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CITIZENS REDISTRICTING COMMISSION

In the matter of
Citizens Redistricting Commission (CRC)
Legal Advisory Committee

800 North Dartmouth Avenue
Honnold/Mudd Library
Claremont, CA 91711

THURSDAY, FEBRUARY 10TH, 2011
1:01 P.M.

Reported by:
Samantha Avenaim

1 APPEARANCES:

2 MEMBERS PRESENT:

3 Commissioner Filkins Webber

4 Commissioner Blanco

5 Commissioner Forbes

6

7

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9 PUBLIC:

10 Angelo Ancheta

11 John Kopp

12 Brian Lawson

13 Eugene Lee

14 Peter Yao

15 Kirk Miller

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P R O C E E D I N G S

FEBRUARY 10, 2011 1:01 P.M.

COMMISSIONER FILKINS WEBBER: I
guess we can start. I'm Jodie Filkins Webber.
I'm not any particular chair for this. I'm
sitting here only because the plug was closer to
me.

So this is the legal advisory
subcommittee that has been established by the full
Citizens Redistricting Commission. We do have an
agenda. We've identified five items, rather
broadly, to discuss various issues concerning the
Commission overall.

I have some ideas of items of
discussion based on circumstances that have arose
throughout the course of just the limited time we
have been a full Commission, questions that people
might have asked me in particular just because I
am a lawyer, but I'm not a lawyer for this
Commission, so I can't wait for Kirk to join us
and we can get started.

So I have about eight items on my
list, and they correlate with the agenda that we
have here, and I can throw them out there and we
can put them in some sort of order. I'll just

13:52:56 1 list them right now and then we can -- whatever
13:52:58 2 you find is a priority for discussion.

13:53:02 3 COMMISSIONER BLANCO: And whether
13:53:02 4 we want to add some --

13:53:06 5 COMMISSIONER FILKINS WEBBER: I
13:53:07 6 added two other items for the next agenda,
13:53:07 7 which --

13:53:07 8 COMMISSIONER BLANCO: For next --

13:53:07 9 COMMISSIONER FILKINS WEBBER:
13:53:10 10 Correct. And I can -- we can talk about those
13:53:11 11 when we talk about expanding the agenda for the
13:53:15 12 legal advisory committee. I had two other items
13:53:18 13 that I added to it for the February 23rd meeting
13:53:19 14 that got noticed, and you might find that on the
13:53:21 15 website right now.

13:53:22 16 But just eight quick bullet points
13:53:25 17 on what I was thinking, is some discussion
13:53:27 18 regarding Public Records Act and the necessary
13:53:31 19 training to provide to the rest of the Commission
13:53:33 20 regarding what that means, the possibility that we
13:53:36 21 could be subject at any time to a Public Records
13:53:40 22 Act request and even in further advising staff as
13:53:44 23 to what that might entail.

13:53:46 24 Another interesting issue that came
13:53:48 25 up is how you define 8253, which in particular --

13:53:53 1 and I forgot my -- I have my legal book, but.

13:53:53 2 COMMISSIONER BLANCO: The first
13:53:53 3 one's --

13:53:57 4 COMMISSIONER FILKINS WEBBER: The
13:53:57 5 first one is Public Records Act request and
13:53:59 6 possible training.

13:54:01 7 The second issue is 8253. As it's
13:54:03 8 defined under the Voters First Act, it's -- it --
13:54:07 9 the issue is receiving communications about
13:54:12 10 redistricting matters from anyone outside of a
13:54:15 11 public hearing, and that correlates with -- with
13:54:21 12 the other statement in 8253.

13:54:24 13 Mr. Lawson, I appreciate that.
13:54:24 14 We'll get to that. We're just going to do a
13:54:24 15 bullet point real quick.

13:54:28 16 MR. LAWSON: I heard you needed a
13:54:30 17 copy of it.

13:54:32 18 COMMISSIONER FILKINS WEBBER: Oh, I
13:54:32 19 will in a moment. We'll get -- we'll get to that.
13:54:32 20 Thank you.

13:54:36 21 And then the next bullet point is
13:54:36 22 hiring VR -- VRA counsel and how we're going --
13:54:37 23 avenues for solicitation, advertising,
13:54:37 24 interviewing.

13:54:40 25 The next bullet point I was

13:54:42 1 thinking of, the necessary training to the full
13:54:44 2 Commission regarding standing rules for -- to
13:54:47 3 propose to the Commission regarding conducting
13:54:49 4 outreach public hearings; in other words,
13:54:51 5 instructing the Commission regarding proper time
13:54:54 6 designations for speakers, inquiries of the
13:54:57 7 Commission members to speakers during a meeting
13:54:58 8 only on items that are on agenda, not items that
13:55:01 9 are not on the agenda.

13:55:04 10 COMMISSIONER BLANCO: So what's the
13:55:05 11 general --

13:55:07 12 COMMISSIONER FILKINS WEBBER: In
13:55:07 13 other words, the idea is creating some standing
13:55:09 14 rules for our public outreach meetings, because
13:55:11 15 the manner in which they're being handled, we're
13:55:15 16 not limiting time, we're not timing speakers, and
13:55:15 17 unfortunately, given the vast amount of interest
13:55:19 18 of the public, I have seen at my own city council
13:55:24 19 meetings, for instance, people could commandeer
13:55:27 20 hours on end unless we have standing rules about
13:55:30 21 the time and limitation of time.

13:55:31 22 And, for instance, this meeting in
13:55:33 23 particular is a good example. We opened it up for
13:55:35 24 public hearing, but we do not necessarily
13:55:37 25 reiterate that we do need to open it up to more

13:55:40 1 members of the public to speak, and if you have
13:55:43 2 one individual that commandeers, then the rest of
13:55:46 3 the public cannot use the time.

13:55:47 4 So those are the types of rules
13:55:49 5 that I'm talking about we need to --

13:55:49 6 COMMISSIONER BLANCO: But not just
13:55:50 7 outreach meetings, but --

13:55:53 8 COMMISSIONER FILKINS WEBBER: No,
13:55:53 9 just -- for all public hearings.

13:55:53 10 COMMISSIONER BLANCO: All public
13:55:53 11 hearings.

13:55:53 12 COMMISSIONER FILKINS WEBBER:
13:55:55 13 Correct. I just was reading my notes here.

13:55:55 14 MR. LAWSON: I -- I'm sorry. Go
13:55:55 15 ahead.

13:55:55 16 COMMISSIONER FILKINS WEBBER: But
13:55:57 17 just some standing rules, that's the other bullet
13:55:58 18 point.

13:55:58 19 The fifth bullet point was
13:56:00 20 something that was raised, and I'm not certain
13:56:02 21 whether we need to bring it up, but in fact, we do
13:56:05 22 have a member of the public that raised this
13:56:07 23 issue -- no. No, Mr. Lawson didn't raise this
13:56:09 24 issue, I don't think.

13:56:10 25 But compensation under 8253.5,

13:56:13 1 there was a public comment regarding our prior
13:56:16 2 discussion regarding compensation and per diem and
13:56:20 3 whether or not we should be discussing that and
13:56:22 4 bringing that back to the Commission.

13:56:23 5 Sixth bullet point, Bagley-Keene.
13:56:26 6 There seems to be maybe some misunderstanding, and
13:56:28 7 maybe we need to train the Commission as to what
13:56:30 8 number of people are we talking about where there
13:56:33 9 would be a violation, under Bagley-Keene it talks
13:56:36 10 about a majority.

13:56:38 11 We have an understanding, we have a
13:56:39 12 nine-person quorum for our size of our Commission.
13:56:42 13 When -- when is that line crossed? Because the
13:56:44 14 first aid commissioners did have training. That
13:56:46 15 training was extremely conservative and basically
13:56:49 16 advised us not to speak to anyone on the
13:56:52 17 Commission, not to even speak to staff
13:56:54 18 essentially, about anything. And that obviously
13:56:55 19 ties your hands about being able to -- to do
13:56:58 20 something outside of a public hearing if we need
13:57:01 21 to move forward.

13:57:03 22 COMMISSIONER BLANCO: So
13:57:04 23 Bagley-Keene as to what constitutes a meeting?

13:57:04 24 COMMISSIONER FILKINS WEBBER:
13:57:04 25 Correct. And the number --

13:57:10 1 COMMISSIONER BLANCO: That's why
13:57:11 2 I'm clarifying whether it was --
13:57:11 3 COMMISSIONER FILKINS WEBBER:
13:57:11 4 Because there are different --
13:57:11 5 COMMISSIONER BLANCO: -- a quorum
13:57:13 6 or meetings.
13:57:14 7 COMMISSIONER FILKINS WEBBER:
13:57:15 8 Correct. And there are different -- I guess --
13:57:15 9 it's just an issue, a bullet point that we might
13:57:18 10 need to --
13:57:18 11 COMMISSIONER BLANCO: Yeah, we'll
13:57:18 12 just do Bagley-Keene. Okay.
13:57:20 13 COMMISSIONER FILKINS WEBBER:
13:57:20 14 Number 7, another -- I am -- because I find it
13:57:25 15 fascinating, as I'm sure you might, Mr. Miller,
13:57:27 16 that I'm keeping a separate item of notes and
13:57:31 17 recommendations for amendment to the government
13:57:33 18 code as we progress through this entire process.
13:57:36 19 And I might ask that you consider
13:57:38 20 doing the same. Because we find that as we're
13:57:43 21 actually dealing with the Voters First Act, we do
13:57:46 22 not have any judicial interpretation of the act,
13:57:48 23 so where -- where have we been constrained?
13:57:52 24 The 14-day notice does seem to
13:57:54 25 conflict a little bit with the ten-day notice with

13:57:55 1 Bagley-Keene. Are we being constrained? Do we
13:57:57 2 want to make some recommendations? Obviously,
13:57:59 3 this would be after our -- after our Commission
13:58:03 4 work is finished, but if we keep notes now as we
13:58:08 5 progress, then we could get together and talk
13:58:10 6 about some proposed amendments to the legislature.

13:58:14 7 And then the eighth bullet point,
13:58:17 8 this was discussed at the last open public
13:58:19 9 hearing, whether our full agenda -- you'll notice
13:58:22 10 we have a standard item for closed session for
13:58:25 11 personnel matters and whether we should consider
13:58:29 12 adding a second item there, which is permissible
13:58:32 13 under the government code, to provide notice of
13:58:35 14 the possibility of going into closed session for
13:58:37 15 litigation.

13:58:39 16 MR. MILLER: Good suggestion.

13:58:39 17 COMMISSIONER FILKINS WEBBER: And
13:58:41 18 how we should -- how -- what -- drafting the
13:58:47 19 language for that.

13:58:47 20 So those are my eight highlights.
13:58:48 21 Again, priority-wise, or if anybody else wants to
13:58:51 22 add to the list, feel free to do so, and then we
13:58:54 23 can maybe prioritize what we think might be
13:58:57 24 important. But those are the things that I was
13:59:00 25 thinking we should --

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MR. MILLER: You should be
the chair. It's a good list.

COMMISSIONER FILKINS WEBBER:
Anything else to add to it, Mr. Forbes? Any ideas
on priority for discussion?

COMMISSIONER BLANCO: I would
suggest that we have the VRA Counsel Selection
Commission as a priority since that will be coming
up. And we have basically an hour today.

COMMISSIONER FORBES: And the
second thing I would do is that I think that,
because it came up, is that the Bagley-Keene,
among ourselves, who's can talk to whom about how
much. We need to talk about that.

COMMISSIONER BLANCO: So those
two -- those two, and -- and on both of those,
whether we will even give recommendations. I
mean, the form of -- the outcome of this is to be
recommendations to the full Commission.

So if we had time, I think the --
those standing rules for the public hearing would
be the next thing we'd need to come up with. So I
would say let's try and get through those.

COMMISSIONER FORBES: Oh, we talked
about that in previous meetings to some extent.

14:00:12 1 COMMISSIONER FILKINS WEBBER: Yes,
14:00:12 2 we have.

14:00:14 3 COMMISSIONER FORBES: I think that
14:00:15 4 would go fast. We have enough city council
14:00:18 5 experience and exposure to --

14:00:21 6 COMMISSIONER FILKINS WEBBER: And
14:00:21 7 if we do have time, I think we should put it next
14:00:23 8 in order. Many of us on the Commission have been
14:00:25 9 asked to -- to communicate at various meetings
14:00:31 10 throughout California on redistricting and the way
14:00:36 11 that 8253 is -- is situated. So maybe we can put
14:00:40 12 that next in order for -- to advise the Commission
14:00:42 13 because we got into it a lot --

14:00:46 14 COMMISSIONER FORBES: The Eldredge
14:00:47 15 Commission talked about that extensively as well.

14:00:51 16 COMMISSIONER FILKINS WEBBER: Okay.
14:00:51 17 So those are four highlights of what we can
14:00:55 18 prioritize for today since we have an hour.

14:00:59 19 MR. MILLER: Maybe they'll
14:01:00 20 want a break before we start the full board
14:01:03 21 meeting again.

14:01:04 22 COMMISSIONER FILKINS WEBBER: It's
14:01:04 23 the same thing Cynthia has been going...

14:01:10 24 COMMISSIONER BLANCO: The last one
14:01:11 25 was?

14:01:11 1 COMMISSIONER FILKINS WEBBER: 8253,
14:01:13 2 define, so.

14:01:13 3 COMMISSIONER FORBES: When we get
14:01:22 4 there, I can tell you what we talked about.

14:01:22 5 COMMISSIONER FILKINS WEBBER: And
14:01:22 6 since this is our first subcommittee, do we want
14:01:26 7 to open it up to the members of the public for
14:01:28 8 now?

14:01:28 9 COMMISSIONER FORBES: Sure.

14:01:29 10 COMMISSIONER FILKINS WEBBER: Just
14:01:29 11 at least on our bullet points, if anybody would
14:01:32 12 like, you've heard what we set as far as some
14:01:34 13 priorities for setting what this legal
14:01:38 14 subcommittee can do and what we might take back to
14:01:42 15 the Commission.

14:01:43 16 Do any of the members of the public
14:01:45 17 have any comments as to additional items you might
14:01:48 18 find of interest for this legal subcommittee to
14:01:48 19 consider and take back to the full Commission?

14:01:48 20 MR. KOPP: Well, my only question
14:01:54 21 was going to be: Do you want public input as you
14:01:57 22 discuss each bullet point or save them to the end,
14:02:00 23 which can be somewhat disconcerting if you've
14:02:03 24 forgotten --

14:02:03 25 COMMISSIONER FILKINS WEBBER: I

14:02:03 1 think what we'll do with the priority today, we've
14:02:06 2 marked four of them we hopefully can get to in an
14:02:07 3 hour. I think once we're completed or we've
14:02:11 4 made -- we've had a discussion, we'll open it up
14:02:13 5 for the members of the public after each of these
14:02:13 6 priorities, unless somebody has a suggestion --

14:02:13 7 MR. KOPP: Yeah, I think you have
14:02:13 8 an hour and a half, actually, till 3:30 is what
14:02:22 9 your agenda says.

14:02:22 10 COMMISSIONER FILKINS WEBBER: Okay.

14:02:25 11 MR. MILLER: So maybe we
14:02:26 12 should start with a break.

14:02:28 13 COMMISSIONER FILKINS WEBBER:
14:02:28 14 Anyone else have any other suggestions?

14:02:32 15 Thank you.

14:02:33 16 Then I guess we can start with VRA
14:02:38 17 counsel.

14:02:38 18 COMMISSIONER BLANCO: Do we have --
14:02:39 19 I know you're here, but any other staff to know
14:02:42 20 where this is at right now?

14:02:45 21 MR. MILLER: I can help
14:02:46 22 you with that.

14:02:47 23 COMMISSIONER BLANCO: Can you tell
14:02:48 24 us where we are with that?

14:02:50 25 MR. MILLER: Well, we need

14:02:55 1 a plan. And I think I can help you to move things
14:03:00 2 along with some guidance. We know that we're
14:03:09 3 going to need that counsel, and it seems to me
14:03:13 4 what you want to know from them is the scope of
14:03:15 5 the work that is proposed, how they propose to
14:03:19 6 interact with the consultants drawing the plans
14:03:23 7 and with full Commission and a sense of cost.

14:03:31 8 If -- I think that that process is
14:03:41 9 facilitated if -- if I meet with them to talk to
14:03:47 10 them about it, but I think you need to meet with
14:03:51 11 them directly to make a decision about who you
14:03:56 12 want and to hear directly about the proposal for
14:03:59 13 how they go about the work and for its cost.

14:04:08 14 Just so you know, I wanted to get
14:04:11 15 acquainted, you know, and not in any way
14:04:14 16 representing the Commission, but just trying to
14:04:18 17 get a feel for those things, and with that in mind
14:04:23 18 I -- I spoke with Margarite Leone and I spoke with
14:04:27 19 Paul McKaskle and told them that I was not there
14:04:30 20 at your bequest, but because I wanted to get a
14:04:34 21 sense of their views and would he come back to the
14:04:39 22 Commission for direction about how you'd like to
14:04:41 23 proceed.

14:04:42 24 Now, you know, do you know
14:04:47 25 presently, or perhaps other members of the

14:04:50 1 Commission do, of specific attorneys that you
14:04:53 2 would like to have contacted for this meeting?

14:04:56 3 COMMISSIONER FILKINS WEBBER: Well,
14:04:57 4 we've -- I don't know if you're aware of it, but
14:04:59 5 maybe they told you, Ms. Leone and Mr. McKaskle
14:05:03 6 applied for the position of chief counsel, so
14:05:06 7 we -- we did have an opportunity to interview both
14:05:09 8 of them.

14:05:09 9 I still believe, based on the
14:05:11 10 information that Ms. Leone provided to us, I think
14:05:14 11 she's still a valuable consideration to put
14:05:18 12 together a proposal as you're suggesting as to
14:05:22 13 what -- because she's so involved in this area,
14:05:24 14 she has the utmost experience and she certainly
14:05:28 15 could put together a presentation as to what her
14:05:30 16 firm could offer just in what you've outlined as
14:05:35 17 far as scope of work and their anticipation of
14:05:38 18 interaction with the planners and mappers and the
14:05:41 19 Commission and costs.

14:05:41 20 And I think facilitating that for
14:05:47 21 us, she's one person. Otherwise, I don't know,
14:05:50 22 since I don't -- I've never had any interaction in
14:05:53 23 that -- in that area. Obviously, Commissioner
14:05:56 24 Blanco has, and she may have some suggestions of
14:05:58 25 other individual.

14:05:59 1 And that's why I was wondering
14:06:01 2 whether this would be something where we would
14:06:03 3 provide some recommendation to you, like for
14:06:05 4 Ms. Leone, and I'm sure Ms. Blanco has some other
14:06:08 5 individuals, but should there be some other
14:06:11 6 mechanism for solicitation of other individuals
14:06:13 7 that we might not name and how would that
14:06:16 8 solicitation take place too.

14:06:20 9 COMMISSIONER BLANCO: I think
14:06:22 10 before we even do that, and I think it's great you
14:06:24 11 reached out to them, I think we need some clarity
14:06:31 12 and we need to discuss on the Commission what we
14:06:35 13 want this attorney to do.

14:06:38 14 COMMISSIONER FILKINS WEBBER: Well,
14:06:38 15 I think their qualifications are outlined as
14:06:42 16 required under the Voters First Act.

14:06:45 17 COMMISSIONER BLANCO: Right, but
14:06:46 18 there's still some -- I mean, it's like what -- at
14:06:46 19 what stage, you know. I think when -- you know,
14:06:49 20 voting rights attorney is a very big rubric. I
14:06:55 21 mean, it can be everything from -- there could
14:06:59 22 be -- there will be people who know different
14:07:02 23 things along the range of knowledge and I think we
14:07:06 24 need to know what is it that we are really asking
14:07:09 25 for that person to do as a staff attorney for the

14:07:14 1 Commission on voting rights.

14:07:16 2 I know it's discussed in the
14:07:20 3 statutes or in the regs, really, but I think it
14:07:26 4 would be helpful to figure out, like, at -- you
14:07:28 5 know, at -- the first stage what is it that we're
14:07:32 6 asking them to do, you know, the minute -- like
14:07:34 7 let's say they were to join the staff tomorrow.
14:07:37 8 What would be their first thing that we would be
14:07:39 9 asking them to look at?

14:07:42 10 You know, and sort of leading up to
14:07:45 11 the presentation of the final maps. Are we --
14:07:52 12 should they -- should they be involved in the --
14:08:02 13 all the outreach, especially the input meetings
14:08:06 14 where we're going to be getting testimony about a
14:08:11 15 lot of things, including communities of interest.

14:08:13 16 Is it important for the attorney to
14:08:17 17 be able to go to those hearings? Do we think it's
14:08:22 18 important, if that attorney is going to work with
14:08:26 19 the mappers, to then try and incorporate that
14:08:31 20 information we receive into legal considerations
14:08:35 21 about the voting rights act?

14:08:37 22 Because that could -- that could
14:08:38 23 mean that -- that could be -- limit who could do
14:08:42 24 this if we're asking for that person to be -- you
14:08:46 25 know, sort of go travel with us, go to these

14:08:50 1 hearings.

14:08:50 2 I -- I guess I -- I'm not so sure
14:08:53 3 that we know what we mean when we say a VRA
14:08:56 4 attorney, because you could have a person who's a
14:09:00 5 general, a more generalized attorney but has some
14:09:03 6 knowledge as to having either brought cases for
14:09:11 7 violations of Section 2 or having defended Section
14:09:14 8 2 cases, but that doesn't really -- hasn't ever
14:09:18 9 done Section 5 or cases that involve challenges
14:09:25 10 around whether the lines are drawn around
14:09:29 11 partisanship rather than around the criteria
14:09:31 12 that's out -- you know, so --

14:09:32 13 COMMISSIONER FILKINS WEBBER: But I
14:09:33 14 think it's -- I think the full Commission's ideas
14:09:36 15 that this is something we should decide in the
14:09:38 16 legal subcommittee --

14:09:40 17 COMMISSIONER BLANCO: That's what
14:09:41 18 I'm saying.

14:09:42 19 COMMISSIONER FILKINS WEBBER: --
14:09:42 20 and bring it back.

14:09:42 21 COMMISSIONER BLANCO: That's what
14:09:42 22 I'm saying.

14:09:42 23 COMMISSIONER FILKINS WEBBER: So if
14:09:43 24 you're opening that up --

14:09:44 25 COMMISSIONER BLANCO: Yeah, I am.

14:09:45 1 COMMISSIONER FILKINS WEBBER: -- I

14:09:45 2 have a few ideas. I think --

14:09:49 3 COMMISSIONER BLANCO: We can talk

14:09:50 4 about individuals.

14:09:51 5 COMMISSIONER FILKINS WEBBER: For

14:09:51 6 cost purposes, I think there's got to be this

14:09:55 7 issue of do they generally charge on a retainer or

14:09:58 8 are they looking at hourly and expenses, which

14:10:02 9 would be for traveling.

14:10:05 10 I for -- again, for cost-saving

14:10:07 11 purposes, given our limited budget, I'd really

14:10:10 12 like somebody who would be interested in

14:10:11 13 participating in this process, given that it's the

14:10:14 14 first occasion which California has ever had a

14:10:15 15 redistricting, which then there should be a

14:10:18 16 balance for their participation with us and

14:10:20 17 possibly doing it on a retainer at a less cost. I

14:10:26 18 think it would be less cost to the council because

14:10:29 19 I certainly am well aware of how an attorney's

14:10:32 20 fees could get out of hand if we really left it up

14:10:35 21 to them on an hourly basis.

14:10:37 22 I see that there could be a

14:10:39 23 possibility of -- I see their participation maybe

14:10:43 24 early on with us as far as training, and

14:10:47 25 Commissioner Blanco, this is what some of my

14:10:50 1 concerns were, given the state of the law and
14:10:53 2 where I think -- correct me if I'm wrong, is it
14:10:57 3 "Bartlett versus Strickland"?

14:10:59 4 COMMISSIONER BLANCO: Uh-huh.

14:10:59 5 COMMISSIONER FILKINS WEBBER: And
14:11:00 6 some of the concerns that I have about the type of
14:11:04 7 information that we would be obtaining from the
14:11:07 8 community and some concerns about what types of
14:11:10 9 questions I could even ask in an open public
14:11:13 10 hearing at an outreach meeting, for instance, and
14:11:16 11 whether if I'm asking a certain question, is there
14:11:18 12 a possibility that that question could be in
14:11:21 13 violation of the law for Section 2 purposes or
14:11:24 14 Section 5 purposes.

14:11:25 15 So I can -- I would like to see
14:11:28 16 somebody who could provide us some initial
14:11:30 17 training as -- and who would have experience in
14:11:34 18 dealing with redistricting commissions. Ms. Leone
14:11:37 19 does have that experience because she represented,
14:11:40 20 if I'm not mistaken, Arizona, or somehow she was
14:11:44 21 involved in Arizona redistricting.

14:11:44 22 MR. MILLER: She was
14:11:45 23 involved, yeah.

14:11:46 24 COMMISSIONER FILKINS WEBBER: So in
14:11:47 25 that sense -- and she's also involved in

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litigation.

I would really like to see somebody who could advise this Commission as to the proper manner in which to proceed, given where we are at with the state of the law under Section 2 and Section 5, and making sure that the Commission does not cross any lines that somebody could suggest would be against the law.

And what I bring up are issues, and Commissioner Blanco, you know this better than I, especially regarding issues of race and how much we could get into that in an open public hearing and whether we might be more challenged by certain members of the public to address some of those concerns and where that line is drawn.

So I can see their early participation to help us and guide us for outreach, then maybe they wouldn't be involved all that much until we get down to looking at certain districts and looking at the way we were drawing the maps.

So I can almost see that one retainer might be good for early coordination in the beginning, and then maybe we won't use them for a couple of months and then they're going to

14:12:52 1 come back and work with our mappers and look at
14:12:55 2 certain areas.

14:12:56 3 That's kind how I pictured our VRA
14:13:00 4 counsel.

14:13:00 5 COMMISSIONER FORBES: I had -- I
14:13:01 6 had three comments. One was on the cost issue. I
14:13:03 7 think we cannot do an hourly rate. I think it
14:13:06 8 would destroy our budget.

14:13:10 9 The -- I think also the training
14:13:12 10 was the first thing I wanted the person to do. I
14:13:15 11 mean, I want to know I can go into a meeting and I
14:13:17 12 can participate in the meeting and not -- ask the
14:13:19 13 right questions and not ask the wrong questions.

14:13:21 14 And then lastly, and I agree with
14:13:25 15 you, I think that what I am looking for a person
14:13:28 16 who can do is that when we begin to draw the maps,
14:13:32 17 as we draw them, the person can tell us, watch out
14:13:35 18 as you are drawing this map, here are some
14:13:39 19 pitfalls you might fall into in this area, one;
14:13:43 20 and two, I think this map will withstand a
14:13:46 21 challenge.

14:13:46 22 I want somebody who will tell me
14:13:48 23 that. I mean, it can always be challenged, but I
14:13:53 24 want my attorney to be able to tell me that that
14:13:56 25 map should withstand scrutiny.

14:13:59 1 COMMISSIONER FILKINS WEBBER: And I
14:14:00 2 think that goes back to Commissioner Blanco's
14:14:02 3 point is somebody who has litigated Section 5
14:14:06 4 would certainly be a fine candidate to support --

14:14:09 5 COMMISSIONER FORBES: And they
14:14:10 6 really need to be able to sign off on each
14:14:13 7 district as we do it.

14:14:14 8 COMMISSIONER BLANCO: I mean, I
14:14:15 9 think that that's the -- really starting
14:14:18 10 backwards. That's the ultimate goal of our hire
14:14:24 11 of a -- you know, for attorney, is to draw -- help
14:14:29 12 us draw legally sustainable maps. You know,
14:14:35 13 whether they get challenged or not --

14:14:38 14 COMMISSIONER FORBES: You can
14:14:39 15 always be sued.

14:14:40 16 COMMISSIONER BLANCO: Right. And
14:14:41 17 from a lot of different -- from many different,
14:14:43 18 not even voting rights or, you know --

14:14:46 19 COMMISSIONER FORBES: Right, right.

14:14:47 20 COMMISSIONER BLANCO: -- but from a
14:14:48 21 voting rights perspective in particular, somebody
14:14:52 22 who we feel really has -- can help us produce a
14:14:52 23 defensible map.

14:15:00 24 So I think that's like the overall
14:15:03 25 goal of this person, and then sort of so many

14:15:07 1 things flow into that, I agree with, you know, how
14:15:10 2 we conduct the outreach area and how we receive
14:15:13 3 information. All of that is going to be part and
14:15:16 4 parcel.

14:15:18 5 I mean, when you get to the point
14:15:19 6 of litigation, you know, somebody is going to look
14:15:22 7 at all the information you based your maps on,
14:15:27 8 everything, so I think we need them early so that
14:15:30 9 every step of the way this person, along with, I
14:15:34 10 would say with you as well, is beginning to think
14:15:38 11 of this as, you know, the --

14:15:44 12 MR. MILLER: This is our
14:15:45 13 product.

14:15:46 14 COMMISSIONER BLANCO: A product,
14:15:46 15 that this is all going into something. And so --
14:15:48 16 and I don't think it's like they will be able to
14:15:50 17 say when we draw this district, it doesn't work
14:15:53 18 like that. I mean, it's really going to be the
14:15:56 19 whole --

14:15:56 20 I mean, they're not going to say
14:15:59 21 district by district -- I mean, they won't be able
14:16:00 22 to tell us district by district, but the challenge
14:16:03 23 could be to an entire map. So it's both as we're
14:16:07 24 drawing to account for population and growth, but
14:16:12 25 also what does the overall map look like, because

14:16:16 1 there's, you know, they're both going to come up,
14:16:20 2 you know.

14:16:20 3 COMMISSIONER FORBES: The other
14:16:21 4 thing I think that's going to be important for
14:16:22 5 them to do is not only tell us that this map is
14:16:27 6 defensible or sustainable, if you prefer --

14:16:29 7 COMMISSIONER BLANCO: No, no,
14:16:31 8 defensible.

14:16:31 9 COMMISSIONER FORBES: Defensible.
14:16:32 10 But also be able to articulate to a nonlawyer why
14:16:39 11 this map looks this way in conjunction with
14:16:45 12 meeting the Voting Rights Act, and you can't talk
14:16:48 13 legalese to the public. Because we're going to
14:16:50 14 come up with, we've talked about some
14:16:52 15 unusual-shaped districts probably to meet the
14:16:54 16 Voting Rights Act requirements. They need to be
14:16:57 17 able to articulate that in a simple way to the
14:17:01 18 public who also may have to accept what we're
14:17:04 19 doing here.

14:17:05 20 COMMISSIONER BLANCO: Do you
14:17:06 21 envision this person speaking with the public?

14:17:09 22 COMMISSIONER FORBES: I think they
14:17:09 23 need to be able to speak to us, that then allows
14:17:12 24 us to say, we drew it this way because the Voting
14:17:16 25 Rights Act; we have to do it this way because this

14:17:18 1 is -- comes up looking like this.

14:17:20 2 COMMISSIONER BLANCO: I think
14:17:20 3 that -- I -- I agree with you.

14:17:21 4 COMMISSIONER FORBES: And be able
14:17:22 5 to hold our hand.

14:17:24 6 COMMISSIONER BLANCO: We have to do
14:17:25 7 that anyway with the delivery of the map. It has
14:17:28 8 to become the basis --

14:17:28 9 COMMISSIONER FORBES: That's
14:17:28 10 exactly right.

14:17:29 11 COMMISSIONER BLANCO: It's -- it's
14:17:30 12 part of what we have to do. We have to have the
14:17:32 13 explanation for the maps as part of the final
14:17:34 14 product.

14:17:36 15 COMMISSIONER FORBES: But for me
14:17:37 16 it's really important, I think, that the average
14:17:41 17 citizen understands what the hell we did, not just
14:17:43 18 the lawyer crowd, or not just those who are
14:17:46 19 interested in the Voting Rights Act, but for the
14:17:48 20 general public as to why these districts look the
14:17:51 21 way they do.

14:17:53 22 COMMISSIONER BLANCO: Yeah. I
14:17:54 23 think that's going to be twofold. I think we
14:17:54 24 talked about this last time. One of it -- one --
14:17:56 25 one part is us knowing what the legal basis is and

14:17:59 1 feeling comfortable about it, and the next we
14:18:02 2 talked about I think at the last meeting sort of
14:18:06 3 how do we in general talk about these issues, and
14:18:09 4 we said that was something we wanted to have the
14:18:11 5 public -- the outreach --

14:18:16 6 COMMISSIONER FORBES: We actually
14:18:16 7 talked about that at our -- at our outreach
14:18:19 8 meeting this morning.

14:18:19 9 COMMISSIONER BLANCO: Yeah, so I
14:18:19 10 think --

14:18:20 11 COMMISSIONER FORBES: And I
14:18:20 12 remember the first meetings we had in December,
14:18:23 13 they had the 25 blocks and how you can, you know,
14:18:27 14 stack them or crack them, so to speak, you know,
14:18:29 15 to come up with districts. That's a very useful
14:18:32 16 way of describing to the public, and we talked
14:18:35 17 about coming up with a document or an outreach
14:18:39 18 piece that would help the public understand what
14:18:41 19 we're doing here and what those issues are.

14:18:46 20 COMMISSIONER BLANCO: So in terms
14:18:47 21 of cost, I haven't weighed in on that, I -- I
14:18:50 22 agree. There is -- I mean, there might be --
14:18:54 23 well, I would prefer not to do hourly for sure.

14:19:00 24 Retainer, I think there's another
14:19:03 25 option besides retainer and hourly, which is we

14:19:07 1 hire a staff attorney.

14:19:07 2 COMMISSIONER FORBES: That's
14:19:07 3 correct.

14:19:09 4 COMMISSIONER BLANCO: And that
14:19:10 5 actually would be my preference. I mean, I think
14:19:13 6 we have that in the -- I mean, that seems the way
14:19:16 7 it's been envisioned, actually, is that there
14:19:18 8 could be a staff attorney.

14:19:21 9 And -- because I -- I want this
14:19:23 10 person to be our attorney. I don't want to hire
14:19:26 11 somebody that's got other obligations and, you
14:19:29 12 know, we fall -- you know, when we try and get
14:19:32 13 something, we're like third on the list of -- you
14:19:34 14 know, we're behind the paying client and...

14:19:37 15 You know, I really -- I think we
14:19:38 16 need a staff attorney the same way that we can
14:19:41 17 pick up the phone and call you about stuff or send
14:19:44 18 you a note, I want an attorney very soon that we
14:19:48 19 can know is on staff that's our attorney to deal
14:19:52 20 with these issues.

14:19:54 21 COMMISSIONER FILKINS WEBBER: But
14:19:55 22 by suggesting that, you're also limiting the
14:19:58 23 potential pool, because when you -- and what
14:20:00 24 you're suggesting is is that Ms. Leone would
14:20:03 25 potentially not be one of those individuals,

14:20:06 1 because she is -- she's a partner in her firm,
14:20:09 2 probably one of the most, and I would think you
14:20:11 3 would agree, qualified individuals based on
14:20:14 4 experience alone, regardless of the politics of
14:20:17 5 it.

14:20:17 6 So I think by suggesting that it
14:20:19 7 was somebody that could come on staff, I think
14:20:22 8 you're really limiting the pool of potential
14:20:25 9 prospects, especially for somebody that we need.

14:20:28 10 Now --

14:20:28 11 COMMISSIONER BLANCO: Maybe, maybe
14:20:29 12 not.

14:20:29 13 COMMISSIONER FILKINS WEBBER: And
14:20:30 14 she described how she still could -- I mean, she
14:20:31 15 applied for the position and she also recognizes
14:20:35 16 that she certainly has obligations to other
14:20:37 17 clients. I think any consultant would.

14:20:40 18 But I just don't see -- well, I
14:20:45 19 don't -- I don't foresee that that would
14:20:46 20 necessarily be required, and I think based on the
14:20:51 21 staff salary structure, I'm looking at a retainer
14:20:54 22 that would probably be very -- my mind of a
14:20:57 23 retainer, which would be similar to what we would
14:20:59 24 be paying staff anyway. So I don't think cost
14:21:02 25 necessarily is a factor.

14:21:02 1 COMMISSIONER FORBES: Let me ask
14:21:03 2 you a question. In your contacts, or your
14:21:05 3 experience, would we be able to get an attorney
14:21:11 4 that would meet our needs, who would for like six
14:21:14 5 months, they would take a leave of absence either
14:21:16 6 from a faculty post or a firm or something like
14:21:20 7 that, I mean, because we don't know what's going
14:21:21 8 to happen after August 15th. That's a whole
14:21:24 9 different animal.

14:21:24 10 COMMISSIONER BLANCO: That's a
14:21:24 11 whole different animal.

14:21:25 12 COMMISSIONER FORBES: But between
14:21:25 13 now and August 15th, they would take a leave of
14:21:28 14 absence or get a leave of absence or to be our
14:21:31 15 counsel in this regard, is that doable?

14:21:37 16 MR. MILLER: That's
14:21:38 17 possible. You know, this is a unique circumstance
14:21:41 18 that might be attractive to people.

14:21:44 19 My concern, though, is this, that
14:21:46 20 this is kind of the redistricting of the century
14:21:49 21 experiment, if you will. And I don't mean that in
14:21:52 22 a negative way at all but in a very positive way.

14:21:56 23 And being the largest state in the
14:21:59 24 union, it's such a big task, I -- I think we ought
14:22:08 25 to try to get highly experienced counsel, because

14:22:12 1 the mountain is really so steep here. And, you
14:22:16 2 know, when you look at what lawyers in private
14:22:18 3 practice earn and what the state pays, the scales
14:22:22 4 are like this. There is no comparison.

14:22:25 5 So I -- actually, I do have a
14:22:27 6 concern about getting a lawyer of the quality that
14:22:30 7 I think this work requires at a cost that's like
14:22:38 8 what we pay people at the state level.

14:22:44 9 COMMISSIONER FORBES: Do you think
14:22:44 10 that we could -- and there's the practicing
14:22:50 11 lawyers, which make lots more, versus the -- an
14:22:53 12 academic?

14:22:56 13 MR. MILLER: We do have a
14:22:57 14 member of the public here who has perhaps more
14:22:59 15 experience in academia than I do. Could that
14:23:02 16 member of the public speak to that issue?

14:23:02 17 MR. ANCHETA: Without disclosing
14:23:05 18 personal salary? Well, there are some -- I think
14:23:09 19 there are some important points and there are a
14:23:12 20 lot of important choices, but the voting rights
14:23:13 21 bar is small, whether it's plaintiff or defense.
14:23:15 22 So you really -- you could probably identify them
14:23:18 23 in the meeting right now in terms of -- you might
14:23:20 24 want to do that, actually, in terms of names
14:23:22 25 you're thinking about.

14:23:24 1 I think Commissioner Forbes raises
14:23:27 2 a good point, which is that you don't want to
14:23:28 3 knock out a certain potential applicant, and there
14:23:32 4 may be some flexibility in terms of how you post
14:23:34 5 this, so there are multiple options. That's
14:23:36 6 something to think about.

14:23:37 7 In the academic sector, you know,
14:23:39 8 if you go outside of California, you will increase
14:23:42 9 the pool, but you only have maybe four people who
14:23:45 10 are -- who do voting rights and election law, and
14:23:49 11 I don't think any of them have a whole lot of
14:23:51 12 time.

14:23:52 13 COMMISSIONER FORBES: You mean
14:23:53 14 faculty?

14:23:53 15 MR. ANCHETA: Yeah. There are a
14:23:55 16 couple of people. Now, again, you know, some of
14:23:57 17 them are former plaintiff's attorneys. For
14:23:59 18 example, I'm thinking of Pam Karlan at Stanford,
14:24:03 19 probably one of the nation's leading experts on
14:24:05 20 the Voting Rights Act.

14:24:06 21 But again, if you're looking at
14:24:07 22 certain leanings or --

14:24:07 23 COMMISSIONER FORBES: Well, I think
14:24:10 24 there are conflicts.

14:24:11 25 MR. ANCHETA: But there are many

14:24:12 1 issues around that, too, because you can't
14:24:13 2 necessarily escape people's past lives before they
14:24:17 3 went into academic work. I have a certain
14:24:19 4 activist background prior to becoming an academic.
14:24:23 5 So it's not necessarily a cure all, but it does
14:24:26 6 present another source of potential applicants, I
14:24:28 7 think.

14:24:28 8 MR. MILLER: It's --
14:24:29 9 another point there that I think we have to deal
14:24:31 10 with is to what extent we can be comfortable with
14:24:37 11 a lawyer who has only litigated for a particular
14:24:41 12 side.

14:24:42 13 You know, the -- you ask them to
14:24:46 14 step out of their role, and I think a good lawyer
14:24:48 15 can do that and do it well, but we do have the
14:24:51 16 challenge of the public perception that you have
14:24:55 17 to factor in to that with any lawyer who has been
14:25:00 18 highly partisan in their practice.

14:25:03 19 I'm sorry. I didn't mean to
14:25:04 20 interrupt.

14:25:05 21 MR. ANCHETA: No, I think just on
14:25:06 22 the issue of the academic sector.

14:25:09 23 COMMISSIONER FILKINS WEBBER: Well,
14:25:09 24 why -- I have a question. How many people are we
14:25:10 25 really talking about that would be interested in

14:25:14 1 being VRA counsel for this redistricting
14:25:18 2 commission, between the two of you, Mr. Ancheta
14:25:22 3 and --

14:25:23 4 MR. ANCHETA: Anna Lana Henderson,
14:25:26 5 interested.

14:25:27 6 COMMISSIONER FILKINS WEBBER: I
14:25:28 7 mean, could you really put together a list of
14:25:29 8 names that --

14:25:29 9 MR. ANCHETA: Yeah, we could.

14:25:29 10 COMMISSIONER FILKINS WEBBER: That
14:25:29 11 either Kirk could contact or that we would be
14:25:32 12 posting? I mean, are we talking about ten people?
14:25:34 13 Are we talking about --

14:25:36 14 MR. ANCHETA: Probably, if you're
14:25:37 15 staying within the state.

14:25:39 16 COMMISSIONER BLANCO: If you're --
14:25:39 17 and which I'm not sure that we need to. I think
14:25:41 18 if we went outside the state, which actually is
14:25:43 19 something we should think about, in terms of sort
14:25:48 20 of helping us with the issue of impartiality, you
14:25:53 21 know, I think we should -- I personally think we
14:25:55 22 should open our thinking up to people outside of
14:25:59 23 California. So I think if we -- and that's not
14:26:04 24 saying they will do it, but if we are to outreach
14:26:08 25 beyond California.

14:26:09 1 COMMISSIONER FILKINS WEBBER: My
14:26:09 2 point was, just real quick, was if we opened it
14:26:12 3 up, we wouldn't necessarily have to make any
14:26:15 4 decision in the subcommittee or even take it to
14:26:17 5 the Commission regarding retainer, regarding
14:26:20 6 staff. I mean, we have an idea that we probably
14:26:22 7 want to do retainer or whether that they would be
14:26:23 8 staff or whether they would take a leave of
14:26:26 9 absence.

14:26:26 10 I think we could open it up to when
14:26:28 11 we -- the candidates themselves to make the
14:26:31 12 presentation to us, and then we can say, wow,
14:26:34 13 they've done this before, this is really how it's
14:26:36 14 going to work for us, instead of us going around
14:26:38 15 and around about, okay, we want somebody with a
14:26:41 16 retainer or we want somebody on staff.

14:26:43 17 COMMISSIONER FORBES: Those are
14:26:44 18 secondary issues.

14:26:46 19 COMMISSIONER BLANCO: Those are
14:26:46 20 details.

14:26:48 21 COMMISSIONER FILKINS WEBBER: Those
14:26:48 22 are people that can give us a presentation.

14:26:49 23 MR. MILLER: Just one at a
14:26:50 24 time, for the sake of our reporter.

14:26:54 25 You know, I think what I could do

14:26:56 1 is tell prospective lawyers that the Commission
14:27:01 2 would like proposals that include these elements
14:27:06 3 and, you know, are you able or willing to include
14:27:09 4 these elements. And then, you know, you get --
14:27:13 5 you get to sort out what's available that way and
14:27:18 6 make your choice.

14:27:21 7 COMMISSIONER FORBES: I was going
14:27:23 8 to suggest one thing is we can go to other states
14:27:25 9 where the Voting Rights Act has been an issue.
14:27:28 10 They may have counsel who have our experience,
14:27:30 11 just not in California.

14:27:31 12 The other thing I was wondering is
14:27:33 13 whether we control the Justice Department for
14:27:37 14 someone who wanted to leave the Justice Department
14:27:39 15 after this -- I mean, if they're in the Justice
14:27:43 16 Department now, they leave the Justice Department,
14:27:44 17 they come to work for us in their own professional
14:27:47 18 thing and the expectation at that point after
14:27:49 19 we're done, they would go on to private practice,
14:27:52 20 as to whether there is a way of accessing or
14:27:55 21 whether --

14:27:55 22 COMMISSIONER BLANCO: That's
14:27:55 23 interesting.

14:27:56 24 COMMISSIONER FORBES: -- you know,
14:27:57 25 whether there would be any merit in that.

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MR. ANCHETA: I'm going to cut because I'm -- technically, I'm issuing public comments, I have to get acknowledged here.

I think that's a very good idea, because I think in terms of perception of neutrality, if one -- far more trying to recruit out of the DOJ. That's sort of the most neutral, because that's basically the U.S. government enforcing Section 5, enforcing Section 2.

Again, someone with that experience may have, again, comparable experience on one side or the other prior to joining the DOJ, but I think that's a good pool to work with in terms of being perceived as not necessarily leaning one way or the other in terms of plaintiff or defense side.

COMMISSIONER FORBES: It was a thought.

COMMISSIONER BLANCO: And I know we sort of -- or we said we would take public comment at the end, and I see a hand, so let's maybe we should do a few more and then open it up.

I agree that we don't have to determine the form of payment, because I don't want to box ourselves in. We should see who's there.

14:28:55 1 And then I like the idea of the
14:28:59 2 Justice Department as a possible source, and I
14:29:02 3 like the idea, maybe, of -- I mean, I think it
14:29:07 4 depends on the person, but I like the idea of
14:29:09 5 considering academics. But I think we would have
14:29:12 6 to really think about who it is and that they're
14:29:15 7 really, like, practical and not, you know,
14:29:16 8 theoretical voting people.

14:29:19 9 COMMISSIONER FILKINS WEBBER: The
14:29:20 10 ones that have litigated before.

14:29:22 11 COMMISSIONER BLANCO: But the
14:29:22 12 reality is that most academics that do this do
14:29:26 13 sort of go out and do some work and come back into
14:29:30 14 academia, because that's -- that's the only way
14:29:32 15 they can really teach the subject is to keep very
14:29:35 16 hands on. So it's a -- it's a part of the
14:29:39 17 academia that's usually the most practical in
14:29:42 18 terms of the legal academia of voting people.

14:29:46 19 So I think that -- we should
14:29:47 20 identify that as a potential recruitment.

14:29:53 21 MR. MILLER: Another
14:29:54 22 factor I think is availability, as our train is
14:29:57 23 leaving the station we hope quite soon. When
14:30:03 24 would you want them to be available to begin
14:30:06 25 advising the Commission?

14:30:09 1 COMMISSIONER BLANCO: Yesterday.

14:30:10 2 COMMISSIONER FORBES: That's like a

14:30:11 3 financial box.

14:30:12 4 COMMISSIONER BLANCO: Yeah.

14:30:14 5 COMMISSIONER FORBES: I mean,

14:30:15 6 sooner rather than later, but that's obvious. So

14:30:18 7 it's really sort of -- you know, we got the

14:30:19 8 world's best person is going to take three weeks.

14:30:23 9 That's opposed to someone that we think is lesser

14:30:24 10 but they'll be here next week.

14:30:25 11 MR. MILLER: Well, how

14:30:27 12 about a -- I mean, would you be more comfortable

14:30:29 13 with a range, not the number of days, but rather

14:30:32 14 do we really need them by?

14:30:34 15 COMMISSIONER FORBES: Middle of

14:30:35 16 March.

14:30:35 17 MR. MILLER: Well, that's

14:30:36 18 very helpful.

14:30:36 19 COMMISSIONER BLANCO: Yeah, I think

14:30:36 20 that's right. At the latest.

14:30:39 21 COMMISSIONER FORBES: And start to

14:30:40 22 get the --

14:30:41 23 COMMISSIONER BLANCO: At the end

14:30:42 24 because we want -- yeah. I would agree.

14:30:46 25 COMMISSIONER FILKINS WEBBER: So do

14:30:47 1 you have an idea, Kirk -- well, let's just look at
14:30:48 2 this practically speaking real quick. You had
14:30:53 3 said -- you used the word "element," so do you
14:30:55 4 have an idea if -- if we were to task you with the
14:31:00 5 responsibility of contacting maybe a list of
14:31:03 6 people that soon-to-be Commissioner Ancheta might
14:31:08 7 put together and Commissioner Blanco might put
14:31:10 8 together that's one avenue of soliciting their --
14:31:17 9 what is the word I'm looking for -- their
14:31:18 10 presentation for us. And so do you have an idea
14:31:22 11 what -- or should we discuss what type of things
14:31:24 12 are -- or I guess based on our discussion, you
14:31:25 13 have an idea of what we would be wanting from
14:31:28 14 them?

14:31:30 15 MR. MILLER: I -- I think

14:31:30 16 so.

14:31:31 17 COMMISSIONER FILKINS WEBBER:

14:31:31 18 Because I think on the one hand you can solicit
14:31:34 19 that, then isn't there -- there's got to be -- I
14:31:35 20 suspect with the State there's probably some sort
14:31:37 21 of posting or listing that we could do with the
14:31:40 22 DOJ. I don't know -- or around those types of
14:31:44 23 individuals that are in the DOJ. I don't know how
14:31:46 24 to -- how do you recruit from the DOJ?

14:31:50 25 MR. MILLER: I don't think

14:31:51 1 that's a state issue, per se.

14:31:54 2 COMMISSIONER FILKINS WEBBER: No,
14:31:54 3 it's not. I'm just saying how do we do it
14:31:55 4 practically, or how do we get their attention that
14:31:59 5 we might be interested in anybody who would want
14:32:03 6 to leave the DOJ? How do you get the attention of
14:32:06 7 any other attorney outside the state?

14:32:08 8 So in the one sense, we've got Kirk
14:32:09 9 that's going to -- Mr. Miller is going to solicit
14:32:11 10 maybe some of the names that we've put together so
14:32:14 11 they can put together something, but if we want
14:32:15 12 something more from the other individuals outside
14:32:17 13 the state or academia or the DOJ, I don't know
14:32:20 14 that our website posting, whatever we drafted, is
14:32:24 15 going to be sufficient.

14:32:27 16 COMMISSIONER FORBES: If I were
14:32:27 17 you, I would call up the Assistant Attorney
14:32:31 18 General in Washington D.C., and say, here's what
14:32:35 19 we're looking for.

14:32:35 20 MR. MILLER: I think
14:32:36 21 that's the right approach.

14:32:36 22 COMMISSIONER BLANCO: There is a
14:32:37 23 voting rights --

14:32:38 24 COMMISSIONER FORBES: Section. A
14:32:38 25 voting section.

14:32:40 1 COMMISSIONER BLANCO: And there is
14:32:40 2 also a list serve of apparently of voting rights
14:32:44 3 attorneys who communicate regularly. So I mean, I
14:32:49 4 think we -- unless, I don't know the -- I don't
14:32:50 5 know what our restrictions are, but I think we
14:32:53 6 could, in terms of using the state announcement
14:32:57 7 posting for jobs, but if there wasn't a
14:33:00 8 limitation, I think we could get the word out. I
14:33:06 9 just don't know what --

14:33:06 10 COMMISSIONER FORBES: I think -- me
14:33:07 11 personally, maybe I have a grandiose view of it,
14:33:08 12 but I think this is such a unique opportunity that
14:33:12 13 they -- someone in the Justice Department would
14:33:15 14 jump at the opportunity to do this. I mean, this
14:33:19 15 is really potentially cutting-edge stuff.

14:33:22 16 COMMISSIONER BLANCO: Like you.

14:33:22 17 MR. MILLER: That's right.
14:33:23 18 Well, that is right. And I think your very simple
14:33:27 19 idea is the right one: Make a phone call to a
14:33:30 20 high-level person and make the inquiry.

14:33:33 21 COMMISSIONER FORBES: Yeah.

14:33:34 22 MR. MILLER: I would
14:33:35 23 welcome, you know, nominations, if you will, of
14:33:39 24 people you would like me to contact.

14:33:42 25 COMMISSIONER BLANCO: Now or --

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MR. MILLER: Whenever you
like.

COMMISSIONER BLANCO: I have to
think about.

So do we -- let's see, what else on
this item?

COMMISSIONER FILKINS WEBBER: Did
we want to put -- and do we need to draft what we
would put on the website?

MR. MILLER: You don't
need to -- you can task me with that.

COMMISSIONER BLANCO: Okay. Great.
But we will put it on the website.

MR. MILLER: I will
undertake to find avenues to let people know, but
I don't know what they are as we're talking here,
so I'm not sure where I'll end up with that, but I
hear the request and will undertake to be
responsive to it.

COMMISSIONER BLANCO: And I can
work with you on where this list should be sent, I
mean where the announcement should be sent and --
you know.

COMMISSIONER FORBES: Do you think,
again, that we should make it clear that we're

14:34:44 1 really looking for two different tasks here. One
14:34:47 2 is someone who will help us with the preparation
14:34:51 3 of the maps, that they'll withstand scrutiny in
14:34:54 4 our judgment. It's not the person necessarily who
14:34:58 5 is going to litigate if we're challenged.

14:34:58 6 MR. MILLER: Oh, I think
14:34:58 7 those are different.

14:34:58 8 COMMISSIONER FORBES: I think we
14:35:02 9 need to make that clear, that this is one job, not
14:35:04 10 both.

14:35:05 11 MR. MILLER: That's right.
14:35:06 12 It might be the same person, but --

14:35:06 13 COMMISSIONER FORBES: It might be.

14:35:08 14 MR. MILLER: But what -- I
14:35:09 15 think yes, we can make that distinction.

14:35:12 16 COMMISSIONER BLANCO: Right, that
14:35:12 17 we're not hiring our defense attorney.

14:35:14 18 COMMISSIONER FORBES: Precisely.
14:35:16 19 Precisely.

14:35:17 20 MR. MILLER: Now, I do
14:35:17 21 want to raise the issue again that we touched on
14:35:20 22 is background in terms of partisanship. You know,
14:35:26 23 I'm jumping ahead and I'm kind of jousting at
14:35:31 24 windmills here, because I'm not sure of the
14:35:33 25 answer, but it's possible that everyone will be

14:35:38 1 associated with one camp or another, and then you
14:35:40 2 would have to make the determination as to whether
14:35:44 3 it's deep enough to make a difference, if the
14:35:48 4 Commission itself is an adequate filter on that or
14:35:52 5 if, in fact, you end up having to hire more than
14:35:55 6 one for that reason. Those are all possible
14:36:00 7 outcomes of that.

14:36:06 8 COMMISSIONER FILKINS WEBBER: You
14:36:07 9 had made a comment, you had told Mr. Miller,
14:36:07 10 Commissioner Blanco, that you were going to give
14:36:09 11 him some places where announcements should be
14:36:13 12 made?

14:36:15 13 COMMISSIONER BLANCO: Posting.
14:36:16 14 Like the job announcement.

14:36:17 15 COMMISSIONER FILKINS WEBBER: But
14:36:17 16 what types of areas are you thinking or what type
14:36:18 17 of list would you be putting together?

14:36:20 18 COMMISSIONER BLANCO: Well, I was
14:36:20 19 actually thinking academics that are in this area.
14:36:25 20 I think that there is a law school professors
14:36:32 21 voting group.

14:36:32 22 MR. ANCHETA: Yeah -- I'm sorry,
14:36:33 23 I'm commenting.

14:36:36 24 COMMISSIONER BLANCO: Yeah. And
14:36:37 25 then I know people at the Justice Department.

14:36:39 1 COMMISSIONER FILKINS WEBBER: Okay.

14:36:42 2 COMMISSIONER FORBES: I think it's
14:36:43 3 the same when we interviewed in closed session
14:36:45 4 about, you know, we have to weigh that and we
14:36:48 5 just, you know, it is what it is, but until we see
14:36:51 6 the field, there is no way of judging --

14:36:54 7 COMMISSIONER BLANCO: Right.

14:36:55 8 COMMISSIONER FORBES: -- the weight
14:36:56 9 to be given to that.

14:36:57 10 COMMISSIONER BLANCO: I think we're
14:36:58 11 all aware and it's going to be -- it's just going
14:37:01 12 to be -- it's going to be hard. It's a small --

14:37:02 13 MR. MILLER: Small pool.

14:37:02 14 COMMISSIONER FORBES: Small
14:37:02 15 university.

14:37:04 16 COMMISSIONER BLANCO: It's a small
14:37:04 17 university of these folks and they're on one side
14:37:07 18 or another. So that's why I'm sort of inclined,
14:37:10 19 if we could -- if we could find the right
14:37:14 20 academic, it would be -- or justice, it would kind
14:37:17 21 of pull us out of that pool of --

14:37:19 22 COMMISSIONER FORBES: Or out of
14:37:20 23 state.

14:37:21 24 COMMISSIONER BLANCO: Or out of
14:37:21 25 state. Although even there, I think -- but at

14:37:23 1 least it wouldn't be --

14:37:23 2 COMMISSIONER FORBES: At least it's
14:37:23 3 not California.

14:37:24 4 COMMISSIONER BLANCO: At least it's
14:37:25 5 not California. But I think we're all aware that
14:37:31 6 that's -- that this is a tough one.

14:37:31 7 COMMISSIONER FILKINS WEBBER: Any
14:37:32 8 other ideas before we open up? We'll take some
14:37:35 9 public comment.

14:37:37 10 MR. KOPP: Yeah, I was just going
14:37:39 11 to suggest that this is federal law and, you know,
14:37:42 12 if you're going to pull a panel or create a panel
14:37:47 13 to consider and then try to recruit them, that you
14:37:52 14 go nationwide.

14:37:54 15 These are -- this is going to be a
14:37:57 16 star on somebody's resume and they're going to --
14:38:00 17 it's a plumb position. There are 49 others --
14:38:04 18 well, except those states that only have one
14:38:07 19 member in Congress, but there are 40-some-odd
14:38:10 20 states that have reapportionment issues and
14:38:13 21 they're apt to be litigated over a period of a few
14:38:16 22 years.

14:38:17 23 Where I came from, the issue, after
14:38:23 24 Reynolds versus Sims and so forth in the 60's,
14:38:27 25 didn't get resolved until 1964 -- actually, they

14:38:29 1 didn't create districts until '66 because they had
14:38:33 2 at large elections because they couldn't resolve
14:38:33 3 the issue.

14:38:35 4 So with litigation, these people
14:38:36 5 are going to want to have this plumb item on their
14:38:39 6 resume.

14:38:40 7 And as to whether you want to go
14:38:41 8 from -- seek out plaintiffs or defense attorneys,
14:38:46 9 if you -- if you solicited and got advice from a
14:38:51 10 plaintiff's attorney, they would probably tell you
14:38:54 11 things that a defense attorney wouldn't consider
14:38:56 12 even though the duty of a defense attorney is to
14:38:59 13 anticipate what the plaintiff is going to pursue.
14:39:02 14 And the converse works just as well.

14:39:06 15 So it's probably going to hinge on
14:39:08 16 the personality and the perception and what the
14:39:14 17 Commission inquires from individual interviews.
14:39:19 18 Those are my observations.

14:39:20 19 You know, in 2000 "Bush v. Gore,"
14:39:26 20 "Gore v. Bush," the only person who was an
14:39:29 21 in-state attorney that I'm aware of was the
14:39:31 22 Secretary of State of Florida. You know,
14:39:33 23 everybody else came from outside the state. It's
14:39:35 24 federal law. I wouldn't restrict you to
14:39:38 25 California.

14:39:40 1 COMMISSIONER FILKINS WEBBER: Thank
14:39:41 2 you.

14:39:41 3 Anyone else have any public
14:39:42 4 comment?

14:39:46 5 MR. ANCHETA: I don't want to take
14:39:46 6 someone else's turn.

14:39:48 7 Just a couple points, and this
14:39:49 8 intersects, I think, with some discussion that
14:39:53 9 will have to occur with the full Commission or
14:39:55 10 with the technical committee, which is that when
14:39:57 11 you're looking at the capacity of a commission to
14:39:59 12 address Section 2 and Section 5 issues, you have
14:40:04 13 to look, one, at legal counsel; but two, you have
14:40:09 14 to look at the social science capacity of the
14:40:09 15 Commission.

14:40:13 16 And I think it goes beyond the --
14:40:16 17 maybe somebody who has some related experience on
14:40:19 18 the large data sets we're getting, but
14:40:21 19 particularly with Section 2 because, in essence,
14:40:24 20 the Commission is trying to prevent violations
14:40:28 21 which might ultimately be litigated.

14:40:30 22 You have to look at the litigation
14:40:33 23 framework, and one of the major bodies of evidence
14:40:36 24 necessary in those cases is a lot of political
14:40:40 25 behavior data, polarized voting, you know,

14:40:43 1 cohesive voting among minority groups, and that
14:40:48 2 data is hard to find, as anybody who's ever
14:40:51 3 litigated can tell you, it's really -- it's often
14:40:52 4 put together just for the litigation, which is why
14:40:55 5 it's really tricky in a redistricting context
14:40:58 6 because there is not a whole lot of it out there.

14:41:00 7 So it's something to think about,
14:41:02 8 and again, maybe it's more of the purview of the
14:41:04 9 technical committee, but in thinking about the
14:41:07 10 capacity to address voting rights issues, it's not
14:41:10 11 only legal counsel but it's also some degree of
14:41:13 12 social science, whether it's a political scientist
14:41:16 13 or a historian, but somebody who can help with
14:41:18 14 that kind of data gathering.

14:41:20 15 It may be ultimately that the
14:41:22 16 Commission has to rely on outside studies and
14:41:26 17 maybe, again, maybe folks who may litigate at some
14:41:29 18 point in the future, but you have to have that
14:41:31 19 kind of basic information at some level to
14:41:33 20 actually litigate a case.

14:41:34 21 So the Commission needs to be at
14:41:35 22 least able to analyze that and say, well, it seems
14:41:38 23 likely that if we don't draw a majority/minority
14:41:42 24 district here, given the voting patterns and the
14:41:44 25 history of election, that kind of thing, that we

14:41:45 1 really should draw one here, as opposed to one
14:41:48 2 where it's just drawn based on racial
14:41:49 3 demographics, which could be quite problematic.

14:41:54 4 That leads to my second point,
14:41:56 5 which has been a concern of mine because, as you
14:41:56 6 know, I've been sort of catching up on everything
14:41:58 7 and reviewing transcripts and looking at training
14:42:00 8 videos.

14:42:01 9 I'm hoping that prior to hiring the
14:42:03 10 counsel, there can be some training or some
14:42:06 11 discussion with the full Commission regarding some
14:42:09 12 Constitutional causes of action that have not
14:42:12 13 been -- from what I can tell, have not been talked
14:42:13 14 about at any level in the trainings or in
14:42:16 15 discussions, because there are a couple -- well,
14:42:19 16 there is one line of cases that in essence puts
14:42:23 17 pretty serious restrictions on how you draw
14:42:26 18 majority/minority districts, Shaw versus --
14:42:29 19 S-h-a-w v. Reno, R-e-n-o, and "Miller v. Johnson,"
14:42:34 20 line of cases.

14:42:35 21 I think it's been mentioned, but it
14:42:37 22 really restricts how you look at race and whether
14:42:40 23 race is the predominant factor and if you are
14:42:44 24 looking at other factors as well, which of course
14:42:47 25 the Commission will, but particularly when you're

14:42:48 1 trying to draw Section 2 majority/minority
14:42:51 2 districts, you've got to weigh this countervailing
14:42:54 3 line of cases.

14:42:55 4 The other line of cases, which is
14:42:56 5 probably not so much at issue with the Commission,
14:42:59 6 but I hadn't heard anything about it, is -- and
14:43:00 7 Commission Blanco just briefly mentioned sort of
14:43:04 8 the partisan gerrymandering cases, and there's
14:43:08 9 some rather unclear guidelines put out by the
14:43:08 10 Supreme Court.

14:43:08 11 And it may not be an issue because
14:43:11 12 the Commission has a specific mandate not to look
14:43:13 13 at party affiliations, so maybe that's not an
14:43:16 14 issue, but it hasn't been talked about, so it may
14:43:18 15 be useful to have -- particularly the Shaw and
14:43:20 16 Miller case line talked about someplace.

14:43:25 17 Again, it could be this council
14:43:27 18 certainly, but I think it needs to get out there
14:43:30 19 because the Commission members as a whole need to
14:43:32 20 know the full legal landscape. I think that's
14:43:35 21 really important to bring that out as well.

14:43:39 22 MR. MILLER: I've got one
14:43:41 23 more comment. Why don't we finish the public
14:43:41 24 comment.

14:43:41 25 MR. LAWSON: Just very quickly.

14:43:45 1 I'm Brian Lawson. I teach political science. But
14:43:48 2 I am not one of those types of people who does
14:43:51 3 what Mr. Ancheta described, but I have done
14:43:54 4 research and read about it, and it is true that
14:43:55 5 there a large number -- not a large number, it's
14:43:56 6 probably a small community, like your VRA lawyers,
14:43:59 7 that do provide those sorts of services.

14:44:01 8 And again, I don't do that, but I
14:44:05 9 have heard of people who do that. I have talked
14:44:06 10 briefly with people who do that. So, I mean, it's
14:44:08 11 just another consulting service that you can buy
14:44:13 12 if you need it.

14:44:15 13 COMMISSIONER BLANCO: Yeah. And I
14:44:16 14 think that's -- I mean, I -- I suspect that
14:44:20 15 we'll -- one of the things, hopefully, that this
14:44:23 16 attorney will do is, one, do -- provide a training
14:44:27 17 for -- as Jodie mentioned, for the Commission, and
14:44:31 18 also if they're, you know, a good voting rights
14:44:34 19 attorney, they will know that you need the -- the
14:44:37 20 other information about racially polarized voting
14:44:43 21 and that that comes from -- and that there have to
14:44:47 22 be regression analysis and all these very complex
14:44:51 23 things that go into even figuring out how to draw
14:44:56 24 Section 2 districts.

14:44:58 25 So I'm hoping that whoever we hire

14:45:02 1 will then be aware of that, because there are
14:45:05 2 people who do that, that are -- when you do
14:45:11 3 litigation voting rights, you often have -- you
14:45:14 4 have an expert that does all this -- the
14:45:18 5 demographic, history of discrimination, or that
14:45:22 6 does the -- can calculate the regression analysis.

14:45:26 7 So there's -- there's no way around
14:45:27 8 it. If we're -- if we're going to be drawing
14:45:30 9 maps, it's not just going to be the census data
14:45:33 10 and the law. There are these other very technical
14:45:37 11 expert -- areas of expertise that we're going to
14:45:40 12 have to have, you know, access to in order to do
14:45:44 13 it right, and we're going to -- you know, we
14:45:46 14 have -- I can't remember which working group has
14:45:49 15 consultants and all of that. Maybe it's the
14:45:52 16 technical committee?

14:45:53 17 MR. MILLER: I think
14:45:53 18 that's right.

14:45:55 19 COMMISSIONER BLANCO: Yeah. So
14:45:55 20 this is something where we have to coordinate,
14:45:59 21 because some of those technical consultants will
14:46:01 22 be related to the legal issues.

14:46:03 23 COMMISSIONER FILKINS WEBBER: Any
14:46:03 24 other public comments?

14:46:06 25 MR. LEE: Good afternoon. I'm

14:46:07 1 Eugene Lee, and I work at the Asian Pacific
14:46:10 2 American Legal Center, which is a nonprofit civil
14:46:12 3 rights and legal services organization in
14:46:15 4 Los Angeles, and I wanted to share a couple of
14:46:18 5 thoughts with you.

14:46:19 6 The first is that we at APALC
14:46:22 7 certainly look at the Commission selection of
14:46:25 8 counsel with expertise in the Voting Rights Act as
14:46:29 9 one of its most important decisions, and we would
14:46:32 10 ask the Commission to consider ensuring as much
14:46:36 11 transparency in carrying out that selection as
14:46:39 12 possible.

14:46:39 13 For example, we would ask the
14:46:43 14 Commission to consider taking public input on
14:46:47 15 candidates for the counsel position and to ask for
14:46:55 16 public comment generally on what -- what should go
14:46:58 17 into the job description for the Voting Rights Act
14:47:02 18 counsel.

14:47:03 19 The second point is that as far as
14:47:07 20 what this person should be able to do, you know,
14:47:11 21 you all mentioned some very important things. I
14:47:14 22 would just add a small point that the counsel
14:47:18 23 should be able to provide the Commission with
14:47:20 24 guidance on what kind of information it needs to
14:47:24 25 look at and how to deal with prohibitions in the

14:47:27 1 Voters First Act on what kind of information the
14:47:31 2 Commission can consider.

14:47:32 3 So specifically, the Voters First
14:47:35 4 Act prohibits the Commission from looking at the
14:47:38 5 residences of incumbents or candidates, which its
14:47:40 6 intention with looking at Section 5 compliance.
14:47:45 7 So for purposes of Section 5, it may be important
14:47:48 8 to look at whether you are pairing minority
14:47:51 9 incumbents in the same district. And if you don't
14:47:53 10 have access to incumbent residences, then you
14:47:57 11 can't make that kind of assessment.

14:47:59 12 So it's important to have someone
14:48:00 13 who can provide that kind of vantage point and
14:48:03 14 guide the Commission on how to deal with this
14:48:06 15 prohibition on what the Commission can consider
14:48:09 16 and the intention between that and Section 5
14:48:12 17 compliance.

14:48:13 18 The third point is that I think
14:48:17 19 part of what should go into hiring the Voting
14:48:22 20 Rights Act counsel is who is going to engender
14:48:27 21 public trust from California's diverse
14:48:30 22 communities. And so California's diverse
14:48:32 23 communities are -- I think are going to be more
14:48:37 24 prone to buy into the Commission's mission if they
14:48:40 25 know that the Voting Rights Act counsel is someone

14:48:43 1 who is fully committed into ensuring opportunities
14:48:47 2 for electoral participation in the spirit of the
14:48:52 3 Voting Rights Act.

14:48:53 4 And then the last point is that my
14:48:55 5 organization, and I'm sure there are others, would
14:48:57 6 be very happy to help spread the word to
14:49:00 7 potential -- to people who might be potentially
14:49:04 8 interested in this position. So just an open
14:49:07 9 offer to help in whatever way we can to spread the
14:49:11 10 word.

14:49:12 11 COMMISSIONER FORBES: Can I ask
14:49:13 12 counsel one question? He asked about an open
14:49:16 13 process. Are we allowed to give out a list of
14:49:19 14 people who have applied for the job? I didn't
14:49:23 15 think so, but I wanted to get your opinion on
14:49:25 16 that. Because I don't want you to think that
14:49:26 17 we're stonewalling you if we don't do it. That's
14:49:28 18 why I want to get it out.

14:49:28 19 MR. MILLER: I would like
14:49:29 20 to look into the disclosure obligations associated
14:49:34 21 with the contracting process of this type before I
14:49:40 22 respond, but we will respond in open session to
14:49:42 23 your question.

14:49:44 24 COMMISSIONER FORBES: Because we
14:49:44 25 may not be able to meet your request, and I just

14:49:46 1 want you to understand if we're not able to, there
14:49:48 2 is a reason for it. It's not just that we're
14:49:52 3 concealing information.

14:49:53 4 Thank you.

14:49:55 5 MR. MILLER: I wanted to
14:49:55 6 add one comment, if I could, and first of all, I
14:49:59 7 completely agree with your conclusion that this is
14:50:01 8 one of the most important things that the
14:50:03 9 Commission will be doing, at least early on. And
14:50:06 10 the reason I say that is this is a lot to
14:50:14 11 accomplish in a short period of time, and we don't
14:50:18 12 have a way of extending the time, so we really
14:50:20 13 have to do our best with what we've got here.

14:50:24 14 So I'm thinking, okay, I want to
14:50:26 15 get -- I'm not sure where I can be for you at the
14:50:31 16 next meeting, but I want to be as far down the
14:50:33 17 road as I can be.

14:50:37 18 I certainly will have undertaken to
14:50:39 19 contact people. Whether they will have a proposal
14:50:43 20 or be willing to make a proposal by the time of
14:50:46 21 our next meeting, you know, we can't predict that.
14:50:49 22 And actually, I think the next -- the next couple
14:50:52 23 of meetings are the last that are scheduled. I
14:50:55 24 don't believe -- is there anything on the calendar
14:50:57 25 in March either for --

14:50:58 1 COMMISSIONER FORBES: Not yet.

14:51:00 2 MR. MILLER: So what I was
14:51:00 3 going to ask is if the committee would be willing
14:51:08 4 to schedule a special meeting of the committee --

14:51:12 5 COMMISSIONER FORBES: Subcommittee.

14:51:15 6 MR. MILLER: -- the
14:51:15 7 subcommittee to consider this in the first part of
14:51:21 8 March in the anticipation we would be able to make
14:51:27 9 a decision. I'm thinking that you may want more
14:51:29 10 time on this matter than would be available in a
14:51:34 11 meeting setting like we have at this set of
14:51:36 12 meetings where you're back in full session and
14:51:39 13 you've got an hour and a half or two hours,
14:51:41 14 whatever it is. You might need a day. So I just
14:51:43 15 want to be willing to schedule a special meeting
14:51:49 16 for this purpose in between meetings.

14:51:52 17 COMMISSIONER FORBES: It's easy for
14:51:54 18 me because I'm in Sacramento, so that's easy for
14:51:56 19 me. Jodie would be the hardest one.

14:51:58 20 MR. MILLER: We can
14:52:00 21 teleconference people in if that's a factor as
14:52:02 22 well.

14:52:02 23 COMMISSIONER FILKINS WEBBER: But
14:52:03 24 the problem is is providing the notice and --

14:52:05 25 MR. MILLER: Well, it

14:52:06 1 is --

14:52:06 2 COMMISSIONER FILKINS WEBBER: --
14:52:06 3 telephone number.

14:52:07 4 MR. MILLER: But we can do
14:52:08 5 that.

14:52:09 6 COMMISSIONER FILKINS WEBBER: But
14:52:10 7 it would have to be a public meeting place where
14:52:13 8 the public can participate.

14:52:13 9 MR. MILLER: Well, we have
14:52:14 10 to have at least one place that meets that
14:52:19 11 description. You know, the better thing would be
14:52:22 12 to have everybody together. I'm just thinking
14:52:24 13 about alternatives to give us more time if we
14:52:30 14 can't get together.

14:52:31 15 COMMISSIONER FILKINS WEBBER: So
14:52:32 16 you're suggesting that -- at least I have a list
14:52:33 17 of four items right here. You might have more on
14:52:35 18 your list of things to do. But because of what we
14:52:40 19 are tasking you to consider, you are thinking that
14:52:44 20 it would be best -- you might -- will you be able
14:52:47 21 to provide us probably some type of update in our
14:52:50 22 legal subcommittee at the end of February?

14:52:52 23 MR. MILLER: Oh,
14:52:52 24 absolutely.

14:52:53 25 COMMISSIONER FILKINS WEBBER: Okay.

14:52:53 1 And then we might be able to narrow it a little
14:52:56 2 more, and you're suggesting a meeting that first
14:52:58 3 week in March so that the legal subcommittee could
14:53:01 4 get together and strictly to discuss VRA counsel?

14:53:04 5 MR. MILLER: And I raise
14:53:05 6 it now because of the 14-day notice.

14:53:07 7 COMMISSIONER FILKINS WEBBER:
14:53:08 8 Exactly.

14:53:08 9 COMMISSIONER FORBES: Right.

14:53:09 10 COMMISSIONER FILKINS WEBBER:
14:53:09 11 That's what I mean.

14:53:10 12 MR. MILLER: Maybe we
14:53:11 13 cancel the meeting for whatever reason, either we
14:53:14 14 made too much or too little, but it would give --
14:53:16 15 think of it as a security blanket.

14:53:20 16 COMMISSIONER BLANCO: I'm for that.

14:53:21 17 COMMISSIONER FILKINS WEBBER: I
14:53:22 18 don't have a problem March 4th, let's say. It's
14:53:25 19 the first Friday of March. I'm assuming, based on
14:53:28 20 the schedule of the full Commission, we've
14:53:30 21 generally been looking at the second and third
14:53:33 22 week. March is pretty tight. It's got four
14:53:37 23 Fridays.

14:53:37 24 MR. MILLER: I'm hopeful
14:53:39 25 that we'll establish more Commission meetings in

14:53:41 1 full session and we might even want to adjust
14:53:44 2 this, so --
14:53:44 3 COMMISSIONER FILKINS WEBBER: Okay.
14:53:44 4 MR. MILLER: You know,
14:53:44 5 maybe we choose a date today as a placeholder and
14:53:49 6 since our notice isn't going out today, we can
14:53:53 7 revisit that up to the 14th day.
14:53:55 8 COMMISSIONER BLANCO: What are we
14:53:56 9 looking at?
14:53:57 10 COMMISSIONER FILKINS WEBBER: March
14:53:59 11 4th tentatively.
14:54:02 12 COMMISSIONER BLANCO: That works.
14:54:03 13 MR. MILLER: How long is
14:54:04 14 that after the next Commission meeting, the full
14:54:06 15 meeting?
14:54:06 16 COMMISSIONER FILKINS WEBBER: A
14:54:07 17 week. No. Yeah, it's a week.
14:54:13 18 COMMISSIONER BLANCO: It's a week.
14:54:13 19 COMMISSIONER FILKINS WEBBER: It's
14:54:13 20 a week. So is that enough time for you?
14:54:15 21 MR. MILLER: Well, let's
14:54:16 22 say March 4th, because we'll probably be back --
14:54:20 23 COMMISSIONER FILKINS WEBBER: I
14:54:21 24 think we're going to be back around March 9th.
14:54:21 25 MR. MILLER: With the full

14:54:21 1 Commission?

14:54:23 2 COMMISSIONER FILKINS WEBBER: With
14:54:23 3 the full Commission.

14:54:25 4 MR. MILLER: Let's do
14:54:25 5 this. If we -- if it's possible for you to hold
14:54:27 6 two dates, why don't we also say March 9th --
14:54:32 7 March 8th, the day before, so that -- just trying
14:54:40 8 to bake in some flexibility in a rigid situation.

14:54:44 9 COMMISSIONER BLANCO: So the 4th
14:54:45 10 and -- what was -- the 8th?

14:54:52 11 MR. MILLER: Yeah.

14:54:52 12 COMMISSIONER BLANCO: I can't do
14:54:53 13 the 8th.

14:55:00 14 COMMISSIONER FILKINS WEBBER: I
14:55:01 15 can't do the 8th either.

14:55:02 16 COMMISSIONER FORBES: That's out.

14:55:04 17 COMMISSIONER BLANCO: I've been
14:55:04 18 scheduling everything for those other days that we
14:55:07 19 said we would keep clear.

14:55:09 20 COMMISSIONER FILKINS WEBBER: The
14:55:09 21 other thing is that if the full Commission does
14:55:10 22 come back on the 9th, as I understand it based on
14:55:13 23 our prior discussions, the Wednesday of whatever
14:55:15 24 week that we decide to come back is generally our
14:55:18 25 legal subcommittee days anyway. I mean our

14:55:22 1 advisory subcommittee days prior.

14:55:27 2 COMMISSIONER BLANCO: So we would

14:55:28 3 be meeting on the 9th.

14:55:29 4 COMMISSIONER FORBES: On the

14:55:29 5 morning of the 9th.

14:55:29 6 COMMISSIONER FILKINS WEBBER:

14:55:29 7 Correct, anyway.

14:55:30 8 COMMISSIONER BLANCO: Anyway.

14:55:31 9 MR. MILLER: All right.

14:55:31 10 Maybe, depending on our needs, we can carve out

14:55:36 11 extra time for this committee at that time.

14:55:40 12 COMMISSIONER BLANCO: Yeah, we

14:55:40 13 can -- I mean, yeah. We're going to be there.

14:55:44 14 MR. MILLER: Well, that

14:55:44 15 gives us some flexibility to work with. Thank

14:55:46 16 you.

14:55:48 17 COMMISSIONER FORBES: So we need to

14:55:50 18 notice it, though, for the morning of the 9th.

14:55:50 19 COMMISSIONER BLANCO: And the 4th

14:55:50 20 also.

14:55:50 21 COMMISSIONER FORBES: And the 4th,

14:55:52 22 right?

14:55:52 23 MR. MILLER: What I

14:55:53 24 thought we would do is creep up on it, see what

14:55:56 25 our progress is, but this gives us the flexibility

14:55:59 1 to send that notice.

14:56:01 2 COMMISSIONER BLANCO: Let's just
14:56:03 3 tickle the 4th so that we don't forget to notice
14:56:06 4 it.

14:56:06 5 COMMISSIONER FILKINS WEBBER:
14:56:07 6 Anything else, Mr. Miller? We have a half an hour
14:56:09 7 left. We might want to move on to the other three
14:56:11 8 items. We can at least address them.

14:56:13 9 Any other further public comment on
14:56:15 10 VRA counsel?

14:56:17 11 Thank you.

14:56:18 12 Okay. We'll take back in our --
14:56:22 13 just a brief summary, we'll take back to the
14:56:25 14 Commission the assignments for Mr. Miller in
14:56:28 15 advising them when we report back to the full
14:56:31 16 Commission that he will be soliciting presentation
14:56:35 17 materials from named attorneys that he will be
14:56:37 18 given lists of, contact the DOJ for a contact
14:56:39 19 person to post a job or discuss that issue,
14:56:41 20 drafting the website notice for the position.

14:56:47 21 Commissioner Blanco is to provide
14:56:49 22 places where the announcements could be made and
14:56:50 23 we are going to tentatively schedule a special
14:56:52 24 legal subcommittee meeting for March 4th. And
14:56:54 25 right now I guess it's just the 4th.

14:56:56 1 So that is what I'll brief.

14:56:59 2 MR. MILLER: Well, the 9th
14:57:00 3 would occur automatically.

14:57:03 4 COMMISSIONER FILKINS WEBBER: Yes.
14:57:04 5 So that's what we will address to the full
14:57:06 6 council.

14:57:07 7 The next item, excuse me, of
14:57:11 8 priority was --

14:57:15 9 COMMISSIONER BLANCO: Can we take a
14:57:16 10 break?

14:57:16 11 COMMISSIONER FILKINS WEBBER: Sure.
14:57:16 12 (Whereupon, a discussion was held
14:57:17 13 off the record.)

15:01:20 14 COMMISSIONER FILKINS WEBBER: We're
15:01:21 15 back on the record, so to speak.

15:01:29 16 The other issue of priority we'll
15:01:33 17 take up real quickly, and as I understand it based
15:01:35 18 on some of the discussion made by the full
15:01:38 19 Commission on occasions, the first eight
15:01:40 20 commissioners -- and I'll just say it for the
15:01:42 21 public as well as Mr. Miller -- received formal
15:01:46 22 training, live training in an open public session
15:01:50 23 regarding Bagley-Keene, and we were given these
15:01:54 24 handouts as well.

15:01:56 25 And I must say that it was very

15:02:01 1 conservative. And essentially the recommendation
15:02:05 2 was that we weren't to have a communication with
15:02:07 3 any other member of the Commission or staff
15:02:10 4 regarding any redistricting matters, which almost
15:02:12 5 makes it impossible to do agendas, you know, to
15:02:15 6 even consider scheduling. There's all kinds of
15:02:17 7 issues that were raised because we did get such
15:02:21 8 strict training.

15:02:22 9 So we have taken counsel's advice
15:02:26 10 from the BSA and SOS, who have assisted us
15:02:32 11 throughout the course of this case in correctly
15:02:35 12 training the Commission that when we set up the
15:02:39 13 legal advisory committees, that this is considered
15:02:42 14 an advisory committee that needed to have special
15:02:44 15 notice requirements that we could not meet outside
15:02:47 16 of open public hearings.

15:02:49 17 So now the question is, there might
15:02:50 18 be some confusion between I guess what constitutes
15:02:54 19 a serial meeting for this group of 14
15:02:59 20 commissioners, or are we really looking at a
15:03:02 21 larger group because we've added staff. So then
15:03:10 22 where is the number of impermissible individuals
15:03:14 23 to be involved in a communication regarding
15:03:16 24 redistricting matter?

15:03:17 25 I believe that's the issue.

15:03:18 1 Because are we looking at a Commission of 14,
15:03:21 2 because we are a designated committee, which then
15:03:25 3 you have a quorum of nine, so it would prohibit
15:03:28 4 any communications beyond nine, or do you really
15:03:31 5 look at it broader because we have an executive
15:03:33 6 director? We have two staff members. We have
15:03:36 7 communications. We have Mr. Miller. So then are
15:03:38 8 we looking at a larger body where the majority
15:03:42 9 communication could go?

15:03:44 10 COMMISSIONER FORBES: One other
15:03:44 11 thing which I think needs to be -- I was thinking
15:03:45 12 about this is that, as you'll see as it hopefully
15:03:49 13 won't happen, but a number of our significant
15:03:51 14 votes have to be with three Republicans, three
15:03:56 15 Democrats, and three Independents.

15:03:56 16 So that raised the question for me
15:03:59 17 is whether more than two of any -- at least of the
15:04:04 18 independents, three other Democrats or
15:04:07 19 Republicans, can talk among each other because
15:04:08 20 they represent enough votes to block anything of
15:04:11 21 substance.

15:04:13 22 COMMISSIONER FILKINS WEBBER:

15:04:14 23 But --

15:04:14 24 COMMISSIONER FORBES: Okay. No.
15:04:14 25 Let's say there's four independents. Any two of

15:04:18 1 them can block a subsequent vote on the maps or
15:04:23 2 anything substantive, because you have to get
15:04:25 3 three of them. So that leaves me to ask the
15:04:27 4 question: Can more than two -- or can even two
15:04:31 5 independents talk to each other, because they
15:04:33 6 represent a majority of one the sub groups that is
15:04:37 7 necessary under the initiative to block?

15:04:41 8 I mean, like let's say you're an
15:04:42 9 independent and you and I get together and say,
15:04:44 10 "We are not going to vote for this, are we?" And
15:04:46 11 we have a private conversation, it's only two of
15:04:48 12 us, but it's enough. And the same is true for
15:04:51 13 three Republicans and two Democrats, we have the
15:04:54 14 same issue, because that's enough.

15:04:55 15 MR. MILLER: To some
15:04:56 16 extent, the Bagley-Keene Act addresses that.

15:05:01 17 COMMISSIONER FORBES: Okay. That
15:05:01 18 was my concern. It's not just a question of nine.

15:05:04 19 MR. MILLER: Your
15:05:05 20 instincts are good.

15:05:07 21 COMMISSIONER FILKINS WEBBER: And
15:05:08 22 one sub issue to that is, in looking at
15:05:13 23 Bagley-Keene, the discussion is not necessarily I
15:05:15 24 guess of any redistricting matters, but it does
15:05:18 25 state in here to develop a collective concurrence.

15:05:21 1 So is it any type of discussion? Obviously, your
15:05:25 2 example is a good example of why you would be --

15:05:28 3 MR. MILLER: Let's -- if
15:05:29 4 we could, drop back and talk about the numbers
15:05:32 5 first.

15:05:33 6 COMMISSIONER FILKINS WEBBER:
15:05:33 7 Right.

15:05:33 8 MR. MILLER: And I have to
15:05:36 9 say, and I think even the pamphlet from the
15:05:39 10 Attorney General says, and it's unfortunate, that
15:05:42 11 this is not designed to enhance efficiency. And
15:05:49 12 it's kind of flippant, but it is the case.

15:05:51 13 There's simply no corollary to -- in business to
15:05:57 14 the challenge that's presented in complying with
15:06:01 15 Bagley-Keene for transparency purposes.

15:06:05 16 A couple of you had the pamphlet
15:06:07 17 with you. If you happen to have it, if you would
15:06:09 18 turn to page 17. And look particularly at the
15:06:19 19 definition there on page 17 of a state body. Page
15:06:31 20 17. And the numbers are at the bottom of the
15:06:34 21 page. C.

15:06:40 22 And the key words here, if -- well,
15:06:43 23 first of all, so what is a state body? We know
15:06:47 24 that the Commission itself is a state body. What
15:06:52 25 presents the challenge that you're working with is

15:07:06 1 in C it talks about what else a state body can be,
15:07:10 2 an advisory board, advisory commission, advisory
15:07:13 3 committee, advisory subcommittee, or simply
15:07:17 4 multimember advisory committee of a state body if
15:07:21 5 created for formal action.

15:07:24 6 And then this last phrase:

15:07:27 7 "And if the advisory body

15:07:28 8 so created consists of three or

15:07:31 9 more persons."

15:07:37 10 So this committee, having been
15:07:39 11 formed by what's clearly a state body, the
15:07:45 12 Commission, becomes itself also a state body.

15:07:50 13 So as a result, those rules that we
15:07:51 14 are referring to about what constitutes a majority
15:07:54 15 and supermajority are not really the right test
15:07:58 16 for this purpose. For this purpose, it's a
15:08:02 17 committee of three or more persons.

15:08:05 18 And that's what makes this so
15:08:07 19 cumbersome for us is because once you get to that
15:08:11 20 number three, then you're subject to the open
15:08:17 21 meeting law.

15:08:20 22 COMMISSIONER FILKINS WEBBER: But
15:08:20 23 that's as to the creation of subcommittees. What
15:08:24 24 if three or more that are not part of the
15:08:28 25 subcommittee wanted to talk about something? I

15:08:32 1 mean, is this Commission hampered by the three or
15:08:35 2 more rule when we're not talking about an advisory
15:08:39 3 board, advisory commission, advisory committee
15:08:41 4 that was created by the state body? We're talking
15:08:45 5 about the discussion.

15:08:47 6 MR. MILLER: You have, I
15:08:47 7 think, some additional flexibility there, but you
15:08:50 8 need to be careful, because then you do quickly
15:08:55 9 potentially run into the serial meeting problem.

15:08:59 10 Let's say, for example, three
15:09:01 11 people who are not formed officially by the
15:09:03 12 committee meet for whatever purpose. They in turn
15:09:09 13 talk with three others. Then it becomes, as we
15:09:14 14 like to say, the slippery slope. And that's why
15:09:18 15 you get very conservative advice is because it's
15:09:22 16 so easy to wander into a problem unintentionally.

15:09:28 17 I think it's best probably, you
15:09:30 18 know, recognizing our time, I think the idea of
15:09:35 19 having additional training with the full
15:09:37 20 Commission is the best idea. This is kind of a
15:09:42 21 nuance, yet very important part of the act that
15:09:45 22 doesn't shout out at you and an area that would be
15:09:48 23 useful for us to talk about with the full
15:09:51 24 Commission.

15:09:53 25 COMMISSIONER FORBES: Also one

15:09:54 1 thought, just tuck this away, is that whereas most
15:09:58 2 commissions, I think, are advisory, we have the
15:10:02 3 final authority, so we're a little bit of a
15:10:05 4 different animal perhaps. And I don't know -- I
15:10:10 5 don't know --

15:10:10 6 MR. MILLER: That's what
15:10:12 7 creates you as a state body at the top.

15:10:15 8 COMMISSIONER FORBES: Right. So
15:10:16 9 anyway, I just --

15:10:17 10 MR. MILLER: And that
15:10:18 11 isn't -- it's for that -- it is a state body.

15:10:22 12 COMMISSIONER FORBES: No, I
15:10:22 13 understand that. I understand that.

15:10:24 14 COMMISSIONER FILKINS WEBBER: So
15:10:24 15 we'll take back to the Commission to ask the
15:10:28 16 Commission to consider when it might be best for
15:10:30 17 us to have another session of training. Is that
15:10:34 18 something that you would want to put together for
15:10:36 19 us, Mr. Miller? Or do you feel that you would be
15:10:40 20 in that position?

15:10:41 21 MR. MILLER: I think there
15:10:41 22 are people who come with the PowerPoint kit, and
15:10:45 23 that might be best, and I'll do color commentary
15:10:48 24 if I can find that person.

15:10:50 25 COMMISSIONER FORBES: Do address

15:10:51 1 the issue of the fact we are in different groups.

15:10:51 2 MR. MILLER: Yeah. It has
15:10:51 3 to be.

15:10:54 4 COMMISSIONER BLANCO: Because I'm
15:10:55 5 quite concerned about that.

15:10:57 6 COMMISSIONER FILKINS WEBBER:
15:10:58 7 Commissioner Forbes, what was the woman's name
15:11:00 8 from the BSA.

15:11:02 9 COMMISSIONER FORBES: I don't
15:11:02 10 remember.

15:11:02 11 COMMISSIONER FILKINS WEBBER:
15:11:03 12 She -- in fact, she did give formal training to
15:11:08 13 the new six commissioners, did she not? You
15:11:11 14 had -- you weren't there.

15:11:11 15 COMMISSIONER BLANCO: I wasn't
15:11:15 16 there.

15:11:15 17 MR. MILLER: I think they
15:11:16 18 received --

15:11:16 19 COMMISSIONER FILKINS WEBBER: They
15:11:16 20 did receive.

15:11:16 21 MR. MILLER: I think they
15:11:16 22 received less, though, is my understanding. I
15:11:18 23 could be wrong about that. But even so, you know,
15:11:22 24 as short as this thing is, I think everyone can
15:11:25 25 benefit from hearing it twice.

15:11:28 1 COMMISSIONER FILKINS WEBBER: Then
15:11:29 2 we can probably capitalize on -- what was her
15:11:31 3 name? It escapes me.

15:11:31 4 MR. MILLER: I know who
15:11:38 5 you mean.

15:11:38 6 COMMISSIONER FILKINS WEBBER:
15:11:39 7 Commissioner Yao, do you happen upon to know the
15:11:40 8 name of the woman?

15:11:40 9 COMMISSIONER YAO: Donna Neville, I
15:11:43 10 believe.

15:11:43 11 COMMISSIONER FILKINS WEBBER: Donna
15:11:45 12 Neville from the Bureau of State Audits, and she
15:11:48 13 has a PowerPoint. We might be able to focus her
15:11:50 14 presentation a little more as what we are -- what
15:11:53 15 are we looking at as far as structure now with our
15:11:56 16 legal subcommittee? What are we trying to
15:11:57 17 accomplish for the public and really move things
15:12:01 18 forward? Can we get her to, I guess --

15:12:05 19 MR. MILLER: I think --

15:12:08 20 COMMISSIONER BLANCO: And I think
15:12:08 21 we should capture your question, Jodie, about now
15:12:13 22 that we -- with staff, like, if we -- if I talk to
15:12:19 23 Kirk, you know, and then to two other
15:12:24 24 commissioners, what's happened there with that
15:12:27 25 situation of the three or more?

15:12:32 1 MR. MILLER: I don't --
15:12:33 2 don't count.
15:12:33 3 COMMISSIONER BLANCO: That's what
15:12:33 4 I'm saying.
15:12:33 5 MR. MILLER: I don't
15:12:37 6 count.
15:12:37 7 COMMISSIONER FILKINS WEBBER: I was
15:12:38 8 under the impression that staff does count for the
15:12:41 9 purposes of serial communication.
15:12:43 10 MR. MILLER: But it's a
15:12:43 11 different -- it's a different test. It's not a
15:12:45 12 numbers test so much there is a function test.
15:12:48 13 You know, I wouldn't want to pole on your behalf
15:12:52 14 the whole Commission.
15:12:52 15 COMMISSIONER BLANCO: I see. Got
15:12:56 16 it. Got it.
15:12:56 17 COMMISSIONER FORBES: You can't
15:12:58 18 duck it by --
15:12:58 19 COMMISSIONER BLANCO: By using an
15:12:58 20 intermediary?
15:12:58 21 MR. MILLER: That's right.
15:13:00 22 COMMISSIONER BLANCO: Okay. Got
15:13:00 23 it.
15:13:05 24 COMMISSIONER FILKINS WEBBER: So we
15:13:06 25 will take it back to the Commission for

15:13:07 1 consideration.

15:13:07 2 MR. MILLER: Now, I just
15:13:08 3 wanted to mention one other thing on this -- on
15:13:11 4 this point, because it's coming right up. There
15:13:13 5 is a special exemption, if you may have noticed it
15:13:16 6 in here, for purely social events, which is the
15:13:22 7 Commission Dinner in my view.

15:13:24 8 COMMISSIONER FILKINS WEBBER: We've
15:13:24 9 capitalized on that.

15:13:27 10 MR. MILLER: But -- but
15:13:27 11 also do keep in mind the admonition that it has to
15:13:31 12 stay social and is not a place where you can
15:13:36 13 discuss business.

15:13:37 14 COMMISSIONER FILKINS WEBBER: So we
15:13:38 15 will -- just real quickly, do any of the members
15:13:41 16 of the public have any comments and maybe my
15:13:43 17 fellow Commissioner Yao?

15:13:46 18 COMMISSIONER YAO: I'd like for
15:13:48 19 council to take a slightly different, broader view
15:13:51 20 of this Bagley-Keene requirement. Taking the
15:13:55 21 views I would say you only talked to one other
15:13:58 22 commissioner and you can avoid serial meeting
15:14:01 23 problems, probably -- certainly that's one way of
15:14:05 24 doing it.

15:14:05 25 But on the other hand, I believe

15:14:08 1 both the Bagley-Keene and the Brown Act sets a
15:14:13 2 requirement saying you cannot exceed the minority
15:14:17 3 count in the Commission. You know, you can't
15:14:21 4 come -- you can't close to the majority count.

15:14:24 5 And the way that I have always done
15:14:26 6 it is before I talk to anybody else, I disclose
15:14:29 7 who else I have talked to, okay, so that the
15:14:33 8 person that I talk to next can stop me if that
15:14:37 9 happens to exceed the total number that we are not
15:14:41 10 supposed to exceed.

15:14:42 11 For example, that individual may
15:14:44 12 have discussed that issue with, let's say two
15:14:47 13 other candidates, but by me disclosing that
15:14:50 14 information to the person I want to discuss, we
15:14:52 15 can in that instant in time decide whether we have
15:14:56 16 or have not exceeded the maximum number of people
15:14:59 17 that we can talk to.

15:15:00 18 So we have always addressed that
15:15:04 19 potential problem by taking that action as
15:15:08 20 compared to doing it the other way saying that if
15:15:10 21 I only talk to one other person, I would never be
15:15:13 22 accused of a chain meeting or anything else.

15:15:16 23 So I think we're looking for ways
15:15:18 24 to have the ability to discuss the issues and do
15:15:23 25 the business, adhering to the open meeting intent

15:15:27 1 in the law and try to work it in that matter. So
15:15:30 2 I think there are other ways besides the very,
15:15:33 3 very conservative guideline that we have received
15:15:36 4 from BSA and from SOS in terms of how much can we
15:15:40 5 discuss internally.

15:15:42 6 MR. MILLER: Would it be
15:15:42 7 possible for us to have that conversation -- I
15:15:48 8 don't fully understand what you're saying, but I
15:15:51 9 would like to, and we can talk and I can give
15:15:54 10 you -- without -- it doesn't violate anything for
15:15:57 11 you to talk to me.

15:15:57 12 COMMISSIONER YAO: I understand,
15:16:02 13 but the -- but where we're going -- where I think
15:16:03 14 you're heading is repeating the same presentation
15:16:07 15 that we -- no?

15:16:08 16 COMMISSIONER FILKINS WEBBER: No.
15:16:08 17 No. And Commissioner Yao, I certainly appreciate
15:16:10 18 your participation, but we have 15 minutes left,
15:16:13 19 and we do have a couple other things we want to
15:16:16 20 get to.

15:16:16 21 But no, our suggestion was to
15:16:18 22 tailor it and tailor the presentation either from
15:16:21 23 Ms. Neville or somebody else we can find based on
15:16:24 24 our present structure and based on the issues that
15:16:26 25 we've seen come up. We certainly don't want her

15:16:28 1 to reiterate what we have already been subjected
15:16:31 2 to in the two sessions, one from December and then
15:16:36 3 the 6th again.

15:16:37 4 So no, we're looking at tailoring
15:16:38 5 it to the issues that I think Mr. Miller is aware
15:16:41 6 we've been discussing in the subcommittee issues.

15:16:45 7 COMMISSIONER YAO: Thank you.

15:16:45 8 COMMISSIONER FILKINS WEBBER: Okay.
15:16:45 9 Thank you.

15:16:46 10 Any other comments from the public
15:16:46 11 regarding Bagley-Keene?

15:16:48 12 Thank you. We'll move on.

15:16:50 13 The other priority issue, 8253,
15:16:53 14 Section 8253 of the Government Code has become
15:16:57 15 again another topic of discussion among the
15:16:59 16 Commission members. It did come up before.

15:17:01 17 Mr. Miller, specifically what I'm
15:17:03 18 referring to is Section (a)(3) of 8253. Do you
15:17:07 19 have that in front of you?

15:17:07 20 MR. MILLER: Uh-huh.

15:17:08 21 COMMISSIONER FILKINS WEBBER: For
15:17:08 22 the members of the public, I'll just read it
15:17:10 23 briefly. It's the first sentence that appears to
15:17:12 24 be at issue.

15:17:14 25 "Commission members and

15:17:15 1 staff may not communicate with
15:17:19 2 or receive communications about
15:17:21 3 redistricting matters from
15:17:23 4 anyone outside of a public
15:17:25 5 hearing."

15:17:27 6 So there have been circumstances in
15:17:29 7 which many of the Commission members have been
15:17:31 8 invited to speak at redistricting meeting that
15:17:35 9 have been taking place throughout the state.

15:17:37 10 And the issue, for instance, came
15:17:39 11 up -- this section is -- the sentence itself
15:17:42 12 involved two things. Number one, you may not
15:17:44 13 communicate with, which would mean the
15:17:46 14 communication comes from the commissioner. But
15:17:48 15 then there is the second phrase which is "or
15:17:51 16 receive communications." In other words, being
15:17:53 17 the Commission member listening to somebody else.

15:17:55 18 So the discussion came up when
15:17:57 19 certain Commission members went and gave welcome
15:18:00 20 statements at some events, the discussion was it
15:18:05 21 probably would not be right for them to stay at
15:18:07 22 that event, because then they would be technically
15:18:10 23 receiving communications about redistricting
15:18:11 24 matters outside of a public hearing.

15:18:15 25 There are several webinars that are

15:18:17 1 going on obviously throughout the United States
15:18:19 2 regarding redistricting issues. Again, should
15:18:24 3 a -- could a Commission member actually receive
15:18:26 4 that communication through the webinar regarding
15:18:29 5 redistricting matters, and if one person can do
15:18:32 6 it, would they then be prohibited from
15:18:35 7 distributing that to other Commission members?

15:18:37 8 So I think that we need to provide
15:18:40 9 further information to the Commission regarding
15:18:41 10 what does "communication with outside of a public"
15:18:45 11 mean and what does "receiving communications about
15:18:45 12 redistricting matters" mean to the full
15:18:48 13 Commission?

15:18:48 14 COMMISSIONER FORBES: You just
15:18:50 15 answered the question, because we have a booklet
15:18:52 16 which we got today with the article. Can I read
15:18:54 17 an article about the redistricting process?

15:18:57 18 COMMISSIONER FILKINS WEBBER: But
15:18:58 19 see, this was given to the full Commission at a
15:19:00 20 public hearing.

15:19:01 21 COMMISSIONER FORBES: No, no, but
15:19:01 22 I'm saying, just in general --

15:19:03 23 COMMISSIONER FILKINS WEBBER:
15:19:03 24 That's different.

15:19:04 25 COMMISSIONER FORBES: -- can I read

15:19:05 1 an article on redistricting?

15:19:09 2 COMMISSIONER BLANCO: Let me just
15:19:10 3 say that the concrete example that I remember -- I
15:19:12 4 mean, there have been several of them, going to
15:19:14 5 meetings and -- but the one about materials and
15:19:16 6 then what you do with them came up. Commissioner
15:19:20 7 Barabba -- is that how it's pronounced?

15:19:20 8 COMMISSIONER FORBES: Yeah, it's
15:19:20 9 Barabba.

15:19:24 10 COMMISSIONER BLANCO: -- I guess
15:19:25 11 went to a conference in D.C. about the census, and
15:19:28 12 he said, "Look at this great stuff. You know,
15:19:30 13 this is really interesting information."

15:19:30 14 COMMISSIONER FILKINS WEBBER: It
15:19:34 15 was a webinar.

15:19:34 16 COMMISSIONER BLANCO: It was a --
15:19:35 17 you know, if you want to go and, you know, I think
15:19:37 18 this could be useful information, and immediately
15:19:39 19 some people said, well, we can't -- we can't even
15:19:42 20 participate in this webinar or look at these
15:19:45 21 materials about the census because -- you know,
15:19:48 22 because of this interpretation of this Government
15:19:53 23 Code section.

15:19:54 24 So I do think, and I think as
15:19:59 25 redistricting nationally picks up steam, we will

15:20:03 1 be -- there will be many of these kind of
15:20:06 2 opportunities of going to this and going to that,
15:20:08 3 I mean not to speak, that too, but even just
15:20:10 4 receiving information about redistricting. Like I
15:20:14 5 can see a conference on major concerns of
15:20:17 6 redistricting for blah, blah, blah, or -- what do
15:20:21 7 we do in that situation?

15:20:22 8 COMMISSIONER FILKINS WEBBER: Do we
15:20:23 9 have to leave --

15:20:26 10 COMMISSIONER BLANCO: Or can we go?
15:20:26 11 Can we attend something that we think would be
15:20:29 12 informative?

15:20:30 13 MR. MILLER: I think
15:20:31 14 you've teed up the issue well and, given our short
15:20:35 15 time, if I could take that under advisement and
15:20:38 16 try to come back to the Commission.

15:20:40 17 COMMISSIONER FORBES: The one thing
15:20:40 18 that the Public Information Committee talked about
15:20:43 19 was that we're going to create a little card -- or
15:20:47 20 we're going to recommend creating a little card
15:20:49 21 that says that sentence on it and give it to
15:20:52 22 anybody who wants to interview us so they
15:20:55 23 understand these are our limitations.

15:20:58 24 The other thing is that we're going
15:20:58 25 to -- we ask them to prepare a -- like a little

15:21:03 1 five-minute canned speech that we could give, that
15:21:09 2 would be, you know, run through council as well,
15:21:11 3 so the information we're giving is not about
15:21:12 4 redistricting matters, but it's more about the
15:21:15 5 process and so forth and so on. So that's
15:21:18 6 something.

15:21:19 7 COMMISSIONER FILKINS WEBBER: Do
15:21:19 8 any members of the public have any comments?
15:21:22 9 Mr. Lawson?

15:21:24 10 MR. LAWSON: Yeah. I have thought
15:21:25 11 about this in some length. Like Commissioner Yao,
15:21:27 12 I would like to be able to see the Commission to
15:21:29 13 do their matters well. I'm not a lawyer, so this
15:21:33 14 may be completely impossible, but the idea was
15:21:36 15 that you could very narrowly define the term
15:21:38 16 "redistricting matters" to only, for example,
15:21:43 17 drawing lines on a map.

15:21:50 18 And as long as someone is not
15:21:52 19 talking to you about drawing lines on a map,
15:21:55 20 you're okay. But again, I have no clue, and
15:21:56 21 again, members of the public who are, you know,
15:21:58 22 very focused on transparency and things like that
15:22:01 23 might not appreciate that kind of very narrow
15:22:06 24 definition to allow a great deal of conversation.
15:22:07 25 I don't know.

15:22:07 1 COMMISSIONER FORBES: Another
15:22:08 2 variation would be that we could anytime we go to
15:22:10 3 something or do something like that, we could have
15:22:11 4 a link to our website or we could have it
15:22:13 5 introduced at the public meeting that we have so
15:22:16 6 that everything we do actually, in fact, is
15:22:18 7 public. And so we could go provided we could have
15:22:25 8 it talked about at least.

15:22:26 9 COMMISSIONER FILKINS WEBBER: Any
15:22:27 10 other comments from members of the public?

15:22:30 11 MR. KOPP: The example that was
15:22:32 12 given about attending, you know, a census bureau
15:22:36 13 webinar, I -- what is it -- I was looking at the
15:22:39 14 Census Bureau's publication, you know, public law
15:22:44 15 94-171 is basically an encouragement, and if you
15:22:50 16 have a conflict between that law, receiving
15:22:52 17 information about redistricting and so forth, and
15:22:56 18 your mission statement from the State, you might
15:23:01 19 just think about the federal supremacy.

15:23:03 20 COMMISSIONER FILKINS WEBBER: Any
15:23:04 21 other comments? Mr. Lee.

15:23:06 22 MR. LEE: I was going to make a
15:23:07 23 comment similar to Dr. Lawson's comment about
15:23:11 24 looking at redistricting matters as an additional
15:23:13 25 term that should be defined in addition to

15:23:15 1 receiving communications and communicate with, and
15:23:19 2 I think that there is room to look at this more
15:23:23 3 narrowly.

15:23:26 4 The initiative -- Prop 11 could
15:23:31 5 have been drafted to simply talk about
15:23:33 6 communications about redistricting, but there is a
15:23:36 7 word that was inserted there, "matters," which
15:23:39 8 kind of implies that that's a subset of the very
15:23:43 9 broad field of redistricting.

15:23:48 10 COMMISSIONER FILKINS WEBBER: Thank
15:23:49 11 you.

15:23:49 12 Anyone else?

15:23:51 13 MR. KOPP: Just one other thing.
15:23:52 14 We kind of went through this where I live. It was
15:23:55 15 a creation of a new city, so there was all kinds
15:23:57 16 of training that went on, public meetings about
15:24:00 17 Bagley-Keene and Brown Act and so forth, and one
15:24:02 18 of the suggestions of the interim city manager was
15:24:06 19 that in terms of receiving information, those be
15:24:10 20 funneled through the city manager, the city
15:24:13 21 manager compile a list of public comments that
15:24:17 22 have come in, say, through e-mail or drop-ins at
15:24:21 23 the city hall, and then present them to the new
15:24:26 24 city council so that you don't really have
15:24:29 25 meetings and discussions about them, but you're

15:24:31 1 presented with what the public has to say, and
15:24:34 2 then they can be considered. They are part of the
15:24:37 3 agenda.

15:24:38 4 COMMISSIONER FILKINS WEBBER: Well,
15:24:38 5 we do do that now.

15:24:41 6 MR. KOPP: But if you intentionally
15:24:45 7 tried to focus the majority of what comes in even
15:24:48 8 as individuals to, say, a manager who disseminates
15:24:53 9 that to the whole Commission, you avoid that
15:24:55 10 serial meeting problem.

15:24:58 11 COMMISSIONER FILKINS WEBBER: Thank
15:24:58 12 you.

15:24:58 13 Any other comments? We're running
15:25:01 14 short on time.

15:25:02 15 But we'll just move quickly for the
15:25:05 16 sake of the full Commission and the report back to
15:25:07 17 the Commission, we'll advise them that Mr. Miller
15:25:09 18 will take it under advisement and consider the
15:25:13 19 wonderful public comments that were made, and
15:25:15 20 definitely appreciate that, given that we do have
15:25:18 21 to define our own law since the judiciary hasn't
15:25:23 22 done it yet. We certainly appreciate that.

15:25:25 23 Real quickly, the last matter of
15:25:27 24 priority that we were discussing for this session
15:25:29 25 were the consideration of the standing rules to

15:25:33 1 take back for conducting public hearings, and we
15:25:40 2 might need to table this for next time, because I
15:25:43 3 think that we need to probably put together a list
15:25:46 4 for the full Commission of the types of rules that
15:25:49 5 we should set up.

15:25:50 6 MR. MILLER: You know, I
15:25:51 7 just would encourage you to follow up on what you
15:25:53 8 were talking about earlier, though, right away,
15:25:55 9 which was limiting the amount of time a member of
15:25:58 10 the public has to speak.

15:26:00 11 COMMISSIONER FORBES: Now, we
15:26:01 12 discussed this at a previous meeting, and what I
15:26:03 13 would ask is that the staff review that and see
15:26:05 14 what the Commission has to say about the amount of
15:26:07 15 time we were going to allow.

15:26:08 16 COMMISSIONER FILKINS WEBBER: Well,
15:26:09 17 we did. We already voted --

15:26:10 18 COMMISSIONER FORBES: Right. So
15:26:10 19 let's get that in writing.

15:26:12 20 COMMISSIONER FILKINS WEBBER: Okay.

15:26:13 21 COMMISSIONER FORBES: Rather than
15:26:13 22 table it, let's just see what have we done.

15:26:15 23 COMMISSIONER FILKINS WEBBER:
15:26:15 24 Because we need to advise the rotating chair that
15:26:18 25 this probably needs to be mentioned -- was it

15:26:23 1 something we should put on the agenda?

15:26:25 2 MR. MILLER: Well, it's

15:26:26 3 something that you can implement right away.

15:26:28 4 We've got three more -- two or three more days of

15:26:30 5 meetings and I just thought it might be helpful to

15:26:33 6 the Commission to implement this.

15:26:36 7 COMMISSIONER FILKINS WEBBER: Well,

15:26:36 8 they need to be reminded of what we've already

15:26:38 9 voted on.

15:26:38 10 MR. MILLER: Do you recall

15:26:38 11 if you set a time?

15:26:39 12 COMMISSIONER FILKINS WEBBER: If

15:26:39 13 I'm not mistaken, it's five minutes.

15:26:44 14 COMMISSIONER FORBES: Up to 30

15:26:45 15 minutes total and five minutes, unless there's a

15:26:47 16 whole long list of people, in which case --

15:26:50 17 COMMISSIONER FILKINS WEBBER: It's

15:26:51 18 just not -- it's just not being followed.

15:26:51 19 COMMISSIONER BLANCO: Well, no

15:26:57 20 one's exceeded five minutes before.

15:26:57 21 COMMISSIONER FORBES: And we just

15:26:57 22 haven't announced it.

15:26:57 23 COMMISSIONER BLANCO: You should

15:26:57 24 announce it.

15:26:59 25 MR. KOPP: You might also look at

15:27:01 1 the Fair Political Practices Commission rules
15:27:03 2 about the spirit of enforcement of this kind of
15:27:06 3 thing, applying it uniformly and not granting
15:27:10 4 favoritism to one group versus another, opponents
15:27:15 5 versus proponents.

15:27:15 6 COMMISSIONER FORBES: And it's
15:27:16 7 probably the language --

15:27:16 8 COMMISSIONER FILKINS WEBBER:
15:27:16 9 Certainly that's why we want to keep it. We do
15:27:18 10 have a standard and we have already voted on it.

15:27:21 11 MR. KOPP: But the Fair Political
15:27:22 12 Practices Commission, some of their rules talk
15:27:23 13 about the way in which you enforce that, and
15:27:27 14 there's a spirit of public outcry that you have to
15:27:33 15 tolerate, and if it exceeds two minutes per
15:27:37 16 person, six minutes total on a particular subject,
15:27:39 17 like the Norco School Board and so forth, which is
15:27:43 18 one of their rules, you have to tolerate it
15:27:46 19 sometimes.

15:27:47 20 COMMISSIONER FORBES: And I would
15:27:48 21 include it -- recommend that we include it in our
15:27:50 22 agendas. It's a standard text.

15:27:54 23 MR. KOPP: It's in many agendas.
15:27:57 24 Opening paragraph or something.

15:27:57 25 COMMISSIONER FORBES: Or last

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15:28:00 2
15:28:02 3
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paragraph.

COMMISSIONER FILKINS WEBBER:

Mr. Miller, can we task you with just a brief draft of what we should probably consider putting on the agenda?

And also -- that's it. The other thing we were considering for the agenda was the closed session issue that we could add as point Number 2. Could you --

MR. MILLER: Well, we can --

COMMISSIONER FILKINS WEBBER: That would be for March.

MR. MILLER: -- use closed session for litigation and we'll notice that in the same way we do personnel matters in the event there is litigation we will have that noticed.

COMMISSIONER BLANCO: But we'll recommend that today.

COMMISSIONER FILKINS WEBBER: So that would be Number 2. Okay.

It's 3:28. Any other public comments on our first legal subcommittee meeting, which I thought was quite successful and I really appreciate the number of people that we had. If

15:29:04 1 not, then we'll go ahead and adjourn this meeting,
15:29:08 2 unless there's anything further from --

15:29:08 3 MR. MILLER: I would just
15:29:09 4 add one thing, that when we do the PR, the open
15:29:13 5 meeting law training, I think it would be
15:29:17 6 worthwhile to spend a little time on the Public
15:29:20 7 Records Act at the same time. They are related
15:29:22 8 and they're both important to the Commission's
15:29:24 9 business.

15:29:28 10 COMMISSIONER FILKINS WEBBER: Thank
15:29:29 11 you. We're adjourned.

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(Whereupon, at the hour of

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3:29 p.m., the proceedings

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were adjourned.)

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I, SAMANTHA AVENAIM, Certified Shorthand Reporter, Certificate Number 10627, for the State of California, hereby certify:

The foregoing proceedings were taken before me at the time and place therein set forth;

The proceedings were recorded stenographically by me and were thereafter transcribed;

The foregoing transcript is a true and correct transcript of my shorthand notes so taken;

I further certify that I am neither counsel for nor related to any party to said action, nor in any way interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of February, 2011.
