NEWSOM: Yes.

CHAIR ANGELIDES: They can hear us -- they can hear us, right?

MS. KINNEY NEWSOM: Yes, they should be able to.

COMMISSIONER BORN: Okay. So they're all on mute; and now we're going to --

MS. KINNEY NEWSOM: And I'm -- we're going one by one --

COMMISSIONER BORN: -- put them back one at a time?

MS. KINNEY NEWSOM: I'm putting them on, so I can see which one it is.

COMMISSIONER BORN: Okay. Have each one of them speak as you put it on.

CHAIR ANGELIDES: Hello?

COMMISSIONER BORN: Is anybody on?

MS. KINNEY NEWSOM: Yeah, they're all on.

CHAIR ANGELIDES: Can anyone speak?

VICE CHAIR THOMAS: Yeah, I'm on.

UNIDENTIFIED MALE: Okay, so it wasn't you, Bill.

COMMISSIONER BORN: It's not you, Bill.

VICE CHAIR THOMAS: Well, I'm not on a cell phone.

CHAIR ANGELIDES: All right. Let's move to --

COMMISSIONER BORN: Is everybody else back on so that they can talk?

CHAIR ANGELIDES: Keith, are you still on?

MS. KINNEY NEWSOM: No.

COMMISSIONER BORN: No?

MS. KINNEY NEWSOM: Some of them dropped off on their own.

COMMISSIONER THOMPSON: I'm on.

MR. COHEN: Aha.

COMMISSIONER MURREN: Heather's on.

MS. KINNEY NEWSOM: It's John from -- what's John's connection?

CHAIR ANGELIDES: John, what are you on?

COMMISSIONER THOMPSON: I'm on a hard line.

(Loud static noise)

COMMISSIONER BORN: He's on a land line.

CHAIR ANGELIDES: Is it his phone?

COMMISSIONER THOMPSON: *[Unintelligible]* phone.

CHAIR ANGELIDES: What?

COMMISSIONER THOMPSON: I haven't changed my location or anything for the last hour and a half of the day.

CHAIR ANGELIDES: All right.

Well, let's see if maybe it abates, out of luck.

Let's move to the item, which is Item Number --

COMMISSIONER BORN: 8.

CHAIR ANGELIDES: -- Item Number 8, which is the additional or dissenting views procedures.

Are there any -- and, Keith, are you on?

MS. KINNEY NEWSOM: I don't think he's dialed back in.

CHAIR ANGELIDES: Okay, I want Keith on, because I understand he had some issues or concerns on this matter.

MS. KINNEY NEWSOM: Can you call him, or...

CHAIR ANGELIDES: Why don't we -- why don't we start the discussion, though, right now?

(Telephonic tone)

CHAIR ANGELIDES: Keith?

MS. KINNEY NEWSOM: No, that's somebody dropping off.

CHAIR ANGELIDES: Okay.

MS. KINNEY NEWSOM: That's Bill dropping off.

CHAIR ANGELIDES: Bill?

VICE CHAIR THOMAS: Yeah?

MS. KINNEY NEWSOM: Oh, maybe not.

CHAIR ANGELIDES: No, Bill's on. Bill's on.

Well, let's start --

VICE CHAIR THOMAS: Was the action just taken?

CHAIR ANGELIDES: Yes, Bill?

VICE CHAIR THOMAS: Gary?

MR. COHEN: Yes?

VICE CHAIR THOMAS: Would you give me the context in which the Commission is now operating based upon the reports?

(Loud static noise)

MR. COHEN: Excuse me?

(Telephonic tone)

COMMISSIONER BORN: Bill, we didn't hear you.

VICE CHAIR THOMAS: What is the structure and operating procedure of the Commission [unintelligible] --

(Loud static noise)

CHAIR ANGELIDES: Okay, we're having a -- we're having a -- we can't -- we're getting -- we should --

MS. EDELBERG: Can you mute everyone but Bill?

MS. KINNEY NEWSOM: Yes.

(Loud static noise)

COMMISSIONER BORN: Okay, we're going to mute everybody --

CHAIR ANGELIDES: We're going to mute everyone but Bill for a minute, if you would all please stay with us.

Bill, go ahead.

MS. KINNEY NEWSOM: Hold -- give me one second, okay?

COMMISSIONER BORN: Because we can't hear you, Bill --

VICE CHAIR THOMAS: No, the question is --

COMMISSIONER BORN: -- because of the static.

VICE CHAIR THOMAS: -- based upon the recorded vote just taken in terms of the structure of the Commission, the actions of the Commission.

Because we have a significant recorded split vote on a fundamental action of the Commission. And my assumption is, this is now the governing structure of the Commission; is that correct?

MR. COHEN: Well, this is an amendment to the rules of the Commission, yes.

VICE CHAIR THOMAS: So we have an amendment to the rules.

What if it is not found acceptable by the Congress or a member of the Congress that we're going to send the letter to? Are they going to have to vote to have a majority accepting it?

MR. COHEN: I think we're not asking for approval. We're just informing the Congress that the report will be delayed. I don't think there's a request for permission. I think it's a notification.

VICE CHAIR THOMAS: And what, therefore, is the rule and function of the statutory date in the legislation that created the Commission? Is that null and void?

MR. COHEN: No, I think that the statutory date is still the date.

CHAIR ANGELIDES: Yeah, we didn't affect that. We're going --

MR. COHEN: We're not -- we can't change that.

CHAIR ANGELIDES: We're going to miss the date --

VICE CHAIR THOMAS: Is the commissioner in violation if they alter

the statutory date?

MR. COHEN: If they which the -- if they --

MS. EDELBERG: *[Unintelligible]* is Peter in violation?

CHAIR ANGELIDES: No, I don't think Peter's in violation.

I don't know that he can release documents on his own.

But -- I'm not an attorney, Bill; but, no, I don't know that someone's in violation.

VICE CHAIR THOMAS: Well, we should know the consequences if we've now taken a formal vote and some people were excited about doing it, so that we have a clear understanding of what commissioners, who were on the losing side of that vote, in a dilemma in which the Commission has now created a new date, by vote, when we are still governed by a fixed date by statute.

Is the commissioner in violation of the Committee rules, and will they be sanctioned if they follow the statute, notwithstanding the fact the majority of the Commission chose to ignore it?

MR. COHEN: It doesn't appear to me that a single commissioner can comply with the statute on his own. It's not the Commission's report, Mr. Vice Chairman.

The Commission is to deliver a report under the statute by December 15th, not an individual commissioner.

VICE CHAIR THOMAS: Well, then you've put a number of us in a real dilemma about whether we can stay on the Commission. I just want you to know that.

MS. KINNEY NEWSOM: I'm going to unmute all.

COMMISSIONER BORN: Okay. So now Gretchen is unmuting the rest of the people on the phone, so they can speak if they wish.

VICE CHAIR THOMAS: So all the commissioners weren't present when I made those statements?

CHAIR ANGELIDES: No, they heard.

COMMISSIONER BORN: They were just muted so that we could hear you, Bill.

CHAIR ANGELIDES: And they --

VICE CHAIR THOMAS: Gotcha. Gotcha.

CHAIR ANGELIDES: Everyone heard it and -- and who is on the -- everyone heard it is on the phone; they just couldn't comment because we were trying to find the source of the static.

VICE CHAIR THOMAS: Gotcha.

MS. KINNEY NEWSOM: They're all on now.

CHAIR ANGELIDES: All right.

MS. KINNEY NEWSOM: For the ones who are still on.

CHAIR ANGELIDES: All right, now, there is the next item, is Item 8 on "Separate and Additional Views." And this was a process which I, at the last meeting and also in an e-mail to Keith, said I would bring forward.

And I guess we should just open discussion about this.

Keith, are you on?

COMMISSIONER MURREN: May I ask a question?

We do not have materials on this particular number; is that correct?

CHAIR ANGELIDES: Yes, you do.

MS. KINNEY NEWSOM: Yes, you do.

COMMISSIONER MURREN: Actually, you're right. I'm sorry. I have them in front of me.

CHAIR ANGELIDES: Keith, are you on?

COMMISSIONER BORN: Maybe somebody should call Keith, since he wanted to comment on this.

(Telephonic tone)

CHAIR ANGELIDES: Keith?

Let's do a new roll call quickly.

MS. KINNEY NEWSOM: Sure.

Phil Angelides?

CHAIR ANGELIDES: Here.

MS. KINNEY NEWSOM: Bill Thomas?

VICE CHAIR THOMAS: Here.

MS. KINNEY NEWSOM: Brooksley Born?

COMMISSIONER BORN: Here.

MS. KINNEY NEWSOM: Byron Georgiou?

COMMISSIONER GEORGIU: Here.

MS. KINNEY NEWSOM: Bob Graham?

COMMISSIONER GRAHAM: Here.

MS. KINNEY NEWSOM: Keith Hennessey?

(No response)

MS. KINNEY NEWSOM: Doug Holtz-Eakin?

(No response)

MS. KINNEY NEWSOM: Both absent.

Heather Murren?

COMMISSIONER MURREN: Here.

MS. KINNEY NEWSOM: John W. Thompson?

COMMISSIONER THOMPSON: Here.

MS. KINNEY NEWSOM: Peter Wallison?

COMMISSIONER WALLISON: Here.

MS. KINNEY NEWSOM: Okay, so it's just Keith and Doug.

CHAIR ANGELIDES: All right, let's talk about Item 8. I sure hope we can -- is Keith not rejoining us? Do we have any indication?

MS. MAYO: I called on my line. No.

CHAIR ANGELIDES: Because I know he had some comments and questions about this.

COMMISSIONER BORN: Well...

CHAIR ANGELIDES: All right, are there comments and questions about this item?

(Telephonic tone)

COMMISSIONER WALLISON: Well, if no one else has any, I will --

CHAIR ANGELIDES: Why don't you --

VICE CHAIR THOMAS: Who came on?

CHAIR ANGELIDES: Well, who just came on?

COMMISSIONER BORN: Or did we lose someone?

VICE CHAIR THOMAS: Or maybe somebody left.

MS. KINNEY NEWSOM: Sorry, I wasn't watching. I can't tell. I wasn't watching.

CHAIR ANGELIDES: If someone -- you e-mailed Keith and told him specifically that --

MR. COHEN: I just sent him an e-mail.

CHAIR ANGELIDES: -- because I know he had issues on Item 8.

Peter, why don't you start?

COMMISSIONER WALLISON: Well, I look at this as simply a breach of faith. Very serious, very -- and unacceptable to me.

But what it provides -- as you know, you've read it -- is that the Commission can at any time decide that anything that is a dissenting statement or a separate statement --

(Telephonic tone)

COMMISSIONER WALLISON: -- or a different statement, can be placed in a separate volume in the report that goes to Congress and the President.

In addition, in the commercial book, if there is one, any separate statement is limited -- according to the proposal, at least -- to about 2,500 words. So you know, I can't even imagine why someone would do something like

this. It is -- it is something that goes way beyond anything I might have expected to be put before us. It changes completely the nature of this Commission at the last minute.

If you told us this at the beginning, then we might have had a completely different attitude toward the whole Commission. But keeping this to the end, a very -- a very partisan move to depress dissent is simply unacceptable.

And the idea that the Commission can vote at some later time to separate a separate statement or a dissent from the regular report, put it in a different volume -- I mean, what you just did, this vote you just took is an example of what's going to happen to anyone who waits to the end, in good faith, to supply a separate statement.

The answer will be, "No, you'll be put in Volume 2." And it's unbelievable to me that you would do it.

CHAIR ANGELIDES: All right, so let me --

COMMISSIONER HENNESSEY: Keith just joined.

CHAIR ANGELIDES: Oh, good. I'm glad you're back, Keith.

COMMISSIONER HENNESSEY: Keith is here.

CHAIR ANGELIDES: Good. Thank you, Keith, because I know you had concerns about this.

So, Peter, let me respond to your comments.

First of all, with respect to this, the provision you're referring to about the separate volume was only a function not knowing the length of what people were intending in the way of dissents, which apparently has been the focus of the work, whether those were 100, 200, 400 pages; and whether, physically, they had to be separated. There's no real desire to separate under 3.B.1 and 2 into separate volumes; but only if a physical determination was made by the GPO that that would somehow be necessary in the production of the report.

I have no idea, sitting here right now. Apparently, you've been very actively working on a dissent. I don't know if it's 20 pages, 50 pages, 100 pages, 400 pages. So that's what that was. That was mechanical.

That -- the intent is not to just plop those into a separate document; but if it --

(Loud static noise)

CHAIR ANGELIDES: -- but if it was physically required --

(Loud static noise)

CHAIR ANGELIDES: -- required then -- if it was physically required to separate into two volumes, that was that.

Secondly, in terms of the commercial publication, there is a limited number of pages that have to be accommodated in that version.

And I might say that if we do not, apparently, you wouldn't be

joining -- you intend to have an additional or dissenting view. But I should indicate that at least the current thinking in terms of major findings of the majority is -- you know, to be succinct, this was to -- basically, we have to be within a -- there's a -- within a page budget.

So with the commercial version -- there is no limitation on the Web, no limitation in the official report; and it was only a reflection that the commercial publisher needs a certainty in terms of the length of document, period. That's all it is.

It's not a partisan move, it's not an attempt to quell dissent. Everything goes on the Web. Everything goes in the official report without limitation.

And I might add, just because things are being said, if you look back through a whole set of precedent of commissions, most of the commissions, again, that I've looked at for precedent had extraordinarily limited size of dissents. They were all in the order -- you know, they tended to be on the order of two or three pages; some, you know, did run up to -- I think the congressional oversight panel had anywhere between six and 36 pages. They were on the upper end.

The decision here, in terms of our procedure, was not to limit in any way, shape, or form, the amount that was placed on the Web or in the official report.

If the objection is to a second volume, genuinely, folks, that was a

mechanical issue. You know, if the GPO can accommodate it all in one volume, God bless.

COMMISSIONER WALLISON: Then why is the Commission supposed to be voting on it?

CHAIR ANGELIDES: They don't need to.

MR. COHEN: Somebody has to make the decision.

COMMISSIONER WALLISON: Well, why is it in there?

CHAIR ANGELIDES: Well, for the very reason if the GPO comes back and says it's impractical.

Now, I don't know --

VICE CHAIR THOMAS: *[Unintelligible.]*

CHAIR ANGELIDES: Excuse me, sir?

COMMISSIONER HENNESSEY: Phil, this is Keith *[unintelligible]*.

VICE CHAIR THOMAS: Why are we -- why are we anticipating what the GPO might do? Have we talked to them? Do we know that?

CHAIR ANGELIDES: Gary?

MR. COHEN: Yeah, I have talked to them. They can -- they can print a very fat book and, depending upon the size of the additional views, it may or may not be an issue.

The publisher, the commercial book, you know, we're looking at a cap of about 500 pages, I think; and the GPO -- or less. The GPO can print 700, 800 pages, they've told me. So, you know, if the additional views are not more than a couple hundred pages, I think it's one volume.

CHAIR ANGELIDES: I mean, do you have any sense --

COMMISSIONER HENNESSEY: Phil?

CHAIR ANGELIDES: -- any sense of length, gentlemen?

COMMISSIONER HENNESSEY: Yeah, Phil, this is Keith.

CHAIR ANGELIDES: Yeah, Keith.

COMMISSIONER HENNESSEY: Can I offer what I think is a constructive suggestion that can square the circle here?

CHAIR ANGELIDES: Yes.

COMMISSIONER HENNESSEY: Because what I'm hearing, I don't think that the goals are in conflict.

CHAIR ANGELIDES: Okay.

COMMISSIONER HENNESSEY: And I take what you're saying at face value in terms of your intent and yet your constraints from a publishing standpoint.

Peter -- you know, Peter has told us that he's working on an additional view. I have been working on an additional view. I'm not sure what

I'm going to do with it or if I'm going to do something with it.

But my suggestion is that we decide, as a commission, that anyone who is considering submitting an additional view should commit themselves to the Commission to a maximum word length.

So maybe Peter would say, "My additional view will not exceed" -- I don't know, I'm making this up -- "around 14,000 words."

And I would say, "If I have an additional view, it will not exceed, I don't know, 9,000 words." Whatever -- whatever the numbers happen to be.

Then we take all of those numbers and add them up; and that's a commitment on the part of the person who is considering submitting an additional view. And then we add those words up and we go talk to GPO. But that we not change the rule to make the decision at the end of the process. If what you need is a fixed length budget, then let's have everybody say, "My view will be no longer than X," and let's see if we can actually fit those into a fat volume.

I'll tell you, as a Hill staffer, I remember that the Ways and Means Committee, which Bill used to chair, had something called the Green Book, which was probably three and a half to four inches thick.

So I've got to believe that there's a way to allow Peter and me and others to get in, you know, 10,000 words, 15,000 words, whatever it might happen to be, and not get into publishing problems.

But it seems to me we don't change the rules other than to require individual commissioners to commit, you know, fairly soon to a maximum word budget.

CHAIR ANGELIDES: Yeah, so I think with respect to the GPO, this was not an issue.

And, I mean, I would just say right here and now, that if people want to delete 3.B -- I don't want to get ahead of everyone else here -- I don't have a problem with that. I'm sure we can work it out with GPO, Keith, all right?

I do think with a commercial publisher, we have a significant issue. And I just want to put something on the table in terms of the views that the majority would express if, in fact, we can't come to some common denominator, you know, which would be the actual official findings of the report.

We're not looking at a hundred pages. We're going to be subject to a pretty regimented budget. So I do think the commercial version, there has to be -- there has to be a tighter limit than ones in the GPO. It's just a fact.

COMMISSIONER BORN: When you're talking about findings, you're not talking about the kinds of narrative that we've been --

CHAIR ANGELIDES: No, correct.

COMMISSIONER BORN: -- getting, which --

CHAIR ANGELIDES: No. Narrative or specific observations by the Commission on that narrative.

But I assume that an additional view would be -- would be, "Here's what either I" --

COMMISSIONER BORN: Separate views.

CHAIR ANGELIDES: Yes, separate views on the causes, yes.

COMMISSIONER BORN: Right.

CHAIR ANGELIDES: But I do think we need a word budget, Keith, there for the commercial version. I just think that's a fact.

COMMISSIONER HENNESSEY: Have we been told by the commercial publisher --

CHAIR ANGELIDES: Yes.

COMMISSIONER HENNESSEY: -- that there is a maximum word length?

CHAIR ANGELIDES: Yes.

COMMISSIONER HENNESSEY: And what is that maximum word length?

CHAIR ANGELIDES: Wendy knows it. I don't know it. But it comes down to about 480 pages -- correct? And they need to set that.

MS. EDELBERG: Right, so that the actual -- the actual number of words will probably be dependent on, you know, specifics, like typesetting and

font size. But, yes, we are -- we are somewhere around 480 pages.

COMMISSIONER HENNESSEY: 480 pages? Okay.

CHAIR ANGELIDES: Of which most -- of course, which most of it, Keith, will be the narrative that is being circulated, for example, all right?

VICE CHAIR THOMAS: If we choose it --

COMMISSIONER HENNESSEY: Right.

VICE CHAIR THOMAS: If we choose it to be.

COMMISSIONER HENNESSEY: Right. And what I'm asking here is --

CHAIR ANGELIDES: Correct.

COMMISSIONER HENNESSEY: -- why -- why don't we have to allocate, it sounds like, 400-plus, or 420 or 430-plus of 480 pages to one view, even if that is the view of six commissioners? Why can't we allocate, you know, a significant share; or why can't we go back to the commercial publisher and say, "We'll pay you more for a longer length"?

CHAIR ANGELIDES: It's not a matter of paying more. They're just saying, they just don't --

COMMISSIONER BORN: They won't do it.

CHAIR ANGELIDES: They won't do it, and...

Well, but it's also not something that they believe that the public

will in any way take up, period. That's in their lengthy experience.

And, by the way, I wouldn't -- I wouldn't say --

VICE CHAIR THOMAS: Wait a minute, wait a minute.

I've -- I've let a lot of stuff go here; but, Phil, for you to tell me that the publisher is going to not tell us it's 480 pages, but they're also going to tell us what is going to sell and not going to sell, and they've told you that dissents don't sell and you have --

CHAIR ANGELIDES: No, they didn't say -- no, they never said -- I never said -- they didn't say dissents didn't sell. I just talked about a length of the volume, Bill.

VICE CHAIR THOMAS: Let me finish. Let me finish.

CHAIR ANGELIDES: Well, but...

VICE CHAIR THOMAS: Let me finish.

You have specified a fixed number of words for dissents. I think it equals somewhere, roughly, five pages.

You have 480 pages to spend. You have told four members who might be interested in a dissent, they get 20 pages. You have 460 pages for the majority.

CHAIR ANGELIDES: Well, I don't agree with your char- --

VICE CHAIR THOMAS: It seems to me you are creating a fundamental

schism here by talking about having to deal with a publisher. And I heard some very strong language about what this Commission should be committed to do in terms of doing a good job; and yet you're willing to submit for another recorded vote the fact that a member who wishes to dissent gets five pages, and everybody else in the majority gets 480 pages to do their -- 460 pages to do their thing.

CHAIR ANGELIDES: So, Bill, let me just -- I need to say this.

So your characterization is, the narrative that the staff is --

VICE CHAIR THOMAS: *[Unintelligible]* --

CHAIR ANGELIDES: Now, let me just say --

VICE CHAIR THOMAS: -- the publisher --

CHAIR ANGELIDES: Now, let me just --

VICE CHAIR THOMAS: -- the publisher as an excuse --

CHAIR ANGELIDES: No, Bill.

VICE CHAIR THOMAS: -- for limiting dissents.

CHAIR ANGELIDES: No, Bill, I'm not --

VICE CHAIR THOMAS: We can make it 400 pages and 80 for dissents.

We can make the story of 300 pages and 180 pages for dissent. That's a decision the Commission can make.

You're making it through the back door on limiting the dissent.

CHAIR ANGELIDES: No, Bill, now, let me just say something here. So you're saying that the three- to four-hundred-page narrative that the staff is preparing of the results of the examination are, in fact, quote, unquote, "our view."

You and I sat in my office, where I said, "What do you think the length is going to be of the additional or dissenting views?" And you thought they might be -- and this is my recollection -- in the 10- to 15- to 20-page period.

We are looking --

VICE CHAIR THOMAS: I was not --

CHAIR ANGELIDES: Hold on.

VICE CHAIR THOMAS: Phil, if you're going to -- if you're going to put words in my mouth, I was not speaking for Peter.

CHAIR ANGELIDES: Well, that's fine. But you are characterizing the body of the report that we will adopt as fully our views. In other words, you're saying that the Commission investigation and narrative --

VICE CHAIR THOMAS: I didn't say that.

CHAIR ANGELIDES: -- is all our 480 pages. It's just -- it's -- that's ludicrous. We're not taking all 400 pages to lay out our views.

We may take --

VICE CHAIR THOMAS: Then what is the number of pages available to the majority for their view? That isn't in here.

CHAIR ANGELIDES: Because --

VICE CHAIR THOMAS: You have dissents limited to a number of pages. You don't have the majority findings and conclusions to a limited number of pages. You have 460 pages available to you the way that language is structured.

CHAIR ANGELIDES: And so you think we're going to take 460 pages just to lay out our --

VICE CHAIR THOMAS: I don't know what you are going to do, Phil. You haven't talked to me. I only saw this language for a day. But it limits a five-page --

CHAIR ANGELIDES: But, Bill --

VICE CHAIR THOMAS: -- dissent, and it does not limit the majority to their conclusion or advocated policy position.

CHAIR ANGELIDES: Well, first --

VICE CHAIR THOMAS: That's the story and the majority and the minority.

You've limited the minority, very clearly, to virtually nothing.

CHAIR ANGELIDES: Well, first of all --

VICE CHAIR THOMAS: *[Unintelligible]* the majority.

CHAIR ANGELIDES: First of all, there is a report, and then there are additional and dissenting views.

Anyone else want to comment?

COMMISSIONER BORN: Well, let me just say this. It's hard to have this discussion without any kind of picture of what the dissenting views' length are. We -- it seems --

VICE CHAIR THOMAS: Or the majority's view.

COMMISSIONER BORN: Well, everybody has been seeing the report coming out.

CHAIR ANGELIDES: Everything is shared every day.

COMMISSIONER BORN: You know, and we're all asking you to comment.

I understand that you haven't been commenting. I'm sorry you haven't been commenting. I urge you to --

CHAIR ANGELIDES: Bill has -- Bill has -- Bill has been.

COMMISSIONER BORN: -- do so.

VICE CHAIR THOMAS: No, no --

CHAIR ANGELIDES: Bill has been.

COMMISSIONER BORN: But --

VICE CHAIR THOMAS: -- wait a minute. Are you telling me that the story is the majority's findings and conclusions?

COMMISSIONER BORN: I am sure there will be additional findings and conclusions that will accompany the narrative.

But let me just say this: We are saying that everything will be on the Web site, without any restrictions. So if the minority wants to write a thousand-page document, that can be on the Web site.

We're also saying that the dissenting views can be in the GPO report, whether or not GPO will come and say, "We can't put everything in a single volume," I don't know. But let's just leave it up to GPO to decide how they can do that.

All the dissenting views will be there.

The question is, now, how long the dissenting views, included with the Commission's report, in the commercial book could be. And it's very hard.

I mean, Phil has come up with 2,250 words, five typeset pages. If we knew that what people wanted was seven pages or ten pages, you know, we could certainly consider that. But without any information from your side as to what the interest in terms of length is for inclusion in the commercial book, I don't see how we can just say whatever you want. You know, you can overwhelm the whole book.

CHAIR ANGELIDES: Yes, and, Bill, it was put in --

VICE CHAIR THOMAS: Okay, so I have --

CHAIR ANGELIDES: -- brackets because I do think --

VICE CHAIR THOMAS: The question -- the question is, how many pages are the minority going to be available to present the majority's point of view?

If you're telling me that this story is going to be socked full of the majority's position, that isn't my understanding of how we were going to write the body of the story, and that the chairman offered findings and conclusions which clearly appeared to be separate from the story.

So if we're not going to have majority's views, minority's views, and a story, but we're going to have 20 pages of minority dissent, and 460 pages of the majority's position available to you, you won't limit the majority's position here. Why don't we put down a number of pages that you get as the majority, and the rest has to be fairly objective story-telling?

CHAIR ANGELIDES: So, Bill --

VICE CHAIR THOMAS: You're letting the argument of the publisher in writing a book control the voice -- the ability to speak, to present a position to the minority on this commission.

I find it ironic that the publisher is going to be the one who limits our ability to express ourselves, and you are unwilling to limit your ability to express yourself.

That is not called a "majority." Minorities have rights. You are assigning a fixed number; and by vote, you are opening yourself up to whatever you want to do for the rest of the pages.

COMMISSIONER HENNESSEY: Bill, what about my suggestion to ask people for word budgets for the --

VICE CHAIR THOMAS: I don't have a problem --

COMMISSIONER HENNESSEY: -- actual report that *[unintelligible]*.

VICE CHAIR THOMAS: -- with that. But I think it should be open to everybody, including the majority on a word budget.

CHAIR ANGELIDES: Well, except the one thing I want --

COMMISSIONER HENNESSEY: I agree.

CHAIR ANGELIDES: Okay, the one thing I want to say, though, on the report itself is, the report itself is the report itself, which we will all consider as a commission.

Within that report, for example, I have heard members of both sides here say that, for example, when you get -- here's an example -- that the decision to save Bear, not save Lehman, was problematic. I have heard people say that, with respect to the -- what happened with Lehman was, it may not just have been on the basis of legal authority.

Those may -- those kinds of items may well be in the body, the chapters of the report.

We are not -- I'll just tell you right now, there's no way that -- I don't know what Peter's length is. I don't think the majority, in terms of major findings and conclusions that would go at, for example, the front of this book, I don't think anyone here is contemplating a hundred pages.

VICE CHAIR THOMAS: Okay, are you limiting yourself to a hundred pages?

CHAIR ANGELIDES: Let me -- for what, Bill? For findings and conclusions?

VICE CHAIR THOMAS: These findings and conclusions.

If the minority is 20 pages, how about we take a hundred pages, and we make it 60-40? You get 60, we get 40?

CHAIR ANGELIDES: All right, I -- I hear what you're saying.

The goal here -- first of all, let me just start at the beginning here. Remember how this all starts, which is that unlike a lot of other commissions, the deliberate effort here was not to limit in any way on the Web and GPO version what could be done or said, or to truncate anything of anyone who had an additional or dissenting view.

We do have a legitimate page budget to meet in a commercial publication; and so we are trying to do this in a way that I thought was fair and reflective of what at least, Bill -- and I'm not putting words in your mouth -- I had understood. So --

VICE CHAIR THOMAS: Are you getting the feeling that maybe that's not the case since we just had one day to see this?

CHAIR ANGELIDES: Well, you and I have talked about this previously on a number of occasions.

VICE CHAIR THOMAS: But not -- not in a formal, structured way, Phil.

Come on, quit acting like I knew anything that was coming out over the last few days. And do you think I would have allowed something that said that you get 2,500 words, and each of you get that, and we get the entire rest of it because the publisher -- and I don't know that the publisher said no.

I think you've created a structure here, and we're telling you that it's way too confining.

CHAIR ANGELIDES: Well, first of all, let me --

VICE CHAIR THOMAS: *[Unintelligible]* --

CHAIR ANGELIDES: Okay, maybe we should break on this issue and reconvene. But also, I think there is some --

VICE CHAIR THOMAS: *[Unintelligible]* --

CHAIR ANGELIDES: Look, we want to make sure dissenting views are heard. But I do want to say, the report is the report. It's not like there's two reports here.

There is a report. There is a report that goes to Congress, adopted by a majority of the Commission. That's just the way it is. And this was not set up to say there's going to be a majority and a minority report.

I think what Keith's suggestion is, if people want to file additional dissenting views -- and, you know, it seems to me that a lot of the focus has been on just that for the recent past -- then people ought to say, "Then here's the budget we need," and we can -- let's see if that can be accommodated.

But I don't think we want to get into discussion about if we have a report now, beginning to constrain what the report says. But if people have legitimate budgets that they're considering right now, then we ought to be able to consider those legitimate budgets.

We may be arguing if -- you know, if Keith is saying, "I'm thinking about 7,000 words," you know -- or, I don't know, I'm just being hypothetical -- and I don't know if you, Bill, Keith, and if you guys are thinking of a joint dissent, if there's a budget for it, then I think what's important to do is say, "Here's what we think we need to express our view."

COMMISSIONER HENNESSEY: So what we --

VICE CHAIR THOMAS: So putting on a piece of paper with a fixed number of words for the minority and no limit to the majority?

CHAIR ANGELIDES: Well, there's no limit on the report, Bill. There's no limit on the report.

COMMISSIONER HENNESSEY: Yeah, but, Bill, as long as -- as long as I have enough words to say my additional view, I don't care how much is left for everybody else.

And I'm willing to -- if Phil wants to set a date, by Friday or Monday of next week, I'm willing to give a commitment that I can live with no more than X words for, you know, for my additional view, if I were to have one. I don't know if Peter is willing to do that.

But then couldn't we have this discussion from a more concrete standpoint?

CHAIR ANGELIDES: Yeah, I think -- I think concrete --

COMMISSIONER HENNESSEY: *[Unintelligible]* you and I have enough words.

VICE CHAIR THOMAS: And I apologize that Doug could not make it because I'm sure he has a view on this.

CHAIR ANGELIDES: Yeah, but I would say that I think Keith's suggestion merits something.

But even if, you know, the view from Peter would be, "Look" -- and I'm not -- "I want 200 pages," that can be accommodated in the GPO version and on the Web. There's no stifling of dissent in any form.

COMMISSIONER WALLISON: Let me --

COMMISSIONER HENNESSEY: But, Phil, why -- why preclude from that

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from the commercial report until we've seen what those numbers actually are?

CHAIR ANGELIDES: Let's see what the numbers are. Exactly. But I also think --

COMMISSIONER WALLISON: No, I'm not -- this is not -- this is not satisfactory to me because, as I said when I started out, there was a breach of trust here in this proposal.

And I don't believe -- I'm not -- I cannot believe anymore that whatever number I provide will be agreed to, abided by, when the Commission comes to vote on what gets into the report as a separate statement and what does not. Because I just saw the Commission change the statutory requirement that we report by the middle of December, to something else. Sometime in January.

And so when we get to January, and maybe there is a report, and I submit something, and I'm supposed to have a certain number of words, well, actually, it turns out, we're not going to have that many words allowed in any report, and the Commission will vote. And it will probably be 6 to 4, maybe it will be 9 to 1. But there will be a vote, and whatever I submit will -- could be excluded.

So it is no longer possible to agree, to me, from my point -- to agree that we'll all submit some words -- word numbers, and that will be sufficient for the commercial report, or any other element of what the Commission is doing.

I think a very serious error was made in putting out this Item 8.

CHAIR ANGELIDES: So you -- Peter, I just need to ask you; so you think if there's a commission report of 200 pages, what would be sensible is a single member could submit 300, and that would be what would be fully published in the commercial part? You think that that's a reasonable approach?

VICE CHAIR THOMAS: Five pages. We're talking five pages, not a hundred.

CHAIR ANGELIDES: Well, I --

COMMISSIONER BORN: Well, that's the question, isn't it, Bill?

CHAIR ANGELIDES: I don't know that it's not a hundred, Bill.

COMMISSIONER BORN: Peter says he won't give us a number.

VICE CHAIR THOMAS: *[Unintelligible]* we make a decision. What's wrong with that?

COMMISSIONER WALLISON: At the time that the report comes -- whatever we say tonight -- you've just asked me to give you a number. And if I gave you a number and then I came in at that number, nevertheless, at that moment, when the report is to be decided what goes into the report, this Commission, as I now see, can vote 6 to 4, or 9 to 1, that that's too -- that that is too large.

Yes, I know we agreed at the beginning that you could submit whatever number you wanted; but it's really too large. Because we did agree at

the beginning of this Commission that anyone could file a dissent; and we did not add any restriction on the size of that dissent.

And saying it is going to go on the Web or saying it is going to -- it will be -- there will be photographs of it, or whatever you want to do -- there will be a puppet show -- I don't think any of that means anything.

Whatever a commissioner submits, which is intended to modify in some way or express disagreement with what the main report says, should be, according to our original rules, accepted.

CHAIR ANGELIDES: Well, we are accepting it on the Web and the GPO version.

And I'd like -- I'm just --

MR. COHEN: That's what goes to Congress.

CHAIR ANGELIDES: What goes to the President and Congress and the Web is being fully accepted.

And I -- I mean, the only thing, Peter -- and I think we should draw this to a close. You have made it clear you're not even commenting on the report.

So with respect to talking about participation on this Commission, you have made it clear for months now that you're not even commenting on the draft. So your whole focus has been --

COMMISSIONER WALLISON: That's false.

CHAIR ANGELIDES: -- the dissent.

COMMISSIONER WALLISON: That -- that is false.

I did make a statement in the last meeting we had about why I am not commenting on the fact statement that had been distributed.

I have not said anything about what I will do with other parts of the report, and I have not yet seen anything that describes what caused the financial crisis.

So merely making statements of fact about what happened with Merrill Lynch and what happened with AIG and so forth is all very nice. And I said, actually, that I thought it was rather well-written. But it's irrelevant to what the Commission is supposed to be doing, which is to tell Congress and the President what caused the financial crisis.

When that comes along, I well could have some comments on that. Not that I expect that they will be accepted, because none of my other suggestions so far have been accepted; but I do believe that that would be the appropriate time to make the comment.

So don't say I haven't participated. I've been at every meeting of this Commission -- mostly present at these meetings --

CHAIR ANGELIDES: I agree.

COMMISSIONER WALLISON: -- and always by phone if not present. So I have participated, and I've been at every hearing.

Don't start with me that I have not participated and been a participating commissioner, because it is not true.

CHAIR ANGELIDES: All right. All right, now, I think -- but I want to hear from other members -- that Keith's suggestion, even though Peter, I know, doesn't agree with it, as to a -- kind of what the need is, is a good place to start, so that maybe this discussion doesn't need to be hypothetical, it can be real.

So, Bill, to the extent that that's something that at least Keith, Doug, and you want to be able to say, "Here's what we think we need," that would be very helpful.

VICE CHAIR THOMAS: Well, it would, but you're probably going to need more than a day or a half a day.

CHAIR ANGELIDES: Yeah, that's fine.

VICE CHAIR THOMAS: And I guess part of the problem is, we have in front of us -- I don't think it's been moved yet -- but I thought the story was that you always move something so you have something to discuss.

CHAIR ANGELIDES: Well, it hasn't been moved because it's been discussed --

VICE CHAIR THOMAS: No. No, but we were just told earlier that you -- that someone moved it so that we would have something to discuss. That's what the attorneys' division always did. But we haven't moved this. We've

had --

CHAIR ANGELIDES: Right.

VICE CHAIR THOMAS: -- a very good discussion. But there's nothing locking us in.

CHAIR ANGELIDES: Yes, so we --

VICE CHAIR THOMAS: I was just trying to --

CHAIR ANGELIDES: We should --

VICE CHAIR THOMAS: -- *[unintelligible]* why Item Number 8 is being handled differently than Number 7?

CHAIR ANGELIDES: Well --

VICE CHAIR THOMAS: That's my first question.

COMMISSIONER BORN: Because I wanted to move Number 7, Bill; and, therefore, I did it.

CHAIR ANGELIDES: Okay.

COMMISSIONER BORN: I'm glad we adopted it. I wanted to move it, and I did move it.

I think we're still groping for the appropriate solutions on Number 8; and I think Keith's suggestion that at least he is willing to propose what length is appropriate for his separate views is a real step forward; and I

applaud that. I think I would welcome that; and I think we should postpone action and continue to discuss this based on --

VICE CHAIR THOMAS: I agree.

COMMISSIONER BORN: -- new information.

VICE CHAIR THOMAS: I think we should take down Number 8. Let people at least begin to try to put down on paper what they would like to have --

CHAIR ANGELIDES: Yup.

VICE CHAIR THOMAS: -- and then we can see if we can reconcile it, instead of someone arbitrarily assigning a number of words for someone who has been on the Commission, who has participated in the Commission, and is told they get five pages.

CHAIR ANGELIDES: Bill, it was in --

VICE CHAIR THOMAS: I don't think that is a --

CHAIR ANGELIDES: Bill --

VICE CHAIR THOMAS: -- democratic way to determine how we --

CHAIR ANGELIDES: Bill, Bill, Bill. Just in fairness, it was in brackets so we could have a discussion.

VICE CHAIR THOMAS: -- will submit some idea of what they think their length ought to be.

CHAIR ANGELIDES: All right.

Anyone -- okay, I think we should continue this item, or postpone this item.

Yes?

COMMISSIONER HENNESSEY: Phil? Phil? This is Keith.

Could I try to -- again, I'm trying to be constructive here. If I could summarize what I think I've heard, which is, I think that there is no disagreement that any additional dissenting views of any length will go both on the Web and will go in the GPO report, which is the official document that goes to the President and Congress.

CHAIR ANGELIDES: Correct.

COMMISSIONER HENNESSEY: And that the official report, produced by GPO, which goes to the President and Congress, will be a single volume, not multiple volumes.

And then what we're discussing here is limited to the commercial report.

And I have a suggestion on the table, which it sounds to me like, at least so far, everyone except Peter may be comfortable with.

CHAIR ANGELIDES: Well, and --

COMMISSIONER HENNESSEY: Is that an accurate statement of where we

are?

CHAIR ANGELIDES: Yeah, I think so. Yeah, and -- I believe so, yes.

And, obviously, the next step would be to say, "What do these -- what do these kind of word budgets look like," and then we can sit down and talk directly and see if we can't work this out --

COMMISSIONER HENNESSEY: And I will produce one of those --

CHAIR ANGELIDES: -- because --

COMMISSIONER HENNESSEY: -- for my own possible additional view.

CHAIR ANGELIDES: -- because I will just say that I do think we're going to have differing views; and I think it's important that differing views be reflected and accorded respect, period.

And we have not done what other commissions have done, which is strictly limit to a thousand words or whatever. We haven't done it. We're just trying to make it work.

So I think -- how long do you think -- Keith, Bill, Doug -- Peter, I understand your position -- do you guys want to mull this around for?

VICE CHAIR THOMAS: I don't know, I have to get -- Scott will have to get ahold of Doug and see if he has a number. But I would think it should be just a few days.

CHAIR ANGELIDES: Okay, fine. Take what you need and we'll talk.

VICE CHAIR THOMAS: Great.

(Telephonic tone)

CHAIR ANGELIDES: And we'll have a more formal discussion about it, Bill. And if we need to include a couple of other members in it, beyond you and me, to hammer it home, let's do that. All right?

VICE CHAIR THOMAS: Well, I think we should include as many people as we can, because we've driven a pretty big wedge here, and I'd kind of like to keep it open.

And might I suggest that we withdraw Number 8, and it doesn't come back in any form? Number 8 doesn't exist -- in the structure that's been offered doesn't exist, so that we don't use that as the basis for voting next time?

CHAIR ANGELIDES: Yeah, it's okay. We will withdraw it -- even though I don't -- I just want to say, I didn't think I didn't hear objection to a lot of the other mechanical stuff that was in here.

VICE CHAIR THOMAS: Well, it's easy to put in if there's agreement later.

CHAIR ANGELIDES: Yeah, I mean, I would like to hear from members, if there's any other objection -- I think it would be very helpful, apart from this issue, of any of the other mechanical provisions about timing are an issue; all right?

Keith, I haven't heard -- huh?

COMMISSIONER HENNESSEY: Fine for me, yeah.

CHAIR ANGELIDES: All right, fine. So let's just do that.

And we will --

(Telephonic tone)

CHAIR ANGELIDES: I think we're losing people. So let's do this --

COMMISSIONER BORN: Wasn't there going to be some discussion about dates for meetings?

CHAIR ANGELIDES: Yes, I did want to say that I think we should point to December 6th and 7th to hold on people's calendars for a review of the report. And I think we should hold December 15th and 16th as days for review of the report based on my best understanding --

COMMISSIONER HENNESSEY: Phil?

CHAIR ANGELIDES: Hello?

COMMISSIONER HENNESSEY: Phil, will you -- Phil, will you tell us soon when, in advance of the December 6-7 meeting, we can anticipate a complete draft to be able to review?

CHAIR ANGELIDES: This is Ms. -- this is Ms. Edelberg's -- the goal -- I mean, I know is -- I mean, I would hope that it would be to everyone a week in advance; and it may miss -- it may miss small pieces of it. But I

would hope a week in advance.

But it's going to continue -- all of Section 3 should be to you, Keith.

Section 1 should be to you by this weekend and -- yeah. And, obviously, if Keith -- we're holding those dates, but we won't -- we'll make sure that the document is available in advance of those meetings.

I mean, one thought is if 80 percent of it's available or 90 percent, we have the ability to discuss and comment on that.

COMMISSIONER HENNESSEY: Thank you.

CHAIR ANGELIDES: I will have Wendy give you her best schedule.

Well, I'll have you give your best schedule of when they can expect pieces.

All right, Wendy? You need to do that. And let's make them real and meet them. All right?

(End of requested partial transcription.)



**Financial Crisis Inquiry Commission
Agenda Item 4 for FCIC Meeting of December 6, 2010
Chairman and Vice Chairman's Report**

See Separate PDF for materials



**Financial Crisis Inquiry Commission
Agenda Item 6 for FCIC Meeting of December 6, 2010
Procedures re: Dissents and Additional Views**

See Separate Word Document for Redlined Material