

BEFORE THE
CALIFORNIA CITIZENS REDISTRICTING COMMISSION

In the matter of
Meeting of the
Legal Advisory Committee

State Capitol Building
Room 447
Sacramento, California

THURSDAY, MARCH 17, 2011
3:00 P.M.

Reported by:
Kent Odell

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APPEARANCES

Members Present

Angelo Ancheta

Maria Blanco

Jodie Filkins Webber

Stanley Forbes

Connie Galambos Malloy

Michael Ward

Staff Present

Dan Claypool, Executive Director

Kirk Miller, Legal Counsel

Applicants

GIBSON, DUNN & CRUTCHER:

George Brown

Matthew Kahn

Dan Kolkey

NIELSON, MERKSAMER, PARRINELLO, GROSS & LEONI, LLP:

Marguerite Leoni

Chris Skinnell

GILDA DANIELS

BRUCE ADELSON

APPEARANCES (Continued)

Also Present

Public Comment

John Ryan, Student, Sacramento State; Member, California
Young Democrats

Astrid Garcia, NALEO Educational Fund

Trudy Schafer, League of Women Voters of California

Joshua Golka, California School Employees Association

David Oliveri, Student, Laney Community College

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1 P R O C E E D I N G S

2 MARCH 17, 2011

3:00 P.M.

3 COMMITTEE MEMBER FORBES: We keep changing
4 microphones and so they have different buttons to do
5 different things. I want to thank you all for coming.
6 This is the Meeting of the Legal Subcommittee of the
7 Citizens Redistricting Commission. Is there anyone here
8 to take roll? No. Then I'll note that the regular
9 committee members are here, that's Commissioners Filkins
10 Webber, Ward, Blanco, Ancheta, and Forbes, and we're
11 joined by Commissioner Galambos Malloy just to sit in and
12 offer her comments.

13 The format for this afternoon's and this
14 evening's meetings, we're going to have four applicants
15 that we've asked to come speak to us about various
16 issues, questions, and budget issues, and scope of work
17 issues, things of that variety. Each presentation will
18 be approximately 50 minutes, at which point we'll take a
19 short break and wait for the next person to come in. The
20 final two presentations will be made by telephone because
21 they're coming from the East Coast. With that, I'd ask
22 if there is anything that the public would like to
23 address the subcommittee on that is not otherwise on the
24 agenda that is within the purview of this subcommittee?
25 Please. And use one of these microphones, I'm sorry --

5

1 MR. RYAN: That's okay. My name is John Ryan.
2 I'm a Sac State student and I'm a member of the
3 California Young Democrats. I've been here a couple of
4 times. I'm here today to speak on behalf of Jess Durfee,
5 who is the Chair of the California Democratic Party's
6 Redistricting Subcommittee. Jess couldn't be here today,
7 but we'd like to urge you to exclude two individuals for
8 the position of Voting Rights Act counsel. Two of the
9 applicants, Ms. Marguerite Leoni, of Nielson, Merksamer,
10 and Mr. Daniel Kolkey of Gibson, Dunn & Crutcher, not
11 only have disqualifying conflicts of interest under
12 Proposition 11, but are closely affiliated with
13 Republican candidates and office holders.

14 Both Ms. Leoni and Mr. Kolkey may be excellent
15 lawyers, but choosing either of them would seriously
16 undermine the public trust and the fairness of your
17 process, and the district boundaries that you ultimately
18 adopt. Ms. Leoni's application reveals that she has been
19 a registered State Lobbyist in the last 10 years, and
20 that her firm is a registered lobbying firm. Government
21 Code Section 8252(A)(2)(iv) makes clear that having been
22 a registered Federal, State, or local Lobbyist is a
23 disabling conflict of interest and Government Code
24 Section 8253(A)(5) states that the Commission shall apply
25 Section 8252's conflict provisions to the hiring of its

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1 staff, to the extent applicable.

2 This conflict of interest is highly applicable to
3 your Voting Rights Act counsel. Lobbyists have ties not
4 only to their clients, past and present, but to the
5 Legislators with whom they have worked. Nielson
6 Merksamer's application also makes clear that it has
7 spent a great deal of time litigating against minorities
8 who have raised claims under the Voting Rights Act. When
9 you add in the fact that Nielson, Merksamer is widely
10 known as a Republican law firm, that Ms. Leoni and her
11 firm have represented Republicans in statewide
12 redistricting litigation, both in California and in other
13 states, and that one of Ms. Leoni's partners, Steven
14 Merksamer, was Chief of Staff to Governor Deukmejian, it
15 would be very hard to argue that the Commission's Voting
16 Rights Act counsel was either impartial or nonpartisan.

17 Mr. Kolkey has a different disqualification under
18 Section 8252, but one that equally affects his ability to
19 appear impartial. He has served as a member of the
20 Central Committee of the State Republican Party within
21 the last 10 years. Section 8252(A)(2)(a)(iii)
22 specifically lists this as a disqualifying conflict of
23 interest, and for the same reasons set out above, this
24 conflict of interest clearly should apply to the person
25 who advises you on something as sensitive as the Voting

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1 Rights Act. In addition, Mr. Kolkey served as Governor
2 Wilson's Legal Affairs Secretary. He and his firm,
3 Gibson, Dunn & Crutcher, went on to represent the
4 Republican Governor in the 1990 Redistricting litigation
5 and, as part of that litigation, Governor Wilson
6 submitted modifications to plans drawn by a group he
7 appointed to submit plans to the Special Masters, but the
8 Special Masters rejected both sets of plans on the
9 grounds that they were not sufficiently protective of
10 minority voting rights. This history is not one that
11 would inspire trust that the Commission's Voting Rights
12 Act counsel would be either impartial or sensitive to
13 minority voting rights.

14 This is not meant to disparage either of these
15 applicants in any way, but just as we would not expect
16 you to hire someone who had been a member of the
17 Democratic Party Central Committee, or who had a
18 distinguished career representing Democrats, I urge you
19 not to undermine the public trust that you have worked so
20 hard to foster by hiring counsel who may give the
21 appearance of some bias, or who do not meet the conflict
22 of interest standards written into the law. Thank you
23 for your consideration and your time, and I have a copy
24 of the letter for each one of the members of the
25 Commission if you want to pass them around.

1 COMMITTEE MEMBER FORBES: Thank you. Is there
2 anybody else who would like to speak and, as I had said
3 initially, these are for issues that are not on the
4 agenda, but that are, in fact, subject to this Committee.
5 Hearing none, seeing no one else coming to the
6 microphone, I would like to invite the representatives
7 from Gibson, Dunn & Crutcher to make an opening statement
8 if you would like. And then the format will be that we
9 have a number of questions that we'd like to ask you.
10 So, if you'd like to take, oh, maybe seven minutes to
11 make an opening statement?

12 MR. BROWN: Okay, we'll go quickly. Thank you.

13 COMMITTEE MEMBER FORBES: Great, thank you.

14 MR. BROWN: First of all, I'm George Brown. I'm
15 a partner with Gibson, Dunn and Crutcher in the Palo Alto
16 office. I've lived in California since 1981. I spent
17 many of those years in Los Angeles and I've been in the
18 Silicon Valley Area for about a dozen years now. We
19 thank you very much for inviting us in for this
20 opportunity to present our qualifications. We want to
21 say at the outset that we think the Commissioners are
22 performing an important public service that is
23 fundamental to our, you know, Democratic system, and we
24 thank you very much for your service, and we are
25 delighted to have the opportunity to potentially assist

1 in this process.

2 I want to give you a brief introduction to our team
3 and then let Dan say a few words if that's okay. First,
4 let me start with Matt Kahn. Matt is lawyer in our San
5 Francisco office. He was born and raised in California
6 and attended Stanford Law School. I've worked with Matt
7 on numerous cases over the last several years, including
8 Voting Rights Act cases. We've been to trial together
9 and I can say he's a terrific lawyer.

10 Kahn Skolnick, at the other end of the table, is
11 a lawyer with Gibson, Dunn & Crutcher in our Los Angeles
12 office. Kahn attended law school at the University of San
13 Diego, he clerked for a District Court Judge in the
14 Southern District of California, United States District
15 Court, he also clerked for the 9th Circuit Court of
16 Appeals. I've also worked with Kahn Skolnick closely
17 over the last several years, including on Voting Rights
18 matters, and he's also a terrific lawyer.

19 Dan Kolkey is my partner; he's in our San
20 Francisco office. He's lived in California since 1978.
21 Dan has been an Associate Justice of the California Court
22 of Appeal. In addition, he's the author of Proposition
23 20 and played an important role in drafting Proposition
24 11. He's been involved in Redistricting for a long time.
25 We think he's going to be an extremely valuable resource

1 for our team.

2 We put together a balanced team that we believe
3 can provide the Commission with the counsel it needs on
4 Voting Rights Act issues in order to carry out its
5 mission. I'm a Democrat, Dan is a Republican, I've
6 worked actively on behalf of minority voters in a variety
7 of litigation over the last seven years, I believe that,
8 among the firms that have submitted proposals, that I'm
9 probably the only lawyer who has actively worked on
10 behalf of minority voters in litigation in California in
11 the last several years. I should say that Matt and Kahn
12 also fall within that category. Now, Dan, can you say a
13 few words about your background and experience?

14 MR. KOLKEY: Yeah, I'd like to address a couple
15 points. And first, what we've done here is try to
16 provide a bipartisan team of lawyers that we think will
17 actually help preserve the Commission's neutrality by
18 having both the Republican and a Democrat. We expect
19 that we're going to agree on the legal advice that we
20 provide. Where there are uncertainties in the law, we
21 will advise the Commission of those uncertainties, and if
22 there's any difference of view as to how to approach the
23 uncertainty, we will provide both points of view to the
24 Commission. But I think this will really help preserve
25 the Commission's neutrality. I'd like to note that I

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1 have participated in the drafting of legislation for
2 Redistricting Commissions for some seven years. I
3 largely drafted Proposition 77, albeit at the direction
4 of a client, and that was, of course, the predecessor to
5 Prop. 11. I was involved in the early stages of the
6 drafting of Proposition 11 and, in fact, I contributed
7 specific language to Proposition 11, as well as its
8 structure. And then, as George mentioned, I did draft
9 Proposition 20. I am intimately familiar with the
10 reasons and meaning for the various criteria in both
11 Proposition 11 and Proposition 20, and think I can be of
12 great benefit to the Commission in that respect.

13 I should also note that, having done this
14 drafting, I really have an interest in the Commission
15 being successful because, if the Commission is not
16 successful, then the drafting of Proposition 11 and 20
17 will have been flawed, so my interest is in a Commission
18 product that is invulnerable to any viable legal
19 challenge and that creates fair, equal opportunity
20 districts. I should also note that I have been involved
21 in the redistricting process in the past, in the '90s as
22 noted, but slightly inaccurately in the letter that was
23 read prior to your introducing us, Gibson, Dunn and
24 Crutcher was retained by Governor Wilson to represent him
25 in redistricting litigation in the early 1990's. Our

1 charge was to help provide fair districts, rather than
2 gerrymandered districts, as the ultimate districts that
3 would be adopted by the State of California. In that
4 connection, Governor Wilson appointed a bipartisan
5 Commission, half Republican, half Democratic and, by the
6 way, one of the Republicans was a Professor from Stanford
7 by the name of Condoleezza Rice, and that Commission,
8 without any influence from Governor Wilson or Gibson,
9 Dunn & Crutcher, tried to create a set of districts as a
10 contrast to what the Legislature was doing. There was a
11 reference, by the way, in the letter that was read that
12 [quote] "Governor Wilson submitted modifications to plans
13 drawn by a group he appointed to submit plans to the
14 Special Masters, but the Special Masters rejected both
15 sets of plans on the grounds they were not sufficiently
16 protective of minority voting rights." In fact, what
17 happened is that, as I said, we were not involved at all
18 in the drawing of the districts by this bipartisan
19 commission. When we saw the districts, we saw that there
20 were some Voting Rights Act flaws and we attempted to
21 amend the plans to the extent we could when they were
22 presented to the California Supreme Court and to their
23 Special Masters. We couldn't completely re-do the plans
24 without undermining the fact that it was an independent
25 Commission that was preparing these plans, but we tried

1 to actually enhance minority rights in our amendments.
2 And when the Special Masters rejected all the plans that
3 were presented to them, including, by the way, plans from
4 various legislative bodies, and various minority voting
5 rights groups, we were the only party that supported the
6 Special Masters Plan as a plan that provided fair
7 districts for California, and the Special Masters Plans
8 were then ultimately adopted by the Supreme Court with
9 some limited changes. But the point is that my work in
10 redistricting for Gibson, Dunn, on behalf of Governor
11 Wilson, was with the effort to create fair, impartial
12 districts for the State of California, which I think the
13 Districts adopted in the 1990's largely accomplished.

14 So, with that, I would just like to say that our
15 interest here is to provide some bipartisan legal advice
16 and to help assure the Commission's success in creating
17 fair, equal opportunity districts. Thank you.

18 COMMITTEE MEMBER FORBES: Thank you. At this
19 time, we have prepared a series of questions that we're
20 going to ask you and just starting with Commissioner
21 Ancheta, ask the first question, and we'll just go right
22 down the list here.

23 COMMITTEE MEMBER ANCHETA: And I believe these
24 were provided to you ahead of time.

25 MR. BROWN: We received several questions, yes.

1 COMMITTEE MEMBER ANCHETA: So, basic question,
2 then. So what in your review will be the most
3 significant and challenging issues arising from the new
4 Census Data for the Commission to consider?

5 MR. BROWN: Thank you. We think there are a
6 couple of apparent issues, sort of starting with the
7 observation that there's been tremendous growth in two
8 minority populations, the Hispanic-Latino population, and
9 in the Asian population. And the recognition that there
10 are certain areas of the state where there are large
11 concentrations of minority voters, particularly Southern
12 California and Los Angeles County, and there may be
13 issues as you try to protect minority voting interests in
14 situations where there are conflicting interests among
15 groups that have legitimate claims. And so there are
16 going to be some challenges in trying to figure out how
17 do you maintain, protect, enhance voting power for one
18 group, when there will be competing groups asking for the
19 same? And it may not be completely possible to solve and
20 protect all the interests, and so that's going to be a
21 challenge.

22 Another area that we see, that the Commission
23 should pay some attention to, is that, from our read of
24 the U.S. Supreme Court case law, we believe they've
25 suggested that it is permissible, though not required,

1 for a redistricting body to create minority districts
2 that are characterized as "influence districts," or
3 "coalition," or "crossover districts," in circumstances
4 where there is no underlying violation of the Federal
5 Voting Rights Act for failing to do that. So, we think
6 that the Commission may want to consider what policies
7 and standards to adopt on this issue so that they could
8 apply them consistently throughout the State. So, those
9 are two things that come to mind for us.

10 MR. KOLKEY: You know, I might add that you're
11 going to have some 14th Amendment issues with respect to
12 the forming of districts, so that is going to have to be
13 a very sensitive subject so that in, say, forming a
14 crossover district, or an influence district, there is
15 not a claim that race was a predominant and controlling
16 basis for the drawing of the district. And you're going
17 to obviously have to be very sensitive to the Latino and
18 African-American populations in Los Angeles County in
19 terms of the formation of districts and the population
20 shifts that result from those population shifts.

21 COMMITTEE MEMBER ANCHETA: And just as a follow-up
22 question, in listing crossover, coalition, and influence
23 districts, those are distinct types of districts and, for
24 example, influence districts where there may be competing
25 interests might be quite different from a coalitional

1 district where you have common interests between two or
2 more groups and, again, assuming an identification of the
3 issue, I think you're correct in identifying them, but
4 there may be a number of variations in terms of those
5 types of districts, I would assume.

6 MR. BROWN: Agreed. There are layers of
7 complexity that will be driven by, you know, the actual
8 facts and data.

9 MR. KOLKEY: And by the way, one of the things
10 that you're going to have to be cognizant about as you go
11 over those districts is you have that recent U.S. Supreme
12 Court decision, Bartlett v. Strickland, and that was a
13 case where the issue was permissibly creating a crossover
14 district, but doing that, then, violated some non-Voting
15 Rights Act criteria that was in the state. And so you've
16 got to be very careful, I think, in California as you
17 draw these districts that you don't then violate the
18 City, County, and communities of interest language in the
19 California Constitution, as you're going about doing
20 that.

21 COMMITTEE MEMBER FORBES: Thank you.
22 Commissioner Ward.

23 COMMITTEE MEMBER WARD: Good afternoon. How
24 would you suggest the Commission approach counting
25 prisoners?

1 MR. BROWN: We've taken a look at that and Matt
2 Kahn is going to address that.

3 MR. KAHN: Thanks, George. So, I think the first
4 thing to recognize about the issue of prisoners is that,
5 as a numerical issue, it's small, there are fewer than
6 300,000 prisoners in California, and there are 37 million
7 - roughly -- people here. So, you're looking at less
8 than one percent of the population. That said, as a
9 political issue, this is very large. Right now,
10 especially as redistricting is going on across the
11 country, there's a big fight over whether prisoners
12 should be counted as residents of the prison, or whether
13 they should be counted as residents of the place they
14 last lived before being incarcerated. Additionally, in
15 some jurisdictions, it's permitted to not count prisoners
16 at all, and that is not the case in California, though.
17 Most states, including California, have in the past
18 counted prisoners based on prison location, but there has
19 been a move in some states, notably in Maryland and in
20 New York, to get away from this and to count based upon
21 where the prisoners lived prior to being incarcerated.
22 We've done preliminary legal research and it appears, as
23 a purely legal matter, that the Commission has
24 substantial discretion to choose one method over another.
25 We would need to look further into this to confirm it,

1 but that's our initial read of the case law. There's a
2 lot of deference from the courts on this. That said,
3 there are some competing interests that the Commission
4 might want to consider on this. With respect to counting
5 prisoners as residents of their prior homes, there is a
6 California law, it is Election Code Section 2025, which
7 says that a person's domicile is not changed by virtue of
8 a number of factors, maybe they moved abroad for study,
9 or they moved to another place for work, briefly; among
10 these categories is incarceration. Now, we've looked at
11 that law and it appears the purpose of that law is to
12 enable the individual voter to maintain a domicile when
13 they have been moved either against their will or for
14 certain permitted purposes, and doesn't necessarily
15 relate to where prisoners should be counted. On the
16 other hand, one could take the view that that law
17 expresses the Legislature's intent that one might look
18 when counting for purposes of redistricting at where the
19 prisoner was before. On the other hand, the Census does
20 not report the prior home addresses of prisoners and, so,
21 in order to do a count based upon where the prisoners
22 used to live, the Commission would have to undertake
23 this, which would likely be costly; but perhaps more
24 important than cost is there might be an accuracy issue
25 and, to the extent that counting prisoners based on what

1 the Commission believes to be their prior home address,
2 is subject to challenge as potentially being inaccurate,
3 then the Commission could run afoul of the Population
4 Equality Principle and the maps could be challenged based
5 upon that. On the other hand, making the choice to count
6 the prisoners from the prison location, that data at
7 least is considered reliable because the Census reports
8 that data, and there is, of course, the "that's the way
9 it's always been done" argument. But, on the other hand,
10 there is a perception, certainly the argument has been
11 made, that counting prisoners based on prison location
12 gives disproportionate weight to the jurisdiction where
13 the prisoners happen to be housed, and makes the votes of
14 the actual citizens who can vote in those jurisdictions
15 somewhat weightier than votes of people in other places,
16 and so there could be a challenge based upon that type of
17 premise. Additionally, I think it's worth noting that
18 states -

19 COMMITTEE MEMBER BLANCO: Can I ask you a
20 question just about that?

21 MR. KAHN: Absolutely.

22 COMMITTEE MEMBER BLANCO: The statistic was one
23 percent of the population? Is that -

24 MR. KAHN: I believe that is true, based upon the
25 California Correctional System. I should add, though, I

20

1 don't think that number includes the Federal prisoners,
2 so maybe it's slightly higher.

3 COMMITTEE MEMBER BLANCO: Okay, so we don't know
4 how it affects those counties that have those populations
5 there, what the -

6 MR. KAHN: That's correct, I don't have specific
7 numbers relating to which counties have the highest
8 numbers of prisons. But, of course, I would be happy to
9 get that information for the Commission. I should say,
10 one other thing I think the Commission would want to take
11 into account in considering which location to count the
12 prisoners from is that the states so far that have moved
13 to counting the prisoners based upon their prior home
14 address have done so in response to specific enabling
15 legislation from the Legislature, and that legislation,
16 for example, has included a process for how to collect
17 the information about where the prisoners used to live,
18 and in some instances a budget for doing so. And so,
19 that's just perhaps something to think about, is whether
20 it might make more sense for the Legislature to bring
21 about this change, as opposed to the Commission, but
22 again, it seems that the Commission has substantial
23 discretion and, of course, we would want to do a lot more
24 research on that.

25 COMMITTEE MEMBER FORBES: Thank you. I would ask

1 - Commissioner Filkins Webber is going to ask the next
2 question, but do be mindful of the time.

3 MR. KAHN: I apologize.

4 COMMITTEE MEMBER FILKINS WEBBER: Being mindful
5 of the time, I just had one follow-up question and I
6 really didn't know what our procedures were going to be
7 in that regard in follow-up to these standard questions
8 we're providing to you, but did you have an opportunity -
9 correct me if I'm wrong, didn't Congress do a 2006 study
10 regarding the practicality of being able to assess
11 prisoners at their "home location," as you've called it,
12 vs. their location of incarceration? Have you looked at
13 that - or was it Congress that did that study?

14 MR. KAHN: I do believe there was a study done
15 and I feel it actually may have been the Brennan Center
16 that did it, in New York, but I'm not certain about that.
17 I know I didn't look at it in connection with this, but I
18 would be happy to do so.

19 COMMITTEE MEMBER FILKINS WEBBER: Okay, I guess
20 the point was that everybody - I thought everybody had
21 dropped the ball after that, that they had realized it
22 was just far too expensive and everything, so we can go
23 into that later. Okay, number three.

24 CMMISSIONER KOLKEY: I will say that one of the
25 things that we would do is counsel, in addition to going

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1 through and determining what the law is, we'd also
2 determine whether a particular course that's taken would
3 expose you to undue vulnerabilities in terms of
4 challenge.

5 COMMITTEE MEMBER FILKINS WEBBER: And essentially
6 you've looked at that as far as your contention that we
7 would have substantial discretion and you would be in a
8 position as counsel to be able to advise us how you could
9 support either position that the counsel or Commission
10 would take?

11 MR. KAHN: That's correct, as I noted, I think
12 further research is necessary, but based on that
13 preliminary research, yes.

14 COMMITTEE MEMBER FILKINS WEBBER: Great, thank
15 you. What do you think is relevant population for the
16 purposes of a Section 2 analysis?

17 MR. BROWN: If I understand your question
18 correctly, I think we believe the case law is that voting
19 age population is the relevant population for determining
20 the creation of a majority-minority district. In the
21 instance where you have reason to believe that there may
22 be non-citizens in that over-18 population, then we
23 believe the case law has suggested that you need citizen
24 voting age population when you're trying to create
25 majority-minority districts. And so we believe the

1 Commission will need to have its technical consultants
2 find a way to estimate those numbers using whatever
3 practices they commonly use.

4 COMMITTEE MEMBER FILKINS WEBBER: Thank you. Are
5 you familiar with the Texas lawsuit on that issue for
6 equal protection?

7 MR. BROWN: Not off the top of my head, unless
8 Dan is.

9 COMMITTEE MEMBER FILKINS WEBBER: Thank you.

10 COMMITTEE MEMBER FORBES: Commissioner Blanco.

11 COMMITTEE MEMBER BLANCO: I should have noted
12 this earlier, I mentioned this at the last Legal Advisory
13 Committee meeting, which is that I am familiar with Mr.
14 Brown, we have a policy on the Commission of disclosing
15 if we've had prior work or personal relationships with
16 any of the persons that we may be hiring or contracting
17 with, and for the record, when I was the Executive
18 Director of the Lawyers Committee for Civil Rights, Mr.
19 Brown was my boss, as a member of the Board of Directors,
20 and as Director of the Lawyers Committee for Civil
21 Rights, I had the final approval on litigation going
22 forward, I approved what litigation we filed, and the
23 settlement of any litigation, and Mr. Brown was, I
24 believe, involved in two lawsuits with the Lawyers
25 Committee as co-counsel on a pro bono basis while he was

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1 at the firm of Heller, Ehrman. And he worked with
2 attorneys in my firm at the Lawyers Committee. So, I
3 just wanted to disclose that, I know I mentioned that
4 last time, but I wanted to disclose that again.

5 I think both of you mentioned, well, I'm not
6 sure, I think it was more Mr. Kolkey than Mr. Brown, but
7 your combined experience with redistricting efforts, what
8 do you think are the common problems, pitfalls, that
9 Commissions run into in drawing districts in the
10 redistricting process?

11 MR. KOLKEY: Well, I think one is that
12 Commissions have got to avoid not following all of the
13 criteria, so I mean, because I mentioned before the
14 Bartlett case is a good example, where there was a
15 laudatory effort to create two crossover districts, but
16 at the price of violating state law on keeping counties
17 whole, and notwithstanding the laudatory goal, because
18 doing this was just permissive and not required, it
19 resulted in a finding that there was a violation by the
20 drawing the maps in terms of that state law provision, so
21 I think, 1) is that the Commission has to be very careful
22 that it's complying with all of the provisions, obviously
23 in the order of priority that they're being done. I
24 think now, with Shaw v. Reno and the other 14th Amendment
25 cases, there's got to be great care taken that there is

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1 not drawing done where race is a central basis for
2 drawing the district, as opposed to complying with the
3 Voting Rights Act. You know, in some ways, there are
4 some criteria that's very easy - population equality, you
5 can almost comply with any criteria and now get
6 population equality down to one person difference among
7 districts. So, that's not going to be an issue
8 whatsoever. I think the big issues are going to be
9 complying with the whole Cities, Counties, local
10 community of interest. By the way, I should note that
11 one of the things I did with Prop. 20 is I added the word
12 "local" to community of interest because if community of
13 interest isn't a local one that you maintain intact, the
14 prospects for challenges would be much greater, someone
15 could say, "Well, you're supposed to maintain intact
16 communities of interest, here's this widespread community
17 of interest that you didn't maintain intact, but by
18 making it local, that makes the risk of challenge based
19 on that minimized. So I think there are some things that
20 have been done with the current criteria that will
21 minimize some of the challenges that one might have
22 otherwise.

23 COMMITTEE MEMBER BLANCO: Just a follow-up
24 question. I think this is the heart of the matter in
25 some ways for this position, the Voting Rights position,

26

1 these questions, do you think that our situation in
2 California differs from Bartlett because our criteria are
3 enumerated in order of priority? In other words, could
4 you decide to forego a compact district because Voting
5 Rights Act compliance is the second criteria? Could you
6 talk a little bit about what your thought process would
7 be like in that situation?

8 MR. KOLKEY: Well, there's absolutely no question
9 that, not only as a matter of the California
10 Constitution, but just as a matter of Federal law, which
11 preempts any inconsistent State law, that compliance with
12 the Voting Rights Act is superior to any of the criteria
13 other than population equality, which I mentioned you can
14 do with a press of a button almost any way you want. The
15 difficult issue will be where it's not compliance with
16 the Voting Rights Act, but simply what is not prohibited
17 by the Voting Rights Act and, there, I think that your
18 better course is to see that you're complying with the
19 other criteria down the line and doing what's
20 permissible, but not required, under the Voting Rights
21 Act, and there will be clearly room to do what's
22 permissive, but not required under the Voting Rights Act;
23 but you need to be careful that you comply with the other
24 criteria that may have lower priority because that
25 criteria is required unless a higher level priority is

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1 also required. So, you just need to be cognizant of that
2 as you make your judgments as to what you're going to do,
3 because it would be very easy for someone like in the
4 Bartlett situation to say, "Look it, these crossover
5 districts have been created, but doing that has increased
6 the divisions of these cities, or local communities of
7 interest, and that violates the California Constitution,
8 and you can't use the Voting Rights Act as a defense
9 because you weren't required to do this under the voting
10 Rights Act." So, that's where you want to be
11 invulnerable to challenge, you need to make sure you're
12 complying with the other criteria, and then, within that,
13 because, let me just add this, there's probably a lot of
14 ways where you can minimize your division of Counties,
15 Cities, and local communities of interest, and still have
16 influence districts, crossover districts, because it will
17 not increase the number of divisions that you're creating
18 geographically. As long as you don't increase the number
19 of divisions with your crossover influence district,
20 you're free to do it. If you do it in a way that
21 increases the divisions, the challenger can say, "Well,
22 the California Constitution says that you minimize the
23 divisions of Counties, Cities, and local neighborhoods,
24 and local communities of interest to the extent possible,
25 and this was not done on this map to the extent possible,

1 and therefore it's a violation." So - there's almost a
2 mathematical beauty to it, just like population equality,
3 just make sure you minimize those divisions, and then you
4 can do your crossover districts, etc.

5 MR. BROWN: If I could just say briefly, to sort
6 of try to recap what I think it all means, there are
7 situations where, under the Federal Voting Rights Act,
8 there will be a violation, unless the Commission takes
9 certain steps. There are other situations where the
10 Commission has choices, permissive actions they could
11 take, that won't violate the Federal Voting Rights Act,
12 but that may create other issues that are in tension with
13 other goals of the statute. And so, we think there's a
14 bit of Rubik's Cube going on that the Commission will be
15 confronted with in trying to balance all the interests.

16 COMMITTEE MEMBER FORBES: Thank you.

17 COMMITTEE MEMBER BLANCO: Thank you.

18 COMMITTEE MEMBER FORBES: What is the attorney's
19 role when working with a line drawing and other technical
20 consultants to avoid creating any racially discriminatory
21 effects or any intentional discrimination?

22 MR. BROWN: We have a number of points in
23 response to that, but let me say that the bottom line, we
24 think, is to give you, the Commission, our best
25 professional advice on what the issues are, what the law

1 is, and what the choices are, and the consequences of
2 different choices, and then bring it back to you as the
3 client to make those choices; bottom line, that's what we
4 think we're doing. Now, in particular, and I won't go on
5 too long, I think that means we need to help the
6 Commission determine what standards of practices to adopt
7 for creating districts, we need to understand, as
8 counsel, the demographics of the various districts. We
9 need to understand the competing options for drawing the
10 lines for each district, we need to understand the
11 communities of interest and the points of view expressed
12 by interested groups and members of those communities,
13 We need to evaluate whether the proposed maps would
14 dilute the minority voting strength in a given geographic
15 area. We need to evaluate whether the circumstances that
16 exist with creating particular maps would potentially
17 give rise to a Federal Voting Rights Act claim. It may
18 not be the case that we can determine conclusively that
19 it would violate the Federal Voting Rights Act. We need
20 to advise the Commission and consultants on modifications
21 that would avoid the risk of a Federal Voting Rights Act
22 claim and meet the Commission's goals. We need to
23 evaluate whether proposed maps would violate
24 Constitutional requirements and hearing about that. We
25 need to advise the Commission and the Consultants on

1 modifications to the maps that would avoid those
2 Constitutional challenges. And then, I think at the end,
3 we need to determine what supporting evidentiary record
4 you're going to need to support what may be inevitable
5 challenges at the end of the day.

6 COMMISSIONER KOLKEY: I would just add that one
7 thing that comes to mind, and we need to talk to your
8 technician or demographer first, is talk to that person
9 about what their process is going to be in terms of
10 drawing districts, and then I think we might be able to
11 develop a process by which they draw the districts that
12 avoids a discriminatory intent, or a discriminatory
13 effect, you know, for example, and this is not something
14 that we've settled out at all, but just as an example,
15 suppose the Demographer draws the districts based on
16 population equality, follows Counties, Cities,
17 boundaries, local communities of interest, and local
18 neighborhoods to the extent he or she understands them,
19 gets compact districts, and then says, "All right, now
20 that I've done that, let's see what the Voting Rights Act
21 implications are of having done that," and then starts
22 making adjustments to comply with the Voting Rights Act.
23 I mean, that might be - as long as what you've done is
24 neutral, because you're just following county lines, city
25 lines, communities of interest lines, and that's neutral,

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1 and then you're doing things to make sure you comply with
2 Section 5 and Section 2 of the Voting Rights Act, that
3 would seem to me, just off the top of my head, a pretty
4 invulnerable way of approaching this and avoiding the
5 risk of discriminatory intent, or discriminatory effects.
6 As I say, we haven't settled on this, but it's just an
7 example of what we think about, and we'd want to really
8 talk to the Demographer and kind of understand his or her
9 process, and then say, "Well, maybe you ought to do it in
10 this order."

11 COMMITTEE MEMBER FORBES: We still have about 15
12 minutes to ask questions and we had five questions. With
13 the Committee's agreement, I'm going to delete questions
14 8 and 9, I think 9 has been answered in their initial
15 comments, and I think 8 deals - perhaps it can be dealt
16 with like a one-word answer or a very short answer, but I
17 think 5, 6 and 7 are more important, and so I would like
18 to devote our time to those, with the committee's
19 agreement.

20 COMMITTEE MEMBER FILKINS WEBBER: I think, for
21 the purposes of time and to be certainly fair to this
22 firm, I'd like to focus a little bit more on number 6,
23 and move on to that --

24 COMMITTEE MEMBER FORBES: All right.

25 COMMITTEE MEMBER FILKINS WEBBER: -- because that

1 obviously is significant.

2 COMMITTEE MEMBER FORBES: Okay. Commissioner
3 Ancheta, number 6.

4 COMMITTEE MEMBER ANCHETA: Yes, and 6 goes to
5 cost, and you've been presented with an outline of the
6 work plan - of a work plan, not "the" work plan, it's "a"
7 work plan, and I think you were given some information
8 regarding how this work has been budgeted in the overall
9 budget, and it's not much money, it's basically at this
10 point only about \$150,000, which, you know, it may be
11 conceivable that that could be raised, but that's the
12 number we're working with, and obviously as a law firm,
13 you've been used to a different kind of billing
14 structure. But, given that constraint, how do you see
15 working within that plan, you know, what priorities might
16 you set in terms of certain types of activities whether
17 its research vs. attending meetings vs. other areas of
18 work that might be shared with the Commission staff? How
19 do you see working under those constraints?

20 MR. BROWN: Yeah, we've given some thought to
21 that and there were seven items in that work plan, let me
22 run through them quickly and tell you how we plan to deal
23 with it and then I can respond to any follow-up
24 questions. The Commission would like a thorough legal
25 briefing on the issue of the Federal Voting Rights Act

1 issues and Constitutional principles, we think that makes
2 a lot of sense. We think we could do that as soon as
3 April 1st and that we would spend about 40-60 hours
4 preparing for that. The Commission wants to know, or as
5 part of the plan, first of all, let me say all seven
6 steps make sense to us, it's logical, it makes sense.
7 Working with the Technical Consultant, we think that the
8 way we would do that efficiently - and, first of all,
9 it's an important process, we need to gather information,
10 we need to find out from them what they see as the
11 issues, and we think as an important process to be
12 efficient, we would assign one of our team to be the
13 point person, so for the regular interactions with the
14 technical consultant, and we would answer questions. At
15 some point, they would draw a very preliminary set of
16 maps at which point we would get together and meet in a
17 more focused way with them to identify issues. We think
18 maybe about 40 hours for that. Advising the Commission
19 on how to gain relevant input from community groups, we
20 think that won't take much time, that it would be
21 developing sort of a checklist of - you want input from
22 community groups, what you want them to give you is the
23 right information, so why not give them a one-page list
24 of things that we'd be interested in hearing about? So,
25 I put five hours, but, you know, it's not much time at

1 all. Now, number four is one of the two substantial
2 areas, providing legal advice on the preparation of the
3 proposed and final maps. We think the way to do this
4 efficiently would be to work on groups of districts by
5 geographic region, so Southern California in different
6 segments will present different issues, some areas of the
7 state will be a lot easier than others, and so we would
8 expect that, once particular regions are prepared, we
9 would sit down, do an intense review, focus on the legal
10 issues, and give advice. Still, 80 Assembly Districts,
11 40 Senate Districts, 52 Congressional Districts, we've
12 penciled it out as about 175 hours to do that, and we
13 would look for ways to do that as efficiently as we can.
14 Number 5 was attending meetings, we think this is an area
15 where you could save a lot of money and time, it is
16 important for Voting Rights Act counsel to understand
17 what the issues are and what information has been
18 provided at meetings, but we think maybe you should
19 minimize our attendance at meetings, except for the ones
20 that we know are going to be particularly important,
21 either because of the issues, or because of the people
22 presenting, or what have you. I know they're all
23 important as part of the process, some will be more
24 important for the specific legal issues than others. So,
25 we're thinking maybe five meetings you would have us

1 attend.

2 MR. KOLKEY: And by the way, just on that point,
3 it does seem to me that it's the hearings after you have
4 tentative maps where the public is going to be able to
5 direct their concerns to something specific, where we
6 will want to be present to hear what the criticisms are,
7 and the reasons for the criticisms of the plan, and that
8 might even mean that it might make sense rather than the
9 minimum 14 days that the Propositions provide for the
10 maps to be out there, is maybe you try and get those maps
11 released earlier so that there's a target for people who
12 want to criticize, and you can better synthesize what
13 those criticisms are and respond to them, and maybe
14 adjust and maybe provide another set of maps that respond
15 to the critiques of those maps. But it's after the maps
16 are up that I think we really would want to be present.
17 And before then, we can communicate with the Demographer,
18 with the Commission, with the staff, with the General
19 Counsel, on issues that arise.

20 MR. BROWN: Now, there's two more, but before I
21 give you the last two, let me say that under my notes,
22 we're already at about 300 or 315 hours, and that the
23 rate that we proposed, that would be the \$150,000 that
24 you've budgeted. Let me address the last two points on
25 your work plan, starting with the pre-clearance advice

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1 under Section 5 of the Voting Rights Act, it's our view
2 in thinking about the Section 5 requirements that we will
3 develop a record that supports pre-clearance as part of
4 the work that I've already discussed. There's four
5 counties that need to comply, what you need to do to
6 comply is not altogether different; sometimes it may
7 create issues, but in this particular redistricting
8 situation, we don't think it's going to create a huge
9 amount of additional work from what we'd be doing
10 already. We think that what should happen, perhaps, is
11 that, as part of - after the maps are final, that perhaps
12 the AG, the California Attorney General, takes it and
13 runs the pre-clearance after that - with support from the
14 record that we've created. So, we didn't put in any
15 additional time for that because we think it will be part
16 of what I've already described.

17 Then, the last part, which could be quite
18 variable, is preparing and delivering to the Commission a
19 report that supports the maps. And this, we penciled in
20 150 to 200 hours, but it's subject to a lot of discussion
21 and a lot of discussion about how much the staff and
22 counsel could help us put together the report. The
23 report really is the Commission's defense of its work,
24 describing the process and the evidence and the issues
25 that were considering and how they were dealt with, and

1 what legal issues we confronted and how they were dealt
2 with, and it's important to get that right. So, we would
3 like to find a way to work to keep that down, but if we
4 were doing it all ourselves, it would be 150-200 hours.

5 COMMITTEE MEMBER ANCHETA: So, as a follow-up,
6 you would be billing at each attorney's standard hourly
7 rate?

8 MR. BROWN: No, let me talk briefly about that.
9 As you can tell from the materials, we're a large, but
10 national firm, we compete at the national market, our
11 billing rates are well above what we've quoted. Mine is
12 \$800.00 an hour, Dan's is \$960 -

13 MR. KOLKEY: \$910.00.

14 MR. BROWN: \$910.00 per hour. Both Matt and Kahn
15 are above \$600.00 an hour. We regularly charge those
16 rates to our clients, we're fully engaged. If we weren't
17 doing this project, we would be spending that time on
18 other client work. We want to do this work, we think
19 it's important public service, we would be delighted to
20 do it. We need to come up with the right balance so that
21 we can get our management committee to sign off on
22 whatever arrangement we finalize on. But what they have
23 approved is our initial proposal that we would work at a
24 fixed billing rate of \$500.00 per hour to be a blended
25 rate, so it would apply to whatever attorney worked on

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1 this matter. We think that would be a substantial
2 discount from our normal rates. And, again, we would
3 work diligently with counsel for the Commission to try to
4 find ways to be efficient. We wouldn't be charging for
5 two lawyers to attend a meeting, if we decide to bring
6 two lawyers, then that would be at our discretion, that
7 sort of thing.

8 COMMISSONER FORBES: Thank you.

9 COMMITTEE MEMBER FILKINS WEBBER: So, just for
10 point of clarification, so based on what you've submitted
11 here and recognizing what your hourly rate is, you are as
12 a part of this bid proposing that you would offer your
13 services at \$500.00 an hour?

14 MR. BROWN: Yes, absolutely.

15 COMMITTEE MEMBER FILKINS WEBBER: Okay, I'm
16 sorry, I didn't - because I'm a little equivocal, so,
17 thank you.

18 MR. BROWN: Lawyers, you know, we're always
19 equivocal.

20 COMMITTEE MEMBER FILKINS WEBBER: That's why I
21 asked the direct question, to get the straight answers,
22 thank you very much.

23 COMMITTEE MEMBER BLANCO: And my other direct
24 question is, I know there is some variety, how many hours
25 including the report are we talking about?

1 MR. BROWN: So, if I add the report, I'm at as
2 much as 500 hours.

3 COMMITTEE MEMBER BLANCO: Okay.

4 COMMITTEE MEMBER FORBES: Okay.

5 MR. BROWN: And, again, there's such a wide
6 variation in that report writing phase.

7 MR. KOLKEY: The question is how much do you want
8 to scrub the report because every potential error in the
9 report, every mis-phrased sentence, could be the grist
10 for a challenge.

11 COMMITTEE MEMBER FORBES: Okay, we have three
12 more minutes. So, if the Commission would like to ask
13 any questions?

14 COMMITTEE MEMBER ANCHETA: I think it's important
15 to look at the conflicts issue if we could because it has
16 been raised in public comment and I think it's been
17 raised as a previous concern by the Committee. And if
18 you could just address it directly, I mean, as others
19 have said, Mr. Kolkey has an outstanding resume and is a
20 very prominent attorney, but there are affiliations
21 you've had. Let me ask you, too, how do you propose to
22 address that, although it's clearly laid out in your
23 application? But, my second question would be, if we
24 were to say Mr. Kolkey simply could not serve because of
25 the disqualification, could you put a legal team together

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1 that could, in fact, provide the services? Because the
2 concerns apply to Mr. Kolkey, not necessarily to the firm
3 as a whole, would that be feasible? But if you would
4 just sort of address it more generally.

5 MR. KOLKEY: Let me address a couple things, one
6 is we certainly could put an ethical wall between me and
7 the rest of the team if you want to exclude me from this.
8 I do think that, given my work on Prop. 20 and my
9 redistricting background and work, I bring a lot to the
10 table that would avoid the vulnerability of a challenge,
11 and you have the benefit of having a bipartisan team of
12 lawyers do this. But let me talk about the conflict
13 issue. The only one that I think has been raised is that
14 I have been the Associate Member of the California
15 Republican Party, I mean, I think that's the only one
16 that I've seen raised, which I disclosed on the
17 application. You should understand that an Associate
18 Member is not a member of the Central Committee. An
19 Associate Member has no voting rights. An Associate
20 Member has no rights at all. The only thing you do as an
21 Associate Member is that someone allows you to be an
22 Associate Member and you pay \$16.00 in dues, that's it.
23 And you get emails and invitation to the Convention for
24 \$16.00, but that is all that is. And I should note that,
25 if you want to talk about voting memberships, I am on the

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1 Regional Board and Secretary of the Anti-Defamation
2 League's Regional Board for the Central Pacific Region,
3 here in California, and that's a Civil Rights
4 organization where I do have a vote on the Board. I've
5 got no vote with the California Republican Party, and you
6 know, it's not even clear to me that an Associate Member
7 that has no voting power really comes within the conflict
8 of interest provisions. But I thought let's just not
9 have any question of interpretation, let's just disclose
10 it. And the other thing I would say is that I have been
11 on the bench, I know how to take an advocate's hat off
12 and provide neutral objective views of the law, I mean,
13 that's what you do as a Judge, and there's no question in
14 my mind that I can do that.

15 MR. BROWN: I would just like to add that I would
16 very much encourage the Commission not to exclude Dan if
17 you should choose our firm. I would value his input and
18 participation in this enormously and what we do every day
19 is give our clients who pay us a fair amount of money
20 good advice about what the law is, and what the client's
21 choices are, so that the client can make those choices.
22 There could be nothing better than if Dan and I have
23 different points of view on an issue and we can come to
24 you and say, "Here's what we think the law is, but you
25 should know that somebody might argue it this way,

1 someone else might argue it this way, and you guys have
2 to decide." I think that would enhance our ability to
3 serve this Commission and not detract from it.

4 COMMITTEE MEMBER FORBES: In view of the time, I
5 think we have -

6 COMMITTEE MEMBER FILKINS WEBBER: I'm sorry, I
7 need this question answered on the conflict issue, as
8 well. It's my understanding that Commissioner Blanco had
9 invited you to submit your invitation, or did you have an
10 intention of responding to the invitation to bid by the
11 Commission, itself?

12 MR. BROWN: I heard about the matter for the
13 first time in a phone call from Ms. Blanco.

14 COMMITTEE MEMBER FORBES: Okay, in view of the
15 time, I want to thank you all for coming and your
16 presentation, I found it very interesting and I know the
17 other committee members did, as well. At this point,
18 we're going to take a five-minute break to be fair to the
19 next person, and then we'll come back here at about two
20 after four.

21 MR. BROWN: Thank you very much.

22 COMMITTEE MEMBER FORBES: Thank you.

23 (Off the record.)

24 (Back on the record.)

25 COMMITTEE MEMBER FORBES: The Legal Subcommittee

1 of the Citizens Redistricting Commission will come back
2 into order. Just for public awareness, the next
3 opportunity for public comment will actually be at 7:00,
4 after we've completed the four interviews, I just want to
5 make that clear, in the interest of time.

6 Our next applicant is the law firm of Nielson,
7 Merksamer, Parrinello, Gross & Leoni.

8 MS. LEONI: Thank you.

9 COMMITTEE MEMBER FORBES: And I would invite you
10 to make an opening five-minute comment, and then we have
11 some prepared questions, which you should have received.

12 MS. LEONI: Commissioner Forbes, if I might, I'm
13 happy to make an opening comment. But I would like to
14 mention that we had received the outlying fiscal issues
15 and of substantive issues from your General Counsel, and
16 we felt it might be helpful, and obviously we're not
17 committed to this, this is your meeting, we had
18 incorporated all of that material into an interactive
19 Powerpoint which we will address hopefully with your
20 interjection with questions, all of the issues, and I
21 think we'll raise other issues for you. We have also
22 brought a live program of *Maptitude* to demonstrate for
23 you in detail how some of these issues play out on the
24 map. I thought it would be helpful to take a look at
25 that. Obviously, we're not committed to this, we will

1 proceed how the Commission prefers. I also wanted you to
2 know that we listened to the proceedings on Monday - on
3 Tuesday - and I am aware of the Commission's concerns,
4 the subcommittee's concerns, and we're prepared to
5 address those, as well. And we will proceed as you
6 desire.

7 COMMITTEE MEMBER ANCHETA: How much time will it
8 take - how much had you planned on the presentation?

9 MS. LEONI: If we went straight through this, I
10 think we would go through it in 15 to 20 minutes. I
11 think, with your interaction, on discussion, we've hit
12 the issues that have been of concern, that we've seen, we
13 address directly the prisoner issues, we address Section
14 5, we talk about various approaches, we direct Section 2,
15 we want to talk about the Census Data and how that data
16 is going to impact the job you have to do, we want to
17 talk about what we know about the Census, what we don't
18 know about the Census, all of that is in here, but I will
19 proceed as you wish.

20 COMMITTEE MEMBER FORBES: What is the pleasure --

21 COMMITTEE MEMBER FILKINS WEBBER: I would
22 certainly - the time that you've spent on this, I would
23 really like to hear this, Ms. Leoni.

24 COMMITTEE MEMBER ANCHETA: If you are basically
25 answering the questions, that's fine to do it that way.

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1 MS. LEONI: And we invite you to interject with
2 your questions and we'll move on when the Commission is
3 comfortable.

4 COMMITTEE MEMBER FORBES: Okay, then we'll watch
5 this, expect you to be done by approximately 4:30, based
6 upon what you've said, and in that case, as necessary,
7 we'll ask additional questions.

8 MS. LEONI: Okay, thank you very much,
9 Commissioners. I think we'll start out with an overview.
10 Well, first of all, let me introduce ourselves. I've met
11 some of you. I'm Marguerite Leoni of the law firm of
12 Blah, Blah, Blah, and Leoni! And this is my esteemed and
13 very talented and capable colleague, Chris Skinnell, and
14 he has - excuse me - now you're having trouble with the
15 Powerpoint. We'll see if he can get it going. Can you
16 get us to the first slide?

17 Well, then, I'm going to do this orally and I
18 apologize to you. We do have a handout and we have
19 emailed it to - we do have copies, yes. And I very much
20 apologize to you.

21 All right, so let me start out with the third
22 slide, it's on the second page at the top, and it's the
23 overview of what our presentation will entail. We
24 gleaned from the conversation earlier this week and from
25 the questions that it might be helpful to get our point

1 of view, as experts of this field, of what sort of legal
2 support in the Voting Rights area the Commission might
3 need, and we are prepared to make a list of what we think
4 are the requirements for Voting Rights counsel and how we
5 fill that need, and that's the second point on the slide.
6 There were issues then - I think our qualifications are
7 very very strong on the substantive areas. What came up
8 in the conversation that the subcommittee had was issues
9 of public confidence in us as Voting Rights counsel and
10 issues of perception. And I want to go through those in
11 detail with you, and hopefully give you more information
12 on the substantive areas, and give you a better basis on
13 which to consider our qualifications, even from a
14 perception perspective to be your Voting Rights counsel.

15 We then thought it would be interesting to move
16 into the substantive matters and let's look at a possible
17 approach to redistricting California, and when in this
18 particular segment of the presentation, we'd like to look
19 at the populations, how they've shifted, and then focus
20 in on a specific area of the state that presents issues
21 that you're going to have to deal with. And what we are
22 doing here is not making judgments about how you deal
23 with them, but issue spotting for you because these will
24 come up.

25 Then, we want to move from there into a review of

1 some special problems facing the Commission and list
2 them, and we have covered the prison issues, we've
3 covered the data issues, the population base for Voting
4 Rights, as well as a number of other issues that we have
5 encountered in our representation of clients in this
6 field. And then we would like to talk to you about cost,
7 and what we think you can get for your money.

8 So, moving on to the next slide, which we don't
9 have up, but it's on the bottom of that page, is what
10 would we recommend if we were your General Counsel - and
11 Kirk is. But with our background, this is what we would
12 recommend to you: 1) Your counsel needs to have
13 specialized knowledge of the law, including Federal
14 Voting Rights law, Sections 2, 5 and 203, and the United
15 States and California Constitutions; 2) they need to have
16 hands on experience with Section 5, including making and
17 defending submissions; 3) they need to have hands on
18 experience putting lines on a map and, in addition, they
19 need to have their own mapping capabilities in order to
20 adequately and thoroughly advise you as counsel, and they
21 need to have knowledge of the technology and the data; in
22 addition, they should have experience in anticipating and
23 avoiding line drawing problems, so they can give you a
24 heads up of when things are moving into problematic
25 areas, they need to offer creative solutions and, in my

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1 view, create options for you. You are the decision-
2 makers, this is not going to be a straightforward
3 process. The next item is the necessity for availability
4 of counsel and the capacity to do the work. And while
5 this is not a litigation position, litigation background
6 is helpful because we understand where the landmines are
7 going to be and can help you plan to avoid them or
8 anticipate them, and be prepared for when they will
9 inevitably come. We think it's good to have a statewide
10 perspective and have worked on a statewide redistricting
11 process, and we have been counsel or a consultant on
12 three statewide redistrictings, and also have experience
13 in working with demographic and voting rights experts,
14 racially polarized voting experts, and know what
15 questions to ask in order to give you adequate legal
16 advice. And then, I think it's important that you are a
17 public entity, that the counsel, your Voting Rights
18 counsel, is comfortable working in the public setting,
19 and advising you in open session. It's a different set
20 of skills and requirements than the ordinary attorney-
21 client relationship.

22 The next slide is "Why does Neilson Merksamer
23 fill the bill?" We provided a lengthy summary to the
24 Commission of our experience, it's long and it's varied.
25 We are expert in redistricting and Voting Rights law and

1 have been working in the field for 30 years. We have
2 been counsel in advising on the enactment of numerous
3 plans, no one of our plans has even been challenged, and
4 we have applied every single law that you need to apply
5 fairly and honestly. We have made hundreds of Section 5
6 submissions not only of redistricting plans, but of other
7 voting changes. And there may be issues that require
8 pre-clearance in the middle of your proceedings. And we
9 have experience doing that, advocating our submission,
10 and working directly with the Department of Justice
11 personnel in making those submissions. We have the
12 capability to actually put lines on a map. I, once
13 again, refer to my colleague, Chris Skinnell, who before
14 he began working with us as an attorney, was my
15 Demographic Consultant on a number of redistrictings.
16 And so, Mr. Skinnell approaches the task not only with
17 legal eyes, but understanding how the program works; so,
18 if we have a question and the file is imported to us from
19 your consultant, we can sit and work on it and explore it
20 in a way that attorneys do and not necessarily with only
21 the eyes of the Demographer to guide us. We've been
22 around the block with redistrictings, we know where the
23 problems arise, we've dealt with them, and we've resolved
24 them. We have been legally and politically successful in
25 resolving mapping conflicts. We are available. We are a

1 California firm. We have an office across the street
2 from you. And we also have an office in Marin County.
3 We also have sufficient personnel to assist. I've
4 indicated that there will be three assigned to the
5 project. We have another fine litigator and attorney who
6 will work with us, as needed, Mr. Sean Welch. We did not
7 use him as primary and, of course, his resume would be
8 presented to you, but if need be. We have been legal
9 consultant to the California State Board of Equalization
10 in the Wilson case, we represented the Democratic
11 Majority in defending and advocating in that litigation.
12 We also represented the nonpartisan - we were on the
13 consulting team, which is a little bit different -- to
14 the nonpartisan Arizona Commission, and we represented
15 the Florida Senate in 2000. We have a deep understanding
16 of the types of analyses that are necessary to do
17 adequate Section 2 Opinions, and this includes not only
18 the demographics, but we know the experts in the racially
19 polarized voting methodologies, we understand the
20 methodologies, the regressions, we understand the
21 variations, we know how they're interpreted, we know that
22 there are strengths and weaknesses, and we know where the
23 landmines are in court. And lastly, we've represented
24 numerous public entity clients, I've given you a partial
25 list of our clients, and we represent many many of them.

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1 So, I think we fill the bill for you.

2 COMMITTEE MEMBER ANCHETA: Ms. Leoni, before you
3 go to the next slide, which I think addresses some
4 important issues regarding, you know, conflicts and -

5 MS. LEONI: And I'm about to address those,
6 Commissioner Ancheta.

7 COMMITTEE MEMBER ANCHETA: Just a quick question
8 regarding your working with the Technical Consultants,
9 which is one of the questions -

10 MS. LEONI: Absolutely.

11 COMMITTEE MEMBER ANCHETA: And it's great that
12 you have in-house capacity, but we are - obviously, we're
13 working with a technical consultant specific to work on
14 whatever software they're using, and to have the Voting
15 Rights Attorney sort of play an advisory role regarding
16 those activities. If there were any conflicts, let's
17 say, among - and obviously we as a Commission, we have
18 final say anyway, but if you saw - if you envisioned any
19 conflicts or other problems that might arise in terms of
20 your interaction with the Technical Consultant, how do
21 you see those being addressed?

22 MS. LEONI: I would imagine that those are
23 conflicts about where the lines go, or conflicts with
24 methodology; conflicts with where the line goes comes to
25 this Commission.

1 COMMITTEE MEMBER ANCHETA: Right.

2 MS. LEONI: Okay. Conflicts, we know our role,
3 we're the lawyers, we would most certainly defer to your
4 Demographic Consultant on technological issues, but if we
5 saw something that was of concern to us, we would most
6 certainly raise it and certainly bring it to the
7 attention of the staff, and if it needed to come to the
8 Commission, then it would. All right?

9 Now, I would like to address -- I think we fill
10 the bill for you -- and I would like to address the
11 public confidence issues. I disclosed quite openly, and
12 I hope you all had an opportunity to visit the Secretary
13 of State's website and our website, that we are a
14 lobbying firm. And in addition to that, I have been a
15 registered Lobbyist; I am not now and I want to address
16 to you, in specific, what I did in my role as the
17 Lobbyist. First, I want to tell you about the law.
18 There is a case and it's called Fullerton Joint Union
19 High School District v. State Board of Education, and one
20 of the minor issues in that case determined that the
21 adjustment of the boundaries of the School District, in
22 any number of ways, is a legislative act. And when you
23 are doing it, it feels like you're in a quasi-judicial
24 context, but you're not, it's a legislative act. And
25 those sorts of matters often come before the State Board

1 of Education. There's another law in the Fair Political
2 Practices Commission that requires advocates on
3 legislative matters before State bodies to be registered
4 to lobby, and in order to represent these clients before
5 the State Board of Education, I registered to lobby.
6 Since 2000, I've represented four clients, one of them
7 was a school district, the other three were parent groups
8 out of a school district. We made our case before the
9 State Board of Education on the matter before us. When
10 that matter was completed, the last of those matters,
11 these were four separate instances, I let my registration
12 lapse. I am no longer a Lobbyist. In connection with
13 that work, I had occasion to work on a single bill
14 concerning the determinate of the lead agency in CEQA,
15 and this was having to do with the CEQA requirements for
16 a School District reorganization, and I believe I spoke
17 with legislative staff regarding the matter, I don't have
18 a recollection of speaking to any Legislators. That's
19 the extent of my experience. Saying you're a Lobbyist
20 sounds far more glamorous than that, however, it was our
21 view in the firm that the law required me to lobby to do
22 that work. And, indeed, if required to represent a
23 School District or individuals again on these issues, I
24 would be required to do so again, however, rest assured,
25 I have no such clients - no clients working on those

1 matters at this time.

2 Now, with regard to the firm, we are a lobbying
3 firm. We are open and notorious about that, let's say,
4 but we're prepared to address that in the way that many
5 conflicts are addressed, including constructing a
6 firewall to protect the attorneys and you from any cross
7 information that may flow on a firm basis. We've advised
8 other law firms on this, specifically, and we are
9 prepared to propose specific measures, and I can list
10 some of them here. We would obviously work them through
11 with your General Counsel. But, for example, these are
12 the elements of the firewall that I would propose: 1)
13 those who are assigned to the legal team for the
14 Commission would be specifically identified and approved.
15 If we brought anybody in addition, such as a law clerk or
16 a paralegal, that would be approved by your General
17 Counsel before that person would be permitted to work on
18 the case; 2) we would have a written policy signed by all
19 lawyers in the firm, establishing the firewall; 3) we
20 would establish a dedicated, password protected site on
21 our network where only the attorneys working on this
22 matter would have access to data, opinions, etc. As you
23 know, we have an office across the street, the offices
24 where the Voting Rights counsel worked would be secured
25 so nobody else could go in and review papers or any other

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1 matter that we are working on. Our emails are password
2 protected and other attorneys in the office do not have
3 access to, for example, my email. And we are prepared to
4 work through such other elements of a firewall that would
5 - you would deem appropriate and would seem appropriate
6 to the General Counsel.

7 Existing representations is another issue that
8 came up. We have no representations with regard to
9 California statewide redistricting. We would accept
10 none. We are representing clients on supervisorial
11 redistricting, which is different, it operates under a
12 different set - some different set of laws. We are
13 representing school districts, some very tiny, and we are
14 representing other special districts, and a few Cities.
15 Their interests and the purpose of their representation
16 of us does not conflict with our service to the
17 Commission. The number of our clients does not present
18 capacity problems. We are a law firm, we have an ethic
19 in our law firm of - we call it "team law" - and every
20 one of our cases has more than one attorney assigned to
21 it. If there was a need for either Mr. Skinnell, or I,
22 or both, or Mr. Parrinello, to be here, we have the
23 capacity to service our other clients. Last
24 redistricting, I flew between California and Arizona and
25 Florida and, with the team we had on redistricting, we

1 also redistricted nearly the same number of clients that
2 I disclosed to you recently; we have the capacity to do
3 it. I am not anxious about that.

4 Relationships with potentially interested groups.
5 This is not a legal conflict, but a review of our client
6 list and a question about who do these people represent,
7 any firm that is competent to represent you in this
8 matter is going to have deep roots in government and
9 public law. And there are going to be questions posed to
10 you about relationships of other firms. We're legal
11 professionals, and if we are retained by you for
12 redistricting, we accept no counter-representations, and
13 you have our undivided loyalty. And obviously, it goes
14 without question, with the firewall erected, we would not
15 be discussing Commission matters with any clients,
16 certainly, and as we would agree, nor with our partners
17 and other attorneys in the firm.

18 There have been questions raised about our role
19 as Voting Rights defense counsel, and that comes from our
20 client base. We represent public entities, and when they
21 have been sued, we have defended them vigorously, as we
22 are obligated by law to do. But that needs to be
23 counter-balanced with our other activities under the
24 Voting Rights and Redistricting. We have also been
25 called upon to advise clients on the application of the

1 law, and we know what the law is, and we know the spirit
2 of the law, and we are called upon to advise in a way
3 that balances interests you're not even conflicted with -
4 political interests, legal interests, Voting Rights
5 interests, local dynamics, and we do so in a way that has
6 resulted in redistricting plans that haven't been
7 challenged. And we have worked cooperatively with all
8 groups who come before the public entity. We have also
9 been counsel to the Campaign Committee on Proposition 11
10 and Proposition 20, and we are also working on the major
11 reform - these are major reform measures, initiative
12 measures in the state. We were also counsel to
13 Proposition 14. And we advocated with the Good
14 Government groups for the Pre-Clearance of Proposition 11
15 and gave it our heart and soul. As I said to one of my
16 colleagues, it's nice to be working on something you
17 believe in.

18 We have - I think I've covered everything on that
19 slide. I wanted to bring this other matter up, too.
20 Because it appeared in the RFI, but didn't appear in the
21 subsequent questions, and it was not part of your
22 discussion two days ago, but we are also quite - would be
23 quite pleased to team with other Voting Rights counsel if
24 it would make you feel more comfortable. I realize that
25 you also have highly qualified applicants who have not

1 the California background that we do, and we would be
2 very happy to team with them and work with them to
3 balance what you may feel are perception issues that
4 can't be mitigated.

5 We are going to move on into an approach to
6 redistricting California.

7 MR. SKINNELL: This, I want to just add a caveat
8 here. What I'm going to talk about here is one possible
9 approach that one could take to redistricting, it's not
10 that we are necessarily recommending this approach, or
11 that there aren't others, but this is just sort of an
12 example of an approach that the Commission might seek to
13 take.

14 The first step, obviously, would be to identify
15 the relevant population shifts in the existing districts,
16 and I say that, that gets to another issue that I'll talk
17 about a little bit more, but how the Commission plans to
18 proceed, whether it will begin working with the existing
19 districts, or whether it would, as the Masters did in
20 1991, start from scratch. But, presuming for the
21 purposes of this example that they would begin with the
22 existing districts, identifying where the population
23 shifts are, which districts are under-populated, which
24 are over-populated. And I'm going to move over here and
25 give you just a little bit of an example. These are the

1 Congressional Districts, current Congressional Districts,
2 and what we have reflected here are the relative
3 population deviations of each of the districts, using
4 2010 Census Data. And you can see that the red
5 districts, particularly in Riverside and in the High
6 Desert, those are the over-populated districts. The
7 Riverside one is approximately 30 percent over the ideal
8 population. Whereas, the green districts are the ones
9 that are under-populated and need to pick up new
10 population. And how that happens, and how the Commission
11 goes about doing that is probably going to be one of the
12 thornier issues that you're going to have to deal with.

13 And so, what I'd like to do is just focus a
14 little bit on one particular example here. And I've
15 chosen this example because it also goes to our next
16 point, which is the Section 5 benchmarks. So, I'm going
17 to focus here on a district in Monterey County, which is
18 obviously a Section 5 County. And so, this district
19 here, District 17, is substantially under-populated,
20 about 7.5 to 10 percent under, and it's going to have to
21 pick up roughly 37,000 people to meet population equality
22 standards. And the question is, how is it going to do
23 that? And the complication is this: you have several
24 districts that border it, that are over-populated, where
25 it could potentially go to pick up population. For

1 example, San Luis Obispo to the South, there's that
2 district that's substantially over-populated. The
3 problem with moving into that district, as you will see,
4 what we have here is Hispanic voting age population by
5 Census Tract, I didn't do blocks because that gets too
6 small, and for our purposes, we've just done tracts, and
7 if you look, trying to move into San Luis Obispo, you're
8 going to pick up territory that has considerably less
9 Hispanic voting age population than exists in the current
10 Monterey District. So, trying to do that and to move
11 that direction, which would seem natural, may present
12 problems for the Commission in terms of maintaining the
13 benchmark minority voting percentages that it needs to
14 meet to comply with Section 5.

15 MS. LEONI: And you realize, just to interrupt
16 here, the benchmark is not majority-minority - uh,
17 majority - it's a different standard from under Section
18 2, and it's impacted by the deviation of the population
19 from equality, and how that's maintained. Go ahead,
20 Chris.

21 MR. SKINNELL: Another alternative may be for the
22 District to move east into the neighboring districts in
23 the western part of Fresno and Merced County, but those
24 two districts are also Section 5 Districts, so you need
25 to be careful that, as you do it, you're not including

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1 predominantly Latino areas from those districts and
2 thereby reducing the populations in the neighboring
3 districts and bringing them below the benchmarks. Now,
4 it may be possible for those, then, to move further east
5 into the Visalia area and keep the benchmarks the same,
6 but it's going to have to be done delicately because of
7 some of the case law in the Supreme Court; LULAC v. Perry
8 was a Section 2 case, but it held that majority-minority
9 districts aren't just fungible, you know, they're sort of
10 centered on a specific population, and so you have to
11 take that into account as you're moving. You know, it
12 wasn't directly about Section 5, but it may have
13 implications for how this is done. And then, the third
14 possibility -

15 MS. LEONI: Let me put a little point on that,
16 just so you'll understand what we're saying, a 45 percent
17 Hispanic CVAP district in one section of the county may
18 not be the equivalent of a 45 percent CVAP district in
19 another, it's a far more detailed analysis than that.
20 And so, maintaining that benchmark is not necessarily
21 fungible when you shift that district east.

22 MR. SKINNELL: The third option for trying to
23 expand the population of this district may be to go north
24 into the Bay Area, but, of course, those districts are
25 already under-populated themselves. So, if the

1 Commission were to take that route, it would likely have
2 a ripple effect up the coast and around it, across the
3 northern part of the state, and back down the eastern
4 side.

5 COMMITTEE MEMBER FORBES: I want to interrupt for
6 just a moment. I'd like us to have some time to ask
7 questions that we might have afterwards, so if you could
8 wrap this presentation up by a quarter of?

9 MS. LEONI: We most certainly will.

10 MR. SKINNELL: Absolutely.

11 MS. LEONI: We'll leave you with the outline and
12 we'll get to the points.

13 MR. SKINNELL: All right, so I've covered the
14 first two points. Another option may be for the
15 Commission to consider dividing the state into sort of
16 manageable redistricting units, maybe regions, and this
17 may depend on whether it plans to start from the existing
18 districts, or start from scratch, obviously identify
19 Section 2 compliance areas based on the demographics and
20 public testimony, and you know, put some initial district
21 outlines at least into place that the public can comment
22 on, and then, that having been done, redistrict around
23 those areas based on the Proposition 11, Proposition 20,
24 community of interest, and other criteria. And then,
25 obviously, it's got to go back out to the public and get

1 the input from the public, and further refinements will
2 be required.

3 We also wanted to address - someone asked about
4 potential problems that the Commission may face, or
5 special issues, and we just wanted to talk very briefly
6 about some of those, sort of an issues spotting, more
7 than anything. We already talked a little bit about how
8 do you start. Do you start with what's in place? Do you
9 start from scratch? Do you work your way down from
10 larger units to smaller? That's one sort of benchmark -
11 or I should use that word - a foundational issue, if you
12 will, obviously maintaining the Section 5 benchmarks
13 we've already talked about, amendments to Section 5. The
14 standard that is going to be applied by the Department of
15 Justice this time around is not identical to the standard
16 that was applied last time. The Act was amended in 2006
17 with a couple of key components including, particularly
18 relevant, a change in the standard for discriminatory
19 intent. The Department of Justice is going to be looking
20 much more closely at that intent standard and the
21 testimony that's presented, and the alternatives that the
22 Commission considered and maybe rejected.

23 MS. LEONI: And some of the other issues that
24 you're going to face, and they're listed up here, are
25 Census and data issues, and I'm going to tell you that

1 I've never had a redistricting where there wasn't an
2 error in the Census and it will come up as you begin to
3 work with your lines; most recently, in Virginia, 20,000
4 people in a prison were allocated 30 miles away, and had
5 to be adjusted. Those are going to come up. There's
6 going to be manipulating the data from the ACS in the
7 special tabulation, and compiling your racial categories
8 according to the U.S. Department of Justice and the
9 Office of Management and Budget Directives, there's going
10 to be those re-aggregations. We're going to go to a
11 slide on prison population, it's an issue that we have
12 dealt with before, and we have given advice before at the
13 local level, I have dealt with that based on California
14 authorities. You're going to be looking at shifting
15 proportions of minority population, especially in your
16 southern areas where there has been disproportionate
17 growth of your minorities, and this gives rise to issues
18 of coalition districts and how they're going to be
19 identified and handled and what Bartlett has to do with
20 those particular issues.

21 COMMITTEE MEMBER WARD: Mr. Chair?

22 COMMITTEE MEMBER FORBES: Please.

23 COMMITTEE MEMBER WARD: I'm sorry to interrupt.

24 I want to make sure that my colleagues have time to ask
25 questions and we're almost out.

1 MS. LEONI: Go right ahead.

2 COMMITTEE MEMBER WARD: Could we skip to cost and
3 then open the floor, please?

4 MS. LEONI: Absolutely.

5 COMMITTEE MEMBER WARD: Thank you.

6 MS. LEONI: What we have provided to you by way
7 of costs is we thought we'd start with \$150,000 and what
8 could we give you for that. And what would you - a
9 second page of what would you want, in addition. All
10 right? So, we think that for \$150,000, we could give you
11 the following: a crash course presentation on the Voting
12 Rights Act and, combined with that, to work closely with
13 the consultants and our in-house capabilities to issue
14 spot throughout the state for you, based on the full
15 database. So, it's not a redistricting, it's an issue-
16 spotting throughout the state, and that would be two full
17 meetings, one educational in public session on the Voting
18 Rights Act, and then applying that to the actual
19 demographics of the state. We would then work on a
20 number of issues that we gleaned from items that you're
21 interested in, including a cheat sheet on how to train
22 the public in interacting with you, what would be
23 helpful. We would stay on top of the mapping through
24 communications with the consultant and our in-house
25 *Maptitude*. We would review Commission transcripts to

1 stay abreast of developments. We would coordinate with
2 General Counsel about our need to be available by
3 telephone for any specific meeting, and we can watch you
4 on TV, and we would be available by telephone in
5 coordination with the General Counsel. We would stay on
6 top of the indicators of Voting Rights Act legal
7 concerns, including racially polarized voting analysis,
8 and advise on those issues. We would keep General
9 Counsel in the loop all the time, advise staff on
10 developing and monitoring systems to expedite thorough
11 and persuasive Section 5 submissions. We've been talking
12 about methods to do that, so there isn't a long delay
13 between the conclusion of your proceedings and the filing
14 of the Section 5 submission. And also, develop and
15 present at an in-person meeting the legal Voting Rights
16 portion of your plan, the justification, the written
17 justification, for your plan, but also as part of the
18 Section 5 preparation, use that portion, the Section 5
19 portion, as a piece that advocates the plan as compliant
20 with Section 5. So, that's what we think we can provide
21 to you for \$150,000.

22 COMMITTEE MEMBER FILKINS WEBBER: On that last
23 point, that includes the report?

24 MS. LEONI: Yes.

25 COMMITTEE MEMBER FILKINS WEBBER: Oh, okay.

1 Thank you.

2 MS. LEONI: Yes, absolutely. And then,
3 additional services at additional costs, that's the next
4 slide down, we could attend more meetings. Certainly,
5 it's less expensive for us to do when you're here because
6 we're across the street.

7 COMMITTEE MEMBER BLANCO: Excuse me, a
8 clarification. So, how many meetings are we talking
9 about in the \$150,000?

10 MS. LEONI: We have scheduled, Commissioner
11 Blanco, we have scheduled three and I consider those to
12 be eight to 10-hour meetings. I've worked with the
13 Commission before and we went late into the night. We
14 would take a good lunch break, we would take a good
15 dinner break, but that's an all-day - so the Voting
16 Rights Act training is an all-day thing. I think we need
17 to go through cases, we need to go through - get you very
18 comfortable with it.

19 COMMITTEE MEMBER BLANCO: And in terms of the
20 public meetings?

21 MS. LEONI: Those, I considered to be public
22 meetings. I did not include public meetings here. I
23 didn't know how many to guess, and I don't know where the
24 sensitive areas are, therefore, we are prepared to commit
25 based on the advice of, perhaps, I don't know how we're

1 going to communicate with the Commission, but based on
2 the advice of General Counsel, certainly, when we need to
3 be available by phone, and be watching the meeting, and
4 there may be a time where the Commission says, "We really
5 do need somebody on site."

6 COMMITTEE MEMBER BLANCO: Okay, I was just
7 confused, the terminology between public meetings and the
8 Commission's, or the Input Meetings that, you know, our
9 road shows. I was a little confused.

10 MS. LEONI: Ms. Blanco, it may be that you want
11 us to attend an input meeting, but I wouldn't think so.
12 I think all of the work that the Commission does, given
13 the spirit of Prop. 11 and Prop. 20, needs to be public.
14 So, we would attend more meetings. We have committed to
15 three major written products for you, you may want more,
16 those would be at additional cost. There may well arise
17 litigation in the course of the project, we are
18 litigators, and we are appellate litigators, and we know
19 the courts, we know the Sacramento court well. We do
20 writ proceedings regularly, and they will likely come to
21 you as a writ or an injunction, and we are prepared to
22 quickly address those issues for you. You may hire
23 separate counsel, but in the event you needed something,
24 somebody pulls you in the court on the TRO, we're able to
25 protect you on that. We, for additional cost, we would

1 take full responsibility for the pre-clearance
2 submission. Generally, in California, and we work with
3 the Secretary of State's Office, the Secretary of State
4 makes the submissions, but the Secretary of State isn't
5 going to be here, knowing what your plan is about. I
6 think there are ways that we can expedite and make this
7 an easier process for the Secretary of State, including
8 ways that are included in our \$150,000. But once your
9 proceedings are completed, there's going to need to be
10 additional work to get your pre-clearance submission on
11 file. I think that can be - the work can be minimized by
12 advanced planning. We don't know who is going to be
13 responsible to that; if you were to ask us to do that,
14 depending on how the record was prepared, we would give
15 you a separate bid on that. And in addition, if you
16 would want us to coordinate - somebody has got to put the
17 plan into effect - but if you would want us to coordinate
18 with legal issues with the Secretary of State, or the
19 Registrar of Voters issues, those are additional services
20 you might request.

21 COMMITTEE MEMBER FILKINS WEBBER: I have a
22 question. The additional services that you have here,
23 would that be based on an hourly rate or --

24 MS. LEONI: We could do it either way, we could
25 do hourly, we could do project rate.

1 COMMITTEE MEMBER FILKINS WEBBER: So, we can rely
2 on the numbers that you've provided in your response
3 regarding the cost for any additional meetings?

4 MS. LEONI: You know, let me -

5 COMMITTEE MEMBER FILKINS WEBBER: Because you
6 have some numbers in here for eight hours, and so, if we
7 needed to go back to the Commission and make sure that I
8 understand this correctly, as well, you have three
9 meetings up at the top in the \$150, which would include
10 the crash course for the Voting Rights. I'm assuming
11 probably the other meeting regarding your recommendations
12 for managing the public input, that would be one meeting,
13 I'm assuming. Where is your third meeting on the top?

14 MS. LEONI: Well, now, the three meetings, the
15 three meetings were the crash course on Voting Rights
16 Act, application of the crash course to the thoughts on
17 the ground, and the third meeting would be a presentation
18 of the Voting Rights aspect of your plans at perhaps your
19 final meeting, or second to final meeting, all right?
20 The other issues I would work on through General Counsel,
21 such as how does the public interact with you. One thing
22 that Commissions make - you have to educate the public
23 about what you need to hear, they need to know how they
24 can most effectively advocate to you - what should they
25 be talking about? What is the language they should be

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1 using? And that guidance is important, but also it's
2 important for you to know how to elicit that testimony
3 for them, so you have a full record that makes your plan
4 defensible. And so, that is guidelines that I would work
5 through with General Counsel, and he can certainly
6 present those to you.

7 COMMITTEE MEMBER FORBES: Other questions?

8 COMMITTEE MEMBER ANCHETA: So one type of public
9 meeting we've been discussing is basically an all-day or
10 maybe two-day meeting, maybe two meetings, where there
11 would be presentations of statewide maps, again,
12 statewide maps having considerable amount of data in them
13 and some of those may, in fact, be specifically targeting
14 Section 2 and Section 5 districts. In terms of how you
15 see the work occurring, would you see that as a meeting
16 where it would be advisable to have counsel attend the
17 meeting? Or would you suggest simply, again, the
18 conveying of the information?

19 MS. LEONI: My best guess is that - my best - I
20 think you may want counsel present at that, I think you
21 may.

22 COMMITTEE MEMBER ANCHETA: Okay, thanks for that.
23 That would be under the additional -

24 MS. LEONI: That would be under the additional.

25 COMMITTEE MEMBER ANCHETA: Thank you.

1 COMMITTEE MEMBER FILKINS WEBBER: In having an
2 opportunity to review all the submissions, one thing that
3 I find distinctly different, and correct me if I'm wrong,
4 about the services that you intend to propose to this
5 Commission, is that you have *Maptitude* in your office?

6 MS. LEONI: Yes.

7 COMMITTEE MEMBER FILKINS WEBBER: And so you are
8 able - it appears to me that you are adding also your
9 expertise in the technical - in understanding the
10 technicalities of actual line drawing. Can you explain
11 that a little bit more about how that sets you apart from
12 maybe other firms who are just looking at providing legal
13 advice on Voting Rights Act, but how do you meld the two
14 together to make you more competitive for this particular
15 position?

16 MS. LEONI: Your consultant, your demographic
17 consultant, is going to essentially do what you tell him,
18 then you're going to provide that to your legal Voting
19 Rights counsel and say, "Does this pass muster?" What we
20 can do in-house is manipulate those lines because it
21 passes muster only when it doesn't, and we can manipulate
22 those lines to identify pitfalls that may arise under the
23 Voting Rights Act. You think you've nailed the
24 benchmark, and we begin looking around and find out, I
25 mean, obviously we're going to use the ACS and the

1 special tab, we look at the margins of errors in those
2 documents and we say, "Well, no." But what happens if we
3 move it here and then we look and the numbers improve?
4 Then, we can come back to you, or through General
5 Counsel, or in writing, and say, "We have..." -- and this
6 is important under the new VRA standards that were
7 enacted when the Voting Rights Act was reauthorized in
8 '06 -- we can come back and say to you, "We think that
9 your benchmark is not as - we don't think you hit the
10 benchmark. We think there are areas that should be
11 included in this district that are not." And we are
12 able, then, to manipulate that and bring that back to
13 you. We can suggest alternatives, we can give you a
14 variety of lines and you may say, "Well, talk to the
15 consultant or talk to General Counsel and have them bring
16 it back to us so we can see it." But it enables us to
17 give you better legal advice. There's not something that
18 somebody didn't look at.

19 COMMITTEE MEMBER FORBES: Are there any final
20 questions? Hearing none, I want to thank you both for
21 coming. I appreciate it very much, I know the Committee
22 does, as well.

23 MS. LEONI: Thank you very much. We are really
24 honored to be among the final four. Thank you.

25 COMMITTEE MEMBER FORBES: Thank you.

1 MR. SKINNELL: Thank you.

2 COMMITTEE MEMBER FORBES: We'll take a five-
3 minute break, and while you set up the telephone.

4 (Off the record.)

5 (Back on the record.)

6 COMMITTEE MEMBER FORBES: Thank you, Ms. Daniels
7 and thank you for this sort of experiment in long-
8 distance communication. I feel like we should have up
9 your portrait on the table in front of us. Anyway, I'm
10 Commissioner Forbes and I'm chairing this meeting this
11 afternoon and this evening for you and we appreciate your
12 taking the time to talk to us. The format we're going to
13 use, we're going to ask you if you'd like to make a five-
14 minute sort of introduction, whatever you want to talk
15 about, then we have a series of questions, which I
16 understand you have, that we will ask those and, to the
17 extent we have time, we'll ask follow-up questions. We
18 may delete a question if, in fact, your opening statement
19 takes care of one of the questions, we might just skip
20 it. But that's going to be the format for the moment.
21 so, with that, just for the public, we're interviewing
22 Gilda Daniels, one of our applicants to be a Voting
23 Rights Attorney for the Commission. Ms. Daniels, you're
24 on.

25 MS. DANIELS: Good evening, or good early

1 evening, I guess, for you and late evening for me. I
2 want to first of all say thank you to the Commission for
3 inviting me to speak with them tonight, I certainly
4 appreciate this opportunity. As you know, my background
5 is certainly in Voting Rights, I've been working in the
6 Voting Rights area for the last 15 years - hello?

7 COMMITTEE MEMBER FORBES: Yes.

8 MS. DANIELS: Can you hear me?

9 COMMITTEE MEMBER FORBES: Okay. And in my
10 experience, I've not only worked with the Department of
11 Justice in enforcing Federal Voting Rights law, you know,
12 the Voting Rights Act, as well as the National Voter
13 Registration Act, also known as the Motor Voter Law,
14 enforcing HAVA, and certainly within Section 2 of the
15 Voting Rights Act, in Section 2 and Section 5, which are
16 certainly quite important in this redistricting process
17 to the State of California. I think that you will find
18 that my background and experience can certainly be
19 helpful to the Commission in helping to draft the plan
20 that provides the citizens of California an opportunity,
21 and an equal opportunity, to participate in the electoral
22 process.

23 I served as a Deputy Chief in the Civil Rights
24 Division, Voting Section at the Department of Justice,
25 for approximately six years and I served under both

1 Clinton and George W. Bush Administrations, certainly
2 during that time not only conducted Section 2 training
3 for the staff, but also very involved with public policy
4 decisions involved in the 2006 reauthorization of the
5 Act, involving certainly not only reviewing Section 5
6 submissions, but being an integral part of the Section 5
7 process, and certainly being involved also with minority
8 language cases, as well, bringing cases to include
9 persons, and particularly the broader case of United
10 States v. Brooks County that involved Spanish speaking
11 Americans and increasing their opportunity to participate
12 in the electoral process.

13 Since leaving the Department of Justice, I've
14 been a Professor, a Law Professor at the University of
15 Baltimore Law School, where I teach Civil Procedure,
16 Critical Legal Theory, and an Election Law Seminar. And
17 I have found that I am what I call a "hybrid" in that I
18 am a Law Professor, as well as a practicing attorney, so
19 someone who has actually practiced in the areas where I
20 now write. And certainly in my scholarship, you can
21 certainly find that some of the issues that California is
22 facing and contemplating during this redistricting
23 process are issues that I've written about in my
24 scholarship, and certainly have thought about, so this
25 isn't something that I'm, you know, just thinking about

1 tonight or this week, but certainly issues that I've
2 considered during some time.

3 I just would like to finally say that I, again,
4 would like to thank the Commission for inviting me to
5 speak to them tonight, and I certainly look forward to an
6 opportunity to work not only with the Commission but also
7 with the people of California.

8 COMMITTEE MEMBER FORBES: Great, thank you so
9 much. Just so that I say this as a reminder to the other
10 members of the Committee, this interview will take
11 approximately 50 minutes, total, and so that's just to
12 keep everybody aware of the time factor, so we don't run
13 out before we get to the end of the questions. With
14 that, I'd ask Commissioner Ancheta for the first
15 question.

16 COMMITTEE MEMBER ANCHETA: Thank you. And we
17 have been trying to disclose any relationships, but I
18 disclosed this last time, but Professor Daniels and I, if
19 she remember, but I remember our serving on a panel
20 together at Indiana University last year, if you recall
21 that. But we haven't worked together -

22 MS. DANIELS: Oh, that's right, that's right.

23 COMMITTEE MEMBER ANCHETA: So, I have met
24 Professor Daniels. I did that language presentation.
25 But, anyway, just for purposes of disclosure. So,

1 Professor, what do you think are the most significant and
2 challenging issues arising from the new Census Data for
3 the Commission to consider?

4 MS. DANIELS: Issues from the new Census Data, I
5 certainly think that the primary issue for the Commission
6 will be addressing the growth and the movement of the
7 Latino population throughout the State of California.
8 I'm sorry, did I interrupt you, Angelo - Commissioner?

9 COMMITTEE MEMBER ANCHETA: No, no, go ahead.
10 Please go ahead.

11 MS. DANIELS: Certainly in looking at the
12 existing Congressional Districts, we saw that there are
13 seven 2001 Congressional Districts that had Latino Voting
14 Age populations and, now, in 2010, 11 of these Districts
15 have Latino Voting Age majorities, and five of those
16 seven districts with Latino majorities in 2000 no longer
17 have Latino Voting Age majorities, but four of those five
18 are in Los Angeles County District. So you had this
19 movement of Latino voters throughout the state, this
20 certainly will and have impacted what the existing
21 districts look like. And so, certainly something to
22 consider in regards to Section 2 protection, now, just
23 when you take what Section 5 of the Voting Rights would
24 consider the benchmark plan, which would be the 2001
25 plan, and input the 2010 numbers, you would now have 11

1 districts that have Latino voting age majorities, and
2 then once you get into - in actually looking at just
3 those straight numbers, you certainly aren't going to get
4 into how to deal with citizens' voting age, population,
5 whether or not - and in using total population for
6 drawing the districts, you know, how you would deal with
7 citizens' voting age, population, what would be the most
8 accurate data to use, and making sure that you're
9 certainly complying with Section 2, as well as Section 5
10 requirements in looking at the shift and growth in the
11 minority population.

12 COMMITTEE MEMBER FORBES: Thank you. Now we're
13 going to have Commissioner Ward ask the next question.

14 COMMITTEE MEMBER WARD: Good evening. Question
15 is how would you suggest the Commission approach counting
16 prisoners.

17 MS. DANIELS: How would I suggest that the
18 Commission approach prisoners?

19 COMMITTEE MEMBER WARD: Counting prisoners.

20 MS. DANIELS: Counting prisoners, counting
21 prisoners. Well, I recognize that the counting of
22 prisoners can certainly serve as a contentious issue, but
23 I would suggest to the Commission, in that the
24 Legislature has not passed legislation that would change
25 the manner in which the state would count its prisoners,

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1 meaning, for example, in Maryland, Maryland has passed
2 legislation that would require it to count prisoners
3 where they are from as opposed to where they are located.
4 As you know, on the Census count, they count prisons
5 where they are actually located, in the correctional
6 facility as opposed to where their addresses may have
7 been prior to being incarcerated. But, in that
8 California has not passed this type of legislation that
9 Maryland had, my suggestion to the Commission would be
10 that the Census criteria which is where prisoners are
11 located, i.e., the correctional facility, for two
12 reasons: 1) if you use any other criteria, it would need
13 to be certified, and that could put you at a potential
14 litigation risk because certain persons want to know how
15 you could justify these numbers, but I think, secondly,
16 and more importantly, if you chose to use a different
17 count, it could certainly delay the process of
18 redistricting in that, you know, we currently don't have
19 those numbers and are in the process of getting those
20 numbers certified, so I would certainly suggest that, in
21 the counting of prisoners that you use the Census
22 criteria and, you know, the Census numbers where
23 prisoners are counted where they are current located.

24 COMMITTEE MEMBER FORBES: Thank you. The next
25 question will be asked by Commissioner Filkins Webber.

1 COMMITTEE MEMBER FILKINS WEBBER: Hello, Ms.
2 Daniels.

3 MS. DANIELS: Hello, how are you, ma'am?

4 COMMITTEE MEMBER FILKINS WEBBER: Good. What do
5 you think is the relevant population for purposes of
6 Section 2 analysis?

7 MS. DANIELS: What is the relevant population?

8 COMMITTEE MEMBER FILKINS WEBBER: Yes.

9 MS. DANIELS: You mean whether total population,
10 or voting age population, or -

11 COMMITTEE MEMBER FILKINS WEBBER: Or whatever
12 else you believe to be relevant.

13 MS. DANIELS: In regards to -

14 COMMITTEE MEMBER FILKINS WEBBER: For the
15 purposes of a Section 2 analysis.

16 MS. DANIELS: For purposes of a Section 2
17 analysis. For purposes of the Section 2 analysis, I
18 would - I would use voting age population instead of
19 total population, but also for Latino population, or
20 minority population, I would certainly use CVAP
21 population.

22 COMMITTEE MEMBER ANCHETA: This is Commissioner
23 Ancheta. So, for follow-up on that, because it may not
24 be that, within a particular district, the line is
25 necessarily clear between it being a majority Latino vs.

1 a coalitional district, or there may be a number of
2 populations there, would you suggest, again, varying it
3 between citizen voting age population and voting age
4 population, or would you suggest one benchmark that might
5 be applied statewide?

6 MS. DANIELS: You can use more than one, but
7 certainly I think you could get a more accurate -- for
8 Section 2 purposes - you can certainly get a more
9 accurate indication when you're determining whether or
10 not there's an opportunity to elect, by looking at the
11 Voting Age population, as opposed to, say, total
12 population. And so, when you have a Latino population,
13 or in particular, certainly, I think CVAP would be the
14 correct calculation, the correct criteria to use.

15 COMMITTEE MEMBER FORBES: Okay.

16 COMMITTEE MEMBER BLANCO: Can I do a follow-up on
17 that?

18 COMMITTEE MEMBER FORBES: Sure. This is
19 Commissioner Blanco.

20 COMMITTEE MEMBER BLANCO: Good evening Ms.
21 Gilbert [sic]. There is some concern, I know, in some
22 corridors about the fact that the CVAP is not available
23 in the Census Data. Can you talk about that?

24 MS. DANIELS: Could you repeat your question?

25 COMMITTEE MEMBER BLANCO: There is concern that

1 CVAP is not captured in this 2010 Census. Can you
2 address that?

3 MS. DANIELS: Oh, you're talking about the way
4 that the - in that the CVAP is a part of the American
5 Survey? Right, so there are different datasets that are
6 available for CVAP and there are certainly different
7 margins of areas of error, and there are also different
8 geographies that you could use, you know, Block level,
9 Block group, as well as tract, you could even use voting
10 precincts. So, in regards to what data would be
11 available, certainly I would suggest that you first
12 determine which set or sets to use, and I think
13 California may have its own CVAP file that is developed
14 by using a surname analysis. So, that could also be
15 sourced, as well. But in looking at which set or sets to
16 use, because I would certainly suggest that you only use
17 the data that a court would accept, and also considering
18 DOJ's standard, which for most purposes would be the ACS;
19 however, California has what would be considered more
20 reliable CVAP data that is based on surname analysis, and
21 it has an acceptable margin of error, you could certainly
22 create more than one plan, you could compare the two
23 plans, you know, one maybe using the ACS data, and
24 another using the California surname - doing the surname
25 analysis that - I don't know if California has it for its

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1 own CVAP file - and determining which would be the more
2 accurate in that regard.

3 COMMITTEE MEMBER BLANCO: Thank you.

4 COMMITTEE MEMBER FORBES: The next question will
5 also be asked by Commissioner Blanco.

6 MS. DANIELS: Can I also - so, I'm sorry, so I
7 guess to reiterate, when I was mentioning the Census and
8 CVAP, what I'm speaking of is the ACS Data, not the
9 actual 2010 counting of Citizens Voting Age Population.

10 COMMITTEE MEMBER BLANCO: Yes, thank you for that
11 clarification. To the extent that you have experience
12 with redistricting, what do you think are the most common
13 mistakes made by Redistricting Boards or Commissions, and
14 how could this Commission avoid those pitfalls?

15 MS. DANIELS: Well, there are two primary things
16 that I think this Commission can do to avoid some common
17 pitfalls, and I think one of the first pitfalls is what
18 I'm calling a "lack of training." I think the Commission
19 should certainly undergo Section 2 and Section 5 training
20 so that they can certainly be more knowledgeable about
21 the process, as well as what the legal requirements are,
22 and I know that there are members of the Commission who
23 are not lawyers, and some who are not so familiar with
24 the redistricting process, so I think that's why it would
25 be very important for Commissioners to undergo some

1 training in regards to what Section 2 is, what Section 5
2 is, what actual redistricting maps look like and how they
3 are formed, and also litigation considerations in regards
4 - would also be a point to discuss during any training
5 and, in litigation considerations, not only talking about
6 potential risks through the redistricting process, but
7 also how Commissions - and you may have already done this
8 - but what would be considered a public document, what is
9 discoverable, you know, in regards to email, etc., and
10 making public statements, that kind of information, so I
11 think those are some of the pitfalls and the first one, I
12 certainly would like to highlight, would be a lack of
13 training. And the second one would be public
14 involvement, or the lack thereof. It's important,
15 certainly, to make the Commission available to the public
16 and make it available for public involvement, and not
17 only to say, you know, we're having public hearings, but
18 also, once you receive that information, utilize the
19 information provided in a way that the public can see the
20 information they're providing. And I think certainly for
21 public hearings, information on communities of interest
22 that you get from the communities will be very helpful
23 and crucial, and demonstrating to the public that you're
24 actually utilizing the information that they provide, I
25 think, is something that will be very important and it's

1 certainly a pitfall that can be avoided.

2 COMMITTEE MEMBER FORBES: Thank you. The fifth
3 question is, what do you see is the attorney's role when
4 working with line drawing and other technical consultants
5 to avoid creating any racially discriminatory effects, or
6 any intentional discrimination?

7 MS. DANIELS: Well, I believe one of the first
8 things that has to be done is to identify, prior to
9 drawing any districts, prior to drawing any lines, I
10 think the first thing you have to do is identify places
11 where you have identifiable minority communities and also
12 where you may have had dramatic shifts in population.
13 And I think as I indicated in my response to your request
14 for services, I indicated one of the first things would
15 be to look at the existing districts and use the 2010
16 numbers where you had some considerable shifts, so I
17 think in working with the line drawers, I think first the
18 attorney and the line drawer can just, again, talk about
19 particular areas, for example, with the California
20 redistricting, you know, looking at areas like Los
21 Angeles, as well as Kings County, and San Bernardino, and
22 Orange County, are certainly districts - areas that I
23 would look at even before drawing the lines. And also,
24 the Section 5 covered jurisdictions of Merced, Monterey
25 County, Kings County, and Yuba, and looking at what

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1 shifts may have occurred in those areas and making sure
2 that - highlighting those areas that we should pay
3 particular attention to during the redistricting process.
4 And finally, I would look at places where, in the past,
5 there may have been Section 2 concerns, meaning that
6 there may have been concerns of majority-minority
7 districts that were drawn and contested, or districts or
8 areas where there were - or that they should have been
9 drawn. So, those are certainly ways in which I think the
10 attorney can certainly play a role in working with the
11 line drawers, to make sure that there's no intentional
12 discrimination.

13 COMMITTEE MEMBER FORBES: Thank you. And now
14 we'll start again with Mr. Ancheta, with Question 6.

15 COMMITTEE MEMBER ANCHETA: So, this is sort of a
16 multi-part question, but fundamentally, it goes to cost
17 and sort of a general work plan that you envision. So,
18 you have received sort of an outline of our work plan,
19 it's not the be all and end all, but it's been presented
20 to you, but if you could sort of talk about how you see
21 cost and budgeting that you might propose in light of
22 this plan, how would you allocate your time among the
23 various tasks, including attending meetings, and because
24 you're out of state, that's of particular concern to us,
25 and where do you think you might be able to reduce cost

1 in terms of working with our staff? And then, finally,
2 again, multiple parts here, could you describe generally
3 the work product that you'll provide and how you will
4 arrive at sort of -

5 MS. DANIELS: Could you say the last - repeat the
6 last thing?

7 COMMITTEE MEMBER ANCHETA: I'm sorry, so let me
8 go back one just to make sure. So, where do you think
9 you could reduce cost in terms of working with our staff?
10 And then, finally, could you sort of generally describe
11 the work product that you intend to provide and how you
12 arrive at sort of a final cost? And you did identify, I
13 think, \$200,000 in your proposal. What we're sort of
14 working with, with a smaller number right now, which is
15 \$150,000. So, how would you sort of generally allocate
16 the work?

17 MS. DANIELS: Okay, I - Mr. Miller did provide me
18 with the work plan, the "Work Plan Development
19 Guidelines," as it is entitled. Would you like me to go
20 through each of those, or just kind of give you a general
21 overview?

22 COMMITTEE MEMBER ANCHETA: How much time do we
23 have in terms of -

24 COMMITTEE MEMBER FORBES: We're good for time.

25 COMMITTEE MEMBER ANCHETA: You can try - hit the

1 major points you think you might want to emphasize and
2 we'll let you know if we're hitting time problems.

3 MS. DANIELS: I need you to repeat the last part
4 again.

5 COMMITTEE MEMBER ANCHETA: Go ahead, go ahead and
6 highlight the major points and if we're sort of running
7 short on time, we'll just let you know.

8 MS. DANIELS: Okay, great. I'll go through it
9 fairly quickly and essentially will answer your last
10 question first, which was final costs and how I came to
11 the calculation. So, what I did was I used the hourly
12 rate of \$250.00 and came to -- \$250.00 an hour - and
13 projected what I thought, you know, the number of hours
14 it would take to do each of the tasks that are included
15 in each of your enumerated paragraphs. And my final cost
16 would range between \$135,000 to \$205,000. And so, as I
17 go through each of these, you'll see where they have -
18 you know, have the ability to cut costs. In regards to
19 question 1, where you are asking for a thorough briefing,
20 including a written memorandum and summary, again, I'm
21 suggesting that the Commission undergo a training session
22 which would take about one and a half to two days of
23 training, and also included under question 1, the time it
24 would take me to prepare the training and draft the
25 materials because I think it's important to not only talk

1 about what Section 2 is and what Section 5 is, but also
2 kind of generally talk about case law, the various types
3 of districts, majority-minority districts, crossover
4 districts, influence districts, etc., what the law
5 requires, talk about the reauthorization of the Voting
6 Rights Act, as well as the Census numbers, California
7 Voting Rights Act, etc. And there is certainly within
8 this, there are places where you can utilize, the fact
9 that you already have in regards to drafting materials,
10 can have the line drawer talk - certainly have a section
11 on that process, as well as having the staff attorney or
12 head counsel talk about California Voting Rights Act, and
13 you know, I could talk about the VRA and other areas, as
14 well as in looking at what the litigation risks are. And
15 I think it's important to point out that, you know,
16 particularly in talking to the Commission about possible
17 litigation risks, as you mention in paragraph 1, to see
18 that you are anticipating litigation, and that can
19 certainly be a good thing because it can certainly
20 determine how you approach the process and being
21 cognizant of the legal requirement. But, in
22 understanding that redistricting is an extremely
23 litigious activity and, you know, there is a strong
24 possibility that there will be litigation, but certainly
25 you can minimize the risks of litigation by demonstrating

1 compliance with the Voting Rights Act, and One Person,
2 One Vote, etc. So that's why I think that having that
3 type of training just to make the Commissioners aware of
4 what the Voting Rights Act requires would be important in
5 also helping to minimize any risk involved. In question
6 2, with working with the technical consultant, and where
7 prisoners are counted, certainly, I think I've addressed
8 where prisoners should be counted, and also issues of
9 racially polarized voting, I certainly recommend that the
10 Commission undergo a racially polarized voting analysis
11 and hire someone to do this so that would be an
12 additional cost to the Commission to have a racially
13 polarized voting analysis. And I certainly work with
14 experts in that area, in the area of racially polarized
15 voting, as well as I've worked with experts in drawing
16 lines, so I'm certainly familiar with that and certainly
17 can provide that to the Commission. So, I estimated
18 that, in working with the technical consultant under
19 enumerated paragraph 2 would take about 50 to 60 hours in
20 regards to -

21 COMMITTEE MEMBER ANCHETA: I'm sorry, Professor
22 Daniels, this is Commissioner Ancheta, as you're going
23 through these, could you - since you're out-of-state,
24 could you indicate where you think it would be essential
25 that you be here physically vs. where you think that

1 could be done electronically or by telephone because it's
2 helpful to know in terms of your availability how, as you
3 go through this work plan, when we would be able to -

4 COMMITTEE MEMBER FORBES: Let me ask the
5 question, this is Commissioner Forbes, a little more
6 directly, at least for my purposes. You're in Maryland,
7 we're in California, your work plan is about \$135,000,
8 it's about 550 hours, or thereabouts, that represents
9 over the next four months 125 to 135 hours a month on
10 this project, which is about three weeks. How do you see
11 yourself doing that? Are you going to come here and get
12 an apartment for four months? Are you going to try to do
13 it long distance? And then, what other professional
14 obligations do you have over the next four months that
15 might interfere with this?

16 MS. DANIELS: If possible, hopefully I can answer
17 the second Commissioner's question first, if that's okay?

18 COMMITTEE MEMBER FORBES: Sure.

19 MS. DANIELS: In regards to my availability,
20 certainly - I don't see being in Maryland as a hindrance
21 to completion of this redistricting process and, as I
22 noted in my opening remarks, I am currently an Assistant
23 Professor at the University of Baltimore, and I can
24 assure you that my teaching responsibilities will not
25 interfere with my working with the Commission. The

1 actual day of classes is April 21st, but I certainly have
2 the ability to move classes, such that I can, sort of
3 between now and then, can make visits to California, to
4 do the training, to meet and speak with Commissioners, as
5 well as the technical consultants and other staff
6 members. And I do not have any teaching responsibilities
7 during the summer, so my entire summer can be dedicated
8 to the California Redistricting Commission, and so that
9 hopefully should alleviate any concerns you might have
10 regarding my availability. In regards to what can be
11 done, you know, certainly thanks to the Internet, email,
12 *Skype*, *FedEx*, other means of communication, there are
13 certainly tasks that can be done outside of the State of
14 California, including, you know, communicating
15 consistently with the line drawers, with your counsel on
16 staff, and others, and particularly having counsel and
17 technical staff complete tasks. And I also see some of
18 this sort of like a continuing of the professor/student
19 relationship, if you will, and certainly hopefully you
20 all don't consider it an offensive characterization, but
21 certainly as a professor, particularly with the training
22 or in other areas, you know, speaking with - and I'll
23 also note that, certainly as a Deputy Chief, I have
24 managed large groups of employees and managed them
25 certainly in that they can complete outcomes without

1 being present, and certainly in the Department while
2 people were traveling on cases, or working at home, the
3 Department of Justice has a strong, what they call
4 "flexible work space" where you can work at home two or
5 more days a week, so I'm accustomed to managing
6 personnel, if you will, and certainly wouldn't have, you
7 know, any hierarchy of seniority or anything of that
8 nature, but I am accustomed to working with people who
9 are not present in the office with me so we can discuss
10 ideas, issues, share files over the Internet or email,
11 and discuss them. And I do note that the Commission, I
12 think, further down will discuss the number of meetings
13 to attend, as well, and which of those I think would be
14 important to attend, as well. But I'm certainly
15 available to the Commission as counsel for discussion and
16 can - and am certainly available to travel to California,
17 as well. And a lot of this has to do with how the
18 Commission envisions is Voting Rights Act counsel and I
19 think that's certainly something that you all would have
20 to discuss. And I note, you know, that the law firms are
21 in Southern California, so, although they're not out of
22 state, they would have to move - if that's your
23 requirement - they would have to move to Sacramento, as
24 well, so I'm not sure if that's what you would require.

25 COMMITTEE MEMBER FORBES: Do you want to continue

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1 on the work plan?

2 MS. DANIELS: Okay, on the work plan, with number
3 3, [reading] "propose and make available to Commission
4 advice relevant to community groups, attendance of
5 community group meetings," etc. I think one thing I
6 could do with the use of staff is certainly have the
7 technical staff's available method in which groups can
8 formally submit comments to the Commission, you know, the
9 Department of Justice actually has comment instructions
10 for the Section 5 process, so something similar to that
11 where you have a designated address, or even if you have
12 a way that they can do it via Internet, where they know
13 that it's a formal comment and that they're making a
14 submission and it will be considered in regards to the
15 redistricting process. Also, I know there are a number
16 of hearings, but also describing what the types of
17 hearings are, whether it's a discussion of maps, or
18 whether it's a community outreach, or whether or not
19 you're accepting alternative plans, you know, and other
20 information, or you're requesting live testimony and how
21 people can sign up to provide that, as well. And with
22 the communities of interest, also, you know, creating a
23 database regarding communities of interest. And in
24 regards to the number of visits, I certainly think it
25 would be helpful to have the VRA counsel present when the

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1 Commission has public hearings in the Section 5 public
2 jurisdictions, as well as some of the hot spots mentioned
3 earlier, like San Bernardino, as well as Orange County,
4 and Los Angeles. So, I think that would also be
5 important for the VRA counsel to be in those areas, as
6 well as maybe other areas that the Commission may think
7 there is a potential Section 2 or Section 5 concerns, and
8 that's certainly something the VRA counsel can help
9 determine along with the Commission.

10 COMMITTEE MEMBER FORBES: Can I ask you to
11 comment on items 6 and 7, which are the preparation of
12 the report and any advice and assistance regarding pre-
13 clearance?

14 MS. DANIELS: Can I go to what is question 4 in
15 regards to engaging on with the technical consultant to
16 provide legal advice regarding preparation of the, as you
17 said, proposed and final maps, I certainly see this as
18 the meat of the engagement. Certainly, after the
19 training and some initial meetings, that's when you start
20 the line drawing, and I think that's when the meat of the
21 engagement will begin. And I have that at about 20-40
22 hours a week for about three months, in working with the
23 line drawers because you're not just helping them
24 determine where the lines should go, but also the
25 information from the community meetings and others in

1 making a determination as to what -

2 COMMITTEE MEMBER BLANCO: What was that number
3 again, excuse me?

4 MS. DANIELS: I said 20-40 hours per week for
5 about three months. And it's after, I think, some
6 initial period before they actually start drawing lines,
7 and so certainly once they start drawing some initial
8 plans, I think that's, again, where the meat of the
9 engagement and where the bulk of the expense will come.
10 As I already addressed, participating in Commission
11 business meetings and such other public outreach
12 meetings, I think Mr. Miller indicated that there were
13 about 40 meetings currently scheduled, and so I would say
14 about eight to 10 of those meetings, possibly, and that,
15 again, mentioning particularly in the Section 5 covered
16 jurisdictions, Los Angeles, Orange County, etc., and I
17 think the meetings are also a place where existing staff
18 can be utilized in attending those meetings and making
19 notations helpful to the final product. In regards to
20 the Section 5, providing advance - or delivering the
21 report, I have that at about 50-80 hours of work. Again,
22 that's just gathering all the information that's been -
23 or compiling all the information that's been gathered
24 over the four or five-month period, and that of course
25 would also include using existing staff to help draft

1 that final report, you know, the line drawers and the RPV
2 analysis, as well as you could use the counsel to help
3 draft part of that report, as well. And for the final -
4 provide advice and assistance with the pre-clearance
5 review, it's required by the Department of Justice, I
6 have that at about 40 to 50 - I have that at 40 to 50
7 hours.

8 COMMITTEE MEMBER FORBES: Okay, thank you. I
9 think it goes through our list. Commissioner Ward, do
10 you want to ask - I think she's answered question 7, so
11 perhaps you want to ask 8.

12 COMMITTEE MEMBER WARD: Absolutely. We are not
13 presently hiring litigation counsel, but we would like
14 you to describe your experience and availability to
15 handle any trial and appeal.

16 MS. DANIELS: Now, that - I certainly saw that as
17 a very interesting question, and I'm not sure you want
18 your VRA counsel to also serve as litigation counsel,
19 only - I'm thinking more of what would be the
20 discoverable and, you know, what role the VRA counsel
21 could actually play in that regard. Certainly, the VRA
22 counsel should have in mind what the law requires and
23 work in that direction, but I'm not sure you want them to
24 also serve as litigation, you know, to actually litigate
25 your cases. But, nonetheless, my experience in

1 litigation, well, at the Department of Justice, I was
2 primarily a Litigation Deputy, where I was primarily
3 responsible for Section 2 litigation and NVRA, HAVA, and
4 other Voting Rights statute. But I handled the Section 2
5 Districting cases, I've handled Section 2 and 4E and 208,
6 which is - the Section 208 deals with assistance of
7 voters, allowing voters to choose the assister of their
8 choice. I've argued cases in United States District
9 Courts, as well as Courts of Appeal, so I can certainly
10 assist litigation counsel, or serve as litigation
11 counsel, I'm just not sure you want that person to -

12 COMMITTEE MEMBER FORBES: Thank you. Our General
13 Counsel, Mr. Miller, has a question he'd like to ask.

14 LEGAL COUNSEL MILLER: We understand the deep
15 experience you've had from the enforcement perspective
16 with the Department of Justice, but can you tell us if
17 you have previously represented a public entity, either
18 at the local level, or a larger one like ourselves?

19 MS. DANIELS: A public entity on the local, if
20 I've ever represented a public entity.

21 LEGAL COUNSEL MILLER: Yeah, a public entity
22 involved in the redistricting process, whether that would
23 be County Supervisors, or the City level, any public
24 entity where you have served as counsel to that entity
25 with respect to redistricting matters.

1 MS. DANIELS: I have served - I've served as a
2 counsel to a public organization - other than serving in
3 the Department of Justice, I'm trying to think, no, other
4 than serving in the Department of Justice, no.

5 COMMITTEE MEMBER FORBES: Okay, thank you.

6 MS. DANIELS: I have certainly handled
7 districting matters, you know, Shaw type of cases, etc.,
8 handled Section 2 litigation, the drawing of districts,
9 as well as Shaw cases, defending Districts, as well, but
10 actually representing a public entity, like a County
11 Commissioner group, no, I have not done that.

12 COMMITTEE MEMBER FORBES: Thank you. Now for our
13 last question, Commissioner Filkins Webber?

14 COMMITTEE MEMBER FILKINS WEBBER: The public must
15 have a high level of trust and confidence in any Voting
16 Rights Attorney's ability to provide objective
17 nonpartisan advice to this Commission. In light of the
18 public comments, which I'm not sure you're aware, that's
19 come in regarding you, how can you provide assurance to
20 this Commission that you could meet that level of trust
21 and confidence necessary?

22 MS. DANIELS: What was the last part you said, a
23 public comment that came in?

24 COMMITTEE MEMBER FILKINS WEBBER: Yes, are you
25 familiar that public comments have been posted regarding

1 your response to our invitation to bid.

2 MS. DANIELS: No, I'm not sure what you're
3 referring to.

4 COMMITTEE MEMBER FILKINS WEBBER: We can get into
5 that in a moment, but the general question is that the
6 public must have a high level of trust and confidence in
7 the firm's ability to provide objective nonpartisan
8 advice. How can you provide assurance to the citizens of
9 California that you can provide such high level of trust
10 and confidence?

11 MS. DANIELS: I can assure the public that my
12 main objective is certainly to assist California in
13 developing a districting plan that will provide an equal
14 opportunity to participate in the electoral process, and
15 certainly my more than 15 years of experience has been in
16 enforcing the Voting Rights Act and enforcing the Federal
17 laws as they exist, and it's certainly very important to
18 instill confidence from our actions, and certainly
19 exhibiting knowledge of this area, I don't dare say that
20 anyone can, you know, contest my knowledge or my
21 experience, as well as being transparent about the
22 process, and adhering to state's redistricting criteria
23 and involving the public in the process. So, I think as
24 the Commission is committed to being transparent,
25 certainly I am committed to being transparent in order to

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1 evoke a high level of trust and confidence, and certainly
2 looking based on my extensive experience in enforcing the
3 Voting Rights Act and other voting statutes, hopefully
4 they can have a high level of trust that I will enforce
5 the Voting Rights Act requirement, and noting primarily
6 that that requirement is that there is an equal
7 opportunity to participate in the electoral process, and
8 I would certainly in this process continue to make that
9 the focus of the redistricting process, that it's
10 supposed to provide an equal opportunity to participate
11 and showing that districts are drawn so that that can
12 occur.

13 COMMITTEE MEMBER FORBES: Does any Commissioner
14 have any further questions? This is Commissioner Blanco.

15 COMMITTEE MEMBER BLANCO: I would like to address
16 the public comment that was submitted. We received - can
17 we say who it is?

18 COMMITTEE MEMBER FILKINS WEBBER: Yeah, I was
19 going to ask her if she actually knows the individual.

20 COMMITTEE MEMBER BLANCO: So, we received a
21 public comment that's posted on our website, which is
22 wedrawthelines.ca.gov. I don't know if you have access
23 right now to the Internet, but anyway, this is a comment
24 by a Mr. Hans A. Von Spakovski expressing - who
25 apparently was in the Voting Section of the Civil Rights

1 Division at the Department of Justice, and I won't -
2 there are some characterizations that I won't mention,
3 but the specific concern he raised was a question -- a
4 situation where, when he was at the Justice Department,
5 where there was a jurisdiction that was seeking bailouts
6 under Section 5 of the Voting Rights Act, and that you -
7 according to this letter, that you recommended the
8 jurisdiction be required to submit any change affecting
9 the voting to the local branch of the NAACP for approval
10 of any change for 10 years, even after the Federal Court
11 declared it free from coverage. And did that happen? If
12 it did, can you explain that?

13 MS. DANIEL: Say the last part again, I'm sorry.

14 COMMITTEE MEMBER BLANCO: I -

15 COMMITTEE MEMBER FORBES: If it happened -

16 COMMITTEE MEMBER BLANCO: The question is, are
17 you familiar with these facts? And what can you tell us
18 about them?

19 MS. DANIELS: Well, first of all, I can tell you
20 to first consider the source in that it is Mr. Hans Von
21 Spakovski, in that he was a - I think an Interim Federal
22 Elections Commissioner, but could not receive
23 confirmation from the Senate to remain an FEC
24 Commissioner because of his political involvement and
25 certainly the very partisan way in which he managed the

1 Voting Section. There were certainly very credible
2 statements, certainly what the Senate considered credible
3 allegations, regarding his politicalization of the Voting
4 Section. So, again, at first I would say consider the
5 source. Secondly, regarding the facts that you stated,
6 it is consistent with Mr. Von Spakovski's
7 sensationalization and misstatement of facts. I
8 certainly would not advocate that a jurisdiction -- that
9 a jurisdiction would have to seek NAACP approval for a
10 bailout. That's actually a laughable contention.
11 Certainly, the Voting Rights Act bailout procedures don't
12 require that, nor would I. So, I'm not sure how he
13 arrived at that statement, other than to sensationalize
14 the requirement in the bailout procedure; you know, just
15 in regards to Section 5, in the Section 5 process, the
16 Attorney General is going to ask members of the community
17 how they feel about Section 5 submissions, as well as the
18 bailout process, so that's - I'm not sure if he thought
19 complying with that part of Section 5 and the bailout
20 procedures was - you know, again, that was just a
21 sensationalization of some facts that I'm not - it just
22 sounds like he's sensationalized.

23 COMMITTEE MEMBER FORBES: And for our last
24 question -

25 MS. DANIELS: And I think you mentioned something

1 else, I'm sorry, could you repeat what the other facts
2 were?

3 COMMITTEE MEMBER BLANCO: No, that was all I was
4 asking about was the allegation about the NAACP, sort of
5 having to sign off on matters relating to the Section 5
6 bailout.

7 MS. DANIELS: No, I would never have done it,
8 it's not required as the Voting Rights Act, and I think
9 that's just the sensationalization. And I - if enforcing
10 the Voting Rights Act and other voting statutes are
11 considered radical, or whatever Mr. Spakovski called them
12 -- and I would dare say that Mr. Spakovski would consider
13 enforcing the Voting Rights Act a radical idea.

14 COMMITTEE MEMBER FORBES: Our last question will
15 be from Commissioner Ancheta.

16 COMMITTEE MEMBER ANCHETA: Yeah, so just in the
17 last few minutes, some questions about capacity and
18 resources. Will you - under this contract, would you be
19 performing 100 percent of the work? And, second, do you
20 envision or do you have any other existing clients or
21 other work, other than your professor job that might
22 affect your ability to work with our Commission?

23 MS. DANIELS: I don't currently have any
24 additional clients, so I would be solely dedicated to the
25 California Redistricting. I am actually conducting a

1 National webinar in a few months, in what is about a
2 month, on Redistricting and Federal requirements, along
3 with Bruce Adelson, actually. Bruce Adelson and I worked
4 together in the Department of Justice. And would I do
5 100 percent of the work? I certainly see that there are
6 certainly areas where I could subcontract work out to
7 other attorneys and I have former DOJ colleagues that I
8 have in mind, as well as possibly some former Section 5
9 analysts in the Department of Justice who can assist with
10 the Section 5 process in preparing the submissions. And,
11 also, not to be disregarded, certainly by being at a
12 university, I certainly have a wealth of students to be
13 able to do research for me, as well, so I do have the
14 capacity to have additional persons working on this
15 redistricting.

16 COMMITTEE MEMBER FORBES: I think that concludes
17 our interview now, and we want to thank you very much,
18 Ms. Daniels, for taking part in this long-distance
19 interview. Thank you so much.

20 MS. DANIELS: Thank you. And I appreciate the
21 opportunity, again, thank you for allowing me to speak to
22 you via telephone, I do apologize that I didn't - it
23 didn't become apparent that I wouldn't be able to make it
24 today until after I made the submission, so I should have
25 indicated that in my submission. Again, I apologize for

1 that oversight, but I do thank you for allowing me to
2 interview for this position via the telephone.

3 COMMITTEE MEMBER FORBES: Thank you. We'll take
4 a five-minute break.

5 MS. DANIELS: Thank you so much.

6 (Off the record.)

7 (Back on the record.)

8 COMMITTEE MEMBER FORBES: For the public, I am
9 speaking with Mr. Bruce Adelson, who applied for the job
10 as our Voting Rights Act Attorney. The format will be
11 that, if you would like to, we invite you to make like a
12 five-minute introduction, and then we have a series of
13 questions, which I understand you have received, and we
14 will go down and ask them one by one by different
15 Commissioners, and the Commissioner will identify
16 themselves at the time they ask the question. And then
17 we have about, oh, it's now, here, about eight minutes
18 after six, so our plan is to go to about 7:00 and that
19 will give you the same amount of time as the other
20 applicants had, and with that, I invite you to make an
21 opening statement if you like.

22 MR. ADELSON: Well, thank you very much and thank
23 you for the opportunity to address the Commission on this
24 very important issue. I certainly appreciate our being
25 able to get together by phone. This is obviously a very

1 exciting time for California with redistricting and with
2 the new Citizens Redistricting Commission. I'll tell you
3 a little bit about myself and certainly the work that I
4 do. I'm a former Senior Attorney with the United States
5 Department of Justice. I worked at the Department of
6 Justice from 2000 to 2006. I was heavily involved at
7 Justice in the last round of Redistricting for the 2000
8 Census in reviewing various submissions under Section 5
9 of the Voting Rights Act, in leading the Justice
10 Department's review of the Arizona Independent
11 Redistricting Commission's work ten years ago. I also
12 reviewed and analyzed and investigated various
13 jurisdictions and redistricting plans around the country
14 concerning other aspects of the Voting Rights Act, the
15 Minority Language provisions, for example, and Section 2.

16 Part of my practice now, frankly, is assisting
17 jurisdictions with the many requirements and complexities
18 of redistricting. That is an area that is of great
19 interest to me because it is so fundamental to our
20 Democracy and our right to vote. So, I work with a lot
21 of jurisdictions across the country on redistricting. I
22 look forward to answering your questions and being able
23 to help you with anything that I can this evening.

24 COMMITTEE MEMBER FORBES: Well, thank you. We'll
25 now turn to the questions. The first question is going

1 to be asked by Commissioner Ancheta.

2 COMMITTEE MEMBER ANCHETA: Good evening. So,
3 what do you think will be the most significant and
4 challenging issues facing the Commission, arising from
5 the new Census Data?

6 MR. ADELSON: Well, I think that California,
7 being the largest and most populace state in our Union,
8 California has built-in challenges that other states
9 don't. For example, if you look at the preliminary data
10 now, California's population has increased by almost 3
11 million people from 2000 until 2009. Such an increase in
12 the largest state in the country brings with it myriad
13 challenges and myriad issues. When you're dealing with a
14 complexity like redistricting, overlaying with the
15 complexities of the Federal law, enforcement by the
16 Justice Department, being - having an open process with a
17 new Redistricting Commission because, as you know, most
18 states do not have independent commissions, so all of
19 that folded into one brings some significant challenges
20 and I think the bottom line is your population has
21 increased by more than 3 million people, dealing with
22 that new mass of people and folding them into your
23 existing districts, changing district lines, working with
24 your Congressional Districts, that is a huge
25 responsibility, so just the very fact of the increase of

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1 population in California is indicative of the challenges
2 that the Commission faces, related solely to the Census
3 Data.

4 COMMITTEE MEMBER FORBES: The next question will
5 be asked by Commissioner Ward.

6 COMMITTEE MEMBER WARD: Good evening.

7 MR. ADELSON: Good evening.

8 COMMITTEE MEMBER WARD: How would you suggest the
9 Commission approach counting prisoners?

10 MR. ADELSON: And by "prisoners," I presume you
11 mean incarcerated individuals?

12 COMMITTEE MEMBER WARD: That's a fair definition.

13 MR. ADELSON: In my experience, there have been
14 jurisdictions, there certainly were in the last
15 redistricting cycle, that would use prison populations to
16 dilute minority populations, to suggest that they have a
17 minority population of 40-45 percent, for example, but
18 that 40-45 percent, of that group, many of them, if not
19 most of them, could be incarcerated felons who are not
20 voting. That's something that I saw a lot during the
21 last round of redistricting; that's something to be very
22 sensitive to. Certainly, the Justice Department and
23 citizens are very aware of that as they diluted faster
24 and something that needs to be looked at very carefully
25 as the lines are drawn.

1 COMMITTEE MEMBER FORBES: Now, this is
2 Commissioner Forbes, asking a follow-up question on that.
3 When you say "dilutive," are they dilutive by keeping
4 them concentrated or counting them where they're
5 incarcerated? Or are they causing dilution by scattering
6 them in to other districts?

7 MR. ADELSON: Well, frankly, I've seen both, but
8 I recall that, in thinking about our conversation this
9 evening, about one jurisdiction that I remember, that I
10 can't identify, that was not on the web post 10 years
11 ago, that brought to the Justice Department a
12 redistricting plan that had one district that had a very
13 large minority population, 60-70 percent. And in
14 analyzing it, we discovered that at least half of the
15 population in that district were incarcerated felons who
16 would not be voting, which changed our analysis and our
17 outlook completely, so prisoners can be and have been
18 used in both contexts. When I say "dilutive," I'm
19 referring mainly to something that could be somewhat
20 deceptive and suggesting that there is a large population
21 of minority voters and citizens who will be voting, when
22 indeed the number could be much less.

23 COMMITTEE MEMBER FORBES: Thank you.

24 MR. ADELSON: You're welcome.

25 COMMITTEE MEMBER FORBES: The next question will

1 be asked by Commissioner Filkins Webber.

2 COMMISSONER FILKINS WEBBER: Good evening. What
3 do you think is the relevant population in the State of
4 California for the purposes of a Section 2 analysis?

5 MR. ADELSON: Well, there are many different
6 populations, and the beautify of California, frankly, is
7 your diversity. I mean, if you look at just the Minority
8 Language provisions of the Voting Rights Act, and all of
9 the languages in California that are covered by that Act,
10 you kind of get a window into what California is facing
11 with redistricting. When you have populations of people
12 who speak Japanese, Tagalog, for example, and Spanish, as
13 well as many other languages, these are very relevant
14 populations when you're looking at a Section 2 analysis
15 and also looking at the Section 5 requirements of the
16 Voting Rights Act. In my experience, jurisdictions that
17 are covered for various languages have very key
18 indicators by that very language coverage of certain
19 groups in their jurisdictions which they will need to be
20 analyzing very carefully during the redistricting
21 process.

22 COMMITTEE MEMBER FORBES: Thank you. The next
23 question will be asked by Commissioner Blanco.

24 COMMITTEE MEMBER BLANCO: Good evening. You have
25 - from the materials that you submitted to us - a fair

1 amount of experience working with Redistricting Boards
2 and Commissions. And so the question is, what are some
3 common mistakes that you see, or pitfalls, really, what
4 are our danger zones for Commissions and Boards and how
5 can they avoid them?

6 MR. ADELSON: Well, that's a very interesting
7 question primarily for me because of all the review work
8 I did with the Justice Department of the Arizona
9 Redistricting Commission 10 years ago. And, as you know,
10 that was the first Census, the first redistricting for
11 that Commission was in the last round of redistricting.
12 There were many issues that were relevant to that
13 Commission that affected its work and people, frankly,
14 complained about after the process was over, and those
15 factors were maintaining independence, maintaining
16 nonpartisanship, and also adhering to various
17 redistricting criteria under State law. In Arizona, one
18 of the particular criteria that the Redistricting
19 Commission was alleged not to have followed, which
20 resulted in substantial litigation, was an element of
21 Arizona law that required that political competitiveness
22 in redistricting be taken into account as much as
23 possible. That's the basis for very contentious
24 redistricting that went on - the litigation went on for
25 years. I think that the pitfalls generally, based on my

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1 experience of Boards and Commissions is, as I said,
2 maintaining that independence, maintaining rigid
3 nonpartisanship, looking at all the relevant
4 redistricting factors, and also, frankly, looking at this
5 as a process. It's more than just numbers, it's more
6 than just lines, because we're also talking about
7 substantial citizen involvement and substantial citizen
8 participation. That's not always something that Boards
9 or Commissions look at as being as much of a priority as
10 drawing the actual lines.

11 COMMITTEE MEMBER FORBES: A fifth question is,
12 what is the attorney's role when working with the line
13 drawing and other technical consultants to avoid creating
14 any racially discriminatory effects or any intentional
15 discrimination?

16 MR. ADELSON: Well, I think really to put it in
17 the main, you know, as an attorney, I feel that I have an
18 ethical obligation not to draw the lines, or not to be
19 involved in the drawing of lines, or advise on the
20 drawing of lines that are discriminatory under Federal
21 Law. Discrimination under Federal Law in Redistricting,
22 under Section 5 and Section 2 are illegal, so that I
23 think the attorney's job is to work with the
24 organization, with the Commission, with the consultants,
25 with the specialists who are drawing lines, to get behind

1 the data, understand what the data is revealing,
2 understand racially polarized voting, for example, but
3 also know that sometimes data do not tell the whole
4 story. You've got to do substantial archaeological work,
5 so to speak, to get behind the data, to understand what
6 they really reveal. I've seen that countless times, I
7 see that, frankly, in my work today with jurisdictions on
8 redistricting. I certainly saw that 10 years ago when I
9 worked with the Justice Department. Sometimes data,
10 sometimes statistics are not what they appear to be.

11 COMMITTEE MEMBER FORBES: As a follow-up
12 question, what sorts of archaeological work have you done
13 to get behind the data?

14 MR. ADELSON: That's a great question. I'll give
15 you an example. One of the things that happened in
16 Arizona 10 years ago is Arizona presented to us several
17 districts that they indicated were so-called "majority-
18 minority," that had majority numbers of minority voters,
19 either racially, or as far as language. On the surface,
20 those districts looked as if they would be consistent
21 with certain requirements under the Voting Rights Act,
22 but by doing the archaeological work that I referred to,
23 and really getting into the analysis, we found that some
24 of those so-called minority voters did not turn out to
25 vote, or were unable in the district that they had voted

1 in, to elect the so-called candidates of choice, the
2 people that they wanted to elect, so the number was
3 artificial, it was a mirage. Just by saying that there
4 are, let's say, 55 percent minority voters in a district,
5 unless those voters turn out the vote, actually vote,
6 register to vote, and have the ability to elect, then
7 that number is not what it appears to be and you have to
8 get at the actual number of the minority voters who meet
9 all those criteria that I just mentioned.

10 COMMITTEE MEMBER FORBES: Thank you. Mr.
11 Ancheta, ask the next question.

12 COMMITTEE MEMBER ANCHETA: Yes. So, this is sort
13 of a multi-part question regarding work plan and budget
14 and costs. You received a copy of the work plan from Mr.
15 Miller, our Chief Counsel. Could you talk about what you
16 see as the budget that you might propose in light of the
17 plan, and specifically because we had - we've proposed in
18 our budget basically \$150,000 cap for this particular set
19 of services, how would you allocate your time among
20 various tasks, including attendance of Commission
21 meetings and, in particular, how would you address
22 allocating that work given your base location, how would
23 you deal with coming to California for various tasks
24 under the work plan? How would you reduce costs in
25 working with our staff? And just overall, how would you

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1 generally describe the work product in how you reach your
2 set of proposed costs?

3 MR. ADELSON: Okay, absolutely. I mean, these
4 are considerations that I deal with every day in dealing
5 with clients across the country with redistricting. And
6 one particular item that I think is very important, that
7 I discuss with clients all the time, I think it is not
8 cost-effective, it is not cost-effective for the
9 Commission and for the people of California, for me to
10 attend many many public meetings, for example. The cost
11 of my doing that, whether I live in Sacramento, or live
12 where I do now in Maryland, is prohibitive, and that's
13 aside from whatever travel costs are involved, it's just
14 my time in coming to meetings. By not coming to many
15 public meetings at the beginning, for example, when the
16 public is being introduced to Redistricting as a concept,
17 when plans have not been drawn, when the lines have not
18 been drawn, my coming out to that could cost the
19 Commission tens of thousands of dollars. And that is not
20 a cost that I am interested in incurring with you. I
21 think that money could much better be spent, and my time
22 is much better spent, for example, in working with your
23 consultants who are drawing the lines, and looking at the
24 data, working with you, answering your questions,
25 briefing you, and briefing the staff on various Federal

1 issues, being on top of what's happening, for example,
2 with the Justice Department. By the grace of technology,
3 whether it's by Internet, by *Skype*, by fax, by email,
4 there are many ways that we can economize, and these are
5 things that I do, frankly, every day because I'm very
6 concerned about the cost of redistricting, and that's
7 aside from litigation, just the cost of actually doing
8 it, so we can preserve our scare resources and work on,
9 for example, it's working with you on an ongoing basis,
10 and working with your consultants, as they review the
11 data and review the maps, rather than extending costs by
12 having me come to public meetings certainly early in the
13 process where I think my time could be much better spent
14 from a cost basis, by doing other substantive things.

15 COMMITTEE MEMBER FORBES: Let me put a follow-up
16 on that. We, or Mr. Miller, provided you with the Work
17 Plan Development Guidelines, and you have addressed some
18 of that, but looking at that list of items, can you give
19 us a rough idea of how you would allocate the time?

20 MR. ADELSON: Frankly, it wouldn't be fair to you
21 for me to tell you that, for question 1, that that
22 involved X number of hours, because, frankly, my estimate
23 is not going to be accurate because, right now, even if I
24 were working for you as your consultant, as your counsel,
25 without having looked at the data, examined the maps,

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1 looked at your plans that you submitted to the Justice
2 Department for Pre-Clearance, or that the State submitted
3 10 years ago, it's really very difficult for me to say
4 how many hours I would spend on each item. I will tell
5 you, though, that one item in particular on your Work
6 Plan Development Guidelines, when you talk about engaging
7 on an ongoing basis with the consultant and other experts
8 to provide advice regarding the preparation of the
9 proposed and final maps, in many ways that's really the
10 heart of what we're going to be doing. What
11 redistricting involves is moving forward and dealing with
12 issues as they come up because many issues will come up
13 that are not anticipated, things will come up that are
14 potential problems, that people might not have been aware
15 of. Number 4 is really the heart of it. And working
16 through issues as they arise, putting out fires, because
17 I guarantee you, there will be fires that we'll have to
18 deal with, but not knowing exactly what they are not, it
19 really wouldn't serve you and I don't think it would be
20 fair for me to throw out numbers which frankly are going
21 to change as the process moves forward.

22 COMMITTEE MEMBER ANCHETA: This is Commissioner
23 Ancheta. In your proposal, you did indicate that you -
24 or you indicated a not to exceed figure of \$210,000.

25 MR. ADELSON: Correct.

1 COMMITTEE MEMBER ANCHETA: As I mentioned
2 earlier, at least at this point, the budget for the
3 Commission on this set of services is right now \$150,000.
4 If you had to work within that particular budget
5 constraint, how would you see, if at all, adjusting the
6 work plan guidelines that we've given to you?

7 MR. ADELSON: Well, as I said, I mean, I think
8 that I would stress that, if you look at my original
9 estimate, and I understand what your potential budgetary
10 constraints are, you can take significant amount of funds
11 away as far as public meetings are concerned, and I can
12 also work to economize as much as you would like to fit
13 within your constraints. You know, one of the things
14 that would be involved in that, for example, would be
15 working with staff so that I can discuss various issues
16 with them to inform them about various issues and ideas
17 to be aware of, so that that might not be something that
18 I would be involved with. But, although I certainly
19 understand your constraints, this is a very complex,
20 expensive process and when you're looking at something
21 from a statewide perspective the costs can be quite
22 substantial. That does not, as you know, include
23 litigation, which hopefully we would not have to
24 consider.

25 COMMITTEE MEMBER ANCHETA: Do you at least,

1 looking at item 6 and 7 of the Work Plan, do you envision
2 that, again, within the \$150,000 constraint, that there
3 would be at least a report that would be prepared by you
4 to be included in our final report, which essentially
5 would be justifying the districts that we're drawing with
6 respect to the Voting Rights Act, and two, in terms of
7 working with California, the Secretary of State, and
8 maybe the Attorney General's Office running pre-
9 clearance, that those tasks would be covered under at
10 least a base figure of \$150,000?

11 MR. ADELSON: Well, I think, one of the things
12 that I noticed in reviewing the Guidelines is that that
13 report is obviously the foundation for what the
14 Commission would be doing, and would also be the
15 foundation for, frankly, your submission to the
16 Department of Justice for Pre-Clearance because it will
17 lay out all your motivations, all the standards that you
18 looked at, and all the factors that you considered. That
19 goes to the very heart of whether there is intentional
20 discrimination under Federal Law, or whether there is the
21 effect of discrimination, perhaps unintentional
22 discrimination, if you will. So, that is also one of the
23 key aspects to your work plan and certainly as I envision
24 what we would be doing together.

25 COMMITTEE MEMBER FORBES: We have a question from

1 Commissioner Filkins Webber.

2 MR. ADELSON: I'm sorry?

3 COMMITTEE MEMBER FORBES: We have a question from
4 Commissioner Filkins Webber.

5 MR. ADELSON: I'm sorry, could you repeat that,
6 please?

7 COMMITTEE MEMBER FILKINS WEBBER: Is your answer
8 to the question, yes, that the pre-clearance report would
9 be included in your not to exceed number?

10 MR. ADELSON: Oh, yes, absolutely.

11 COMMITTEE MEMBER FILKINS WEBBER: Thank you.

12 MR. ADELSON: You're welcome.

13 COMMITTEE MEMBER FORBES: Okay. Commissioner
14 Ward, well, next question.

15 COMMITTEE MEMBER WARD: The Voters First Act
16 requires the final maps to be accompanied by a report -
17 oh, we already talked about that.

18 COMMITTEE MEMBER FORBES: Yes, so next question.

19 COMMITTEE MEMBER WARD: Go to 8?

20 COMMITTEE MEMBER FORBES: Yeah, go to 8.

21 COMMITTEE MEMBER WARD: We are not presently
22 hiring litigation counsel, but would like you to describe
23 your experience and availability to handle any trial and
24 appeal.

25 MR. ADELSON: Well, my legal career, my legal

1 career is - and I guess, you know, my wife chides me
2 about this, I'm embarrassed to say I've been a lawyer for
3 almost 30 years - in that time, I've litigated complex
4 cases in State and Federal Court, I did voting litigation
5 at the Justice Department, I had several cases, and
6 certainly one of the cases was the Arizona Redistricting
7 Commission, the lawsuit in Federal Court in May 2002,
8 where we presented our objection letter to the Court, and
9 then guided the Commission in its work after our
10 objection was entered. But just as far as litigation,
11 I've litigated in the U.S. Supreme Court, I've litigated
12 in State and Federal Appeals Court, I've done -- one of
13 the complex series of litigations that I did was several
14 cases against three Roman Catholic Archdioceses for child
15 sexual abuse by clergy, those cases were in the late
16 1980's and were among the first wave of cases nationally
17 against Roman Catholic Clergy, Bishops, and Cardinals,
18 regarding sexual abuse by Clergy against children. And
19 so I've done - I certainly have a substantial record of
20 litigation experience. I should tell you that my view of
21 litigation with redistricting, sometimes, as you know,
22 litigation happens, and litigation is not necessarily the
23 best thing that can happen. But I think, going forward,
24 I commend you that you're not hiring litigation counsel
25 now because I think jurisdictions that do that may appear

1 sometimes looking down the road more at problems than
2 looking at how to avoid them. And there are certainly
3 ways to avoid redistricting litigation, redistricting
4 suits, redistricting concerns. I think that's something
5 that, as I said, I commend you for looking at that down
6 the road, rather than looking at it now.

7 COMMITTEE MEMBER FORBES: Commissioner Filkins
8 Webber will ask her final prepared question.

9 COMMITTEE MEMBER FILKINS WEBBER: The public must
10 have a high level of trust and confidence in your ability
11 to provide objective nonpartisan advice to this
12 Commission. How can you provide assurance to the
13 citizens of California that you have such high level of
14 trust and confidence?

15 MR. ADELSON: Well, that question is something
16 that I recognize is extremely important and I'm very glad
17 that's something we can talk about. In my work, I work
18 with jurisdictions that are governed by Republicans and
19 that are governed by Democrats. I have a record of
20 nonpartisanship as far as not - I don't do any political
21 work, I don't make any political contributions to
22 candidates, I have absolutely no connection in my
23 professional life of work with any group or entity that
24 takes any partisan positions. The jurisdictions that I
25 work with, as I said, are governed by Republicans,

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1 governed by Democrats, and this is true across the
2 country. So, my professional life is governed by being
3 nonpartisan.

4 COMMITTEE MEMBER FORBES: Other questions that
5 the Commissioners would like to ask? Please.

6 COMMITTEE MEMBER FILKINS WEBBER: Yes, a follow-
7 up to that issue. Again, this is Commissioner Filkins
8 Webber. Have you had an opportunity to review any of the
9 public comments that have been made about you today?

10 MR. ADELSON: No, have there been public comments
11 about me?

12 COMMITTEE MEMBER FILKINS WEBBER: Do you - of
13 course. You're not the only one! Do you know a
14 gentleman by the name of Hans Von Spakovski?

15 MR. ADELSON: Yes, I know Hans.

16 COMMITTEE MEMBER FILKINS WEBBER: And how do you
17 know him?

18 MR. ADELSON: We worked together at the Justice
19 Department for a few years.

20 COMMITTEE MEMBER ANCHETA: His reports - FYI -
21 it's also a posting at National Review online, but the
22 same submission came to the Commission, but in essence, a
23 rather short set of comments regarding your activities
24 when you were together at the Justice Department,
25 basically words to the effect that you sort of took the

1 most radical positions on legal cases.

2 MR. ADELSON: Oh, okay, did he mention any
3 specific things that I took these positions on?

4 COMMITTEE MEMBER ANCHETA: I don't think so, not
5 -

6 COMMITTEE MEMBER BLANCO: Hold on, there is some
7 reference, it was a little unclear to me, in one of the
8 articles, there was a reference to Virginia and Virginia
9 Redistricting? Were you involved with the Virginia
10 redistricting?

11 MR. ADELSON: No, I didn't do - I had no
12 involvement with any - I had no involvement with any
13 matter in Virginia, although I will tell you that I used
14 to live in Virginia.

15 COMMITTEE MEMBER BLANCO: Okay.

16 COMMITTEE MEMBER FORBES: Okay, go ahead.

17 COMMITTEE MEMBER FILKINS WEBBER: I have another
18 question since we do have a lot of time. In your
19 Statement of Qualifications, you had mentioned the case
20 of Nick, et al v. City of Bethel, the State of Alaska.
21 You had stated that the State of Alaska determined to
22 withdraw you as their expert after you provided
23 deposition testimony. Is that true?

24 MR. ADELSON: Yeah, they went through me after I
25 gave deposition testimony because the Plaintiff

1 challenged my ability to continue to advise the State and
2 also serve as the testifying expert. So, the State
3 decided that they'd rather me advise them as counsel,
4 rather than have me testify as an expert.

5 COMMITTEE MEMBER FILKINS WEBBER: Well, how did
6 they challenge you as an expert?

7 MR. ADELSON: I'm sorry, how did the Plaintiffs
8 challenge me?

9 COMMITTEE MEMBER FILKINS WEBBER: Yes, upon what
10 grounds?

11 MR. ADELSON: Oh, well, the challenge was that
12 they argued to the State that, under Federal law, that I
13 couldn't be an expert and also serve as their advising
14 counsel. And the State decided that they did not want to
15 fight that issue, so they withdrew me as their expert,
16 selected someone else, but continued to retain me as
17 their expert counsel, but I did not testify in the case.

18 COMMITTEE MEMBER FORBES: Commissioner Blanco.

19 COMMITTEE MEMBER BLANCO: Yes, since we have some
20 time, I'd like to actually - are you familiar with the
21 California Voters First Act? Have you had a chance to
22 look at it?

23 MR. ADELSON: I'm familiar with it a little bit,
24 yes.

25 COMMITTEE MEMBER BLANCO: So, we have rank

1 ordered criteria for how we make decisions about how we
2 draw our political boundaries, and, you know, number one
3 is the Constitutional, obviously, population
4 equalization, number two is Voting Rights Act, and then
5 it continues and there's community of interest,
6 compactness, attempts to keep counties together, and
7 there are a couple more. How - what are some challenges
8 that you foresee legally? You know, you've described
9 that you've seen, you know, some of the population of
10 California with the latest Census Data, what are some of
11 the challenges you see with juggling those criteria -
12 compactness, contiguity, community of interest, and the
13 Voting Rights Act, as superseding all of those, in the
14 order of the criteria?

15 MR. ADELSON: Well, I mean, that really goes to
16 the heart of it and that certainly is something that, you
17 know, as I said, I deal with regularly now with my
18 clients, that I dealt with at the Justice Department. Of
19 course, under Federal law, the Voting Rights Act
20 considerations are going to have to be paramount,
21 certainly paramount as far as the four counties in
22 California that are covered by Section 5 of the Voting
23 Rights Act, and understanding that issues of
24 retrogression and discrimination are priorities under
25 Federal law, and must be looked at very carefully. And I

1 also think that typically issues involving contiguity and
2 communities of interest are not necessarily in conflict
3 with the Federal requirement. I think where the Federal
4 requirements can come into conflict, for example, is
5 something that Arizona faced 10 years ago, and is facing
6 now as far as political competitiveness, how do you
7 create a district that is arguably politically
8 competitive, but also is not discriminatory and is not
9 retrogressive under the Voting Rights Act? Retaining the
10 rights of certain minority voters to be able to elect
11 whom they want, but then also, how do we make that
12 district more - how do we make it politically
13 competitive? Many people argue that those considerations
14 can dovetail and are not contradictory, and I think, in
15 principle, that they're not. But it's very important in
16 looking at the criteria under California law, meshing
17 that with what the Federal requirements are, and making
18 sure that the Federal requirements are complied with, so
19 we don't run into a problem, for example, with the
20 Justice Department objecting to the redistricting plan
21 because a State consideration outweighed the Federal one.

22 COMMITTEE MEMBER BLANCO: Thank you.

23 COMMITTEE MEMBER ANCHETA: This is Commissioner
24 Ancheta. Just two questions, not necessarily related.

25 First question is, as you know under Section 5, under the

1 Jingles test, I'll spell that for our transcriber - J-i-
2 n-g-l-e-s - you know, there are three factors that the
3 Supreme Court weighed on Jingles, plus the totality of
4 circumstances test. For redistricting purposes, we
5 obviously don't have to meet the same level of empirical
6 evidence that one would require in a plaintiff's
7 challenge to a District, but we do have to do our
8 homework and do some analysis. For redistricting
9 purposes, and given the state of California and the large
10 numbers of Districts and a wide variety of populations,
11 what level of empirical analysis do you think should be
12 at minimal, or required, for the Commission to undergo,
13 given our task and the timelines that we have to deal
14 with?

15 MR. ADELSON: Well, that also relates a little
16 bit to what I said before about the archaeological
17 analysis, it's sometimes going beyond the data and really
18 digging down deep to discover, for example, what the
19 history of discrimination is in a particular
20 jurisdiction. What is the history of minority voters
21 being able to elect whom they want, at the local level
22 and at the legislative level, for example? What is the
23 history of minority voters as far as turning out the
24 vote? What is the history of the minority voters who
25 speak languages other than English, as far as their being

1 given access to the electoral process? So, these are
2 some of the factors that go into an overall analysis to
3 determine a potential Section 2 issue. Under Section 5
4 of the Voting Rights Act, you're looking at
5 retrogression. You look at the issue of can minority
6 voters - have they been able to elect whom they want? If
7 the answer is yes, that right must be, that option, that
8 ability must be retained, it cannot be diluted, it cannot
9 be eliminated, and it can't be diminished, even if that
10 diminishment is one or two percent, that could be
11 retrogressive giving the voting patterns of a particular
12 community, and of a particular District. So, when you're
13 looking at something on a statewide basis, obviously
14 these issues are multiplied and magnified because you're
15 looking at more people, more territory, and obviously in
16 California, you're looking at approximately 34 million
17 people. In your Section 5 counties, your four Section 5
18 counties, who are under the Pre-Clearance provisions of
19 the Voting Rights Act, you're looking at almost a million
20 people. I mean, Merced County, for example, has their
21 population has increased approximately 35 percent -
22 35,000 people, I'm sorry, since the last round of
23 redistricting. Monterey's population is now
24 approximately 410,000 compared to 401,000 ten years ago.
25 So, you're obviously dealing with significant numbers of

1 people. Looking at electoral history, and history of
2 discrimination both locally and at the legislative level,
3 are very important in determining answers to the
4 questions that you suggest.

5 COMMITTEE MEMBER ANCHETA: Okay, so as a follow-
6 up to that, again, as you know, racially polarized voting
7 is a key analysis under Jingles and we certainly don't
8 expect you or any Voting Rights Attorney to do this kind
9 of analysis, but what do you think is the minimal amount
10 of analysis - and this is more statistical analysis and,
11 as you know, ecological regression, and other ecological
12 inference analyses, which, again, we see a lot of that in
13 a plaintiff's lawsuit, but what do you think we ought to
14 do as a redistricting body in terms of getting that kind
15 of analysis? Or should we even engage in that kind of
16 analysis?

17 MR. ADELSON: Well, as you say, racially
18 polarized voting analysis goes to the heart of a lot of
19 the things that we're talking about, looking at Districts
20 now and who are the representatives? Who prevails in
21 elections? Are they Anglo or are they Latino? Are they
22 Asian Americans? Are they African Americans? Looking to
23 see who among those various people, those various
24 candidates, those various officials, are candidates of
25 choice, and then determining whether blocks of voters, be

1 they Anglo, or be they Latino, or be they any other
2 ethnic or racial group that I mentioned, looking to see
3 whether they vote in blocks, whether they make alliances,
4 and whether, as you say, there is racially polarized
5 voting, so that if you have a population that is, let's
6 say, 51 percent Latino and 49 percent Anglo, can 51
7 percent Latinos, and that's assuming that taking my
8 number just as a concept for discussion, that that is the
9 number of the citizen voting age population that votes,
10 is that a high enough number for them to be able to elect
11 candidates of choice? In many parts of the country, 51
12 percent with racially polarized voting is not high
13 enough; and, typically, for minorities to elect in
14 certain parts of the United States, they need
15 populations, where citizen voting age population, people
16 who were registered to vote, can be as many as 55, 56, 57
17 percent. That would vary by District, that could vary by
18 County, that's going to depend upon the lay of the land,
19 if you will, of the various districts and geographical
20 jurisdictions in California.

21 COMMITTEE MEMBER ANCHETA: So, my second question
22 goes to resources and capacity of your firm. I'm not
23 entirely clear if you're a solo practitioner or if you
24 have some associates, but first, could you sort of talk
25 about the current capacity of your firm to do the -

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1 generally do its work? And then, second, given that you
2 do have a number of clients that you're already
3 representing, and I'm assuming our contract would
4 probably be the biggest one you have, how do you see
5 balancing what would be the California contract with
6 other responsibilities that you have? And I've also
7 noticed you have another business ongoing, as well, from
8 your resume, there is a publishing business that you also
9 indicate, I'm not sure if that's active or not. But how
10 do you see juggling these many clients and
11 responsibilities?

12 MR. ADELSON: Well, juggling - you're assuming --
13 juggling my existing clients is not an issue for me
14 because I'm able to serve all my clients quite well, and
15 they're quite pleased with the services that I'm
16 providing them. In my work with redistricting now, I do
17 subcontracts with, for example, a demographic consultant
18 to analyze the data, do a statistical analysis for me,
19 and draw his maps. I will also be working with this
20 subcontractor attorneys, potentially attorneys who are
21 also former Justice Department attorneys, so we will work
22 together going forward with various redistricting
23 engagements because, as I'm sure you can appreciate,
24 there are a lot of challenges in what we're talking
25 about, there are a lot of challenges for you in

1 redistricting, there are a lot of challenges for staff,
2 there are a lot of challenges for the public, and a lot
3 of challenges for counsel, because this is a very
4 complicated endeavor. But, from my perspective, I have a
5 nationwide practice, I have clients from coast to coast,
6 which has been true almost from the point that I've left
7 the Department of Justice. My first client after leaving
8 the Department of Justice was a large Western entity, not
9 in California. So, I'm quite able to manage my practice
10 now, and I will be managing my practice going forward
11 because there are other redistricting engagements that I
12 expect to be retained for, there are other jurisdictions
13 that are seeking my advice and seeking my input,
14 certainly now as the Census Data is starting to roll out.

15 COMMITTEE MEMBER FORBES: Commissioner Filkins
16 Webber.

17 COMMITTEE MEMBER FILKINS WEBBER: Did I hear you
18 correctly that you stated that you subcontract with the
19 demographer?

20 MR. ADELSON: I'm sorry, do I subcontract with
21 whom?

22 COMMITTEE MEMBER FILKINS WEBBER: With the line
23 drawing expert?

24 MR. ADELSON: Yes, I have - one of my
25 subcontractors is called Research Advisory Services, they

1 are my demographic and statistical consultant for all -
2 right now, for all of my redistricting clients, be they
3 school districts, counties, or municipalities.

4 COMMITTEE MEMBER FILKINS WEBBER: I'm sorry, what
5 is the name of that company again?

6 MR. ADELSON: Research Advisory Services, they're
7 located in Phoenix.

8 COMMITTEE MEMBER FILKINS WEBBER: And for what
9 purpose would you - are you suggesting that you would be
10 utilizing their services as part of your proposal to us?

11 MR. ADELSON: Oh no, I mean, I'm just responding
12 to the question about what staffing did I have now. I
13 mean, I understand that you have a separate RFP for a
14 consultant who will be your line drawing consultant, if
15 you will. Research Advisory Services is my line drawing
16 consultant.

17 COMMITTEE MEMBER FILKINS WEBBER: But I also
18 understood you to state earlier that one matter in
19 particular you find important is that, not necessarily
20 for the attorney to be involved in line drawing, because
21 it would be illegal if you're drawing something
22 discriminatory, but that you the attorney should get
23 behind the data and understand racially polarized voting.
24 So, would you be using your own line drawer to help
25 assist you in the statistical analysis? Or would you be

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1 accepting the information and data provided by this
2 Commission through their own technical expert?

3 MR. ADELSON: No, I would expect to be working
4 with the Commission and working with your consultant;
5 however, if there was a need for additional data, or
6 additional resources, that would be something I would
7 bring to you as a suggestion. But right now, my thought
8 is that I would be working with you and with your
9 consultants.

10 COMMITTEE MEMBER FORBES: Are there other
11 questions from any Commissioner? In that case, that
12 concludes the interview. We certainly do appreciate your
13 taking the time to talk to us, Mr. Adelson.

14 MR. ADELSON: Well, I appreciate your indulging
15 my, unfortunately, not being able to be with you and
16 accommodating my desire to talk to you by phone.

17 COMMITTEE MEMBER FORBES: Thank you very much.

18 MR. ADELSON: You're welcome. Thank you.

19 COMMITTEE MEMBER FORBES: Good bye.

20 MR. ADELSON: Bye bye.

21 COMMITTEE MEMBER FORBES: Okay, at this point,
22 I'm going to invite - and I said earlier that this would
23 be the time we would have for additional public comment,
24 and - well, let's see how many people want to speak
25 first. Am I cruel? How many people would like to

1 address us? Okay, we'll take a 10-minute break, then,
2 prior to public comment.

3 (Off the record.)

4 (Back on the record.)

5 COMMITTEE MEMBER FORBES: I'll call the meeting
6 of the Commission's Legal Subcommittee back to order. We
7 had left at the point I was inviting additional public
8 comment. Now, again, our typical limit is five minutes,
9 so I would ask the audience to restrict itself to that
10 amount of time. Can I invite someone to come and begin?

11 COMMITTEE MEMBER FILKINS WEBBER: I'm sorry, just
12 a clarification. Is there some different rule for
13 advisory committees? As I understood, it was three,
14 unless you had more than six, or if you had more than six
15 speakers?

16 COMMITTEE MEMBER FORBES: I don't know that we
17 talked about that, did we? Go ahead.

18 MS. GARCIA: Good afternoon - or, good evening,
19 Commissioners. Astrid Garcia with NALEO Educational
20 Fund. Thank you for the opportunity to speak to you
21 today and thank you folks in the audience who allowed me
22 to go first, I have to catch a flight back to Los
23 Angeles, so thank you for that.

24 I want to begin by just thanking the
25 Commissioners for taking just such a thoughtful approach

1 in the last two days, you know, I was able to watch
2 online on the 15th, and I know that a lot of thought has
3 gone into this process, so we just want to thank you for
4 just really taking everything into consideration. Each
5 Commissioner was selected by the Applicant Review Panel
6 last year because they demonstrated their ability to be
7 impartial, their respect for transparency of the process,
8 and their willingness and ability to uphold the Voting
9 Rights Act. These three areas were core to Proposition
10 11, the Voters First Act, that has been referenced today,
11 to build public trust. And I can see that the
12 Commissioners are committed to selecting a Voting Rights
13 counsel that will continue to build that public trust and
14 demonstrate these three criteria.

15 The VRA counsel is an integral role of the
16 redistricting process, it will counseling the
17 Commissioners on the importance of the Voting Rights Act
18 and this is especially important for our communities of
19 color here in California. They should, therefore, be
20 held to the same standard and demonstrate that they, too,
21 can be impartial, that they, too, can be transparent, and
22 that, above all, they believe in upholding the principles
23 and the values of the Voting Rights Act. With that, I
24 would like to state that we believe that applicants Gilda
25 Daniels and the Federal Compliance Consulting applicant,

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1 Mr. Bruce Adelson, have demonstrated that they hold these
2 qualities, specifically they have demonstrated a
3 willingness for transparency, their impartiality, as we
4 just heard Mr. Adelson describe that his professional
5 experience is based on being impartial, and their work at
6 the Department of Justice, really demonstrates their
7 experience in working to uphold the Federal Voting Rights
8 Act.

9 With that, I'd also like to raise some concerns
10 on some of the applicants, and I'll begin with - excuse
11 me - I've been here all day, too, and have lots of notes,
12 but I'll keep it to three minutes - with some concerns
13 I'll begin with the Applicant, Gibson, Dunn & Crutcher.
14 First, I'd like to state that comments made by the
15 Applicant raised some concern in terms of their
16 sensitivity to vulnerable communities, specifically, I
17 think it was Commissioner Ward asked the question about
18 the prison population, it was discussed as this number
19 was insignificant to the overall numerical population,
20 and I believe this comment showed a lack of sensitivity
21 to communities of color in the sense that the issue of
22 prison populations really impacts some communities more
23 than others, specifically the African American community
24 and the Latino community. So, I know it was a comment
25 and perhaps it was factually true, however, just this

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1 lack of sensitivity to the issue and to acknowledging
2 that some communities may be more impacted by this issue
3 than others, I'd just like to raise that point.
4 Additionally, the fact that this applicant came in with a
5 partisan team, pointing out that they have Republicans
6 and Democrats, raises the question about their ability to
7 be impartial, individually. So, right now, they
8 presented a team that had both Democrats and Republicans,
9 however, when they attend public meetings, if only one
10 Republican or one Democrat is available in attending
11 these public meetings, can these individuals truly be
12 impartial when they're listening to this input, or
13 providing counsel to the Commissioners? This is also
14 true in the sense that each individual, it seemed, held a
15 specific expertise that they were bringing to the
16 Commissioners; again, they did not demonstrate that each
17 expert can be impartial and so, therefore, when the
18 counsel is being provided to the Commission, can the
19 Commission be sure that this information and this counsel
20 is being provided in an impartial manner.

21 COMMITTEE MEMBER FORBES: You have one minute
22 left.

23 MS. GARCIA: Okay, I will scroll faster. The
24 next comments I'd like to address are issues of
25 transparency with the Applicant, Nielson, blah, blah,

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1 blah, and Leoni, as was stated earlier, I'll skip ahead,
2 again, the need to put all these firewalls in place, I
3 think, again raises a question in terms of transparency,
4 how will this create barriers for transparency for
5 something that the Commission has been very true to the
6 process? Additionally, the idea of cost, this is the
7 first time in California's history that we're going
8 through this process, it seemed that they had capped
9 their services at about 300 hours and we didn't
10 understand - at least, I didn't get clarity in terms of
11 what that would mean for continued services. And,
12 finally, this firm hasn't demonstrated that they can
13 uphold the values and the principles of the Voting Rights
14 Act. Their experience is heavily focused on defending
15 against the California Voting Rights Act, so I ask the
16 Commissioners to take a close look at that specific
17 experience, and again, our goal is that the Voting Rights
18 counsel can continue to build the public trust in the
19 process that the Commissioners are doing, and for the
20 future of California.

21 COMMITTEE MEMBER FORBES: Thank you. Next
22 speaker. There were three of you who raised your hands.

23 MS. SCHAFER: Thank you, Commissioners, for the
24 opportunity to speak to you and I'd like to echo what all
25 of your applicants and Ms. Garcia said about our praise

1 and appreciation for the thoughtful process that you are
2 going through, I think it has been excellent in all that
3 I've followed, and I really appreciate that you are
4 giving careful consideration with criteria that you have
5 discussed, and that you will go forward in that manner.
6 Oh, I beg your pardon, I am Trudy Schafer representing
7 the League of Women Voters of California. I - we are
8 expecting actually to speak tomorrow in the public
9 comment period to the Commission about a letter that we
10 emailed on Tuesday, the 15th, it's posted as a joint
11 submission with a number of organizations, but in looking
12 at it, I realized that the fourth of our four points was
13 very specifically relevant for just now, and so I felt
14 that I ought to present it now.

15 The general idea was in response to your -
16 actually Commissioner Di Giulio's - request to me back at
17 that September - February 26th meeting about a top five
18 ideas for Commission success. And we were thinking
19 especially about transparency and public access to the
20 Commission. Our fourth - and the first three comments
21 will be tomorrow because they aren't so particularly
22 relevant now - but the fourth one was about ensuring that
23 the public felt invited to participate in the process and
24 that we felt that your hiring process should prioritize
25 employing staff and consultants who have previously

1 demonstrated a commitment to upholding those core values
2 of the Voters First Act, and who will promote public
3 trust in the Commission's work. So, speaking to that, we
4 said that, when hiring staff and consultants, we believe
5 you should scrutinize the disclosures that the applicants
6 are required to make, pursuant both to your Conflicts
7 Policy and to your Invitations to Bid, for their
8 consistency with the core of the Voters First Act. The
9 Conflicts Policy requires that, as you know, the
10 applicants for staff and consulting positions with the
11 Commission provide full disclosure of prior employment or
12 consulting work as part of the hiring process. The bid
13 invitations for the mapping consultant and the Voting
14 Rights Act counsel also require disclosures of past work.
15 The Commission, we feel, should review these disclosures
16 for whether the applicant's past work reflects the core
17 values of Proposition 11, of which compliance with the
18 Voting Rights Act, as well as public trust in the
19 Commission's process, are paramount. The Voting Rights
20 Act, as you know, protects the ability of
21 underrepresented communities to have equal opportunities
22 to participate in the electoral process, including the
23 opportunity to elect candidates of their choice. Anyone
24 whose work has focused on undermining the creation or
25 maintenance of these opportunities should be considered

1 unqualified for Commission employment, especially, of
2 course, as Mapping Consultant or VRA counsel. The
3 Commission's hiring of staff and consultants who have a
4 demonstrated commitment to ensuring that California's
5 underrepresented communities have an equal opportunity to
6 participate in the electoral process will help build
7 trust among California's diverse population. We feel
8 this, in turn, is a key step toward achieving broad
9 public participation in the redistricting process. It
10 will also help the public trust if you ensure that your
11 staff and consultants have the ability to be impartial
12 and we feel you should review those disclosures with that
13 in mind, as well. As you'll see in the submission, there
14 were, I believe it's 10 organizations, that signed this
15 letter, the Advancement Project, the African American
16 Redistricting Collaborative, the Asian Pacific American
17 Legal Center, California Common Cause, California
18 Forward, the California State National Association for
19 the Advancement of Colored People, CAUSE, the Central
20 Coast Alliance United for a Sustainable Economy, the
21 Greenlining Institute, the League of Women Voters of
22 California, the Mexican American Legal Defense and
23 Educational Fund, MALDEF, and the National Association of
24 Latino Elected and Appointed Officials Educational Fund.
25 Thank you.

1 COMMITTEE MEMBER FORBES: Thank you, appreciate
2 it. Next speaker.

3 MR. GOLKA: Good evening, Commissioners. Joshua
4 Golka with the California School Employees Association.
5 I, too, would like to thank you for your tireless service
6 in what you're doing not only today, but throughout the
7 entire process, following with the other groups, we'd
8 just like to thank you.

9 I'm here to speak against the selection of
10 Nielson, Merksamer and Gibson, Dunn, and I'll try not to
11 be repetitive of what's already been covered previous to
12 me. I'd like to start with a quote from Nielson
13 Merksamer's website. It says, "Nielson Merksamer has
14 become a powerful force in state and national politics.
15 It is safe to say that very little of any consequence
16 occurs in state political and governmental circles
17 without the knowledge or active involvement of the firm."
18 That's a quote from the *California Journal* listed on the
19 firm's overview page. This gets to the conflict of
20 interest question that you've been dealing with today,
21 and Nielson Merksamer has strong well known ties to the
22 California Republican Party, the Republican National
23 Committee, several past Republican Governors, and
24 Republican office holders, to include representing then
25 Senator Abel Maldonado and former Assembly Member Keith

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1 Richman in litigation. These ties can't be dismissed
2 with references to "not currently representing parties or
3 candidates." They're there, and they're long term, and
4 we would urge you to take a closer look at those.

5 A second quote from Nielson, Merksamer's website
6 reads, "Consider a sampling from this firm's client list.
7 What do all these groups need? Help with political
8 matters, campaigns affecting our economic interests,
9 representation on proposed government regulations.
10 That's all Nielson, Merksamer does, political and
11 government legal work. The firm isn't a political
12 contributor. What is supplied is talent, strategic and
13 tactical direction, and a network of connections to
14 causes and candidates." That's from the *San Jose Mercury*
15 *News*, that's on the firm's "Our Commitment" page. We're
16 deeply concerned about Nielson, Merksamer's lobbying
17 clients who have a direct and substantial interest in
18 redistricting since redistricting determines who is
19 elected and passes legislation affecting those clients.
20 And this also includes clients that Nielson, Merksamer
21 represents before the Board of Equalization. I don't
22 want to limit this to a legislative setting, it's broader
23 than that. And as a result, we don't think that there's
24 any firewall available that would allow Nielson,
25 Merksamer to qualify as a Voting Rights Act counsel.

1 We also share the conflict of interest concerns
2 that have been discussed regarding Mr. Kolkey and Gibson,
3 Dunn. I won't get into those any further, we do share
4 them. We don't think that his involvement at the
5 California Republican Party can be dismissed as an
6 Associate Member - was a member. He was also an elected
7 official. Those conflicts are real.

8 And, finally, as you're making your decision, we
9 ask that you not look towards litigation and defense as
10 your focus, but towards selecting an expert in both the
11 spirit and the law of the Voting Rights Act. Thank you.

12 COMMITTEE MEMBER FORBES: Thank you. Next.

13 MR. OLIVERI: Good evening, Commissioners. My
14 name is David Oliveri. I'm a resident of Berkeley,
15 California, a full-time Laney Community College student,
16 and a small business owner. And I'm here on my own
17 behalf. I'd like to speak against Gilda Daniels as a
18 private citizen, as a VRA counsel. First of all, as all
19 you guys seemed to have noted, she's much too small of a
20 firm, a one-woman show. She has none of the depth of the
21 attorney teams, and if her teaching would not interfere,
22 it should. I just want to throw out some quotes from
23 "Rank My Professor-dot-com." And while that's a little
24 bit, you know, of a stretch, it is a way of getting to
25 folks' character. Ms. Daniels got very low ratings

1 across the board from all of her students. Some quotes:
2 "Very nice person, terrible teacher." Some more quotes:
3 "Never prepared, constantly bragging." And the final
4 quote: "Class is a breeze, she never embarrasses
5 people." That doesn't seem to me like the kind of person
6 you would want to be your Voting Rights Attorney.

7 As far as the article in the NRO, I think that is
8 actually something very very important that you folks
9 ought to take a look at more carefully. The charge is,
10 while they haven't been fully explored by anyone at this
11 point, are quite serious, and they will definitely cause
12 a major public outrage amongst conservatives,
13 Republicans, both independent and minor parties. So, I
14 think you ought to take that into account as far as the
15 perception that article will create in the public.

16 Finally, while I would like to reply on the
17 prisoner issue, the overwhelming evidence, I think, is
18 she would not be a suitable VRA counsel. She doesn't
19 have the depth of experience, no record of serving a
20 public entity, as you guys brought out, and I don't think
21 this is a job that can be dialed in.

22 To get on to Mr. Adelson, he's a more complicated
23 issue, but one of the things that really concerned me was
24 his whole what he was saying about the archaeological
25 digging that he is prepared to do and, you know, from

1 purely the basis of common sense, what it sounds to me
2 like that is heading towards possibly, or at least there
3 is that perception, is if we can't do the whole thing,
4 legally, by the law, etc., we'll dig far enough so that
5 we can find some reason to redistrict based on race or
6 other issues like that. Again, he is a dial-in attorney,
7 and I don't think that's what the Board is going to need.
8 As far as him saying you can save money by not having him
9 at all of the meetings, well, that's nice, but then, you
10 know, the public doesn't know who he is, and so how can
11 we build any trust? I think that's very very important.
12 Let's see, I had one other thing about him. Sorry. Give
13 me a moment here, I'm definitely shooting from the hip.
14 Yeah, again, as far as the question of capacity goes, I
15 mean, you all asked the question about subcontractors
16 and, you know, I happen to be a General Contractor
17 myself, and if you don't know your subs, in my business,
18 you know, you don't know anything. And if you folks
19 don't know who either Mr. Adelson's subcontractors are,
20 or who Ms. Daniels' potential subcontractors are, I think
21 that's a huge issue. I'll leave it at that and I hope to
22 also, if I have the time tonight, go ahead and email you
23 guys something that is a little bit more thorough. Thank
24 you.

25 COMMITTEE MEMBER FORBES: Thank you for your

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1 comments. Anyone else like to address the Commission -
2 the subcommittee of the Commission? Okay, seeing none,
3 then I'll close the public comment time.

4 One issue I wanted, having heard the applicants,
5 that I wanted to - and it came up on Tuesday and I wanted
6 to raise it again and to see if we want to take further
7 action - we had initially held ourselves to the \$150,000
8 because that's what the budget had, but we were also told
9 that it would be possible to augment that up to \$200,000
10 or some other number that we thought was more appropriate
11 and I just wanted to raise that issue again so we could
12 either put it to bed or change it. And several of the
13 applicants suggested that it was going to be \$200,000 or
14 more, potentially, and I'd like to ask Mr. Miller if he
15 has any observations on this matter.

16 LEGAL COUNSEL MILLER: Yes, first I'd like to
17 compliment the Commission on the work that it did on
18 Tuesday in coming up with a pretty precise work plan,
19 especially for a committee! This sets things out pretty
20 clearly and I think is an adequate document, I don't mean
21 that in other than a very adequate document, to set the
22 stage for a good conversation with a law firm about what
23 their fees will be. This work is a little bit like
24 remodeling an older home where it's hard to be as precise
25 as one might like to be about the actual cost, but this

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1 is in the range of good enough for that. And what
2 strikes me about it is, having now engaged with four
3 firms and, I'll say, two very different types of firms,
4 the D.C. firms and the California firms, even those that
5 we would expect to be on the very low end of the cost
6 side still are pushing a number that substantially
7 exceeds our \$150,000 goal, and I think that says
8 something about the magnitude of the work, particularly
9 when you add in the fact that, on the one hand, for the
10 D.C. firms, this is the representation of a lifetime, if
11 you will, and for the California firms, it's still a very
12 important representation, enough so that both firms sent
13 a significant team here at their expense and did
14 significant preparation to put their best feet forward,
15 so we know we got an important case that people, I think,
16 want to price as competitively as they possibly can. And
17 even within those parameters, our initial budget seems
18 modest, given the stakes and given the visibility of the
19 matter and the efforts we've made to manage this as cost-
20 effectively as we can. And this is the last thing I'll
21 say about it, as I did on Tuesday, I think this is the
22 best way to manage the case. The dollars you save tend
23 to be upfront in planning and expectations, rather than
24 course adjustments along the way, so I think we've set
25 this up pretty well and need to be thoughtful about far

1 we can stretch, given what we've learned thus far from
2 the process. And I think Mr. Claypool can perhaps speak
3 to your ability to stretch a bit.

4 COMMITTEE MEMBER FORBES: Let me ask the
5 Commissioners if they have any comments they'd like to
6 make in response to what we've heard today, or to Mr.
7 Miller's comment, otherwise I'll turn to Mr. Claypool.
8 No? Mr. Claypool.

9 MR. CLAYPOOL: Thank you. As we discussed on
10 Tuesday, we have the budget augmentation letter in to the
11 Department of Finance, but we're still financing the
12 budget change proposal that will constitute our request
13 for additional funds, so we are still at a point where we
14 can augment this amount if that's what this Commission
15 wishes to do, and place it in for approval. And I would
16 say that, even if we didn't get approval on the
17 augmentation with the budget proposal, we would still be
18 in a position if we had to pull back from some of our
19 meetings and, so forth, which that would necessitate with
20 less money than we expected, that we could still find
21 room within that budget to increase this amount. The VRA
22 attorney is required by the Constitution, and the
23 California Contracting Code does not restrict you to the
24 lowest bidder, it requires you when it comes to attorneys
25 to take the most qualified person. So, I think if you

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1 look at those three things together, we can do what this
2 Commission needs to be done with regard to this budget.

3 COMMITTEE MEMBER FORBES: My reaction is, I mean,
4 at least three of the applicants, I think, in so many
5 words, say it is going to be at least \$200,000, it may
6 well be more than that, but at least \$200,000. And I
7 think it does not reflect well on us to build three-
8 quarters of the bridge. And so I would like to propose
9 that we increase the amount we allocate for our Voting
10 Rights Act attorney. Now, my question is whether - we
11 had talked a number of \$200,000, but I wonder whether
12 even that is going to be adequate and whether we would be
13 better off to make it like \$250,000. And I'm open to
14 suggestion to see what other Commissioners think.

15 COMMITTEE MEMBER FILKINS WEBBER: Is it necessary
16 for the Legal Advisory Committee to be discussing
17 budgetary issues that are generally confined to the
18 Finance Committee? I'm not certain that this is a
19 necessity, and correct me I'm wrong, counsel, or Mr.
20 Claypool, before we make a determination who is the most
21 experienced attorney to serve our interests, based on the
22 interviews we just performed.

23 COMMITTEE MEMBER FORBES: Well, I would encourage
24 us to do it because we're not going to have another
25 subcommittee meeting, we're not going to have a chance,

1 and this letter has to go to increase - the augmentation
2 letter should have been in the mail like yesterday, isn't
3 that true?

4 MR. CLAYPOOL: Yes, and the spring finance letter
5 was actually due quite some time ago for most State
6 agencies, we've been given quite a bit of latitude
7 because of how quickly we've had to start up and because
8 of how fast we have to complete this project. Having
9 said that, we were still geared to get this out and the
10 first thing next week was our time schedule, and we were
11 gearing that around this decision that had to be made.
12 So, we still have that latitude if this needs to be
13 something that has to be scheduled.

14 COMMITTEE MEMBER FORBES: That's my point, I
15 don't think we have time to go back to the Finance
16 Advisory Committee, so I think it behooves us to make the
17 recommendation and then let the whole Commission talk
18 about it.

19 COMMITTEE MEMBER ANCHETA: Yeah, I agree with
20 that and we can talk about the dollar figure, but if we
21 come up with a specific figure, that's better, I think.
22 I would suggest we try to do that and simply bring
23 forward a recommendation to the full Commission, have
24 some discussion, of course, with the members of the
25 Budget Committee in the full Commission meeting, and then

1 with, of course, Mr. Claypool advising us, as well, and
2 try to reach some decision in the full Commission
3 tomorrow.

4 COMMITTEE MEMBER FORBES: Now, we don't have to -
5 this group doesn't have to propose a number.

6 COMMITTEE MEMBER ANCHETA: No, we don't have to -

7 COMMITTEE MEMBER FORBES: I mean, we can
8 recommend that to the whole Commission --

9 COMMITTEE MEMBER ANCHETA: We [inaudible]
10 [00:26:46] augmentation, there's a couple ways we could
11 do it. I think we should - and the Chair is here, as
12 well, I mean, I think it would fit in within the
13 Committee's report back tomorrow, to say we would like -
14 assuming we adopt this - we would like to make a
15 recommendation for augmentation of the budget, I mean,
16 period. Or we could come up with some specific figures,
17 I'm an Agnostic on that, frankly. I think that's a good
18 process to follow.

19 COMMISSIONER GALAMBOS MALLOY: So, I'm here as an
20 observer, but I am also speaking on behalf of the Finance
21 and Administration Committee and we'll be presenting our
22 report back tomorrow, so if there is some discussion or a
23 request that's coming forth from this committee, I'm
24 happy to include that. I believe we are actually
25 scheduled to go pretty early on in the report backs, as

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1 compared to the Legal Advisory Committee, so I could - we
2 actually don't have a ton of items - action items - in
3 our report, so I'm happy to take that on.

4 COMMITTEE MEMBER BLANCO: Can I say something,
5 Chair?

6 COMMITTEE MEMBER FORBES: Sure.

7 COMMITTEE MEMBER BLANCO: Yeah, I think we should
8 bifurcate the discussion. I think this is really helpful
9 information. You know, I think it's helpful because we
10 won't have that cloud over our head, in a sense, when
11 we're discussing the candidates, but I think that I agree
12 with the Commissioner that we should discuss the
13 qualifications and that's what we're here to do, and then
14 we should try and arrive at a recommendation based on
15 that. If part of what surfaces in our discussion is a
16 concern about ability of the firms to give us the product
17 we need because of monetary concerns, then I think, you
18 know, we can talk about that and we should not make that
19 the primary basis of the decision, knowing what you've
20 just told us, and we can go to the full Commission, and I
21 think we should not end this week without the full
22 Commission making this kind of decision, but I think that
23 we should proceed on the basis of the qualifications and
24 then see where the budget issue comes up.

25 COMMITTEE MEMBER ANCHETA: I would agree with

1 that, I would de-couple the issues, but I think obviously
2 they're related.

3 COMMITTEE MEMBER FORBES: Right, no, I think they
4 were separate issues. Well, how would you like to
5 proceed? I'm open to suggestions as to how to proceed.
6 I mean, my sense is that, I mean, I would like to have an
7 initial discussion to see how long we think this process
8 is going to take, if this is going to go on for hours,
9 then we should probably take a break and go get something
10 to eat. If it's not then if we think we can get this
11 done in an hour, and maybe we can and maybe we can't
12 depending on the degree of consensus we have, then I
13 would encourage us to sort of soldier on.

14 COMMITTEE MEMBER ANCHETA: Well, I am wondering
15 what our goal is for the end of the process, which is,
16 are we advancing the top candidate? Are we advancing the
17 top two candidates?

18 COMMITTEE MEMBER FORBES: Well, we had initially
19 - and, I mean, I guess we could always change it,
20 initially we were going to recommend one. And that was
21 the goal. Mr. Claypool.

22 MR. CLAYPOOL: I just wanted to tell you, the
23 building is locked at this point, so leaving and coming
24 back is -

25 COMMITTEE MEMBER BLANCO: So we're here.

1 COMMITTEE MEMBER FORBES: Okay, who's got the
2 sandwiches?

3 COMMITTEE MEMBER ANCHETA: And no eating in the
4 room.

5 COMMITTEE MEMBER FORBES: In any case, but we
6 digress.

7 COMMITTEE MEMBER BLANCO: It was a nice thought.

8 COMMITTEE MEMBER FORBES: Right.

9 COMMITTEE MEMBER FILKINS WEBBER: Well, I will
10 commence the discussion and let's get this moving because
11 I get cranky when I'm hungry. And I get punchy, too. I
12 believe it's evident that, among each of the candidates
13 that we've had an opportunity to speak to today, that
14 each provides a different - not necessarily a - well, to
15 some extent there was a difference in scope of work, but
16 a different analysis regarding the manner in which they
17 would take this approach. And I felt that there were two
18 firms, in particular, that gave me very good detailed
19 explanations regarding their interest in how they
20 perceived the work at hand, and given their experience in
21 redistricting, obviously I'm speaking of Ms. Leoni's firm
22 and Gibson, Dunn. And both of them obviously have
23 incredible experience in this area. Ms. Leoni's firm,
24 obviously, has a tremendous amount of redistricting
25 experience, in particular. Mr. Dan Kokel [sic] - Kolkey

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1 - there's an "L" in it - obviously his experience in that
2 regard is also tremendously - would be tremendously
3 helpful to the firm, or the Commission. One thing in
4 particular that I found interesting among both the firms
5 is, again, they developed a particular idea of how they
6 would like to approach their tasks, and they were
7 definitive about it, unlike the two candidates from out-
8 of-state. And I think the two candidates from out of
9 state don't have sufficient experience, let alone having
10 a working knowledge of the Voters First Act, just in how
11 this Commission was developed, itself, which was somewhat
12 of a concern for me. I think that Mr. Adelson hadn't
13 read the Act and he wasn't really familiar. Also, I
14 think there were a lot of generalities that were spoken
15 about with the two candidates from out of state, that
16 didn't give me any idea that they actually understood
17 where the specific issues will arise in California,
18 whereas the California firms that actually have been
19 working with these issues and litigating with these
20 issues actually know where the issues are going to arise,
21 just based on the data that they've already seen in the
22 last couple of weeks coming out from the Census. So,
23 there's a balance here between those that are already -
24 two candidates that are well ahead of the game, I'm
25 afraid, in having their experience and having knowledge

1 in working with Census Data, having experience in
2 redistricting, unlike the other candidates. So, in one
3 sense, if we wanted to - I would propose that we could
4 narrow it down based on experience, alone, and the
5 presentations that we had, and certainly this is nothing
6 against having telephone calls with two outside of
7 California candidates because I've interviewed and talked
8 to plenty of people over the phone and that doesn't
9 change my perception of their experience, overall. But I
10 would suggest that, if we wanted to move forward, unless
11 somebody has some other strong inclinations for any of
12 the two out-of-state candidates, I think that we have two
13 fine firms that we might be able to narrow it down from.

14 COMMITTEE MEMBER FORBES: Commissioner Ward - no?

15 COMMITTEE MEMBER FILKINS WEBBER: I talk a lot
16 when I'm tired, too, so just cut me off.

17 COMMITTEE MEMBER FORBES: Never! Do you have any
18 comments you'd like to make?

19 COMMITTEE MEMBER WARD: I would just echo
20 Commissioner Filkins Webber's comments. I agree, I think
21 that narrowing the two choices is expeditious and I'm
22 ready for it.

23 COMMITTEE MEMBER FORBES: Commissioner Blanco.

24 COMMITTEE MEMBER BLANCO: I agree. I was
25 concerned, but I want to take this very seriously and,

1 you know, people have spoken strongly in favor of the two
2 D.C.'s, so I want to really make sure that we have, you
3 know, I know we want to get out of here, but to have a
4 good discussion on the record. My main - so, I am very
5 concerned about capacity of those two firms. I was
6 concerned initially, just because they looked like solo
7 practitioners when we received the applications, but
8 their experience really, for me, made it so that I wanted
9 to hear from them and they, you know, the fact that we
10 had talked about that one possible ideal candidate would
11 be somebody that had been at the Department of Justice in
12 terms of what we needed, in terms of knowledge including
13 Section 5, then also just that those would probably be
14 folks that the public would find a lot of agreement with
15 because they were in a public entity defending the public
16 and representing the public. That said, I was concerned
17 that Mr. Adelson, in preparation for an interview, had
18 not read the Voters First Act, and I don't know if that
19 was a function of time, or a function of an indicator of
20 the quality of how he juggles a lot of tasks, but that
21 really was a red flag for me in terms of preparation, as
22 well as capacity. The same thing with the professor, you
23 know, she raised the possibility of subcontractors, that
24 raises a lot of concerns for me. We need to know who
25 we're working with and not know that, in turn, we hire

1 somebody and they're in turn hiring other people that we
2 have no control over their product, or over their hiring,
3 and I don't want to get into hiring subcontractors of the
4 contractors. So, I just don't think that we can do that,
5 add that layer, it's already a really complicated process
6 that we're involved in. So, I was very impressed with
7 some of her answers, I think that her knowledge of the
8 law was very good, but I - there might have been somebody
9 that was out of state that could have shown us that they
10 had the capacity to do the work, even long distance, but
11 I don't think these two firms have that ability and I
12 would suggest that we take a little straw poll and see if
13 we agree on that.

14 COMMITTEE MEMBER FORBES: Commissioner Ancheta
15 and myself would like to make comments, sorry.

16 COMMITTEE MEMBER BLANCO: No, you're right.

17 COMMITTEE MEMBER FORBES: Well, I thought Mr.
18 Adelson actually fit the person that I wanted to hire,
19 but the subcontracting issue, I mean, he's got a lot of
20 clients and we're just going to be another one of them,
21 and I think you're absolutely right, I want to know who
22 I'm hiring, and I don't have any idea with him how much
23 I'm getting him. I mean, if I were getting just him, I
24 mean, I think he's a terrific candidate, but as a
25 subcontract, you know, it was unclear to me how much we

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1 were going to get. And I think that Ms. Daniels doesn't
2 have the firm capacity, or frankly, for that matter, the
3 experience of doing something of this significance. And
4 so I would concur that I appreciate their applying, but I
5 would restrict the discussion - next level of discussion
6 - to our two in-state firms. Commissioner Ancheta.

7 COMMITTEE MEMBER ANCHETA: Yeah, I share those
8 same concerns, that's why I raised the capacity
9 questions, and I had some very serious questions, they
10 weren't really answered entirely to my satisfaction,
11 anyway, but that's - and I expected that that would be an
12 issue of selecting those particular candidates. I'll
13 just advance to the next level of discussion, assuming we
14 are talking about that, too -

15 COMMITTEE MEMBER FORBES: Uh huh.

16 COMMITTEE MEMBER ANCHETA: I would rank Gibson,
17 Dunn first, although I have a concern about Mr. Kolkey,
18 and I raised that as an issue with them directly, which
19 is "could you firewall Mr. Kolkey?" The concern I have
20 with Ms. Leoni's firm is so many firewalls may be
21 necessary and it is a lobbying firm, it is absolutely
22 very well qualified and certainly an excellent firm, and
23 we are, if we are in the position of having to defend
24 litigation, going to be defendants, but we are
25 redistricting body, so we are not in that position yet,

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1 and hopefully we will not be in that position. I like
2 Mr. Brown, and I think he - and to the extent - and,
3 again, I don't think this is a conflict here, as far as I
4 can tell, or bias in terms of what Commissioner Blanco
5 has done in terms of suggesting or even contacting Mr.
6 Brown, I don't think so in terms of what we had done in
7 terms of trying to at least contact people and recruit -
8 he can speak to this directly, as well. But I think he's
9 shown some good experience of litigating. From what I've
10 heard, again from Ms. Blanco, in terms of personal
11 experience, having worked with him, he sounds like a very
12 - and I think the Associates - at least the Associate
13 that spoke - seemed to be quite competent. But I do have
14 this underlying concern about Mr. Kolkey, and those same
15 sorts of concerns extend even further to Ms. Leoni's firm
16 because of what's been coming out in both public comment
17 and in prior discussion -

18 COMMITTEE MEMBER FILKINS WEBBER: Well, can you
19 be more specific about Mr. Kolkey, since you were first
20 referring to him?

21 COMMITTEE MEMBER ANCHETA: Yeah, sure, it's the
22 same concern as regarding, again, if we were to apply
23 strictly the Conflicts Policy that was applied to the
24 Commissioners and, again, we have discretion, given our
25 internal policy, but if we were to elevate the scrutiny

1 here, I don't know if he passes because of having been a
2 member of the Central Committee, whether it's Associate
3 or Full, it's still -

4 COMMITTEE MEMBER FILKINS WEBBER: So, I'm sorry,
5 do you have anything else? I didn't mean to cut you off
6 - only because I have a comment on that particular point,
7 in particular.

8 COMMITTEE MEMBER ANCHETA: Yeah, well, again, I'm
9 not sure - I'm not saying it's automatically
10 disqualifying, those are the underlying concerns I would
11 have. I don't think it necessarily - it certainly
12 doesn't qualify the firm at all, I don't think, if -
13 because there are procedures to wall him off and I think
14 they indicate that was a possibility, not one that they
15 necessarily were - I don't think that would be their
16 favorite option, but it sounded like it could be an
17 option. But it is a concern. Again, I think - the
18 reason I'm ranking them higher relative to the other firm
19 is that's one attorney as opposed to a lot of other
20 things that are possibilities, both with Ms. Leoni,
21 individually, as well as the firm as a whole, and I'm not
22 sure all the firewalls - it's an awful lot of firewalls
23 and I'm not sure that those will be sufficiently
24 effective, given other concerns regarding, again, just
25 overall perception, trust, etc. etc. I think all of

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1 these candidates have certainly shown expertise in Voting
2 Rights Act law, so I don't mean to disparage anybody, in
3 particular, but I'm ranking at this point given where
4 we're trying to go.

5 COMMITTEE MEMBER FORBES: I just want - so we are
6 in agreement that we're only going to talk about the two
7 California firms? I just wanted to be sure. Okay. Okay.
8 Commissioner Ward.

9 COMMITTEE MEMBER WARD: I'm sorry, can I get
10 clarification from Commissioner Ancheta? So, what are
11 you actually recommending? Are you recommending the
12 firm? Or are you -

13 COMMITTEE MEMBER ANCHETA: Well, I'd like to
14 discuss them. Again, I would rank Gibson, Dunn as the
15 firm I would look at, but this is - I have an underlying
16 concern about Mr. Kolkey.

17 COMMITTEE MEMBER FILKINS WEBBER: Then, I would
18 like to address it if I may.

19 COMMITTEE MEMBER FORBES: Please.

20 COMMITTEE MEMBER FILKINS WEBBER: Oh, I'm sorry,
21 you have not finished?

22 COMMITTEE MEMBER WARD: I'm just wondering, are
23 we putting forth a recommendation individually at this
24 point?

25 COMMITTEE MEMBER FORBES: No, not yet.

1 COMMITTEE MEMBER WARD: So it's just a general
2 discussion, okay.

3 COMMITTEE MEMBER ANCHETA: I figured we got it
4 down to two and I was just saying, well, since we got it
5 down to two, here is mine, between the two.

6 COMMITTEE MEMBER BLANCO: So can you -

7 COMMITTEE MEMBER FILKINS WEBBER: No -

8 COMMITTEE MEMBER BLANCO: I just want to hear
9 what his final -

10 COMMITTEE MEMBER ANCHETA: [Inaudible] get it
11 started since we were at the level now where we -

12 COMMITTEE MEMBER FORBES: Commissioner Filkins
13 Webber.

14 COMMITTEE MEMBER FILKINS WEBBER: Did you have a
15 question?

16 COMMITTEE MEMBER BLANCO: I was trying to discern
17 where you were saying you would rank Gibson, Dunn first.

18 COMMITTEE MEMBER FORBES: Yes.

19 COMMITTEE MEMBER ANCHETA: Yeah, if we're down to
20 two, as I think we are -

21 COMMITTEE MEMBER BLANCO: We are, that's why -

22 COMMITTEE MEMBER ANCHETA: -- that's why I said
23 I'd rank them first.

24 COMMITTEE MEMBER WARD: Well, my question,
25 though, is that's what I'm asking. What are you ranking

1 first? Gibson, Dunn, or Gibson, Dunn without Mr. Kolkey?
2 That's what I was unclear on. I'm just trying to figure
3 out, what is your -

4 COMMITTEE MEMBER ANCHETA: I would rank both of
5 those above the other firm.

6 COMMITTEE MEMBER FORBES: Right, and I don't
7 think he's made a decision - I don't think he's offering
8 a proposal.

9 COMMITTEE MEMBER ANCHETA: I don't know which
10 one, I'd like to have some discussion about, again,
11 concern regarding conflicts. But my feeling is that the
12 second firm, there's too much going on in terms of all
13 these potential conflicts and the overall perception of
14 the firm as a lobbying firm.

15 COMMITTEE MEMBER FORBES: Commissioner Filkins
16 Webber.

17 COMMITTEE MEMBER FILKINS WEBBER: Thank you. In
18 no particular order because I have not made a decision
19 regarding how I wish to rank, but I just want to address
20 some of your concerns. What I find every interesting, I
21 am the only Commission member that I'm aware of,
22 Commissioner on this entire Commission, that took a
23 strict stance under 8252, and every other Commission
24 member did not wish to accept my interpretation, at least
25 at the time, that was just my opinion and no other

1 Commission member needed to accept my opinion. On an
2 occasion in which this Advisory Committee met, and in my
3 absence, the Legal Advisory Committee came out with the
4 assistance of counsel that what their recommendation
5 would be to the full Commission regarding conflicts of
6 interest and how they would be applied to staff and to
7 consultants. And as far as I knew, that was the
8 recommendation and your interpretation, in particular,
9 you felt that there was not a strict necessity to apply
10 the Conflict of Interest standards to -

11 COMMITTEE MEMBER ANCHETA: No -

12 COMMITTEE MEMBER FILKINS WEBBER: -- the
13 consultants, as I discussed.

14 COMMITTEE MEMBER ANCHETA: No, that's not what I
15 said at the meeting. I said at the meeting that we
16 should not, as a blanket matter, apply that section to
17 all potential employees or consultants. I did, as a
18 qualifier, indicate in my statement that I believe when
19 it came to particular types of consultants, including the
20 line drawing consultant and the Voting Rights Act
21 consultant, that we should, in fact, exercise a much
22 higher level of scrutiny than, say, and the example I
23 gave was simply the Administrative Assistant who might
24 have worked for the Republican Party 20 years ago, that
25 circumstance, I think, is materially different from,

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1 well, this position, as an example, but others as well
2 that I think are sufficiently important to kick up the
3 level of scrutiny. So, what I was suggesting, both in
4 that statement and today, is that there are - there's
5 discretion within our conflicts statement, it doesn't
6 mean we don't ever apply it. I think there are
7 circumstances where we do apply it and we should apply it
8 strictly. This is one of those circumstances. And I
9 think that's been my position consistently.

10 COMMITTEE MEMBER FILKINS WEBBER: That was my
11 trouble with the manner in which the Commission sought to
12 accept that. And you make it discretionary, that means
13 you can apply it in any manner in which serves your
14 purpose, for whatever your analysis is for the time, and
15 that, I'm afraid, is troubling overall. But, aside from
16 that, was there something about Mr. Kolkey's explanation
17 of paying \$16.00 and all of that, that led you to believe
18 that that still created a conflict?

19 COMMITTEE MEMBER ANCHETA: Well, I'd like to talk
20 about that and I don't - he obviously said, well,
21 whatever his actual monetary involvement may have been,
22 but I didn't get a sense of what his actual involvement
23 in the Central Committee was.

24 COMMITTEE MEMBER FILKINS WEBBER: Which was
25 nothing but paying the \$16.00 and getting invited to -

1 COMMITTEE MEMBER ANCHETA: But I don't know if
2 there is more to that. That's what he said.

3 COMMITTEE MEMBER FILKINS WEBBER: Did you ask
4 him?

5 COMMITTEE MEMBER ANCHETA: Well, given the time,
6 I didn't want to take too much time on that, since we
7 were already out of time at that point, but again, I
8 think that's something I would raise. It's not - I'm
9 open to - and I have not foreclosed just hiring the firm
10 with Mr. Kolkey, I've indicated that's certainly my back-
11 up choice, but I think I want to talk about that issue.
12 And if other people don't have that concern, I'm willing
13 - and, again, if there's alignment here, there may not be
14 alignment, but I'm willing to move that candidate
15 forward. But, again, there may be differences on the
16 ranking.

17 COMMITTEE MEMBER FORBES: Commissioner Blanco,
18 would you like to make a comment?

19 COMMITTEE MEMBER BLANCO: No, not right now.

20 COMMITTEE MEMBER FORBES: No comment, huh? Just
21 to give you an opportunity, no pressure. Commissioner
22 Ward.

23 COMMITTEE MEMBER WARD: Now I understand what
24 we're doing. I think, for me, again, being the non-
25 lawyer on the panel, I keep asking myself, what are we

1 doing here today, and as I understand it, we're hiring a
2 Voting Rights specialist, whose guys will not only make
3 or break these maps, but most importantly ensure that all
4 Californians' vote counts. My belief, as stated in my
5 interview for this Commission, until today, is finding
6 primarily absolutely best, most qualified people possible
7 to serve the people of California. I mean, they deserve
8 it. In this case, I would propose that Nielson,
9 Merksamer, Parrinello, Gross & Leoni, bar that, if
10 they're not the most qualified, they're certainly at the
11 top. They have by far the most VRA litigant experience,
12 30 years of redistricting and Voting Rights work, and no
13 map challenges. They have the most capability to support
14 this Commission and they actually have the added
15 capability to get it right with its map drawing and the
16 relevant district analysis, kind of allowing us the most
17 depth of options in relevant districts. They have - in
18 my opinion - the most detailed plan and vision for how to
19 best get the job done. Their experience showed to me in
20 the presentation, it gave a roadmap; again, we're a
21 citizens Commission, we have two lawyers that have VRA
22 experience, but the experience that I think came through
23 in that presentation was glowing for a non-VRA lawyer,
24 with someone with non-VRA experience, and that's the
25 public. I see this as easy. We're consumers looking to

1 buy the best and most durable product we can afford. And
2 I want to be honest, although based on the bids that we
3 talked about the other day, I felt on paper they were the
4 most qualified, but I did share concerns about
5 perceptions and believed that might be an overwhelming
6 factor with this firm, in particular, the concern about
7 lobbying. And I think with the presentation and the
8 explanation that was given, those concerns are gone. The
9 lobbying moniker that Ms. Leoni carried just wasn't an
10 issue with explanation. I mean, that's what makes this
11 process so great is that, after interviewing the best of
12 the best, and allowing each of them to explain
13 perceptions that surround them, we can go ahead and make
14 a decision based on facts. So, yeah, any reservation I
15 had based off of the perceptions that we talked about
16 when we reviewed the bids were alleviated with the
17 presentation. After all, I mean, they were good enough
18 for the non-partisan Arizona Commission, the Florida
19 Legislature, and had served both major political parties.
20 What would make them not good enough for us? Certainly,
21 this panel of lawyers would not suggest that, in order to
22 provide legal representation to three different families
23 and one school board, the state of California demanded
24 that one member of the team, Ms. Leoni, register as a
25 lobbyist, and then immediately proceed to let that

1 registration lapse, disqualify her and that expertise
2 that she brings, and that experience. We want to focus
3 on who is going to give us the best opportunity to
4 protect our communities. I also really appreciated and
5 found it important that only this firm identified the
6 importance of eliciting useful testimony from the public
7 and communities of interest. I think that their careful
8 contemplation of working with the Commission to ensure
9 bountiful communication with California's communities,
10 and then ensuring a thorough public discussion upon
11 releasing the final maps, explaining why we did what we
12 did with relevant districts, is exactly the type of
13 community partnership we're conducting. Let's get
14 something straight, this firm is not getting a contract
15 to go into a secret cave and conduct business in privacy,
16 everything we and they do must be publicly vetted, and
17 must gain as much buy-in as possible, and the experience
18 of this firm clearly shows that they understand and are
19 prepared to earn that trust. Lastly, I want to just put
20 my opinion about perceptions. Perceptions are fluid,
21 they change, especially when viewed in the light of
22 facts. We're going to be judged by the public, by our
23 final product, not by temporary fears of bias. We have
24 two experienced VRA lawyers, as I mentioned, on this
25 team, with a whole lot of - a state full of watchful

1 eyes. I think with the consistent insistence on
2 transparency, which we're bound by, we can afford to hire
3 the best full package this firm can afford, which in this
4 case, I believe is Nielson, Merksamer, Parrinello, Gross
5 and Leoni.

6 COMMITTEE MEMBER FORBES: Well, let me make my
7 comments, then, my initial comments. I think that - I
8 don't have any conflict issues with Mr. Kolkel [sic] - is
9 that right - Kolkey, sorry. I think that, I mean, the
10 one thing he was elected to was being an Appellate Judge,
11 that doesn't seem like very partisan to me. And second
12 of all, that basically, I mean, a \$16.00 membership in
13 the Republican Party is not - I just don't have a problem
14 with that. I think if he were a voting member of the
15 Central Committee at some point in the last 10 years, I
16 would have a big problem with it, but that's not what he
17 was. And I think the virtue of that firm, of Gibson,
18 Dunn, is that both sides are represented, and I think
19 that's where the balance comes from. You have someone
20 identified as a Democratic consultant, or a Democratic
21 attorney, and one who would be viewed as a Republican
22 one. So we have both there and I think that's something
23 that, when we hear a lot about - there's two ways of
24 neutrality, you can be neutral, or you can have both, and
25 this is the both category And I take a little bit

1 different view, I think in either case I'm not concerned
2 about the work product at the end, I think we have two
3 very professional firms who really know their stuff and
4 so I think that we're going to get a comparable product
5 out of either candidate. And I think we, in fact, are
6 buying more, or are trying to acquire more than just
7 technical expertise, let me give you an example, this
8 question came up when the *Chronicle* interviewed us. It's
9 about whether a computer could draw the lines, and
10 absolutely the computers can draw technical lines, they
11 absolutely can, but there's two things the computers
12 can't do, they can't identify communities of interest,
13 you can't program because that's a self-identified thing.
14 The second thing that computers can't do is that the
15 problem 10 years ago was that the public was cut out and,
16 so, the computers cut them out even more. So I think we
17 also need to buy trust and I think that, I mean, the fact
18 - I think that a lobbying firm, without any disparaging
19 them, just can't offer the same level of trust because
20 that's not what they do. And I think, as Commissioner
21 Ancheta said, I don't want to have to have firewalls, I
22 don't want to have firewalls, I want to say, "Play it
23 straight, no firewalls, I want you to be able to do
24 everything you do, don't give me a firewall," because I
25 think once you create firewalls, for the normal public,

1 for the average public, they're just going to hear the
2 firewall. "Why do you have to have firewalls?" Why do
3 you have to have those?" And you can never overcome
4 that. The quality of the work never is going to overcome
5 that because I think one of the fundamental reasons for
6 Prop. 11 and Prop. 20, now, was to restore the public's
7 trust in the process, that is equally as important as the
8 technical aspects, and I think this openness that we're
9 required to do, participation and transparency, that's
10 what that's directed toward, and so - and I just don't
11 think the -- I'll call it the "Leoni Firm" -- can
12 overcome that just because of what they do, by their own
13 admission.

14 There's two other things that I have a concern
15 about, which may or may not be an issue, but they trouble
16 me. They offered a plan of how to solicit public input.
17 We have a consultant to do that. They offered a line
18 drawer. We have our own consultant. I did not want to
19 be in a place, and I don't want to be in a place, where,
20 okay, my Voting Rights Act attorney offers their experts,
21 but ours, we've hired, offers something else. I don't
22 know that I want to be in that place. I mean, I don't
23 want to have this internal potential for internal
24 conflict over the lines. I just have a real concern
25 about that. We have our consultants, we're going to hire

1 a line drawing consultant that we're going to have
2 confidence in, we've already hired a firm that's going to
3 do our outreach. The process - they talked about
4 creating regions - we have regions. So, I just think
5 there is potential for conflict there that I just don't
6 want to go to, so I come down on the side of giving
7 Gibson, Dunn for the reasons I've said, and I was more
8 longer winded than you were! So, that's my comment.

9 COMMITTEE MEMBER BLANCO: I thought the Gibson,
10 Dunn presentation was really good. I'm going to keep my
11 comments brief. I'd like to go with Gibson, Dunn. I'm
12 really not that concerned about Mr. Kolkey. I guess the
13 fact that he's been an Appellate Judge kind of gives me
14 some degree, some sense - and I never heard that there
15 was a problem, but I don't know about that - it gives me
16 a sense, as he stated, that he's able to put aside
17 whatever personal or political views he has and be fair.
18 I think if we really have a concern about the membership
19 in the California Republican Central Committee, if we
20 feel that wasn't answered, I think that's important
21 enough that we might want an answer, is it just paying
22 dues and getting invitations? Or, is he an active
23 participant that helps set policy for the Central
24 Committee? I think that is absolutely fair for us to go
25 back and ask him questions about that because it would

1 have been an automatic disqualifier for any of us and I
2 think, as Commissioner Ancheta said, these are probably
3 the two positions where, even though we gave ourselves
4 discretion, we should look at this very closely, the
5 things that were disqualifiers for us. But if it is what
6 he said it is, you know, we just basically, in spite of
7 his affiliation, then I'm not that troubled by it. But I
8 would be willing to explore it. I didn't get the sense
9 with Gibson, Dunn, the only thing I would differ, I
10 didn't have a sense that we were getting a Republican and
11 a Democratic firm put together, I didn't think of them as
12 a partisan team, I think they stated what their
13 individual party affiliations were, but I didn't get a
14 sense that we would be - we'd have this bipartisan team
15 or something. I just felt that they brought different
16 experience, and it would be incredibly helpful to have
17 the statutory construction knowledge of somebody who
18 drafted, but Prop. 11, but particularly Prop. 20, on
19 board, as we move forward. So, I am extremely concerned,
20 I've made no secret of it, that the other firm is a
21 registered -- the firm itself is a registered lobbyist,
22 and I'm very concerned about it. I don't just think it's
23 a question of qualifications, I think both firms are
24 supremely qualified. But I think there's a huge huge
25 factor of public trust riding here and I don't want to

1 wake up with a headline being that we hired a registered
2 Lobbyist firm as our first - in one of these first very
3 important positions that we've hired. I wouldn't mind a
4 headline that says, you know, we've got this combination,
5 we've got a firm that has a wealth of people from
6 different parties and different experiences, and that's
7 the kind of spirit that I'd like to have to present to
8 the public, as the spirit of this Commission. So, those
9 are my comments.

10 COMMITTEE MEMBER FORBES: Commissioner Ward.

11 COMMITTEE MEMBER WARD: Thank you. Actually,
12 it's really great to be - as I think I was alluding to,
13 for me, the headline I care about is five years down the
14 road that says "California flourished under the
15 California Citizens Redistricting Commission." And
16 we're never going to make everyone happy, we want to, I
17 want to, you know, but it's not the nature of
18 redistricting. God help us if we did this for 30 years,
19 we are going to have a lot of skeptics and a lot of
20 people that might not like certain things, certain
21 decisions we make, that's a part of it, and I think that,
22 you know, Stanley, one of the reasons I love working with
23 you is you have an uncanny ability to make the
24 complicated simple, and I love that about you. For me,
25 it's just not always so simple, though, I get wrapped

1 around the axle, but you know, I didn't see in the
2 presentation from Ms. Leoni's group a separate line
3 drawer, and I didn't see a separate consultant base. I
4 expect, I mean, that's why I am excited about this firm
5 is because they bring the ability to provide that in
6 regards to Voting Rights issues, only, not fact checking
7 all the lines, not - that's not the way I took it, maybe
8 I'm wrong, but my understanding was that they were going
9 to be able to provide an enhanced analysis of Voting
10 Rights relevant districts. And that's a capability that
11 I didn't see - I mean, I expect there's going to be
12 conflict, period, there's going to be some conflict
13 because, as we've kind of learned, we want to draw the
14 lines, as I understand it, again, as a non-lawyer, with
15 neutral criteria, with neutral input, and then kick it
16 over to VRA, and have our attorneys give it a good wash-
17 over. And I have no doubt that there's going to be times
18 where our lines are in conflict with the testimony and
19 the Federal Voting Rights Act, and I think the enhanced
20 ability to add line drawing to that, with options, and a
21 detailed analysis only - only - furthers our opportunity
22 to get this right. And I just can't get past that, I
23 can't throw it away because they're a big firm that has a
24 big mission - big firms are big for a reason and with
25 their history, with their client base, again, assorted by

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1 some, and I've got to tell you, I wish they were
2 Democrats, I do, I wish they were with all my heart
3 because I know this gives the appearance simply because I
4 have an "R" on the biography of partisanship, but that's
5 not it. The case to me is so clear for capability, and
6 for experience and, again, 30 years of experience in
7 redistricting, in these matters, again, that's going to
8 give you a lot of things maybe to include a lobbyist
9 moniker at some point, but no maps, no maps repealed, no
10 maps overturned, I think that's what I'm looking for,
11 that's what I care about, and I don't care if it's a
12 Democrat, Republican, I don't care, I just want the best
13 product for the State of California.

14 COMMITTEE MEMBER FORBES: Commissioner Ancheta.

15 COMMITTEE MEMBER ANCHETA: Yeah, this has been a
16 great discussion and I think, again, I really want to
17 applaud my fellow Commissioners in terms of the - even
18 though we have differences of opinion, this ability and
19 certainly the cooperative nature of the discussion, I
20 think it's been very very helpful and very fruitful to go
21 through it. I'm getting a sense, just counting the
22 votes, that we may have some way of reaching closure on
23 the issue, but I would want to ask for those who - and to
24 speak, as well, but to the extent you might be ranking,
25 three of us have sort of expressed a ranking in one

1 direction, one, or maybe two, maybe going in the opposite
2 direction, but I certainly want to raise the question
3 whether there would be any concerns or any objections to
4 Gibson, Dunn, simply, just again looking at the count at
5 this point. It seems likely, even for a divided vote,
6 that's sort of where we're going, but just to raise any
7 concerns that might exist, and I understand fully the
8 reasons why you're ranking one above the other, but,
9 again, if we're sort of counting the votes at this point,
10 whether there's any objection --

11 COMMITTEE MEMBER FORBES: Commissioner Filkins
12 Webber.

13 COMMITTEE MEMBER FILKINS WEBBER: Well, I have
14 not had a chance to do my summary real quick, and then
15 I'll get to, I think, what you said. We'll just tie it
16 up really quick. I'll just brief. I do want to go
17 through my notes real quick, though. Let's see, where
18 should I start? First, let me just start with Gibson,
19 Dunn, because you had apparently taken my questioning of
20 them similarly as Commissioner Blanco. I know both of
21 you, I was there when you were invited to obviously go
22 out and solicit any firms that were interested. The
23 point of my question essentially was whether they were
24 interested in actually being our counsel, or were they
25 only interested because Commissioner Blanco had brought

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1 it to their attention. I thought there was a bit of a
2 difference there, there were people that are eager to
3 represent us and eager to follow us, and I didn't get
4 that impression from them because she had invited him and
5 Mr. Brown said, "Oh, okay, yeah, that's going on." Well
6 -

7 COMMITTEE MEMBER ANCHETA: Yeah, and I'll have to
8 let Commissioner Blanco answer that because what I did
9 was I called a couple folks, for example, Tom Henderson
10 at the Warren Institute, simply saying, "We're going to
11 be putting out a job announcement, have you got any folks
12 we might want to look at?" And they did with a couple
13 other academic types and with a lawyer at the Lawyers
14 Committee in Washington, D.C. I wasn't recruiting any of
15 them, in particular, I said we're going to put the job
16 announcement out, if you've got some names, shoot them
17 our way, we're looking for, you know, maybe former DOJ
18 attorneys, it could be plaintiffs lawyers, you know, good
19 defense attorneys," you know, operating at that level,
20 and I kept it pretty much limited to that, and since I
21 don't really know defense attorneys, I wasn't going to
22 say, "Hey, can you give me some names?" But if I did, I
23 would have been happy to do that, as well." So, again,
24 that's my - that's my, I guess, for disclosure, that's
25 the recruitment I did a few weeks ago, but I would have

1 to let Commissioner Blanco -

2 COMMITTEE MEMBER FILKINS WEBBER: I didn't have
3 any problem with it - that wasn't the suggestion of my
4 question at all.

5 COMMITTEE MEMBER BLANCO: I think her point is
6 that she was trying to see whether people were eager
7 enough to be keeping track of our proceedings and apply
8 on their own.

9 COMMITTEE MEMBER ANCHETA: Right.

10 COMMITTEE MEMBER BLANCO: Or if somebody had to
11 let them know, I think that was the Commissioner's point.

12 COMMITTEE MEMBER FILKINS WEBBER: Okay, I have
13 just a few comments. Given that I am Chair for this
14 particular week's proceedings, I've been particularly
15 interested in all of the public comments, and I have read
16 all of the public comments during my travels today.
17 We've gotten quite a number of them, including your
18 letter, Trudy. So, I knew precisely the paragraph you
19 were referring to that would be relevant at today's
20 discussion. And I will make some other comments
21 tomorrow, but first and foremost, particularly to this
22 issue, and I think Ms. Leoni hit it on the head, and I
23 think the public needs to be aware of this, anyone that
24 is competent to represent this Commission has deep roots,
25 as she said, in public law, and that goes for all of the

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1 fine candidates that we are going to address throughout
2 this weekend's proceedings, and that means, and as I'm
3 certain several Commission members agree, is that if you
4 have worked in redistricting, you have more than likely
5 represented one side or the other, essentially, and the
6 size that we're looking at here, with what's been raised
7 as far as partisan issues, whether it might be Democratic
8 roots, or Republican roots, and I'm afraid the candidates
9 that have come before us fall in one of those baskets,
10 they really do, and I don't see that anyone has a
11 bipartisan. Now, Gibson, Dunn is close in that regard,
12 but let me just go through some of my summary. I concur
13 with everything that Commissioner Ward has said about Ms.
14 Leoni's firm, and I would like to address some of the
15 concerns that were raised. There is a distinct
16 difference, I believe, between Gibson, Dunn, and Ms.
17 Leoni's firm, and the most important factor is I see
18 Gibson, Dunn as a typical - not typically, but I mean -
19 wonderful firm, obviously, I've known of them for many
20 years, but they are providing legal advice as to
21 precisely everything that they have summarized, and
22 that's precisely what we've asked them to do. What I see
23 with Ms. Leoni is a little added component to it, which
24 is everything that she put down here is fitting the bill
25 for the Commission, but there's one thing that I didn't

1 know until today that they could do, which was they have
2 *Maptitude*, and in having *Maptitude*, which is something
3 that I don't get the gist that Gibson, Dunn actually has
4 access to, is Ms. Leoni's firm could actually under -
5 well, in addition to the fiscally responsible \$150,000
6 proposal that was made, we also have been discussing the
7 possibility of getting another [quote] "technical
8 expert," you know, depending on however that works out,
9 but what I see here is that, in addition to providing
10 legal responsibility to this firm in the Voters Rights
11 Act, that we could actually provide a set of maps to her
12 firm and that she has the technical expertise of an
13 attorney who is also a technical expert, that could
14 actually identify because they already know where the
15 issues are, they've been working in redistricting for 30
16 years, and in looking at the technical data that has come
17 out, the Census Data that has come out, obviously her
18 work with Section 5 Districts, they know precisely where
19 these issues are going to come up. And therefore, we
20 don't even have to instruct our lawyer, if Ms. Leoni was
21 selected, where the issues arise, she would be telling
22 us. We wouldn't have to say, "Please look at this
23 district because of some of the public comments that were
24 made." I mean, this is a technical expertise that we're
25 getting out of Ms. Leoni's firm that foresees everything

1 that I can think that I would be worrying about as a
2 Commission member, that I don't see that I get from
3 Gibson, Dunn. In other words, Gibson, Dunn is going to
4 act typical lawyer-client relationship, "Tell us about
5 your concerns about this," if we raise the issue -
6 spotting issues, for fellow lawyers here, is something
7 that we have to do in law school and we get trained to do
8 it, but you know, the full Commission may not have the
9 experience in being able to do that, and I don't know
10 that Gibson, Dunn will be acting in that capacity. I see
11 them as responding to us and doing the work that we ask
12 them to do, if we spot the issues, they've identified a
13 few of our issues, of course, as well, but I see them
14 being more reactionary than doing the work of looking
15 over the maps, but I don't see them digging in and
16 finding issues or knowing - having the expertise behind
17 them to actually locate those jurisdictions, that will be
18 problematic for us, which in comparison, I have no doubt
19 that Ms. Leoni's firm actually knows where that would be.

20 Stan, to address your concerns, you said
21 something about the end product would be the same with
22 both of them, that there wouldn't be a difference in the
23 end product, and I wholeheartedly differ with you in the
24 sense, that if Ms. Leoni comes across something that was
25 done by our controversial Map Drawer, whomever that might

1 be, that people question, and then we have a back-up
2 solution with our attorney that could review that line
3 drawing in saying, "Legally, this is correct, but you've
4 reached a benchmark," and, "If you really want to address
5 the concerns, here are your alternatives," I mean, she
6 could do that technically and legally, and I find that
7 value for \$150,000 absolutely incredible, and I didn't
8 know that before.

9 The firewalls? Standard practice when you're
10 talking about a firm that has been in business for that
11 many years, with that type of experience, everybody wants
12 to deal with because of the magnitude of their experience
13 and their reputation. Firewalls are of no consequence
14 when they're set up appropriately and the detail that we
15 got today regarding firewalls is precisely what I would
16 have expect, in addition to the signed disclosures from
17 every other lawyer in the firm.

18 Another interesting - you said you liked Mr.
19 Adelson. One thing that Mr. Adelson stated is that he
20 felt it was his ethical obligation not to be involved in
21 drawing discriminatory lines, as if he was presupposing
22 that we would be doing that anyway, and such would be
23 illegal. But he said that an attorney should get behind
24 the data and understand racially polarized voting and do
25 substantial work behind the scenes with the technical

1 expert to determine what these maps reveal. I feel that
2 Ms. Leoni's firm will be doing exactly that, and you said
3 that you were satisfied with Mr. Adelson, potentially,
4 other than the other issues that you raised, but he
5 mentioned that, I liked that as a strategy, and that's
6 exactly what I understood that Ms. Leoni could do for us,
7 and I didn't get the same sense from Gibson, Dunn. Now,
8 there's a couple of things that I want to state just
9 really quick, again, I don't have a problem with Mr.
10 Kolkey, again, he was a Judge, as you had said before.
11 What I have not seen here is any technical expertise in
12 dealing with map drawers and I see them as a typical - or
13 not typical - but Voter Rights Act issuer spotters, to
14 give us legal opinions regarding the way that we should
15 procedurally make some decisions regarding policies, or
16 regarding procedures, but I don't see them as having
17 experience of the magnitude of redrawing lines for the
18 entire State of California in every district that we have
19 to do. And I can get into more details on that. But
20 that, to me, there is a distinct difference between these
21 two firms in what they can offer, but mind you, they gave
22 us a cost of - Gibson, Dunn gave us a cost of \$250,000,
23 granted, they claim it was a discount, but everything
24 that is in there is everything that we get plus more with
25 Marguerite Leoni providing us a cost analysis of the

1 \$150,000. Everything that is added at the bottom is
2 nothing more that's contained in Gibson, Dunn's \$250,000,
3 and we can look at it one for one, but I think that this
4 is an excellent value and it answers precisely the
5 necessity of this Commission. And, despite the fact that
6 I'm from Southern California, I'm afraid I've never heard
7 of Ms. Leoni's firm, and I've been involved with the
8 Republican Women, and I'm afraid I still never heard of
9 her firm. And I've been a lawyer for 15-16 plus years,
10 no, no disparaging remark, but just to let the public
11 know, as well, that I don't have any connection, I don't
12 know anything, and I am a Republican, and that's known,
13 but I don't know anything about the firm, and obviously I
14 know firms carry certain reputations, and I'm certainly
15 appreciative of your disclosure in that regard, I just
16 haven't seen it, but yet we only have a choice, one
17 choice, or two choices, and both have involvement and
18 deep seated roots in redistricting. Thank you.

19 COMMITTEE MEMBER ANCHETA: Well, I think it's
20 better known as the "Blah, Blah, Blah & Leoni firm," as
21 Ms. Leoni said earlier, but I think - I agree very much
22 in terms of the analysis of that firm, that it is a
23 highly experienced firm and would bring a lot to any
24 jurisdictions seeking advice on redistricting and Voting
25 Rights Act compliance. Again, I raise the same concerns.

1 The final point I want to make is that, at least in my
2 preliminary look at the technical consultant bids, I feel
3 that, as a package, and again, let's assume either of
4 those or even the back-up, let's hope we don't have
5 nothing at the end of the day, which is possible, but at
6 least if one of those two gets picked, or there's an
7 interagency contract, I've seen a fair amount of capacity
8 built into those firms, as well, in terms of Polarized
9 voting analysis and Voting Rights Act analysis, as well,
10 so some of that is also built into those consultants,
11 too. So, I think in sort of looking at the package, as
12 well, I feel - and, again, I agree that - I think just
13 based on raw qualifications, that the Nielson firm
14 probably has more going to it in terms of raw
15 qualifications, but again, there are so more serious
16 concerns which I think put them lower than Gibson, Dunn.
17 And at this point, I'm happy to move forward, although I
18 would like maybe just - if we're going forward with
19 recommending Gibson, Dunn, that if they could just write
20 a letter just indicating what exactly Mr. Kolkey's
21 relationship was, that would certainly satisfy me in
22 terms of just an unqualified recommendation that that
23 firm go forward. But that's my only underlying concern
24 if that's how we're going to end up voting at this point.

25 COMMITTEE MEMBER FORBES: Okay, I think we've

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1 perhaps exhausted it. Another comment, Commissioner
2 Ward? I didn't know if you were signaling there or not.

3 COMMITTEE MEMBER WARD: I'm just wondering, I'm
4 absorbing Commissioner Ancheta's information. It's
5 interesting, if your opinion is that Ms. Leoni's firm is
6 in raw form the most experienced, which I believe you
7 stated, and they're the lowest bidder, isn't that what
8 we're looking for? We're looking for, you know,
9 considering cost, and experience, capability, all the
10 things I understood from our prior meeting that we were
11 going to use in consideration of a firm was that, it
12 seems like the only thing that is different is a
13 perceptual fear. And I'm just, again, urging the panel
14 to really think this through because, if we're going to
15 make decisions on perceptions of fear, or how a decision
16 is going to be perceived to be, you know, in the public,
17 again, perceptions in light of facts change. Okay? It's
18 the product that is going to stand the test of time, it's
19 what we put out. And, like I said, I just feel, again,
20 with what you said, in my head it makes me feel like I
21 still don't really understand how we're just pushing on
22 to a decision when it kind of validates to me all of the
23 criteria and everything we were looking to do, which is
24 come up with the most accomplished, the best firm that
25 has the capability to support us, has the most

1 experience, again, I don't think there's even a
2 comparison from what I read and, again, I'm not a lawyer,
3 but maybe you can comment on this for me, a comparison in
4 the Voting Rights Act experience of these two firms, the
5 actual experience of these two firms, I don't see it. I
6 understand that one is more bipartisan, but when it comes
7 to actual experience, it seems like we agree that Ms.
8 Leoni's firm has more, but I'm actually asking maybe
9 someone to enlighten me as to how vast Gibson, Dunn's
10 actually is, comparatively. I question how much is
11 there. And - thank you.

12 COMMITTEE MEMBER FORBES: Commissioner Filkins
13 Webber.

14 COMMITTEE MEMBER FILKINS WEBBER: I just had
15 one other comment that I felt was very important, based
16 on the other public comments that we received and what we
17 heard from tonight. I think it was Ms. Garcia who had
18 made some comments about the necessity to give the
19 appearance of impartiality, and obviously because of
20 exactly how we were selected, as being impartial. If Ms.
21 Leoni's firm has never had a map challenged in the State
22 of California, given the number of advocacy groups in
23 this state, then from my perspective, every single one of
24 those maps was more than likely created in an impartial
25 fashion. Thank you.

1 COMMITTEE MEMBER FORBES: Commissioner Blanco.

2 COMMITTEE MEMBER BLANCO: Yeah, I was just
3 trying to refresh my memory about the redistricting
4 experience in the Gibson, Dunn proposal, and - yeah, I
5 have it here - and I remembered making note of this and,
6 actually, I looked up the cases and read them, and so,
7 Mr. Kolkey represented the Governor in the redistricting
8 litigation in '92, and then a companion piece of
9 litigation, one was before the Supreme Court, another was
10 in the Northern District, and then he has represented the
11 Arizona House of Representatives in an appeal to the U.S.
12 Supreme Court. So, you know, the firm does have
13 redistricting experience, you know, when you said that I
14 was trying to recall, but I remember taking note of that
15 because one had more State Voting Rights, one of the
16 partners had more State Voting Rights Act experience, but
17 Mr. Kolkey had the Federal Voting Rights Act experience.

18 COMMITTEE MEMBER WARD: Thank you for clearing
19 that up. So, Mr. Kolkey, then, would be the only Federal
20 Voting Rights Act experience that comes with Gibson,
21 Dunn, is that correct?

22 COMMITTEE MEMBER ANCHETA: No, I don't want to
23 quibble in, but we can talk about does the other firm
24 have any plaintiff-side Voting Rights Act experience, the
25 answer is they have zero. And the Gibson, Dunn firm does

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1 have plaintiff-side litigation experience. So, I don't
2 want to quibble too much, but again, there is a variety
3 of factors we could weigh. I've already stated my
4 concerns and what my preferences are, I think we can go
5 ahead.

6 COMMITTEE MEMBER FORBES: I would - at this
7 point, I would entertain a motion for recommendation to
8 go to the full Commission tomorrow.

9 COMMITTEE MEMBER BLANCO: I have a question for
10 counsel. We're not voting because this is not a voting
11 body, so on a recommendation, what kind of super majority
12 or all those rules when we're - I know, when we're an
13 advisory committee, we're not really voting, but we're
14 either moving or not moving a recommendation to the full
15 Commission.

16 LEGAL COUNSEL MILLER: The Special Majority
17 Rules, as laid out in the statute apply to the full
18 Commission, and there's no analogue to that at the
19 committee level. So, whether you choose to advance a
20 name as a sense of the committee, or on a motion of the
21 committee, I think that what is important is that you be
22 clear about the nature of your recommendation to the full
23 Commission, and that's at your discretion, then, about
24 how you want to bring the clarity around your
25 recommendation.

1 COMMITTEE MEMBER BLANCO: I would, then, let me
2 just float this and see how people feel about this. I
3 don't think that - I mean, three, two, to me, there's no
4 sense of this body, I think that we should just tell the
5 Commission, describe our discussion and say we weren't
6 able to come up with a candidate as they had instructed
7 us to do -

8 COMMITTEE MEMBER FORBES: A consensus
9 candidate.

10 COMMITTEE MEMBER BLANCO: A consensus candidate
11 and, you know, capture our discussion as neatly and as
12 briefly as we can for them, and that's the best that we
13 can do.

14 COMMITTEE MEMBER FORBES: Commissioner Ward.

15 COMMITTEE MEMBER WARD: Thanks. Two things,
16 one, I feel like my concern kind of got dismissed on the
17 panel here. I am trying to make a decision and
18 participate fully with an open mind and my question was
19 sincere with asking about the Federal Voting Rights
20 experience, it matters to me because I understand that
21 we're hiring a Federal Voting Rights Act firm, and I
22 don't think it's nitty gritty or getting lost in that if,
23 in fact, Kolkey is the Federal Voting Rights Act
24 experience on that firm, and we're talking about
25 considering firewalling him -

1 COMMITTEE MEMBER ANCHETA: No, no -

2 COMMITTEE MEMBER WARD: -- either I'm out of
3 it, or that was mentioned earlier as firewalling him -

4 COMMITTEE MEMBER ANCHETA: No, no, and it's not
5 Mr. Kolkey, it's Mr. Brown that litigated on the
6 plaintiff side of at least two Voting Rights Act cases,
7 so I'm referring to him in terms of that firm's plaintiff
8 side experience.

9 COMMITTEE MEMBER BLANCO: My understanding from
10 the application, or whatever it's called, is that Mr.
11 Brown's experience is in the California Voting Rights
12 Act, which is tailored explicitly after the Federal
13 Voting Rights Act. I am personally very familiar with
14 the Act, there are differences in the remedies that the
15 Acts provide. The test for what constitutes a Majority-
16 Minority District, the dilution standards, are very
17 similar, but it is California Voting Rights Act
18 experience, and it's Mr. Kolkey that's worked with the
19 Voting Rights Act -

20 COMMITTEE MEMBER ANCHETA: The Federal Voting
21 Right Act.

22 COMMITTEE MEMBER BLANCO: The Federal - right.

23 COMMITTEE MEMBER ANCHETA: But the California
24 Act is, again, very similar in terms of litigating the
25 cases, procedurally, expert witnesses, etc.

1 COMMITTEE MEMBER BLANCO: He's worked with
2 experts, with racially polarized data -

3 COMMITTEE MEMBER ANCHETA: It's virtually the
4 same.

5 COMMITTEE MEMBER BLANCO: -- he's litigated, I
6 think it was five or six cases, so it wasn't just
7 consulting with clients and giving them advice about what
8 to do, but actual litigation. Does he mention two?

9 COMMITTEE MEMBER ANCHETA: I think two were
10 cited. Again, you may be aware of others, there were two
11 that were cited in their materials, but - well, if there
12 are, I'm not aware of others, but -

13 COMMITTEE MEMBER WARD: That's all I could go
14 by was the materials and, again, being a non-lawyer, like
15 I said, that's why I was asking the questions. I'm not
16 trying to dig my heels in on something. Like I said,
17 what I'm looking for is the best thing for California,
18 and laying that out is - understanding that experience
19 and a track record, and things like that, matter. That
20 was important to me, so my question was - and I'm sorry
21 if it was misunderstood as trying to demean them, I was
22 literally curious because I couldn't - again, being a
23 non-lawyer, that's why I'm asking for your expertise
24 because I didn't see anything outside of Mr. Kolkey was
25 Federal Voting Rights Act, and then I was concerned

1 because, again, we talk about we have five people, so to
2 me we should be able to come up with a recommendation
3 from the panel, I would think, and if we're going to
4 consider this fully, and Gibson, Dunn, particularly,
5 again, I think that his experience counts, but if we're
6 talking about firewalling out the only Federal Voting
7 Rights experience that the firm has -

8 COMMITTEE MEMBER ANCHETA: I think I'm the only
9 one who raised the firewalling question and I think I
10 simply said that I'm happy to advance them with, again,
11 an explanatory letter, or some signal from the firm
12 regarding Mr. Kolkey's - and, again, I didn't have a
13 chance to ask because we ran out of time, but that would
14 be my concern.

15 COMMITTEE MEMBER FILKINS WEBBER: Well, if you
16 still have a question, that's what my concern is because
17 I was shorted on my ability to ask quite a number of
18 questions, as well. And if you're hesitant to vote for
19 Gibson, Dunn as your recommendation, as long as Kolkey is
20 in there, then the only other option is to abstain or go
21 with Ms. Leoni's firm, but be that as it may, I had just
22 a couple of other questions. And it's getting late.
23 Just two points. From my perspective as an attorney,
24 myself, there is a distinct difference as to what is
25 being offered by both of these firms, so if we didn't

1 reach a consensus, given that I am Chair tomorrow, we
2 have an additional hour because we did break out the
3 training, so we have from - technically, it's 1:00 to
4 3:00 that we would be considering as the full Commission.
5 Mr. Ward or myself could present to the full Commission
6 Ms. Leoni's - a summary of Ms. Leoni's presentation, we
7 could even make copies of this for the Commission, do
8 that in a half an hour, and Commissioner Blanco could
9 maybe do the same thing for Gibson, Dunn, and see if
10 that's the - because we could not come to any consensus.
11 But now that I've been talking a lot, I'm blabbering;
12 now, my other point, Gibson, Dunn, if I'm not mistaken,
13 and correct me if I'm wrong, the only firm out of all
14 these candidates that had any pre-clearance experience in
15 working with the Department of Justice was Ms. Leoni. I
16 don't see anything in Gibson, Dunn's resume and
17 submission that gives any indication that they've had any
18 ongoing relationship, or working relationship, either
19 with the Secretary of State in getting together and
20 appropriately preparing our maps for submission to DOJ
21 and helping with the Pre-Clearance, and obviously that is
22 something that is significant overall. So, that might be
23 another factor when we're weighing experience. I don't
24 see it on Gibson, Dunn's side.

25 COMMITTEE MEMBER FORBES: I think there's

1 something, though - I think what's - I mean, I did not
2 take your comments lightly, Commissioner Ward, about
3 experience and relative experience. I think what's
4 missing here, and we just see it differently, is the
5 degree to which the lobbying and perception of it being a
6 Republican firm counter-balances the perhaps greater
7 experience level, with a lot of it at smaller districts,
8 but greater experience, perhaps a greater experience
9 level. And that's what, I mean, I can't get past. You
10 know, so I ask myself, do I think that the other firm
11 will, based upon what they said, and what they presented
12 here, give us a good product that will accomplish the
13 things that we want it to do, and I think it will. If I
14 didn't think it would, then I might change my vote or my
15 opinion, but I think there has to be some ability to get
16 past - see, I don't agree with your premise that the
17 final product - everyone will forget the lobbying aspect
18 because I think both final products will be good. The
19 thing is, I don't think - I think the amount of flack
20 we're going to get by hiring a firm that is a lobbying
21 firm, and lives across the street for the State Capitol,
22 is such that it will hurt the process.

23 COMMITTEE MEMBER FILKINS WEBBER: How can that
24 be true if no one has ever challenged their maps?

25 COMMITTEE MEMBER BLANCO: Can I -

1 COMMITTEE MEMBER FORBES: Because this is a
2 public perception thing, the public doesn't care about
3 that.

4 COMMITTEE MEMBER FILKINS WEBBER: What do you
5 mean?

6 COMMITTEE MEMBER BLANCO: Could I -

7 COMMITTEE MEMBER FORBES: Uh huh.

8 COMMITTEE MEMBER BLANCO: And I wanted to
9 clarify this when I said this earlier about "front page
10 news." To me, it's not about catching flack, even, I
11 mean, we're going to catch flack throughout this process.
12 Everybody has agreed so far that, as important as the
13 maps that we have at the end of the day, that this is
14 also about the process, that one of the things that's
15 important about this Commission is not just the maps that
16 we're going to draw, that are going to improve and
17 hopefully be a more representative, more inclusive, and
18 provide better representation, but the other part of what
19 we're doing here is building trust back up in government,
20 in the fact that, you know, the voters said, "We don't
21 want business being done as usual." I really see
22 everything that we're doing with the public comments,
23 with the posting, with being simultaneously webcast,
24 whatever you call it, as part and parcel of this process
25 as the drawing of the maps, I really do. This is part of

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1 our mission. And to me, it's a fundamental part of our
2 mission, and so when I say something, I don't want
3 something - what worries me is that people will go, "Ugh,
4 it's business as usual." And here we are, about to go
5 out and do presentations, and try to get input, and have
6 people submit stuff to us, and we're trying to get people
7 back into the process that have been out of the process
8 because this has been done behind closed doors for
9 partisan purposes, with incumbents drawing their lines.
10 So, that's what I mean when I say I don't want -- it's
11 not about flack, you guys, you know, I take flack -- it's
12 really about I don't want to lose - we're bringing people
13 along really well here, we've gotten compliments every
14 time that people say, "You're so open, you're doing this
15 well, you're taking our comments seriously, you're so
16 transparent," I do not want to lose that trust. We still
17 have a lot ahead of us and I don't want to lose it.

18 COMMITTEE MEMBER FILKINS WEBBER: The public
19 comments that we received were as to both of these
20 candidates, from the California Democratic Party, for
21 instance, if I'm not mistaken. Again, and they had
22 problems, obviously, with Mr. Kolkey, and they had
23 problems with Ms. Leoni. So, you've got people on both
24 sides of the aisle that are criticizing both of these
25 firms, so the perception is going to be the same from my

1 perspective, whether - despite which one you select. So
2 when you really - and as long as the public recognizes
3 that, and as long as we are in a public hearing, and that
4 transparency is there, recognizing that both of these
5 firms are criticized by the public, and we have to make a
6 choice between these two because we desperately need to
7 get moving, and both of these choices have - I mean, they
8 presented to us very well. Now, the question becomes, is
9 what in looking at your scope of work and you plan, who
10 could best fit the bill? So, again, I don't think in
11 selecting either one of them there is somebody that is
12 going to be upset, and that's going to happen by the
13 conclusion of this week as to everybody we've selected, I
14 suspect. But it is. And so, the perception is going to
15 be the same with either candidate and I strongly suggest
16 that we consider looking at the work plan that you
17 developed and seeing who best qualifies for that, for the
18 best value.

19 COMMITTEE MEMBER FORBES: Commissioner Blanco
20 made a proposal that we simply go to the full Commission
21 tomorrow and say, "We did not reach consensus. On the
22 conversation, we were three to two, you know, in favor of
23 this other firm, but the feelings were strongly held,"
24 and briefly make the presentations, as Commissioner
25 Filkins Webber suggested, and let the whole Commission

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1 comment and decide what they want to do. I mean, was
2 that a fair statement of your proposal?

3 COMMISSONER BLANCO: That is my proposal and
4 they may have, once they - they could have rejected our
5 recommendation, anyway. They might have their own views
6 about the finalists, but that is my proposal.

7 COMMITTEE MEMBER ANCHETA: So, in terms of
8 process, and I'm okay with that, I guess, because we had
9 originally said, if we - and we're advancing one, at
10 least, I don't know if we considered advancing two -

11 COMMITTEE MEMBER BLANCO: No, we had not.

12 COMMITTEE MEMBER ANCHETA: That we would bring
13 a representative of them in. So, I would raise the
14 question, do we -

15 COMMITTEE MEMBER BLANCO: Yeah, we should talk
16 about that because we did say that, but I think all we do
17 on this committee is advise, and we don't, you know, we
18 can't agree on what we would recommend, and I think the
19 final vote was the Commission's, anyway, so the only
20 thing we're not doing is giving them a recommendation.

21 COMMITTEE MEMBER FORBES: Do you want to invite
22 them -

23 COMMITTEE MEMBER FILKINS WEBBER: Well, we did
24 have it down that whomever our recommendation was, I
25 mean, you made this decision -

1 COMMITTEE MEMBER ANCHETA: We didn't think
2 about the split decision.

3 COMMITTEE MEMBER FILKINS WEBBER: But if I can
4 understand it, then that's - then maybe the public knows.
5 So, your intention was to make a recommendation from this
6 committee and that one individual would make a
7 presentation before a vote?

8 COMMITTEE MEMBER BLANCO: Yes.

9 COMMITTEE MEMBER FILKINS WEBBER: Before a
10 vote.

11 COMMITTEE MEMBER FORBES: Right. So the
12 Commission would have an opportunity to sort of meet
13 them.

14 COMMITTEE MEMBER ANCHETA: And they could
15 reject it.

16 COMMITTEE MEMBER FORBES: They could reject it.

17 COMMITTEE MEMBER BLANCO: Yeah. "This is who
18 we're recommending, go at it."

19 COMMITTEE MEMBER ANCHETA: I think we didn't
20 want to have 100 percent responsibility for making a
21 recommendation without the Commission having some
22 additional input from the top candidate. I think that
23 was our reasoning here.

24 COMMITTEE MEMBER FILKINS WEBBER: Then we get
25 back to the fear that we've had previously, that we don't

1 want to reiterate the same thing that has obviously
2 occurred in this Commission, tomorrow afternoon. But if
3 we did invite the candidates back, would you suggest that
4 maybe they present for 10 minutes, 15 minutes?

5 COMMITTEE MEMBER FORBES: Yes.

6 COMMITTEE MEMBER FILKINS WEBBER: I think it
7 would be reasonable to do that, so that the Commission
8 would have an opportunity to at least hear from them.
9 I'm sure that they've obviously heard and might be
10 watching what we're saying now, so then they would
11 probably have an idea of what their highlights would be,
12 and I think certainly it would be fair to the candidate
13 so that none of us could make any misrepresentation
14 regarding their qualifications, as we understand them.
15 We have time for it, as long as we keep them to that 15
16 minutes.

17 COMMITTEE MEMBER BLANCO: They can watch the
18 presentation.

19 COMMITTEE MEMBER FILKINS WEBBER: But there's
20 too much to do between now and then, that's the problem.
21 So, that's what my recommendation -

22 COMMITTEE MEMBER FORBES: I think that's good.

23 COMMITTEE MEMBER FILKINS WEBBER: My
24 recommendation would be to invite Ms. Leoni to come back
25 for 15 minutes, invite Mr. Brown and Mr. Kolkey, maybe

1 not necessarily their associates, but at least the two of
2 them, or whomever they wish to bring.

3 COMMITTEE MEMBER ANCHETA: Yeah, and I'm sure
4 they're available -

5 COMMITTEE MEMBER BLANCO: Well, they should
6 have made themselves available -

7 COMMITTEE MEMBER FORBES: Because we picked
8 them, they would be expected to show up tomorrow.

9 COMMITTEE MEMBER FILKINS WEBBER: Exactly,
10 because had they gone through the process, they would
11 have -

12 LEGAL COUNSEL MILLER: Mr. Kahn is available
13 tomorrow.

14 COMMITTEE MEMBER FILKINS WEBBER: And he is?

15 LEGAL COUNSEL MILLER: One of the associates.

16 COMMITTEE MEMBER FILKINS WEBBER: And he's the
17 only one that answered on the prisoner issue.

18 LEGAL COUNSEL MILLER: He answered on the
19 prisoners question, that is correct.

20 COMMITTEE MEMBER BLANCO: He is the only one
21 available tomorrow?

22 LEGAL COUNSEL MILLER: That's my understanding.

23 COMMITTEE MEMBER BLANCO: I would not agree to
24 that. I think that the Commissioners should have the
25 same benefit of what we had, I do, unless we just have

1 everybody view the materials. I wouldn't -

2 COMMITTEE MEMBER FORBES: Well, if you can't
3 have an effective presentation, it seems to me we ought
4 to just simply make - Commissioner Ward.

5 COMMITTEE MEMBER WARD: Thanks. There are a
6 lot of concerns here. First of all, though, if we can't
7 trust one member of the firm to simply make a
8 presentation to the Commission representing the firm, I
9 mean, we're going to be counting on these people to be
10 advising us on the Federal Voting Rights Act, and things
11 like that, so certainly I think everyone who presented
12 before us, in person, for sure, was certainly competent.
13 So that's not a concern, I don't think a concern we
14 should be worried about, about what member of what firm
15 actually comes to make the presentation. And the only
16 other thing I'm concerned about is, again, understanding
17 the gravity of this and the full Commission's inability
18 to have sat here and gone through everything, I just am
19 concerned that 15 minutes, especially considering some of
20 the groundwork that was laid prior to this, is not going
21 to be a fair and balanced approach of giving the
22 Commission an opportunity.

23 COMMITTEE MEMBER BLANCO: Yeah, but that's
24 really crazy to have 15 minutes.

25 COMMITTEE MEMBER ANCHETA: Yeah, I'm not going

1 to raise a concern regarding Mr. Kolkey.

2 COMMITTEE MEMBER FORBES: I'm sorry?

3 COMMITTEE MEMBER ANCHETA: I'll drop my - any
4 concern - there's no need for - I don't feel that Mr.
5 Kolkey or the firm would need to write a letter at this
6 point, so -

7 COMMISSIONER GALAMBOS MALLOY: A clarification
8 from Mr. Claypool. What is the turnaround time for us to
9 have access if the Commissioners were instructed to watch
10 the full presentation, the full interview? My
11 understanding is there is a delay for us to have access
12 to the transcripts. Is it 24 or 48 hours? I'm trying to
13 remember. And my understanding is that we chose to rely
14 on livestream and that video was available only in the
15 instance that our venue could not provide livestream,
16 which would mean that if we were to require the
17 Commissioners to watch the interviews, I mean, the only
18 option they would have is to read the transcripts. Is
19 that correct?

20 MR. CLAYPOOL: I am not sure. I believe that
21 that may be correct, but I don't know what the turnaround
22 time is, it hasn't been an issue.

23 COMMITTEE MEMBER BLANCO: Right, right, right.

24 COMMITTEE MEMBER ANCHETA: The transcripts
25 certainly are not going to be available.

1 COMMITTEE MEMBER BLANCO: No.

2 MR. CLAYPOOL: And you're right, the
3 transcripts will absolutely not be available, so it would
4 have to be livestream. They're trying to confirm noon
5 tomorrow for the video.

6 COMMITTEE MEMBER FORBES: Okay. That would be
7 a two-hour time block to watch them both.

8 COMMITTEE MEMBER BLANCO: It's worth it. I
9 think it's worth it.

10 COMMITTEE MEMBER FORBES: I just make that
11 observation, that's all.

12 COMMITTEE MEMBER ANCHETA: If we can get that
13 available and reserve those for the Commissioners who
14 weren't listening or watching -

15 COMMITTEE MEMBER FORBES: So, then, the
16 proposal is that we'll say that we did not reach
17 consensus, but we have - assuming we do - we have the
18 videos available - we'll have to play the videos for you
19 and you can hear the presentation, and then we'll have
20 the discussion as we need, based on the presentation, and
21 they should also have the papers - the paper stuff.

22 COMMITTEE MEMBER ANCHETA: Right. I thought we
23 were going to provide that -

24 COMMITTEE MEMBER FORBES: Okay, I just wanted -

25 COMMITTEE MEMBER BLANCO: They have the

1 underlying materials.

2 COMMITTEE MEMBER ANCHETA: The materials,
3 right.

4 COMMITTEE MEMBER FORBES: And then we'll go
5 from there.

6 COMMISSIONER GALAMBOS MALLOY: I just have a
7 question, though. Would it be out of line to request
8 that we just modify the agenda slightly, task the
9 Commissioners within the evening of watching the
10 information? Again, this is more of a question for you,
11 Madam Chair, in regards to actually taking up two hours
12 of our day tomorrow to watch it?

13 COMMITTEE MEMBER WARD: And I just want to tack
14 on to that, Madam Chairman, again, as the non-lawyer on
15 the panel here, and I don't mean to wear that out, it's
16 just that the rest of the Commission is that way, and the
17 nature of these interviews are often technical in nature,
18 and I've had the luxury of being a part of discussions
19 with you now over the course of several hours and have
20 become up to speed on some things, and way behind, still,
21 on others. And I - just speaking for the rest of the
22 Commission who doesn't have the experience of your
23 experience, I don't think just watching the interviews is
24 going to put a lot of what we've come to understand after
25 them, I mean, I've had to ask clarifying questions, and

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1 they won't have the opportunity to do that, things like
2 that. I just don't think that gets us to what we're
3 looking for, a clean clear process that - I think it's
4 going to lead to a ton of questions and it's going to
5 lead to hours of issues that come from a lack of
6 understanding, actually, and things like that because,
7 again, I can speak for myself that there were several -
8 you know, as you patiently go through the hours, we start
9 to understand and piece it together, but the rest of the
10 Commission is not going to have that luxury. So, I would
11 just, again, speaking for the non-experienced lawyers
12 [sic], I think that just assessing that in-person
13 interview is not going to give a fair grasp of what our
14 Voting Rights and what we're looking for from our Voting
15 Rights attorney to make a decision like this on.

16 COMMITTEE MEMBER ANCHETA: I'm not sure what
17 you're suggesting, though.

18 COMMITTEE MEMBER BLANCO: We have a training
19 tomorrow, don't we?

20 COMMITTEE MEMBER FILKINS WEBBER: No.

21 COMMITTEE MEMBER BLANCO: No training at all?

22 COMMITTEE MEMBER ANCHETA: On the Voting
23 Rights?

24 COMMISSIONER BLANCO On the Voting Rights.

25 COMMITTEE MEMBER ANCHETA: No, that's the

1 following week. That's your meeting. That's your chair.

2 COMMITTEE MEMBER BLANCO: Sorry.

3 COMMITTEE MEMBER ANCHETA: Well, Commissioner
4 Ward, I'm not sure what you're suggesting though. You're
5 sort of suggesting we just sort of start from scratch
6 again - but I'm not sure.

7 COMMITTEE MEMBER WARD: Well, I'm suggesting we
8 find a way to come to consensus and make the
9 recommendation to the full panel.

10 COMMITTEE MEMBER FORBES: I think, I mean, I
11 think we're really offering ourselves two choices. I
12 think we either say we did reach consensus, here is the
13 reason one person was recommended, and here's the reason
14 the other person was recommended, and that just comes
15 from us, that's option 1. Option 2 is we did not reach
16 consensus, the video is available, either we can watch
17 tomorrow, or we can re-agendize the discussion on the
18 Voting Rights Attorney for Saturday and say, you know,
19 watch this between now and Saturday, the interview.

20 LEGAL COUNSEL MILLER: I would suggest to the
21 Commission, there is a two-hour slot reserved on Saturday
22 expressly for the purpose of selecting the Voting Rights
23 Act lawyer. And given the challenge of the following
24 day, which is the selection of the Line Drawer, I think
25 that it may be difficult for the Commission's business to

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1 accomplish both of those on Saturday, and we do have at
2 least a technical issue about changing the agenda for a
3 decision on an important matter. If it was a smaller
4 matter, I think that might make sense, but I am concerned
5 about the notice requirement, given the nature of the
6 decision, the fact that it is teed up for Saturday.

7 COMMITTEE MEMBER FILKINS WEBBER: If I may,
8 Chair?

9 COMMITTEE MEMBER FORBES: Uh huh.

10 COMMITTEE MEMBER FILKINS WEBBER: I certainly
11 concur with Mr. Miller's suggestion primarily because of
12 the agenda, but I like Stan's Option 1, okay, the entire
13 purpose of this Commission developing advisory committees
14 is so that we don't go back to the full Commission and
15 have them do everything that we've just spent hours
16 doing, and certainly don't waste the time of our fine
17 candidates. So, I would opt for Stan's proposal number
18 one, which was to summarize where we were at, that we
19 could not reach consensus, and then leave it to the full
20 Commission to make a determination if they want to see -
21 I mean, certainly those on this committee that support
22 whatever the firm is could make their brief, like I said,
23 15-minute presentation to the full Commission, 15-minute
24 presentation -- maybe Commissioner Blanco, for Gibson,
25 Dunn, and Commissioner Ward or myself for Nielsen. And

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1 if there are far too many questions, or it's just not
2 leading anywhere, because obviously this Commission has
3 also reviewed the material. I know Ms. Galambos Malloy
4 has because she had asked me what to bring. She didn't
5 want to bring *all* the paperwork with her. So, that would
6 be my suggestion, leave it up to the Commission to the
7 extent that they desire to review anything, then we can
8 take a look, but we can't postpone anything until
9 Saturday.

10 COMMITTEE MEMBER FORBES: Okay.

11 COMMITTEE MEMBER FILKINS WEBBER: If the video
12 is available by noon, we would know probably by break,
13 and if it's - we don't know, but we'll know tomorrow, but
14 if it is then we'll know by noon and they could, you
15 know, we could better gauge it from that point whether we
16 cut into our two-hour slot time, but the vote is going to
17 happen tomorrow if the full Commission agrees, but we
18 can't move it to Saturday.

19 COMMITTEE MEMBER FORBES: Okay. Commissioner
20 Ward.

21 COMMITTEE MEMBER WARD: Thank you, Chairman.
22 Again, I love the creative problem solving, this is
23 tough, and I'm sure it gets tougher. It sort of sounds
24 like a Perry Mason episode to me almost now at this
25 point, you know, I feel like we're going to be going into

1 a Commission meeting and have a trial. And you know,
2 again, I just - I don't know that that's the effective
3 way to do this decision. We have the benefit of having
4 been a part of this process now, there's a lot of
5 information that's been considered and taken in, and
6 bantered about, and I think that it's our responsibility
7 to kick this around. I mean, unless we're just digging
8 in our heels, and just saying, "This is how it is, end of
9 story," fine. But I mean, I've worked with you all, I
10 know that's not what we do. I know I've made the
11 statement, like I said, I don't know anybody, I don't
12 know any of these firms, I don't know anything about
13 them, but I've expressed what's important to me. I'm
14 willing to change, but address the concerns for me, help
15 me understand, help me see where - I just don't feel
16 we've totally done our duty here, I feel like we've come
17 to a decision on how we feel initially and that's where
18 it sits. I think that we can do better and I think we
19 should take some time to try that.

20 COMMITTEE MEMBER FORBES: Commissioner Ancheta.

21 COMMITTEE MEMBER ANCHETA: I don't see - I
22 don't sense any changes at this point. We can talk some
23 more, but I don't know that it will necessarily be that
24 productive, maybe it would, but I don't sense that and I
25 think we might just want - I support Commissioner Forbes'

1 suggestion that we -

2 COMMITTEE MEMBER FILKINS WEBBER: I have one
3 further comment.

4 COMMITTEE MEMBER FORBES: Yes, uh huh.

5 COMMITTEE MEMBER FILKINS WEBBER: Each of us
6 was also asked, I suspect, during our interviews, about
7 the ability to compromise and to work with each other and
8 recognizing the strengths and weaknesses that we all
9 bring to this Commission, in total. And we've worked
10 with each other long enough that we have developed a
11 sense of what we trust in each other, what we might
12 question in each other, as well, especially what some
13 people eat, but other than that - Mr. Ward might very
14 well - Commissioner Ward might very well have a good
15 point and it might behoove us to take five minutes to
16 consider what we were asked during our interviews and the
17 obligations that we said that we would meet in
18 considering a compromise, in considering to work together
19 as a Commission for what our sole purpose is, which is
20 for the benefit of the citizens of the State of
21 California. And that's what I would suggest that maybe
22 we do consider what Mr. Ward is saying, to see if we can
23 reach a consensus to come up with a compromise that we
24 could propose to the Commission, so that we could say
25 that we actually did our job.

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1 COMMITTEE MEMBER FORBES: Do you want to
2 comment?

3 COMMITTEE MEMBER ANCHETA: Well, I want to take
4 a five-minute break. I think there are simply times
5 that, notwithstanding all the attempts to reach
6 consensus, where Commissioners - and whether it's this
7 setting or in the full Commission - where there will be
8 disagreement and you call the question, or you say that's
9 where we are.

10 COMMITTEE MEMBER FILKINS WEBBER: We took a
11 break prior to voting for you and -

12 COMMISSONER ANCHETA: No, and that's fine -

13 COMMITTEE MEMBER FORBES: We'll take a break
14 until five after nine and come back and, at that point, I
15 would encourage us to be swift one way or the other
16 because I think further conversation is probably not
17 going to persuade anybody, but anyway, so we'll take a
18 break for eight minutes.

19 (Off the record.)

20 (Back on the record.)

21 COMMITTEE MEMBER FORBES: After the break. Let
22 me just ask, does anybody have an epiphany that they'd
23 like to express? My sense is we're essentially where we
24 were when we took the break, so I think what we need to
25 do is decide how we're going to handle this tomorrow.

1 The proposal had been made that one Commissioner will
2 make like a 10-minute presentation -- first of all, the
3 statement that we reached an impasse, we were 3:2 split,
4 but it was an impasse, functionally, we did not reach
5 consensus -- then, we would have two, from two different
6 Commissioners, 10-minute presentation as to what they
7 view as the strengths and weaknesses of the candidate
8 that they favored. And then open it up to the Commission
9 and say that the video is available, if you want to see
10 the interview, we don't have to, but it's available. You
11 don't want to do that?

12 LEGAL COUNSEL MILLER: I think it's difficult
13 to make a video option in the context of our agenda.

14 COMMITTEE MEMBER FORBES: Okay.

15 LEGAL COUNSEL MILLER: And while I also think
16 there's a lot of advantage to viewing the video, the
17 problem is both of those presentations run about an hour
18 and we have about an hour, and our experience is that
19 it's going to require some discussion after that.

20 COMMITTEE MEMBER FORBES: Okay, forget the
21 video.

22 LEGAL COUNSEL MILLER: So, a similar approach
23 might be - and I'm just hopeful that - and the reason I
24 suggest this is it might make it a little bit less of a
25 debate and easier to resolve, if instead of a pro/con

1 kind of thing, one Commissioner were to summarize the
2 discussion and advance, as objectively as possible, what
3 the differences were and what the strengths were
4 perceived by those who favored one firm or another, and
5 if it's possible for one person to do that I think it
6 just makes the decision a little bit less contentious
7 before the full Commission than if we do it more in a
8 debate style.

9 COMMITTEE MEMBER FORBES: Commissioner Ancheta,
10 could you do that, if we wanted to do that?

11 COMMITTEE MEMBER ANCHETA: I could do that if
12 that's what we want to do, I could.

13 COMMITTEE MEMBER FORBES: Okay, I just wanted
14 to identify someone so we could -

15 COMMITTEE MEMBER ANCHETA: Well, so let me just
16 say - so this is part - we have a 15-minute report slot,
17 right?

18 COMMITTEE MEMBER FILKINS WEBBER: No, this is
19 different.

20 COMMITTEE MEMBER ANCHETA: We don't want to do
21 it during the report slot, then.

22 COMMITTEE MEMBER FILKINS WEBBER: Well, I had
23 already sent you an email on that.

24 COMMITTEE MEMBER ANCHETA: You did?

25 COMMITTEE MEMBER BLANCO: You did. Well, just

1 say what it was.

2 COMMITTEE MEMBER FILKINS WEBBER: I can't
3 remember. Just to refresh my memory.

4 COMMITTEE MEMBER BLANCO: I'm trying to find it.

5 COMMITTEE MEMBER FILKINS WEBBER: Do you
6 remember what it was, Mr. Miller? I made an inquiry of
7 what the Legal Advisory Committee would be providing in
8 the report back at 11:30 because Legal was technically
9 doing their - it was something that you had discussed in
10 Legal Advisory.

11 LEGAL COUNSEL MILLER: This is the only agenda
12 that I recall -

13 COMMITTEE MEMBER FILKINS WEBBER: No, no, no,
14 I'm sorry, we're taking up probably unnecessary time. On
15 the agenda for tomorrow, Legal Advisory Committee is
16 scheduled for a report back at approximately 11:30 to
17 11:45. My question was, we are coming back at 1:00 and
18 Legal Advisory is technically reporting back on the
19 selection of VRA counsel, so I had suggested, you know,
20 what that time - I had made inquiry, and he kicked it to
21 you, Commissioner Blanco, as to whether there would be
22 some type of particular discussion on something else, it
23 might have been the budget issue, it might have been cost
24 issue, I'll look it up.

25 COMMITTEE MEMBER ANCHETA: [Inaudible]

1 [02:02:11].

2 COMMITTEE MEMBER BLANCO: You do?

3 COMMITTEE MEMBER ANCHETA: Well, I'm only
4 asking so I know how much time I have to say and what I'm
5 going to say, but if we're still having that 15-minute
6 slot, I can report back what has happened in the 15-
7 minute slot. I can't necessarily do the pros and cons
8 thing in the 15-minute slot, but I can at least frame the
9 issue so that we will, after lunch, I guess, or whatever,
10 at 1:00, I will present, along with other fellow members
11 what we -

12 COMMITTEE MEMBER FILKINS WEBBER: That might
13 actually be a good idea because, then, to the extent in
14 which any Commission member did not have an opportunity
15 to focus on - because they're at dinner right now,
16 they're not watching us. Anyway, then we can provide
17 them focus as to and identify the actual firms so, then,
18 they can have an opportunity to review the materials
19 again. And they can do so on their own - at lunch - and
20 then come back at 1:00. So, that might be a good option.

21 COMMITTEE MEMBER ANCHETA: Yeah -

22 COMMITTEE MEMBER FILKINS WEBBER: Maybe that's
23 all that you should focus on in the report back is my
24 suggestion.

25 COMMITTEE MEMBER ANCHETA: Yeah, I can do that,

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1 and is that "period?" Or is there something else after
2 that?

3 COMMITTEE MEMBER FORBES: "This is what
4 happened."

5 COMMITTEE MEMBER BLANCO: And then what's the
6 next?

7 COMMITTEE MEMBER ANCHETA: Yeah, so what's
8 after that? It is me? Or am I off the hook at that
9 point? What happens at 1:00?

10 COMMITTEE MEMBER FILKINS WEBBER: Well, I can -
11 if there isn't any other discussion, I mean, we're going
12 to get close on time, unless you want to finish the
13 discussion with the rest of the advisory committee, to
14 the extent which we have anything to add to what you had
15 said, or -

16 COMMITTEE MEMBER ANCHETA: I'll let you guys
17 chime in, I don't think it's going to take 15 minutes.

18 COMMITTEE MEMBER FILKINS WEBBER: -- unless you
19 don't want to.

20 COMMITTEE MEMBER BLANCO: No, no, I'm just
21 trying to envision, it's easy to say, but what are we
22 going to do about the selection?

23 COMMITTEE MEMBER ANCHETA: It's 1:00 to 3:00.

24 COMMITTEE MEMBER FORBES: He's made the pitch,
25 I mean, he's described what's happened and -

1 COMMITTEE MEMBER FILKINS WEBBER: Don't we open
2 it up for discussion to the rest of the Commission?

3 COMMITTEE MEMBER FORBES: They may just ask
4 questions of us.

5 COMMITTEE MEMBER FILKINS WEBBER: They may very
6 well.

7 COMMITTEE MEMBER ANCHETA: During the 15
8 minutes? Or -

9 COMMITTEE MEMBER FORBES: No, after 1:00.

10 COMMITTEE MEMBER FILKINS WEBBER: Which is a
11 two-hour time slot that we have allotted and agendized
12 appropriately for the discussion, this entire discussion,
13 and a vote.

14 COMMITTEE MEMBER ANCHETA: Okay, well, that's
15 fine. I just wanted to know what I need to prep for
16 tomorrow.

17 COMMITTEE MEMBER FORBES: We should suggest -
18 because I think one of the questions, I would be
19 surprised if we don't asked the question, "Would you each
20 state why you had your position?" I would expect that to
21 be a question tomorrow. I would encourage us and I would
22 encourage the Chair to give us three minutes - or two
23 minutes, I mean.

24 LEGAL COUNSEL MILLER: I think that's the best
25 suggestion, rather than delegating it to either one

1 Commissioner or a debate between two, if each were to
2 summarize their views, that is a way to expeditiously
3 cover the field and it's important to give the Commission
4 a context from which to begin because basically they have
5 the resumes from both firms, which can be a certain
6 amount of information. It's a good idea to get those -
7 we'll make copies and get those back in the morning for
8 everyone. But perhaps that short summary of each
9 Commissioner's individual view would be the easiest way
10 to provide a breadth of context for the full Commission,
11 then, to make a determination.

12 COMMITTEE MEMBER FORBES: I think that's -

13 COMMITTEE MEMBER BLANCO: I think that's great.
14 I'm not comfortable with somebody having to represent
15 somebody else's presentation or -

16 COMMITTEE MEMBER ANCHETA: Okay, so I'll do the
17 committee report, the normal 15-minute report, and then
18 that - I agree, we can have a short commentary for each
19 Commissioner, and then I'm sure there will be lots of
20 questions, and I'll let Commissioner Filkins Webber
21 moderate the discussion as Chair.

22 COMMITTEE MEMBER FILKINS WEBBER: That's
23 difficult enough and then I have opinions, but I will act
24 accordingly. Yeah, and the email that I had sent was
25 whether in the report back was the not to exceed issue,

1 but that will probably follow this discussion if we need
2 to address -

3 COMMITTEE MEMBER ANCHETA: I'll report that as
4 part of it. But I think that should be the subject of
5 more discussion and we obviously have to have the budget
6 and other folks will chime in, I am sure.

7 COMMITTEE MEMBER BLANCO: Right.

8 COMMITTEE MEMBER FORBES: Okay, so we have a
9 plan?

10 COMMITTEE MEMBER BLANCO: Well, so we do this,
11 and then what? All of us presents what happened and our
12 views and -

13 COMMITTEE MEMBER FORBES: And then it's -

14 COMMITTEE MEMBER FILKINS WEBBER: We go to
15 lunch.

16 COMMITTEE MEMBER FORBES: No, no, this is after
17 lunch.

18 COMMITTEE MEMBER FILKINS WEBBER: You mean at
19 1:00?

20 COMMITTEE MEMBER BLANCO: Yeah.

21 COMMITTEE MEMBER FILKINS WEBBER: Then you call
22 for a vote.

23 COMMITTEE MEMBER WARD: You said it's time-
24 capped commentary, right?

25 COMMITTEE MEMBER FORBES: Right.

1 COMMITTEE MEMBER WARD: Well, how long was
2 that?

3 COMMITTEE MEMBER FORBES: Oh, two or three
4 minutes because I think we don't want to belabor the time
5 because we want to leave it for the other Commissioners
6 to ask us whatever -

7 COMMITTEE MEMBER ANCHETA: Yeah, and there will
8 probably be some -

9 COMMITTEE MEMBER FORBES: And truthfully, we
10 probably don't need more than about two minutes to say
11 what we want to say.

12 COMMITTEE MEMBER ANCHETA: Yeah.

13 COMMITTEE MEMBER BLANCO: And we should really
14 insist that they take that time at lunch to read every -
15 the two finalists' packages closely so that they can -

16 COMMITTEE MEMBER FILKINS WEBBER: Well, maybe
17 ask staff to direct an email to them this evening to just
18 give them a heads up that it appears that there might be
19 a recommendation for two firms, or there are two firms
20 remaining, please review the two candidates, and then if
21 they get to it, they get to it, if not, they can at least
22 review it again by lunch. Thank you.

23 COMMITTEE MEMBER FORBES: Do we have a plan?

24 COMMITTEE MEMBER BLANCO: Yeah.

25 COMMITTEE MEMBER FORBES: Okay, well, before we

1 adjourn, I do want to invite the public to have another
2 opportunity to address us if they so choose. Seeing
3 none, any further Commissioner comments? Then this
4 meeting is adjourned.

5 (Off the record.)

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