

BEFORE THE
CALIFORNIA STATE AUDITOR
BUREAU OF STATE AUDITS

First Meeting of the First Eight Commissioners
Citizen's Redistricting Commission

555 Capitol Mall, 5th Floor
Sacramento, CA

WEDNESDAY, DECEMBER 1, 2010
9:30 A.M.

Reported by:
Peter Petty

APPEARANCES

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Peter Yao, Chair
Cynthia Dai, Vice Chair
Vincent Barabba
Jodie Filkins Webber
Stanley Forbes
Connie Galambos Malloy
Elaine Kuo
Jeanne Raya

STAFF:

Steven Russo, Counsel for the first eight Commissioners
Patti Alverson, Secretary to the first eight Commissioners

PRESENTERS:

Justin Levitt, Loyola Law School
Karin Mac Donald, UC Berkeley, Center for Research SD&EARC
Nicole Boyle, UC Berkeley, Center for Research SD&EARC

PUBLIC:

Jim Wright

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P R O C E E D I N G S

DECEMBER 1, 2010 9:30 A.M.

CHAIRMAN YAO: Good morning, everybody. The time is 9:30 and we're going to call this meeting to order. First of all, I want to extend a personal thanks to the Audit Department for holding off the rain for another day, it's a beautiful day outside.

The first order of business is comments from the public on items not on the Agenda. Anybody from the public that would like to address the Commission at this point in time? All right, seeing no one approaching the podium, I will proceed to the agenda Item 11. This is training and orientation for the first eight members on the legal concepts that the Citizens Redistricting Commission must apply in its work and the role that the Commission will perform.

MR. LEVITT: Good morning, Mr. Chair, Commissioners. Thank you very very much for the invitation to be here and to speak with you today. The Auditor's Office and you all have asked me to come up in order to help give an overview, and this will be an overview only of the legal tasks that you have in front of you, the criteria by which districts are to be drawn, and how to know where to draw the lines, and particularly, they've asked that I focus on the qualities that you might look for in order to complement

1 your own very diverse and very impressive backgrounds in
2 rounding out the Commission, to focus not on how to know
3 where to draw the lines for its own sake, but on the sorts
4 of qualities that you'll need in order to accomplish the
5 tasks before you, and therefore the sorts of qualities you
6 might want to look for in selecting the additional six
7 Commissioners to join you. There is plenty to cover and I
8 hope that you will feel free to ask questions whenever and
9 however you wish, I'm here for you, and so please interrupt
10 me whenever something is unclear, or whenever you have a
11 question, and I'll be more than happy to attempt to answer.
12 I've planned about just over an hour, I would say an hour
13 and 15 minutes, an hour and a half, of presentation, but I
14 could certainly go whatever speed you wish, and my time is
15 yours. So, with that...

16 I also want to say just as a background that I have
17 reviewed each of your backgrounds and you are all
18 exceedingly accomplished. I have pitched this with as
19 little familiarity with redistricting, in particular, and so
20 I have presumed that none of you have performed
21 redistricting before, even though you may well have been
22 observers of the process, some of you are more former active
23 observers than others. And even though I know you are all
24 now getting exceedingly acquainted with the redistricting
25 process and what it entails, I will speed through the

1 extremely basic information, but I hope to cover it just so
2 that I can be sure that all of you have the same
3 information, the same baseline proceeding forward.

4 My name is Justin Levitt; I am an Associate
5 Professor of Law at Loyola Law School in Los Angeles. This
6 presentation is very similar to one that I gave in February
7 to the members of the Auditor's Review Panel, who were
8 involved in selecting the pool that became you, and that
9 presentation was compiled when I was with an institution
10 called the Brennan Center for Justice in New York, and so I
11 want to credit them fully with much of the work that went
12 into this, even though I also want to be clear that I don't
13 speak for the Brennan Center anymore, I am here in my own
14 capacity as a Law Professor and observer of the
15 redistricting process.

16 As I mentioned, I've tried to tailor the
17 presentation to your task in selecting the remaining
18 Commissioners, those who will join your number for the year
19 ahead - for years ahead, as you heard yesterday. I have
20 also updated this presentation, it is not exactly the same
21 as I attempted to reflect Proposition 20, which, as you all
22 know, passed this last November and affects your mission
23 quite a bit. I'm going to, with your permission, focus on
24 the laws that you, the Commissioners, and your fellow six,
25 will need to apply in order to let you assess the traits

1 relevant to your final selection of individuals. I'm going
2 to be very specific to laws governing California
3 redistricting, for that is your task, I'm not going to talk
4 broadly, unless you wish me to, about laws that are in place
5 in other parts of the country. I'm going to be specific to
6 State and Federal Districts because that is what you are
7 tasked with. Some of you will be familiar, I know that some
8 of you are elected officials from localities, some of you
9 may be familiar with local redistricting. There are
10 different rules in some circumstances for local
11 redistricting and I'm not going to cover those here, I'm
12 focusing on, really, the task that you all have without
13 putting you too terribly much to sleep, focusing on your
14 tasks in designing State and Federal Districts. And I'm
15 going to try to cover -- I know that there are some
16 exceedingly accomplished attorneys among you, I know that
17 not everybody likes it when attorneys talk to them, so I'm
18 going to try and cover the legal requirements and concepts
19 without using an exceptional amount of legal jargon. And
20 finally, though I was at an advocacy center when I had given
21 the first presentation in February, I also know the
22 difference between describing the law and advocating for the
23 law, I'm going to hold myself very strictly to describing
24 what the law actually requires. And that's the conversation
25 that I hope we'll be able to have.

1 In the spirit of keeping this basic, I'm going to
2 try to regress to fourth grade journalism and cover really
3 the basic questions. I want to start with why, just because
4 I think it provides background for why you all are here and
5 what it is you were doing when you redistrict, why this
6 concept takes place at all. Very quickly, redistricting
7 happens because population moves, and when populations move
8 existing districts, the places where we elect all of our
9 representatives, where once there were an equal number of
10 people, become lopsided over time, and certainly over the
11 course of a decade, population moves enough that some
12 districts become quite large compared to other districts,
13 which are comparatively smaller.

14 In 1962, the Supreme Court, in a series of cases
15 following on 1962, the Supreme Court decided that it was
16 unconstitutional to allow this lopsided representation and,
17 in a series of cases known colloquially as the One Person,
18 One Vote cases, although that is really a misnomer, they
19 have to do with representation and not strict voting power,
20 the Supreme Court decided that districts have to have
21 roughly equal population, and so, every 10 years, there is
22 now a Constitutional command to redraw district lines, and
23 as one of you is quite familiar, following the Census every
24 10 years, states, federal entities, and local entities
25 redistrict, they redraw the district lines to ensure equal

1 population or roughly equal population.

2 Where are the district lines drawn? What are the
3 actual rules for redrawing districts? I want to start with
4 Federal law, these are laws that are also reflected in
5 Proposition 11 and Proposition 20 in the California
6 Constitution and in California Government Code that you all
7 are tasked with following. In some cases, they are
8 expressly referred to in California law, but these are
9 mandates that are in place across the country, including
10 California. The first is equal population, the reason why
11 redistricting happens. Your standards became different in
12 November when you were asked to take on Congressional lines,
13 as well as State Senate, State Assembly, and Board of
14 Equalization lines. You inherited two different standards
15 for equal population, and this is important to keep in mind;
16 for Congressional lines, for Federal lines, the Supreme
17 Court mandate, also reflected in the California
18 Constitution, is that the lines be drawn so that the
19 population is equal, as nearly as is practicable. And this
20 means a good faith effort to achieve precise mathematical
21 quality. Now, as some of you know quite well, the Census
22 Bureau that is delivering you your population numbers
23 counts, or attempts to count, every person in the country,
24 but it does so in aggregate blocks, census blocks, and
25 census tracts, and it may not be practicable to literally

1 achieve plus or minus one person in each district, in each
2 Congressional district, based on disparities in the number
3 of people within an aggregate census block, that is, there
4 may just be a block of 10 people, or 20 people, and you
5 won't be able to drill down deeper than that, you won't be
6 able to divide that block in order to achieve precise
7 mathematical equality. But the mandate is that you try, and
8 in several states they have been successful in doing so by
9 adding some census blocks here and taking some census blocks
10 away there, and they've been able to achieve actual precise
11 mathematic equality. I will apologize in advance for the
12 fact that, by presenting in black slides, white text on
13 black slides, normally it pops better for you to see, but I
14 understand that it's also quite difficult for you to see
15 your own notes when the lights suddenly go black.

16 So, Congressional lines, as I mentioned, really have
17 to try to get to precise mathematical equality. That's not
18 the standard for State Legislative lines, and lines for the
19 Board of Equalization. Here, the Supreme Court's standard,
20 also reflected in the California Constitution, is that the
21 population be reasonably equal in each district. And that
22 generally means that you are permitted up to a 10 percent
23 difference between the most populated district and the least
24 populated district if there is a legitimate reason for that
25 difference, if you are attempting to accomplish other things

1 like -- we'll talk about each of these in turn -- preserving
2 communities, preserving municipal boundaries, and other
3 boundaries like attempting to make sure the population that
4 is close to each other is collected in the same district.
5 You are allowed some deviation from precise mathematical
6 equality in designing State, Legislative, and Board of
7 Equalization Districts. And that is important because, if
8 it suits other criteria that you are called upon to apply,
9 if, in fact, you would be able to satisfy other measures by
10 refraining from drilling down to a strict mathematical
11 measure of equality, that's something that you really should
12 do because this criterion allows you latitude in order to
13 accomplish other objectives. And I mention that
14 specifically because, well, as I'll mention in a moment, you
15 will want to be comfortable with, and you will want to
16 choose other Commissioners who are comfortable with, that
17 degree of flexibility, rather than requiring strict
18 population equality of every district in California. You
19 will want to look for Commissioners who will be sufficiently
20 flexible to use latitude that you're literally permitted.
21 That is, just because you can drive down to mathematical
22 equality, it does not necessarily mean that you should.
23 And, in fact, the law directs you otherwise for State
24 Senate, State Assembly, and Board of Equalization Districts.

25 How does this work out in practice? That's

1 relatively straightforward -- and I know that many of you
2 are up to math far more complicated than this, because I'm a
3 lawyer this is about the limit that I can handle -- when you
4 are designing your districts, you will go through the
5 population in each district, find the total population in
6 California, which the Census will give you at some point in
7 late February or early March if you're lucky, in late March
8 if you're late, if you're not lucky, divide the total number
9 of districts to get an ideal, and then calculate a deviation
10 for each district. And what you're looking for is to ensure
11 that districts -- the largest district and the smallest
12 district, here, Districts 4 and 9 -- and when I turn into
13 red print, boy, it really gets hard to read. District 4 is
14 the smallest, District 9 is the largest, and together that
15 deviation is going to exceed 10 percent, and that should be
16 a warning sign. If the total deviation is below 10 percent,
17 and it exists for a good legitimate reason, in order to
18 preserve other objectives, then you've met your mandate at
19 least for State Assembly and State Senate, and Board of
20 Equalization seats, in terms of equal population.

21 What does this mean for the Commissioners who will
22 join you and what you might be looking for in your task of
23 selecting an additional six? And I should mention that
24 these -- I will sum these qualities up at the end, but these
25 are certainly some of many, there is much more to consider,

1 Commissioners will need to do some basic math or review the
2 basic math with staff that you hire, you will need to
3 understand maps of population data so as to be able to
4 adjust the Districts, as necessary, if you are over or
5 under, you need to know where that population is going to
6 come from or go to, and this last point, I think, is
7 especially important, is that you'll need comfort with
8 achieving a result other than a strict one-person deviation
9 if that allows you to satisfy other criteria for State and
10 Board of Equalization Districts where the law gives you that
11 flexibility.

12 The next topic could well take all of the rest of
13 the open meeting that you have, and I mean really through
14 the Christmas holidays, how to deal with race and ethnicity
15 is a topic of enormous complexity. It shouldn't scare you
16 off, but it should give you pause, because there is an awful
17 lot to consider and it's one of the reasons why I know, in
18 the text of the law itself, the law requires that you hire
19 counsel with some familiarity, particularly with the Federal
20 Voting Rights Act, which is the main source of this
21 obligation and the main source of the complexity.

22 I'm going to try to make it as simple as I possibly
23 can, or as straightforward as I possibly can, without
24 oversimplifying in the next little bit, but know that this
25 is really just scratching the surface. If this is an

1 exceedingly simplistic schematic diagram of the square
2 district that none of you have ever seen, or square state
3 that none of you have ever seen, and the -- let's call them
4 beige -- circles represent a minority population, then there
5 have historically been techniques used in order to dilute
6 the voting power of that minority population and this is
7 important to understand because this is where the mandate of
8 the Voting Rights Act comes from, it's why it exists.
9 Historically, the district lines can and have been drawn in
10 order to ensure that the minority population does not have a
11 valid vote. The, I would say, most common tactic is known
12 as "cracking," that involves -- I don't know if you can see
13 them -- but I've drawn now four separate districts in this
14 exceedingly square universe, and they have sliced neatly
15 through the middle of the minority population, and if you
16 look at, or count up the number of minority voters and the
17 number of non-minority voters in each district, if - and
18 this is a big assumption, if the minority voters regularly
19 vote together and differently from the way the non-minority
20 voters vote, then they will be consistently out-voted in
21 every single district; that is, under this scheme, minority
22 voters will have no elected representatives at all, and
23 historically there were, and still are, areas of the country
24 where minority voters tend to vote differently from non-
25 minority voters, that is not, by the way, simply party

1 preference, that is the determination of whether minority
2 voters vote differently or tend to vote differently from
3 majority voters, it depends on much more than party. It may
4 be that, even within a political party, minority voters have
5 coalesced around particular preferences of candidates and
6 non-minority voters regularly choose other candidates, that
7 is why this calculation gets fairly complex, it's not simply
8 about adding up whether, for example, certain minorities
9 tend to vote for Democrats or Republicans, and everybody
10 else votes the other way. It has very much to do with
11 individual candidates in the local jurisdiction. If
12 minorities vote differently, it is entirely possible to
13 divide the minority population to make sure they have no
14 voting power, and I'll also note that, in this exceedingly
15 artificial example, you can do it on occasion without
16 contorted lines; that is, it doesn't take lines that
17 squiggle all over the place in order to crack effectively,
18 at least in some places. That may be one sign that cracking
19 is going on, but it's not necessary. The neatness of the
20 lines doesn't actually give you enough information to know
21 whether lines divide up a minority population in order to
22 dilute their voting power.

23 The other topic, take the same jurisdiction and now
24 draw lines slightly differently, which none of you can see,
25 there is a red line bounding now most of the minority

1 population, it's been drawn neatly around the minority
2 population in this district in order to pack them into one
3 particular district, and over-concentrate their voting
4 power. Now, if the minority population votes together, it
5 is virtually guaranteed that they will, in fact, be able to
6 elect a representative of choice, but only one, and really
7 without any influence anywhere else; that is, all the
8 minority population has been so super-concentrated that
9 their voting power has effectively been leached from the
10 surrounding districts. And here, too, depending on the
11 configuration, it's possible to do this without squiggly
12 lines or lines that look particularly odd. So, that is why
13 the Voting Rights Act was put in place, in order to stop
14 these practices which persistently and over time had diluted
15 the rights of cohesive minorities, racial and ethnic
16 minorities, who despite voting consistently and cohesively,
17 were unable to get any sort of representation.

18 There are two sections of the Voting Rights Act
19 which you will have to contend with, and which your counsel
20 will have to contend with, the first is Section 2, it
21 applies nationwide, and what it essentially says, it sets up
22 three factors for whether the minority voting power is at
23 risk for dilution, whether there is a risk that minorities
24 would otherwise be able to elect candidates of their choice,
25 would be deprived at the opportunity to do so, by the way

1 the lines are drawn. The first -- and now I'm going to make
2 words both small and faint -- the first question is whether
3 minorities represent most of the voters, thanks to a Supreme
4 Court case in 2009, the majority with 50 percent plus one of
5 the voters in a concentrated area, so in a districtish [sic]
6 region because all of this, you have to look at before the
7 districts are actually drawn, in a districtish region, are
8 most of the voters minorities. The second criteria are
9 whether there is what's called "racial polarization," do
10 non-minorities tend to vote for different candidates than
11 minorities? And do they do so consistently and cohesively?
12 That doesn't mean 100 percent of, for example, White voters
13 vote differently from 100 percent of, for example, African
14 American voters, the standard is hazier than that, and tends
15 to reflect shifting coalitions of cohesive voting over time.
16 There is no mathematical number that's been fixed on as the
17 answer, it's something akin to knowing it when you see it,
18 but it involves large blocks of voters, minority voters
19 voting one way, and non-minority voters voting differently,
20 preferring different candidates. And social scientists
21 generally arrive at a conclusion after an awful lot of
22 number crunching about whether racial polarization exists,
23 and to what extent. If those two criteria are satisfied,
24 the third criteria are whether the minority population is
25 otherwise protected, given the totality of the

1 circumstances. That is, these first two criteria say that
2 there are sufficient numbers of minorities voting together
3 to be able to elect a representative of choice. The second
4 criteria, the racial polarization also says that if you
5 don't protect the minority vote, non-minorities will tend to
6 vote against the minority vote so consistently that they
7 won't be able to exercise their voting power, and the third
8 criterion is really a catchall, does it feel like minorities
9 have, in the area that you're discussing, enough protection,
10 sufficient protection, to ensure that they have an adequate
11 ability to exercise their voting power? If that sounds like
12 it might encompass an awful lot of qualitative factors, then
13 you're right, that's the list and I certainly don't expect
14 to go through each of them. It essentially looks to whether
15 or not, in the local area, minority voters have been able to
16 exercise effective voting power or not. And this really is
17 a place where you would benefit tremendously when you are
18 considering particular areas of the state from expertise,
19 not only legal counsel familiar with the Voting Rights Act,
20 but social scientists and historians who study voting
21 patterns in the local demographics, in the local areas, and
22 can arrive at conclusions about whether these sorts of
23 factors lean toward needing to protect minority voting power
24 or not. And in most cases, these standards have been worked
25 out through litigation. You heard yesterday that litigation

1 is most likely coming, and I certainly won't shy away from
2 that, but you can avoid some of the ill effects by
3 considering these factors and considering what we've learned
4 from litigation elsewhere, well beforehand, and really
5 starting out the map drawing process with the Voting Rights
6 Act and these factors very firmly in mind. And this is
7 where expertise will be especially beneficial to you, not
8 because there's any risk that you all aren't capable of
9 understanding these factors, but because they are nuanced
10 and have been developed over time, in specific ways, with
11 specific meanings, and it really is useful if you are
12 steeped in how the Voting Rights Act has been interpreted in
13 different ways over time, in order to help navigate you
14 through these shoals.

15 The overall mandate of the Voting Rights Act,
16 particularly of Section two is, if you have most of the
17 voters in a concentrated area who are minorities, and if
18 there is racial polarization, and if the minority population
19 is not otherwise protected in its voting power, given the
20 totality of the circumstances, then you have a mandate not
21 to dilute that voting power, to preserve it. The Voting
22 Rights Act does not tell you where to draw the lines if,
23 again, in the exceedingly artificial jurisdiction to the
24 left, you might draw a line that looks like that, which
25 would preserve that community's voting power; you might draw

1 a line that looks different, which would still preserve that
2 community's voting power. It doesn't say that the lines
3 have to be drawn in a certain way. What it says is you may
4 not draw the lines in order to dilute the voting power of
5 the minorities who live in that area.

6 Let me introduce Section 5 and then give you an
7 example of some of the qualities you might look for, and
8 then I will pause for questions because I suspect there may
9 well be some. You have another portion of the Voting Rights
10 Act to contend with, in addition to Section 2. Section 5 of
11 the Voting Rights Act applies to a few jurisdictions around
12 the country, and boy, of all of the things I've given you to
13 it's hard to see this is among the hardest because you may
14 be able to see the states in red, those are states that are
15 fully covered under Section 5. There are additional series
16 of states, including South Dakota, including Michigan,
17 including New Hampshire, and including California, where
18 portions of the state are covered under Section 5. In
19 California, Kings County and Merced County, Monterey County,
20 and Yuba County, and what that means practically for you is
21 that any redistricting plan that you draw for the state will
22 be covered under Section 5.

23 What is Section 5? Section 5 is a mandate that was
24 a mandate that was put in place, also by the Voting Rights
25 Act of 1965, covering certain jurisdictions, asking two

1 questions: Is a new electoral law, in this case, a
2 redistricting map, intended to dilute minority votes? Or,
3 does the new map actually end up leaving minority voters
4 worse off, less able to exercise effective voting power than
5 they were before? This Section 5 is about backsliding,
6 essentially. And before your redistricting maps can be used
7 in the state, before the county is actually Precincted using
8 your maps, and before any voter actually can vote using your
9 maps, the lines have to be pre-cleared by the Department of
10 Justice, and I know you spoke a little bit about pre-
11 clearance yesterday. This essentially means they will be
12 submitted to the Department of Justice, which will look for
13 those two factors -- is the map intended to dilute minority
14 votes? And does it actually leave minority voters worse off
15 than they were under the preexisting -- what is called the
16 baseline map -- the current map today?

17 What does all this mean for choosing your
18 colleagues? The 14 of you, collectively, will need to be
19 able to assess the minority proportion of citizen voting age
20 population in the current region, you'll need to know if the
21 minority population is big enough to exercise effective
22 voting power, or review the calculations of experts in this
23 area. That gets incrementally tricky because the
24 citizenship information that you'll have, as Mr. Barabba
25 knows well, I know, will be different from the information

1 that you have on the rest of the population on racial
2 identity, on age, and the like, and so you'll have to figure
3 out how to use that information. Among the 14 of you,
4 you'll need to determine voting patterns by race in
5 particular regions where minorities are sufficiently
6 concentrated, or -- and here, I again strongly recommend
7 reviewing expert determinations of voting patterns, rather
8 than trying to do this yourself -- the 14 of you will need
9 to assess practical opportunity to elect the candidates of
10 choice -- do minorities really practically on the ground
11 have an opportunity to elect the candidates of choice in the
12 region? Or, again, review the assessments of your experts.
13 And you'll need to consider qualitative and historical
14 contextual circumstances, the totality of the circumstances
15 mix that I mentioned before, or review the conclusions of
16 the experts that you hire.

17 There are two other factors that I also think are
18 especially important and here, too, this goes to the need to
19 remain flexible. Commissioners, you and your six colleagues
20 will need to, especially in California, creatively reconcile
21 the rights of multiple minority communities, minority
22 communities living right next to each other in a way that
23 might not be true in other states where there is really a
24 single dominant minority population. You will also need
25 comfort in drawing districts that might seem strangely

1 shaped, and for an example of this, I'll turn to the Chicago
2 suburbs, although I know that you can't see all of the dots,
3 you will probably see enough of them so that I can make the
4 point. In the Chicago suburbs, and this is a district that
5 is rather well known by those who study redistricting, the
6 purple squares represent concentrations of African-American
7 voters and the orange square represent concentrations of
8 Latino or Hispanic voters, and the darker the square, the
9 richer the concentration, so the particularly vibrant
10 purple, or particularly vibrant orange means lots of
11 minority voters. As I think you can see, or at least I hope
12 you can see, the population spreads from east to west among
13 African-Americans, also among the Latino population, and
14 also north to south. Both communities are sufficiently
15 large in relatively compact region that this is rather close
16 in the suburbs of Chicago, both communities are sufficiently
17 large to merit a Voting Rights Act district each on their
18 own, the communities have historically, traditionally voted
19 for different types of candidates, they meet all of the
20 other criteria, and so the challenge that those drawing the
21 districts here have is how to draw a district that gave each
22 population an effective opportunity to exercise their voice.
23 If you draw a district that encompasses the Latino
24 population, most of the Latino population, from north to
25 south, and that sort of district would do it, you cut right

1 through the heart of the African-American community. If you
2 draw a district that captures most of the African-American
3 community from east to west, you cut right through the heart
4 of the Latino community. And so, what the map makers did, I
5 think exceptionally well, is they actually looked at the map
6 and drew exceedingly funny shapes that, together, preserved
7 real electoral opportunity for each substantial minority in
8 the region, which in fact were communities with, amongst
9 themselves, that is, the Latino population here really did
10 vote cohesively, the African-American population here really
11 did vote cohesively, and these two districts, while to the
12 eye they might look awful funny, actually accomplished the
13 objectives, satisfied the Voting Rights Act, were upheld in
14 Federal Court against a challenge, quite well. And that's
15 why I mentioned I used this as a particular example, because
16 when you are looking for an additional six members to
17 complement you, not only expertise in this area, but also a
18 familiarity with, or an ability to stretch the mind to draw
19 districts that might seem strangely shaped, will be
20 exceedingly helpful.

21 Before I go on to the other criteria that you will
22 be asked to consider under the Voting Rights Act, I thought
23 I would stop and see if there are any particular questions
24 on either of the Federal standards, on equal population or
25 on race and ethnicity?

1 COMMISSIONER FORBES: I have three or four questions
2 if you don't mind. One, is there a reasonably, not too long
3 list, of the Federal Court cases that dealt with the Voting
4 Rights Act? Or does the law look like this?

5 MR. LEVITT: The list is unfortunately quite long,
6 not least because there is not only state redistricting that
7 has been litigated, and Congressional redistricting that has
8 been litigated under the Voting Rights Act, but most of the
9 litigation is actually based on county redistricting, or
10 local municipal redistricting, and -

11 COMMISSIONER FORBES: Is it possible to ferret out
12 the ones that just deal with the state and forget the
13 counties and local?

14 MR. LEVITT: It is possible to get that list, but
15 that list would actually be quite misleading, and here is
16 why. The same principles that apply on the county level
17 also apply at the State level and the Federal level. And
18 so, if you were to only look at the State and Federal cases,
19 you'd actually be leaving out important chapters of the
20 book, cases that tell you how the Act is applied, perhaps in
21 that case to a County Commission, but absolutely applied to
22 your job, as well. So, it's possible to create that list,
23 but I wouldn't suggest that, I think that would actually be
24 more misleading than not.

25 COMMISSIONER FORBES: Okay, then I might ask for

1 just a list of the cases. A couple of questions. You made
2 the reference to -- if no area would supply enough minority
3 voters to create a district, are there any particular rules
4 about slicing up that population?

5 MR. LEVITT: There are rules about slicing up the
6 population if that is your intent, so remember that Section
7 5 precludes the intent to dilute minority votes, regardless
8 of the effect, and so if you see a minority population that
9 doesn't amount to enough to exercise control over a
10 district, and you draw lines through that area in order to
11 divide the minority population's power, that is a violation
12 of the law.

13 COMMISSIONER FORBES: Okay, that would be dilution,
14 just not - okay.

15 MR. LEVITT: If you are pursuing other objectives,
16 you can consider that minority population, but there is no
17 federal mandate to. I will say, and I'll get to this in the
18 discussion of political geography, that California's
19 Constitution provides a mandate to consider various
20 communities of interest, and often some racial communities
21 are also communities of interest for other reasons, and you
22 might well consider those in your deliberations.

23 COMMISSIONER FORBES: The other question I had was
24 that you made a reference to those of voting age being
25 counted, as opposed to legal voting age. What I'm getting

1 at is that the census, I understand, includes all persons,
2 documented or undocumented, in the state. Does voting age
3 mean legal voting age, or does it simply mean anybody in
4 that district who is of voting age?

5 MR. LEVITT: That's an excellent question and one
6 that the Supreme Court hasn't fully resolved. In the Ninth
7 Circuit, where you are, in the Western region, the Court has
8 said relatively clearly that the standard for the Voting
9 Rights Act, only for the Voting Rights Act, is because it is
10 focused on electoral opportunity, citizen voting age
11 population, there is a substantial asterisk behind that, and
12 as with much of what we're discussing today. The
13 substantial asterisk is that, when the Census Bureau
14 delivers you information, the best information that you'll
15 have, the most granular information that you have won't
16 include citizenship information. You'll know race, you'll
17 know ethnicity, you'll know age, and you'll know gender, but
18 you won't know -- Mr. Barabba knows well -- you won't know
19 citizenship because that's not a question that's asked on
20 the Decennial Census. The best information you may have on
21 citizenship is only an estimate, it comes from what is now
22 known as the American Communities Survey, it's conducted
23 over, well, there are several versions, some conducted over
24 a year, some conducted over three years, some conducted over
25 five years, the data that is available will reflect an

1 estimate of the citizenship population in a particular
2 region, and the smaller your region, the more variability in
3 the estimate, the less reliable that estimate becomes. And
4 so, depending on the size of your district, you might or
5 might not have adequate information to know the citizenship
6 in the area. And, in those circumstances, the Ninth Circuit
7 has in the past -- actually, a Federal District case in the
8 area has in the past -- accepted voting age population where
9 better information about the citizen voting age population
10 simply wasn't available.

11 COMMISSIONER FORBES: But they will take the other
12 if it, in fact, is available -- the Ninth Circuit?

13 MR. LEVITT: Yes.

14 COMMISSIONER FORBES: Okay, thank you.

15 COMMISSIONER BARABBA: I guess I was a little bit
16 surprised that we really have to take into consideration how
17 the areas have voted, so that would mean that our datasets
18 would not only have the population to worry about and its
19 characteristics, but we'd want to have a cross tab, in
20 essence, particularly with a minority group if they had
21 variation within the voting of that group.

22 MR. LEVITT: That is correct. And one of the
23 distinctions that I think is important to keep in mind is
24 that, I'll also mention this again because it's worth
25 repeating, is that although you have the mandate not to draw

1 districts in order to favor any particular political party
2 or candidate, you may well need political information in
3 order to fulfill your other obligations, including
4 obligations under the Voting Rights Act. That is absolutely
5 right, it is not the case -- some have believed, and I
6 believe this is false, that you have to blind yourself to
7 all political information. In fact, quite the contrary, for
8 purposes of the Voting Rights Act, you may need explicitly
9 to consider voting information to know whether you are
10 effectively depriving a minority of their opportunity to
11 cast an effective vote. And that -- one more note on that -
12 - the information that you may wish to look at, I'll stress
13 again, shouldn't simply be Democrat or Republican, shouldn't
14 simply be party candidate information. The Social
15 Scientists will tell you there is an established methodology
16 for reviewing polarization, but it involves an assortment of
17 different local candidates at specific local races, in order
18 to see whether a particular minority population prefers one
19 candidate over another. It's not as coarsely cut as simply
20 Democrats or Republicans, or neither.

21 COMMISSIONER FILKINS WEBBER: Thank you. In looking
22 at the slide where you were discussing the Chicago suburb,
23 not being familiar, in particular, with the case that was at
24 issue, can you please describe for me why or how the Court
25 justified why that particular designation would not have

1 been considered "packing" of a minority representation group
2 of over-compensating voting power?

3 MR. LEVITT: It is an excellent question, and I --
4 the short version is that, in order to show where the
5 population lives, I've highlighted certain parts of the
6 population, but that is not the only population there. That
7 is, call it the purple area, it's not that the only voters
8 there are African-Americans to various degrees, or various
9 concentrations, there are lots of other voters there, as
10 well. In the orange area, there are lots of other voters in
11 addition to Latinos.

12 COMMISSIONER FILKINS WEBBER: Okay, so just for the
13 purposes of your illustration regarding the manner in which
14 the lines were drawn, and to have a comfort level regarding
15 going outside the box, so to speak, that was simply for
16 illustrative purposes, and not a mandate, or an example of
17 what potentially could happen with packing? It wasn't
18 challenged for packing, I suspect, is my question.

19 MR. LEVITT: Correct, that is right. And the
20 districts that I've drawn here are the actual districts, but
21 there are additional voters over and above the minority
22 voters that are represented on the slide to show you where
23 the minority populations are. There were also additional
24 voters that - neither one of those districts is 100 percent,
25 or 90 percent of the population concentration.

1 COMMISSIONER FILKINS WEBBER: The other question
2 that I have is, I'm familiar with some of the areas of your
3 map that mandated pre-clearance under Section 5. Can you
4 give us a brief history as to the necessity for pre-
5 clearance out of Kings, Merced, Monterey, and Yuba County
6 for California?

7 MR. LEVITT: All of the pre-clearance requirements
8 are tied to either political participation, or registration
9 rates, and they are based on formulas that were key to 1964
10 political races, 1968 political races, 1972 political races.
11 Essentially, in areas where there were started deviations
12 from the norm, often 50 percent or fewer of the population
13 in an area, that was either registered or participated in
14 those elections, were set for pre-clearance. Any entity
15 that was covered under Section 5 has the opportunity to
16 exercise what is known as "bail-out," has the opportunity to
17 say, "Hey, I should no longer be covered under Section 5."
18 After 10 years of essentially a record of fulfilling
19 minority rights, of not violating minority rights,
20 jurisdictions can petition the Department of Justice, can
21 petition a court, to say, "Hey, let me out." And several
22 have across the country. Some don't choose to for many
23 smaller electoral practices, the pre-clearance process isn't
24 all that burdensome if you are just changing a polling place
25 from one place to another, it's not all that burdensome.

1 So, some jurisdictions have not chosen to bail-out. Of
2 those that have attempted to bail out, the vast majority
3 have been successful, and the four California counties have
4 not yet asked to be uncovered from Section 5.

5 COMMISSIONER FILKINS WEBBER: Thank you.

6 MR. LEVITT: Of course.

7 COMMISSIONER GALAMBOS MALLOY: I'd like to follow-up
8 on the pre-clearance question. Could you just explain in a
9 little bit more detail how the process we'd follow in those
10 counties might be a little bit different, and what that
11 actual timeline is for getting pre-clearance?

12 MR. LEVITT: For you all, the process actually won't
13 be specific to the counties because any electoral practice
14 that changes or has the potential to change minority voting
15 rights in those counties has to be pre-cleared. For your
16 purposes, the map as a whole will have to be pre-cleared
17 because, necessarily, whatever map you draw will change the
18 voting practices in those counties, the opportunities in
19 those counties. When the Department of Justice looks to see
20 the impact of the lines that you draw, they will look at the
21 impact with respect to voters in those counties, whether
22 those voters in those counties have a reduced electoral
23 opportunity, that is where the Department of Justice will be
24 concentrated. But your submission will involve the full
25 maps that you draw. I'm happy to go into the actual process

1 of pre-clearance, but it's actually - there are a few steps
2 along the way and I'm not sure if that's where you want me
3 to spend time today. Your counsel will certainly,
4 particularly the counsel, one of the reasons why there is a
5 mandate to employ counsel familiar with the Voting Rights
6 Act is because those who are familiar with the Voting Rights
7 Act will be able to guide you through the pre-clearance
8 process. In essence, you'll have to send in -- and I know
9 the state has a package from the last go-round that will
10 assist in this process immensely, you'll have to send them
11 demographic data and voting pattern data for the maps that
12 you draw. The Department of Justice will review those maps,
13 they may feel free to ask you for more information, or not.
14 And then they will come to a decision. The standard amount
15 of time is 90 days for a decision out of the Department of
16 Justice, but you can ask, and particularly they know in
17 redistricting season, everything is expedited. You can ask
18 for expedited pre-clearance in order to try to drive a
19 decision more quickly, and they are -- they try to be
20 responsive because they know that there are very pragmatic,
21 practical difficulties that result in a lengthy or delayed
22 pre-clearance process for administering elections in
23 California and elsewhere. So they know the redistricting is
24 coming, they're staffing up accordingly, and I think if you
25 request expedited pre-clearance, they'll do their level best

1 to get you an answer as quickly as they can.

2 COMMISSIONER GALAMBOS MALLOY: So, if our deadline
3 for the maps falls in mid-August, will we be submitting
4 these in July? Or as of mid-August when we're done with the
5 maps, they would go to the Department of Justice?

6 MR. LEVITT: It's something that you'll have to
7 decide, there's no legal mandate in the law, and I think
8 that is to your discretion. The mandate requires that the
9 laws cannot go into effect, they cannot actually affect
10 voters' rights until they have been pre-cleared. And so, if
11 you draw the maps up through August and then submit the
12 maps, the process would begin at that point the maps
13 couldn't be used for an election until the Department of
14 Justice had signed off on them. It's in your interest to do
15 more earlier, but as you have heard already from speakers
16 yesterday, it will tend to always be in your interest to do
17 more earlier, and so I don't know that this is any different
18 in that respect.

19 COMMISSIONER GALAMBOS MALLOY: Thank you.

20 CHAIRMAN YAO: In the past, how many iterations has
21 it gone through before it gets cleared?

22 MR. LEVITT: That's an excellent question for
23 California and I'll confess that I don't know. There is
24 normally, the Department of Justice is very keen to have a
25 map in effect that meets the Voting Rights Act requirements,

1 and so it will very rarely get to a stage where there is a
2 formal denial of pre-clearance before they are able to
3 suggest things to Legislative decision-makers. Your process
4 is going to be different, and so I don't know whether
5 they'll be able to suggest informal adjustments to you in
6 the same way that they've been able to re-approach
7 legislative decision makers. As you heard yesterday, in
8 Arizona, they went through a few rounds, they went through
9 at least two rounds before the maps were finally pre-
10 cleared. But I will confess that I don't know in California
11 how many rounds prior maps have gone through before getting
12 pre-clearance from the Department of Justice. I can
13 certainly get back to you with that information.

14 CHAIRMAN YAO: Thank you.

15 COMMISSIONER RAYA: I have a question under the
16 section about complying where you say that Commissioners
17 need to assess practical opportunities to elect candidates.
18 Can you elaborate on what that means?

19 MR. LEVITT: I can, and the magic is in that list,
20 essentially. Whether minority voters are protected under
21 the totality of the circumstances is a very pragmatic
22 assessment, and deals with the history of race relations in
23 the area, it deals with rough overall proportionality of
24 whether there are roughly - very roughly - a number of
25 communities that are able to elect representatives that have

1 been able to elect representatives over time. They'll
2 consider things like whether minority members have been
3 excluded traditionally from candidate slates over and over
4 again, consider specific discriminatory practices or
5 procedures, it's a very pragmatic look at a local community
6 about whether there have been opportunities or denied
7 opportunities for minority communities.

8 COMMISSIONER RAYA: That might include looking at
9 whether minorities have been elected to local offices, as
10 well?

11 MR. LEVITT: Yes, that's correct. And that
12 certainly goes into any assessment both of effective
13 polarization, for example, if minorities were elected to
14 local office with the support of a non-minority community.
15 No single election is determinative because, as you all
16 know, there may be factors in any single election, you know
17 99 percent of the time minorities and non-minorities might
18 vote differently, but in this one election, they decided not
19 to, so no single election will itself hold the key, but that
20 is certainly a factor that plays into the mix.

21 COMMISSIONER RAYA: Thank you.

22 MR. LEVITT: If there are no other questions at this
23 point, just once again, I'll emphasize this for you, so
24 please feel free to stop and we can certainly return. But
25 if there are no other questions on the Federal Rules at this

1 point, then I'll turn to the criteria in the State
2 Constitution. And with that, I will hope to actually
3 generate the slides going in the right direction.

4 So, that was a very quick tour of back and forth
5 through the Voting Rights Act. We have discussed, as you
6 can see, the Federal mandates and, again, both are also in
7 California's Constitution expressly, the requirement to
8 consider equal population, the requirement to consider
9 effective opportunities for minority voters. There are
10 additional set of criteria for you to consider, and this,
11 the Constitution requires, and I'll just go through each
12 again briefly now. Contiguity is the first of these, and
13 relatively straightforward. The fact that a district is
14 contiguous means essentially that all parts of the district
15 are connected to each other. The diagram on the left is not
16 contiguous, the diagram on the right is a district that is
17 contiguous. Islands, and there are several, create special
18 conditions, and you have some latitude to decide when it is
19 that islands are contiguous, and with what. Many other
20 states have adopted definitions that include things like
21 ferry passageways, bridgeways, normal transportation between
22 the islands and the mainland, but that's not included -
23 those definitions aren't included in California's
24 Constitution and you can decide for yourself when it is that
25 pieces of lands separated by water are contiguous with other

1 pieces of land.

2 The quality that you will be looking for among your
3 fellow six Commissioners is relatively straightforward here,
4 simply a need to make sure that all parts of the state are
5 accounted for. You end up with non-contiguous districts
6 when you've let something out somewhere in the middle of the
7 state, and I know that, when Karin Mac Donald talks to you
8 later today about how some of the practice of drawing
9 districts actually works, some of the software, she'll show
10 you, in part, how to include portions of the state, you just
11 have to make sure you've got it all, essentially.

12 The second criterion that California asks you to
13 consider specifically, not reflected in the Federal law, is
14 a little more complex. Political geography here, the
15 California Constitution asks you to consider maintaining the
16 integrity of cities, of counties, local neighborhoods, and
17 of local communities of interest. Mr. Lynne yesterday, from
18 Arizona -- I had the privilege of watching and respect
19 greatly -- he mentioned that communities of interest have
20 been defined in various ways by various commissions. You
21 have a head start in that the law defines or gives you the
22 basis for a definition already, but I'll suggest to you that
23 that definition includes a great deal of flexibility, and so
24 you may well find yourself with many of the same choices
25 that Mr. Lynne mentioned yesterday. Specifically, the

1 Constitution states that a community of interest is a
2 contiguous connected population, which shares common social
3 and economic interests, that should be included within a
4 single district. So, already you've got both flexibility
5 and a value judgment. Whether there are common social and
6 economic interests is quite broad, indeed, and whether they
7 should be included in a single district is up for you to
8 decide, ultimately. I want to point out that the examples
9 that are given to you in the Constitution itself are, first
10 of all, not exclusive, so the Constitution says simply that
11 examples include, but that is not the full list, there could
12 be other examples of communities of common social and
13 economic interests. And they also show that the "and" is
14 actually one of these things called a "disjunctive" and.
15 That means that your community of interest may actually
16 involve either social, or economic interests, and don't have
17 to involve both because the examples they've given you
18 include examples that seem to involve either social or
19 economic interests, in some cases both, but not in every
20 case. And so the examples actually give you some
21 interpretive power, they tell you what that community of
22 interest means, what that statement means. And I'll suggest
23 that it also gives you flexibility to consider which
24 communities from a rather broad set. They have given you
25 examples including urban districts, including rural

1 districts, including industrial districts, the last one that
2 they list for you is common means of communication about an
3 election, that is more often known as a "media market," is
4 the term of art used for this, zones where radio stations,
5 or television stations, or local newspapers, or the like,
6 that the markets they play in, those may lead to a community
7 of interest for you, or not. And here, you really have a
8 great degree of flexibility to take in testimony and decide
9 which communities of interest should be included within a
10 single district, that is a zone of rather broad discretion
11 for you.

12 Again, and if it seems like I'm concentrating on
13 this, that is only because I have seen where others have run
14 into trouble, these lines can be irregular, so those are the
15 lines, that is the border for the City of Los Angeles, and
16 if you were maintaining the integrity of the City of Los
17 Angeles where I live, the lines would look quite strange,
18 but that is a recognized Municipal boundary, and one that
19 you might choose to consider. Even within the City
20 boundaries, there are neighborhoods defined in Los Angeles,
21 you can decide whether or not to adopt those definitions or
22 use others, but the City of Los Angeles has defined local
23 neighborhoods that also might appear quite irregular, so the
24 Harbor Gateway North neighborhood looks like a letter "R,"
25 the Bel Air Beverly Crest neighborhood is defined by the

1 City of Los Angeles, and I'm not really sure what that looks
2 like, but it certainly doesn't look particularly regular,
3 neighborhoods don't have to look like circles or squares.
4 And you heard yesterday from Mr. Lynne talking to you about
5 Arizona's Second Congressional District, he mentioned that
6 national commentators know this district quite well, and
7 he's absolutely right, many point to it as a district gone
8 wrong. I actually agree with his description entirely, I
9 think this is precisely right, I think this is what he was
10 called upon to do because the squiggly connector to the
11 splotch over on the right-hand side of the district, over on
12 the eastern side of the district, in fact, separates one
13 Native American community and gives it an effective voice in
14 and amongst a surrounding population that has very different
15 concerns, and is a very different community of interest, so
16 the Arizona Commission decided, and I think the Native
17 American communities supported that, in both extent. And
18 so, I give you this example because I think it actually
19 shows rather well how the mandate to preserve communities of
20 interest intact can, when it is done successfully, look
21 quite strange, but your mandate is to preserve these
22 communities as successfully as you can. And what that means
23 is that, once again, you'll need to be comfortable with
24 strange shapes, that's why I left off and you'll need to
25 select additional Commissioners who will be comfortable with

1 strange shapes, you will also, I will suggest, want to look
2 for additional six Commissioners who complement you in the
3 ability to reconcile potential conflicts among geographies.
4 Mr. Lynne is absolutely right, you will hear different
5 pockets of individuals within the same geographic area
6 arguing strenuously for different communities of interest
7 within that area, and you'll need to try to reconcile those
8 as best you can. You'll need to reconcile the potential
9 conflicts and testimony even when there is no right or
10 wrong, there is no other place to look to decide where a
11 community actually exists; that is something that is simply
12 up to you and your fellow Commissioners to decide. And so,
13 when choosing the additional six, you will want to look for
14 qualities that allow them to reconcile these particular
15 conflicts. And you'll need to be comfortable with
16 determining what - Mr. Lynne talked yesterday about trying
17 to ask those who came to testify what streets they would
18 consider to be the boundaries of their neighborhoods, or
19 trying to hone in on where neighborhoods might exist. You
20 will need to be comfortable attempting to delineate roughly
21 boundaries that are not pre-defined. They don't exist
22 anywhere else in the law because part of your process will
23 be to cull those and to recognize them where you choose.

24 Compactness - I am sorry, yes?

25 CHAIRMAN YAO: I would like to go back to a few

1 slides on the definition of community of interest. As I
2 read that definition, I also can apply that to the
3 definition of a local neighborhood. Can you perhaps take a
4 moment to distinguish the two terms?

5 MR. LEVITT: I certainly can, or I can take an
6 attempt, I can take a moment, let's put it that way. And
7 I'm flipping here to the actual text of Prop. 20, which
8 gives you the definition for community of interest. When
9 Prop. 20 gives you the definition of contiguous population,
10 etc., it does so tied to what a community of interest is,
11 that the start of that sentence, which I didn't give you is,
12 "A community of interest is a contiguous population which
13 shares..." I think that you have full flexibility to decide
14 for yourselves what a neighborhood might be, and you may
15 choose to adopt that definition, you may choose to adopt a
16 different definition. As I mentioned, some cities have
17 defined neighborhoods. LA has established neighborhood
18 councils for which they have defined boundaries, and I think
19 you can choose to either acknowledge those as local
20 neighborhoods, or select differently. But I think that
21 discretion is entirely in your hands.

22 CHAIRMAN YAO: Is it intended for a community of
23 interest to be a subset of a local neighborhood, or vice
24 versa? Or is this just two terms meaning the same thing?

25 MR. LEVITT: I think they are two terms, I don't

1 believe that they are considered to be nested categories;
2 that is, for example, just to take the actual text, City is
3 listed first, County is listed second, but there are a few
4 counties that are subsets of cities. I think these are
5 distinct, not necessarily mutually exclusive, but distinct
6 political and geographies, is why I categorized them all
7 under that heading, and you can choose to define them as you
8 see fit. I don't think they're necessarily nested within
9 each other.

10 CHAIRMAN YAO: I understand, thank you.

11 MR. LEVITT: And you may also decide that a local
12 community of interest, or a local neighborhood, is bigger
13 than a City or County, or smaller, that too is not defined.
14 The size of the region is not defined for you, other than
15 local. And that's also within your discretion. One final
16 point, I mentioned that some are listed first or second, but
17 there is no explicit preference among - so there is no
18 mandate in the Voters First Act that you prefer Cities to
19 Counties to Local Neighborhoods to Communities of Interest.
20 I have worded them that way because that is the order in
21 which they appear in the Constitution, but I think you have
22 the flexibility to decide how you wish to prioritize those,
23 and you may also - this is important - you may also choose
24 to prioritize them differently in different parts of the
25 state. That is, if you decide that, in one area a city is

1 more important than a particular neighborhood, it may be in
2 a different area that a neighborhood is more important than
3 a particular city, and I don't think there is anything -
4 there is certainly nothing in the law that binds your hands
5 in that respect.

6 COMMISSIONER GALAMBOS MALLOY: Chair, may I move to
7 recess for five minutes?

8 CHAIRMAN YAO: Yes, thank you.

9 (Off the record at 10:36 a.m.)

10 (Back on the record at 10:45 a.m.)

11 CHAIRMAN YAO: It is 10:45, we are reconvening the
12 meeting after about a seven-minute recess. Mr. Levitt.

13 MR. LEVITT: Thank you very much, Mr. Chair. Before
14 I get back to going again, I wanted to remind myself to
15 emphasize, as we are going through all these legal
16 requirements that I am not your legal counsel, you will be
17 hiring legal counsel in the future once you are constituted
18 as a Commission, and my purpose here, while I want to give
19 you as full a flavor for the law as you'll be applying as I
20 can, the purpose is really to do that in order to allow you
21 to best select the other six Commissioners. And so, not
22 only should you decide for yourselves whether what I'm
23 saying is accurate or not, but you'll have legal counsel in
24 the future who will be able to more efficiently guide you
25 than I am today. I hope that this is useful in helping you

1 select an additional six members, but I certainly don't want
2 to purport that I'm giving you legal guidance that you
3 should then apply without checking with anyone else. Before
4 I move onward, we had stopped after a question about
5 neighborhoods and communities of interest, and I want to
6 make sure that I answer any questions that you do have to
7 the best of my ability. Are there other questions before I
8 move on?

9 COMMISSIONER KUO: Yes, I just had something to
10 consider, Professor Levitt. And I know that I'm being very
11 simplistic here, but it sounds to me, and you can correct me
12 if I'm wrong, that a lot of this has to do with tension
13 between preserving communities of interest, which is
14 somewhat open to interpretation by the Commission, as well
15 as drawing non-irregular lines, which, again, also depends
16 on the comfort level of the Commission.

17 MR. LEVITT: And I think you've identified the
18 tension correctly, the thing that I will emphasize, and this
19 will also become clear in the next point I make, is there is
20 no mandate anywhere in the California Voters First Act,
21 anywhere in any of the laws that you're to apply, to draw
22 regular looking lines. There is no responsibility on you,
23 in fact, the mandate many circumstances, and this is why I
24 keep emphasizing this, is to draw lines using other
25 criteria, using other guideposts, using other legal

1 baselines that may well lead you to draw lines that look
2 quite irregular. I want to say, again, there is no
3 requirement to draw lines that look regular -- anywhere --
4 in the Voters First Act. Because there is a very natural
5 human preference for regularity in all walks of life,
6 including redistricting, many people arrive at redistricting
7 where they don't have much experience with redistricting, in
8 particular, with an instinct to draw regular looking lines,
9 to start with things like circles and squares. And so, I've
10 been emphasizing that you may want to keep the legal
11 requirements in mind in order to select an additional six
12 members because it's important to be able to assess out
13 whether people are able to put aside what may be a natural
14 human preference for regularity in order to apply the
15 criteria that you're actually given by law, and that's
16 precisely why I've been mentioning so often that many of the
17 legal mandates that you have may well end up with lines that
18 look quite irregular -- not that they require irregular
19 lines, not that they require regular lines, but that, in
20 applying those criteria, you may at the end of the day have
21 lines that look quite irregular, and according to the law,
22 that's fine.

23 COMMISSIONER KUO: So then the issue, when creating
24 irregular lines, would be the ability for the Commission to
25 justify, or be able to demonstrate what the intentions were

1 behind drawing those lines?

2 MR. LEVITT: You'll have to justify or demonstrate
3 your intentions for the entirety of one of the requirements
4 of the Act is that you prepare a final report where they
5 commission a final report to be prepared, describing why the
6 lines look as they do - not look physically as they do, why
7 the lines were drawn as they were. I don't think you have
8 any additional responsibility to justify strange looking
9 lines than non-strange looking lines, it's just that, in
10 selecting Commissioners to accompany you, you'll want to
11 assess out whether they are able to apply the actual legal
12 concepts that they're given, and if that requires setting
13 aside a natural preference for circles or squares, to be
14 able to do so.

15 COMMISSIONER KUO: Thank you.

16 COMMISSIONER BARABBA: I have another question. Is
17 there any examples of a Commission justifying a line based
18 on an anticipated change in the community?

19 MR. LEVITT: There are, certainly. I will say that,
20 when most states conduct redistricting, they don't tend to
21 justify what they are doing at all, at least not until
22 litigation. And so you don't often see lines explained as
23 we did this because of an X factor, we did this because of a
24 Y factor. But, certainly, it is in people's minds, natural
25 growth or natural growth trends, I will say that, both for

1 equal population purposes and for purposes of the Voting
2 Rights Act, while you may have those natural changes over
3 time in mind, the responsibility is to set a threshold at
4 least of what the current data show, and so it's not
5 permissible, for example, to draw lines that today dilute a
6 minority's effective right to vote, even knowing that in two
7 years, or in three years, they will no longer. But people
8 do and certainly it is permissible to consider what the
9 lines will look like into the future as you draw.

10 COMMISSIONER BARABBA: Thank you.

11 MR. LEVITT: Okay, with that, I'll go onto the next
12 set of criteria that California asks you to consider and
13 this may relate directly to Commissioner Kuo's question, if
14 I can remember which direction the slides go. Compactness
15 is the next criterion that you're given in the Voters First
16 Act. And in many other jurisdictions, in many other areas,
17 compactness may be conceived of in terms of abstract shapes.
18 Normally, when people think of compactness, they do so in
19 mathematical terms, in terms of - there are various
20 measures, there are about 30 different measures that
21 mathematicians have come up with for whether a district is
22 compact or not. Most of them have to do relatively with how
23 far flung tendrils of a district are or are not, so the
24 district on the left would be not compact, the district on
25 the right would be compact. But California does not -- and

1 most of the time, this leads to a preference for regular
2 lines. The reason -- I have to emphasize this -- California
3 does not use this definition of compactness, California
4 gives you a very specific definition of compactness that is
5 also not based on abstract geometric shapes. The California
6 standard is to not bypass nearby population and that is
7 right in the Voters First Act, that is what it says it means
8 when it asks you to draw compact districts. So, here I've
9 got a map that should hopefully seem familiar, this is
10 California and its counties. And here I have just chosen,
11 because it works very nicely for representative purposes,
12 part of the Central Valley, the counties of the Central
13 Valley, to blow up on the right-hand side of the screen. If
14 you were operating under geometric principles of
15 compactness, and you had to draw two districts out of the
16 counties of the Central Valley, you might well seek to just
17 use what looks like a dividing line right along the fault in
18 order to draw one district that is essentially the western
19 half of the Central Valley, and one district that is
20 essentially the eastern half. That is, if you were basing
21 your criterion on geometry, on regular lines, you might use
22 what looks like a fairly natural line of the county line to
23 follow. But California's standard involves population and,
24 so, when you overly the population map, where the population
25 actually lives on the map of the counties, on the more

1 abstract geometric map, what you find is that the population
2 of Central Valley doesn't actually follow the county lines
3 very well. And even more specifically, if you were to draw
4 the western half, eastern half districts, if you were to
5 draw maps based on geometry, then this pocket - you would
6 actually be violating the standard that California gives to
7 you because you would be bypassing nearby population in
8 Fresno in order to extend far up the Central Valley. To say
9 it again, if you were to draw nice neat geometric shapes in
10 California, at least for this configuration, you would not
11 be making districts that are compact in the way California
12 asks you to draw districts that are compact, its standard is
13 start with nearby populations, and then keep districts with
14 increasing amounts of the population nearby, rather than
15 just looking to abstract geometry. And that, again,
16 Commissioner Kuo, in answer to your question why am I
17 emphasizing irregular lines, it is to make sure that the
18 additional Commissioners that you choose are comfortable
19 with applying the actual legal standards that are given, and
20 not any preconceived notions they may have about what
21 redistricting requires.

22 Just to reiterate exactly that same point, in order
23 to draw districts that satisfy California's compactness
24 standard, you will need to identify population clusters; you
25 will certainly have help in that regard from Demographers,

1 and you will need to be comfortable with strange shapes and,
2 if necessary, in order to achieve population compactness,
3 ignore mathematically simple ones even if you get testimony
4 expressing preferences for grid maps or circle maps that
5 don't otherwise fit into the criteria that you're actually
6 being asked by the law to take account of. There are two
7 other criteria that you have to contend with, they are
8 relatively straightforward, at least comparatively more
9 straightforward than those we've discussed so far.
10 California asks you, where possible, to nest districts
11 inside each other. This has a special caveat that says,
12 where practical, and where it does not conflict with other
13 objectives, and that's important to keep in mind. What is
14 nesting? Nesting is drawing districts where essentially the
15 political boundaries coincide where the district boundaries
16 coincide. So, if that is a State Senate District, and you
17 wanted to draw two Assembly Districts in the same geographic
18 region, those districts would not be nested. Those
19 districts are nested, two Assembly Districts sharing
20 political boundaries with the Senate District. And the
21 California Voters First Act asks you, where practical and
22 where it does not conflict with other criterion which are
23 given explicit supremacy, to nest districts inside of each
24 other where you can. What is one example where you might
25 actually not be able to do this, where this might conflict

1 with other criteria? I give you an example of the Voting
2 Rights Act. If, again, this is your exceedingly strange
3 jurisdiction, and you have four State Assembly Districts,
4 those districts, they happen to be nice and regular, they in
5 essence preserve minority voting power in the State
6 Assembly, the minority population is sufficiently disbursed
7 and there is not sufficiently many of them, even if
8 everything were polarized, even if all the other criteria
9 attached, this is probably about as good as you can do in
10 preserving minority voting power in relatively compact space
11 in this jurisdiction for the Assembly. If, however, you
12 were to draw out nested districts in the Senate, you would
13 actually be diluting minority voting power. That is, if you
14 just combine two of those districts and minorities voted
15 cohesively and in a way that non-minorities did not, then
16 you would end up ensuring that minorities essentially lost
17 every vote in the State Senate. In order to draw State
18 Senate lines, you would have to draw a different
19 configuration in order to preserve minority voting power.
20 And the line on the right, in a relatively compact way, it
21 splits the jurisdiction in a different fashion, but in a
22 relatively compact way, preserves minority voting power in a
23 way that is not possible if you nest the Assembly Districts
24 on the left. What does this mean? It means that this is an
25 iterative process, and that you'll have to be comfortable

1 reevaluating one valid map if it leads to an invalid map for
2 a different chamber because the Voting Rights Act tells you,
3 because the California Voters First Act tells you, that
4 certain criteria are more important than nesting. And you
5 may also have to, or your fellow Commissioners may also need
6 to be comfortable deviating from nesting where necessary if
7 drawing two districts that combine to form a larger district
8 would actually violate another criterion farther up the
9 list, your fellow Commissioners will have to be comfortable
10 not drawing districts that nest neatly within each other.

11 Finally, political candidates, as I believe you
12 know, we've already discussed, there are certain ways in
13 which you might have to consider political data, and one of
14 the pieces of information you are not permitted to take into
15 account is the residence of particular political candidates.
16 I have a supposition of the reason behind this and I show
17 the example now at this point rather well known, this is
18 former State Senator Barack Obama's house, his residence in
19 2000 in Chicago, that is actually where he lived, in the
20 middle of - or right on the end of Congressman Bobby Rush's
21 district, and when State Senator Barack Obama ran against
22 Bobby Rush in the primary, he got 30 percent of the vote in
23 a rather hasty campaign; the following year, redistricting
24 occurred and that was Bobby Rush's new district in red,
25 which managed - I don't know if you can see - there's a park

1 just south of United States Senator Obama's house and the
2 district was drawn a block to the north, a block to the
3 west, and two blocks to the south of the Obama's residence
4 in order to ensure that Senator Obama would not challenge
5 Bobby Rush for that Congressional District again. This is
6 one of the reasons why you all, and your colleagues, will be
7 asked not to consider particular residences when you are
8 drawing districts.

9 You also know that you're not able to draw districts
10 in order to favor or disfavor an incumbent, a candidate, or
11 a party, but this does not mean that you have to blind
12 yourself entirely to all party information, you may well
13 have to consider for some circumstances party registration
14 or voting information, including in order to ensure that
15 you're complying with the Voting Rights Act. That is, there
16 is a difference set out in the law between drawing districts
17 in order to benefit particular parties, and drawing
18 districts where you have no information about the political
19 composition at all. And I think those are distinct, and
20 meaningfully so. The Voters First Act does not say that you
21 must -- it says specifically you may not consider residents
22 at all, it does not say that you may not consider partisan
23 voting information. And I think that's important.

24 So, for your colleagues, they'll obviously need to
25 know that there's information they're not permitted to

1 utilize and refrain from utilizing that information. Your
2 colleagues will also need to know that having a partisan
3 affiliation is not only okay, but an explicit consideration
4 in the Voters First Act, you will be choosing your colleagues
5 from particular partisan pools to ensure balance, and pools
6 for those affiliated with neither party, and that
7 considering parties and affiliation is also okay and, in
8 some cases, may be required, as long as you're not drawing
9 districts in order to favor a party or an incumbent, or a
10 political candidate.

11 So that's all that you have to consider! This leads
12 to a few qualities that you may look for in your colleagues
13 and I take it that many of you, if not all of you, have some
14 or all of these qualities yourselves. Quantitative
15 capacity, at least to the extent of reviewing reports and
16 information produced by your experts and your staff,
17 qualitative capacity, to take testimony and review expertise
18 and come to conclusions about what that testimony means, the
19 ability to consider and resolve conflicts, obviously the
20 ability to be flexible, I've mentioned several times. There
21 are a few natural human quirks that I'd like to draw to your
22 attention, only so that you're aware of them, so that you
23 may choose your additional six colleagues with them in mind.
24 I will say, before I go on to those, as we've seen, there is
25 an awful lot here, and I think the State Auditor's Bureau

1 has done really an exceptional job in preparing the entire
2 endeavor, so far, and I want to congratulate them wholly. I
3 think they've also done an exceptional job in screening the
4 pool from which you are to draw your colleagues for
5 conflicts of interest, so that you need not necessarily
6 worry about particular conflicts of interest prohibited by
7 the Voters First Act. Given all that you have to accomplish
8 in a very short time, you may find it useful to choose to
9 select among those who accompany you, those who have
10 experience in the redistricting process, or at least I would
11 encourage you not to discount the value of experience in
12 actually applying some of these things on the ground in when
13 you make your further selections.

14 The natural foibles that I'll mention, and these are
15 qualities that you may recognize in yourselves, or in your
16 family, I certainly know that I have ample experience with
17 all of them. Many people prefer clarity to ambiguity, some
18 prefer to spend far less mental effort on more ambiguous
19 concepts and prefer to gravitate naturally to things that
20 are purer, just because it's harder to grasp what ambiguous
21 concepts may reflect. But the Voters First Act in some
22 places, and Federal law in some places, makes ambiguous
23 concepts just as important as clear ones, and so you'll
24 want, in selecting your colleagues, to choose people who
25 feel comfortable overcoming what may be a natural preference

1 for clarity over ambiguity because the law makes ambiguous
2 concepts important, as well. For example, County boundaries
3 are nice and clear, community boundaries far less so. But
4 the Voters First Act asks you to consider both and does not
5 give you a clear priority to choose between them. And so
6 you would want to be comfortable, certainly, in ensuring
7 that your colleagues are comfortable with ambiguous
8 concepts, just as they are with rather precise ones.

9 In difficult choices, many people prefer to
10 constrain their own discretion. "If I take it out of my own
11 hands, then I don't have to worry I'm doing something
12 wrong." But in some places, the Voters First Act
13 intentionally leaves you discretion, gives you discretion,
14 and asks you to use it in order to accomplish other
15 objectives. For example, the Reasonably Equal Population
16 Standard I mentioned before, for all districts other than
17 Congressional lines where the law gives you flexibility to
18 have districts that are not perfectly equally populated in
19 order to achieve other criteria. And so, in selecting your
20 colleagues, you want to make sure that they, too, can look
21 beyond what may be a natural impulse to constrain your own
22 discretion.

23 And -- I think, finally -- many people have
24 preconceived notions about what "good" looks like. When I
25 present this slide to a classroom-type audience, I show

1 these districts which are all Congressional districts from
2 elsewhere in the country, that one on the top left is from
3 Chicago, it is one of the ones we discussed earlier, and I
4 ask for a show of hands for who thinks which districts are
5 good, or which are bad, and inevitably the ones that look
6 more regular, people feel, are better, without knowing
7 anything more about them. And I go through each of them in
8 turn to say where they are and what they do and why they
9 were drawn as they were. It turns out the most regular
10 looking districts tend to violate the law, in this example,
11 in one way or another. And I use this example to show that
12 the preconceived notions of "good" are very powerful, even
13 when we know that they should make no sense, they're very
14 very powerful. As Susan Boyle, I think, demonstrated to
15 many of us, if you followed this phenomenon, many people saw
16 Susan Boyle participating in one of the talent shows and
17 thought instantly that she would be an awful singer, even
18 though what she looks like has absolutely nothing to do with
19 how well she sings, and I think her performance surprised
20 millions of people, solely because of the power of
21 preconceived notions about what singers look like. The fact
22 that so many millions were surprised that she could seen,
23 actually speaks to the power of these things and says that
24 you may also want to consider among your colleagues who will
25 have the ability to set any preconceived notions that they

1 may have about what good districts look like aside because
2 the law asks for a careful balance of factors that doesn't
3 actually privilege anyone's mental picture of a good
4 district.

5 The same is true with preconceived notions about
6 what redistricting factors mean, what they should entail
7 like compactness. People may come into the process thinking
8 that compactness means one of the 30 mathematical measures,
9 but California law actually instructs you that, here,
10 compactness is not about shape, but about embracing your
11 areas [ph.] of population.

12 And in other places, the law does not give you much
13 instruction, but you will have to come to some shared
14 understanding of what certain terms mean. Some of the
15 criterion you are asked to follow to the extent possible,
16 others, you are asked to follow to the extent practicable,
17 and you don't have guidance from the text of the law whether
18 those mean the same thing, or things that are different.
19 And so you will have to come to a decision with your legal
20 counsel about whether there is a distinction in meaning
21 there, among yourselves. These tendencies, I want to
22 emphasize, are not destiny, they can all certainly be
23 overcome, but the reason I present them is because I think
24 they are important to keep in mind as you make your final
25 selections about who will accompany you in this extremely

1 important process.

2 That was all about the where. I want to spend just
3 a very little time on other qualities that you may want to
4 look for, given all that you have to accomplish. You are
5 being asked to draw district lines, certainly, but you're
6 not just being asked to draw district lines, you have, as
7 you know, a large bucket of additional tasks that you will
8 have to engage in, in order to draw district lines,
9 including hiring and supervising staff and counsel,
10 establishing the hearing process, all the way down to
11 potentially defending litigation, and here, too, these are
12 all places where you'll want individuals to accompany you,
13 who have qualities that will make not just drawing lines,
14 but all of these other factors easier for you, and I know
15 that I phrased all of this in terms of what you'll want to
16 look for in your additional colleagues, I know that many of
17 you, if not all of you, have many or all of the qualities
18 that I've been discussing already. But in order to
19 complement your abilities, you want to make sure that the
20 Commission as a whole can meaningfully engage in all of
21 these tasks. And you have a very short amount of time to do
22 it. From December, which is your deadline for establishing
23 the Commission, through August of approving the maps, there
24 are a number of tasks that you have before you, and now, an
25 additional set of Congressional maps to draw, thanks to

1 Prop. 20, and inevitably, some version of preparing for
2 litigation on the post-August 15th side of things. So, what
3 does all of this mean that you want to look for, or that I
4 suggest you look for in individuals to complement this task?
5 Again, things that are important for being able to draw the
6 lines, quantitative capacity, qualitative capacity, an
7 ability to get beyond common preconceptions, also some
8 ability, which you may have among yourselves, you might want
9 to seek to enhance, to assist with the managerial aspect of
10 your jobs as Commissioners, and particularly, given your
11 time constraints, given so much to accomplish in a short
12 time, again, a suggestion that you not discount experience
13 with the process if there are those within the pool who have
14 it.

15 Also, I wanted to close, and I know you've heard an
16 awful lot about this over the course of several days, I also
17 wanted to mention it because I think it's among the most
18 important things to do, you have mandated partisan
19 restrictions, that is, you'll be selecting your additional
20 six colleagues from certain pools of party registration or
21 registration with neither party, within those constraints
22 you also have the legal mandate to ensure the Commission as
23 a whole reflects the state's diversity, the racial
24 diversity, the ethnic diversity, its geographic diversity,
25 its gender diversity and, as you heard yesterday from Mr.

1 Lynne, I think quite well said, this is important not just
2 for the legal mandate, which of course it is, but also for
3 the credibility of the institution as a whole, that
4 California is really looking to you, thanks you for your
5 service tremendously, and is looking to you and your six
6 colleagues to represent them in the process of deciding how
7 the districts will be drawn. And it is exceedingly
8 important in that regard to ensure, as best you can, that
9 the Commission itself is representative. That fulfilling
10 the legal mandate for diversity will help you as an
11 institution remain credible and stave off a lot of the
12 critique that may have plagued other Commissions in other
13 states in the past, which were not quite as representative
14 of their own state's diversity.

15 I wish you the heartiest of good luck. Seriously, I
16 thank you for engaging in this task, like some of the others
17 because you have here -- I think that it is a momentous
18 undertaking and the service truly that you all are providing
19 is -- we are all grateful for it. I wish you good luck not
20 only in selecting your additional six members, but in coming
21 to being as a Commission as a whole. Like some of the other
22 speakers, I would love to be helpful and available as I can.
23 The State Auditor's Office has asked -- this is *Citizen's*
24 *Guide to Redistricting*, it's a publication that Brennan
25 Center, where I used to work, has put out and we just put

1 out -- I say "we" even though I'm no longer there -- the
2 Brennan Center has just put out an update for 2010,
3 including some of the updated factors in California. And I
4 will make sure that you all have a copy if you wish to have
5 a copy, I can certainly have them send bound copies your
6 way. They have some of -- the book is somewhat alarmingly
7 footnoted, they have some of the case law that you were
8 referring to. This is still a citizen's guide, and
9 therefore a very overview summary, and so it does not have a
10 summary of every case on the Voting Rights Act, but it does
11 present the concepts and give you citations to where the
12 concepts come from so you can see some of how the Voting
13 Rights Act has developed and how it has been applied.

14 And with that, nope, I will head the right direction
15 and simply give you contact information both for myself and
16 for the Brennan Center, which continues to work in the area
17 with some very accomplished individuals if you have any
18 questions whatsoever, I would be more than happy to try to
19 answer.

20 COMMISSIONER DAI: Professor Levitt, I was
21 wondering, that Citizen's Guide, is that available free to
22 other citizens? Or -

23 MR. LEVITT: It is. The Citizens Guide is available
24 not only free, but online.

25 COMMISSIOENR DAI: Excellent.

1 MR. LEVITT: The bound copies are available through
2 the Brennan Center, but it is available online. The website
3 is impossibly long, but you can find it at the Brennan
4 Center's website, itself, it actually up, I believe, this
5 week for the first time, so the second edition is brand new,
6 but it's free to anybody who wishes.

7 COMMISSIONER DAI: It might be helpful for us to
8 link to it directly on the WeDrawTheLines site.

9 CHAIRMAN YAO: Any further questions? All right, on
10 behalf of the Commission, thank you. Thank you very much.

11 MR. LEVITT: Thank you very much.

12 CHAIRMAN YAO: We appreciate your being here.

13 MR. LEVITT: And good luck.

14 CHAIRMAN YAO: Are we ready to continue with the
15 next agenda item?

16 MR. RUSSO: The next speaker is not available until
17 1:00.

18 CHAIRMAN YAO: Well, let me at this point open up
19 the podium to the members of the public, in the event they
20 have comments or questions that are directed to the
21 Commission. All right, seeing no one approach the podium, I
22 will close that. So, let me call a recess between now and
23 1:00. Some of us have to check out of the hotel room and
24 also grab something to eat, so we'll convene at 1:00. Is
25 that acceptable?

1 MR. RUSSO: Of course.

2 CHAIRMAN YAO: All right, thank you very much.

3 (Off the record at 11:19 a.m.)

4 (Back on the record at 1:03 p.m.)

5 CHAIRMAN YAO: All right, it's about four minutes
6 past one o'clock. The Citizens Redistricting Commission is
7 reconvening. Before we start on Agenda Item 11(B), I'd like
8 to open up the microphone to any of the public who may be
9 interested in talking to the Commission. If you do, please
10 come up to the podium. Seeing no one, I will then go
11 directly to Item 11(B), redistricting experience.

12 COMMISSIONER GALAMBOS MALLOY: May I ask, are we
13 getting copies of this Powerpoint presentation?

14 MS. MAC DONALD: Not right now, but you will later.
15 I actually just finished it.

16 Okay, well, thank you very much for having us. My
17 name is Karin Mac Donald. And this is my colleague, Nicole
18 Boyle. And while we're here to tell you a little bit about
19 redistricting from our own experience and also about just
20 redistricting in California, in general - can somebody just
21 tell me if I can control this? Not on this one, okay, I'm
22 sorry. I just got here, we didn't have the tech talk.
23 Okay, so let me just go over some basics here, first
24 introduce ourselves so you kind of get an idea of what we're
25 bringing to the table and why we were invited to talk to you

1 this afternoon. Nicole and I have worked at UC Berkeley for
2 16 and 14 years, respectively, and what we do there is we
3 are part of the statewide database which is the
4 redistricting database for the State of California. And I'm
5 going to tell you a whole lot about that later during this
6 conversation, or during this training. We've also been
7 involved in various local redistrictings, Commission
8 redistrictings in San Diego, and again San Francisco where I
9 was a Lead Consultant, and Nicole worked on those
10 redistrictings, as well. And we've done some special
11 districts and smaller things. Nicole worked for the Special
12 Master in the Arizona redistricting, once that actually went
13 to the Special Master. So, we've seen a lot of processes,
14 we helped set up processes, we've done, you know, GIS work,
15 and multiple tasks during redistricting, so that's basically
16 our hands on experience. Before the last round of
17 redistricting, we were really just theory and data people
18 and there's a big different between being a theory and a
19 data person, and then actually doing a redistricting. And
20 we learned that very quickly. So, the State Board database,
21 again, we want to go into this a little bit later, it's the
22 redistricting database for the State of California, we are
23 located at UC Berkeley, we used to be at the Institute of
24 Governmental Studies, so we moved out of there and we moved
25 over to the Law School, so we are now part of Berkeley Law.

1 And an overview of the session. So, what we're going to do
2 first is review the task of selecting the six additional
3 Commissioners because that's the most immediate task you are
4 charged with, of course. Then we're going to go through
5 data use in redistricting and I know you've already had a
6 data talk, you had a demography talk. And I should just
7 give you the caveat of this particular training, which is
8 that you've heard about demographics, and you've heard about
9 data, now you're going to hear about demographics and data
10 in a slightly different context because we're talking about
11 very small units of analysis, we're talking about what you
12 actually do in redistricting with these kinds of data, and
13 what you have available to you, and what the difficulties
14 and the complexities and all of that good stuff. So that's
15 what we're going to go over. Also, I should point out that
16 everybody who works on redistricting, because this is such a
17 niche of a field, such a strange field, actually becomes
18 somewhat familiar with the law, with demographics, with
19 processes, with public administration, with GIS, so there
20 are basically all these tiny little subsections that,
21 really, there are very few people in these areas with the
22 exception to the law, of course, that redistricting experts
23 really become experts on. So, a lot of what you're going to
24 see from us actually relates to the law, or we're going to
25 interpret the law in some fashion as it relates to

1 redistricting, so there's going to be some overlap with what
2 Justin told you this morning. I should say I'm a Political
3 Scientist, I am not a lawyer. Then, we're going to move on
4 to show you how to move some lines around, so we have some
5 redistricting software here that we can demo for you, so
6 we'll take some of those data units that I'm going to
7 explain, you know, to you about and I'm going to show you,
8 and we're actually going to show you how they move around
9 and how you build districts with those. And then, we can
10 talk about some practical considerations, about public
11 input, for example, in the process, just in general.
12 Perhaps we can eliminate some of the things that you're
13 going to deal with by drawing from the experience that we've
14 had working with other commissions here in California, in
15 particular, because those particular commissions, San
16 Francisco, as well as San Diego, had a lot of public input,
17 and all the lines were drawn in public in both of those
18 particular redistrictings. So, there is definitely
19 something to be learned from those. And then, finally, if
20 we have some time, and if you're still awake, and you still
21 want to talk to us, then we can do some Q&A, and then we'll
22 wrap it up.

23 Okay, so this comes straight from your Legal Guide,
24 pages 7 and 8, just to remind ourselves, the six Applicants
25 shall be chosen to ensure that the Commission reflects the

1 state's diversity, including, but not limited to, racial,
2 ethnic, geographic, and gender diversity. However, it is
3 not intended that formulas or specific ratios be applied for
4 this purpose. Applicants shall also be chosen based on
5 relevant analytical skills, and ability to be impartial.

6 So, what we did is we just pulled from the American
7 Communities Survey, which was briefly introduced to you, I
8 believe, yesterday by Hans from PPIC. And we just looked at
9 the one-year estimates, just to get an idea of what the
10 current racial and demographics, just general demographic
11 breakdown of the State of California is, just so we can
12 contextualize what this Commission looks like now, and how
13 that compares to the State of California. And, again,
14 keeping in mind that, you know, ratios and the like were not
15 supposed to be used, but I think it's still a pretty
16 interesting slide. So, total population in the ACS, and you
17 may have heard that there are some questions about how many
18 people we really do have in the State of California, it's a
19 lot of people, and a lot more than in 2000, that's for sure.
20 Anyway, so we have total population, and then we're looking
21 at White and not of Latino origin, I don't know if it was
22 explained to you that Latino and non-Latino is basically
23 considered an ethnicity for purposes of the Census, right?
24 And that is usually reported separately, so this is a
25 category that just tells you Whites, there are no Latinos in

1 that particular category as far as it has been reported.

2 So, for Whites, we have 41.5 percent, Latinos, we
3 have 37 percent, according to this particular dataset, at
4 least, Asians about 12.3 percent, Blacks 5.8 percent, and
5 then smaller categories are Pacific Islanders and American
6 Indians, Alaskan Natives, and then all the other races, and
7 those are also the multiple race categories. So, what the
8 number right next to White, not of Latino origin -- this is
9 where I wish I could walk around a little bit, and maybe I
10 can -- the 25 percent rate next to White, not of Latino
11 origin, that is basically the make-up of the Commission at
12 this point, ballpark, of course. And that is, I should
13 caveat that right now, by saying that I got these racial
14 breakdowns from somebody else who sent them out and said,
15 "This is the current ratio and ethnic breakdown of the
16 Commission," so if I misclassified somebody, then my
17 apologies because I understand that that can be very easily
18 done. And so, anyway, we have roughly 25 percent White,
19 12.5 percent Latinos, and then 50 percent Asians, and 12.5
20 percent Blacks, and then, you know, you can just kind of see
21 how that compares to the diversity of the State of
22 California at this point. I just thought it would be an
23 interesting chart. Could you go to the next one?

24 So, here is what we did, again, because you know,
25 when you work in redistricting, you realize that you can map

1 almost anything, so we mapped you! So, this is you on a
2 map, and basically we just looked at your county of origin,
3 and if the county is shaded blue, that means there's two
4 Commissioners from that particular County, and if it's
5 green, that just means there's one Commissioner from that
6 particular county. So you see the number 36,961,664 on the
7 left, and then there is a 44 percent up and a 56 percent
8 down? Well, that refers to this particular line here, this
9 line right here, this is where we divided the state in the
10 south and north because it was a straight line and it looked
11 good to us, so that's where we divided it, and we figured
12 out what the population for the lower, as opposed to the
13 upper part of California would be, and percentaged it. So,
14 what we get is 56 percent, you know, below that particular
15 line, I think it's the Ventura County line - no, it is
16 actually not the Ventura County line, it is right below
17 Monterey. Okay, San Luis, Kern, and San Bernardino line,
18 and then 44 percent above that. So, what we have is a
19 slight over-representation, actually, in the north. And
20 this is basically just a zoom-in of the counties in the
21 north because you couldn't really see those very well with
22 the percentages of the population, and I'm not sure whether
23 you can see those. Basically what we have is Yolo County
24 has about one percent of the population for the State of
25 California, and then we have Alameda with four percent, San

1 Francisco with two percent, Santa Clara with five percent,
2 and Santa Cruz with one percent. Okay, so again, this is
3 just an illustration. And why is it important? Why are we
4 talking about reflecting the state's diversity? And this is
5 why it's important, because appearances matter, they matter
6 especially in redistricting, I can tell you that from
7 experience. Every single redistricting I have worked on,
8 every single redistricting that I have observed, appearances
9 really do matter, you just get more buy-in if you kind of
10 look like the State, if you look like the jurisdiction, if
11 people feel like you really represent them. And I think
12 that was the intent of this particular initiative, is to
13 really get to the diversity of the state.

14 Also, of course, you know, if you can get a diverse
15 commission, then you increase the likelihood that somebody
16 on the Commission has experiences working with diversity in
17 different communities, so that's a good thing because people
18 will come and talk to you, they will share their
19 experiences, and if there's somebody on there who can really
20 relate to them, it will make your job easier. It increases,
21 of course, the collective knowledge of the state's geography
22 and of uniqueness because, the more you can bring in this
23 body to the table, the better for all of you, you can share
24 and that will be a good thing. And, again, it brings
25 different voices to the Commission, which is also very good.

1 So now I'm going to move away from this, and I
2 should also encourage you to stop me at any point because
3 we're going into the data talk now, and I really want to
4 make sure that I'm not losing anybody. So, please stop me
5 at any time and ask questions, that'll be good and just
6 fine. So, we're going to go over the following topics:
7 Which data are used to draw lines? So, what are we actually
8 going to use to redistrict? Which data are used for which
9 criteria? Because you have a lot of criteria that you have
10 to meet, as Justin has outlined for you. Which data are
11 easily accessible? Which data are not? And then, which
12 data sources are available, but difficult or impossible to
13 use? And there are a lot of question marks on that last
14 point, and we'll elaborate on that.

15 So, this chart you're going to see twice. I'm going
16 to start with this chart and just give you an overview of
17 basically what's involved, I'm going to break down the
18 different data sources, and then we'll look at that chart
19 again. So, you see data use is in green, right, so
20 basically your redistricting criteria, as I am sure Justin
21 has outlined, first and foremost, equal population, and what
22 you use for that is a data set called the PL94-171, and this
23 will be second nature to you by probably next week, I
24 promise you, because that is how everybody refers to it,
25 you're going to hear this so many times. And really, what

1 this is, it is just the Census dataset that gets released
2 for redistricting and it's just called PL94-171, some people
3 would refer to it as the Redistricting data, but it's
4 basically a block level dataset and I will go into great
5 detail about what is really in the PL94 and what's not in
6 it. So, then, the second criterion, and this really comes
7 straight out of California law, California Constitution, is
8 compliance with Federal law and the VRA. VRA, of course,
9 stands for Voting Rights Act, it's the Federal Voting Rights
10 Act that we're talking about here. What you use to assess
11 the VRA is essentially the PL94-171. SOR stands for
12 Statement of Registration, SOV stands for Statement of Vote.
13 Now, we'll explain how that all factors in. And then
14 there's a question about whether or not you will use
15 citizenship data and what kind of citizenship data you may
16 use for that.

17 Next criterion is compactness. You've heard about
18 it - did you show examples? You did show examples, good
19 idea. So, basically, compactness, you know, people in the
20 most simple way, people think of compactness as something
21 that doesn't look like my hand, but rather it looks like a
22 square or a rectangle, something that is just, you know, a
23 little bit, well, compact for lack of a better term.
24 Contiguity just means that your district has to be connected
25 and, in some of the states in the U.S., this can actually be

1 a very entertaining conversation about whether something is
2 connected and how it's connected. So, if anyone ever wants
3 to hear more about compactness or actually compactness and
4 contiguity, I have some great slides that are definitely
5 entertaining.

6 Respect for city and county boundaries - for that,
7 you use Census geography again because the is actually has a
8 wealth of information and this all comes out with their
9 geography release. Respect for neighborhoods. For that,
10 you would use public testimony, data geography submitted by
11 the public, by cities and counties, etc., and we'll go into
12 detail of that, and that is basically the same for respect
13 for communities of interest, and we're going to elaborate on
14 that, as well. So that's just your overall view of what
15 we're going to do, and let's just go straight into equal
16 population. Next slide, Nicole.

17 So, equal population. That's why we do it, and you
18 know why I write this down? Because, when you're doing
19 redistricting, you have so many criteria to meet, it is just
20 overwhelming, and after a while, you know, you have public
21 testimony, and you just kept the city together and the
22 county boundary is perfect, and then you look at your equal
23 population and you are way over, you know? Your district
24 has just grown to twice the size or something that it should
25 be, and this has happened to almost everybody because there

1 are all these different criteria, and you think, you know,
2 equal population, that's actually an easy one because,
3 really, all you have to do is just make sure you get this
4 particular number, but all the other ones are so difficult
5 and everybody is talking to you about them, so all of a
6 sudden you're over, you're under, and then you're going back
7 to square one, and you're starting to redraw.

8 So it's good to keep in mind that, really, we do
9 redistricting because we need to equalize the populations.
10 It's a Constitutional requirement based on One Person, One
11 Vote, in some sense, it's in the 14th Amendment, Equal
12 Protection, it's the Equal Protection clause, basically.
13 But then, the question is how equal is equal. And I'm going
14 to do this really quickly because I'm sure you've done this.
15 You did this, right? Yeah, okay. Next.

16 So, how equal is equal? And I'm going over this one
17 more time because we're going to talk about data that are
18 used for redistricting. So, in order to equalize something,
19 you have to have a particular dataset that goes to a very
20 small unit of analysis, so that you actually can equalize
21 the populations, okay? So, for Congressional Districts,
22 strict population equality is basically what you're shooting
23 for, you have to, the Courts say, no deviation is too small
24 to worry about. And as a translation, we looked at the
25 Congressional Districts for the last decade and, in 28

1 states, the Congressional Districts had a total deviation of
2 less than 10 people after the 2000 round of redistricting,
3 and that is incredible if you're thinking about how large
4 Congressional Districts are. In Congressional Districts,
5 they can have upwards of 700,000 to 800,000 people in them,
6 and then to deviate and only have a deviation of up to 10
7 people, is incredible, really. In California, the deviation
8 was actually just one person, believe it or not, so that is
9 not easy to do. Next.

10 So, how equal is equal for the Legislative
11 Districts, then? Because that's what you're also drawing,
12 right? This is straight, this comes straight from some
13 court cases. Again, I'm playing the attorney on television
14 here. The total deviation - that's the total deviation
15 within 10 percent may not constitute a prima facie Equal
16 Protection violation under the 14th Amendment, it is a
17 mouthful; basically, what this entire slide says, as the
18 next point, above 10 percent, be ready to justify with the
19 substantial and legitimate State interest; basically, for
20 Legislative Districts, you can deviate more. We used to
21 have a rule of thumb that said, "Okay, you might be able to
22 deviate up to 10 percent," so that means deviation means
23 that the Districts are, you know, they range in how much
24 they're over and under total by 10 percent. But then we had
25 Larios vs. Cox in 2004, so this is a court case that put

1 everybody on notice. The legislature believed that, within
2 plus or minus five percent, so they weren't even going like
3 nine percent over, you know, they weren't going like nine to
4 one percent, where one district was nine percent over, or
5 even 10 percent over, and the other ones were all aligned,
6 but they were actually staying between plus or minus five
7 percent, and that was not upheld, so they got in trouble
8 with this. I think the lesson to be learned is that you
9 want to deviate as little as possible if you can. Of
10 course, you have a lot of different criteria that you have
11 to meet, so some deviation will be in the cards, for sure,
12 you have to have a good reason. And what that second bullet
13 point there says is substantial and legitimate state
14 interest. Now, out of that court case, they said that
15 preservation of county boundaries was a legitimate and
16 substantial state interest, this was not a California case,
17 this was a state where county boundaries were an incredibly
18 important jurisdiction and actually a more important
19 jurisdiction than California. So, we need to go back to the
20 language that we have now in California, and figure out, you
21 know, how we can deviate, or why we can't, what actually is
22 allowable. And part of that answer is probably going to be
23 the Voting Rights Act. Next.

24 COMMISSIONER DAI: So can you explain what happened
25 in that particular case, why it was not considered, why it

1 was not upheld?

2 MS. MAC DONALD: I don't know the details of it, do
3 you?

4 MR. LEVITT: I can if you like.

5 MS. MAC DONALD: Yeah, go ahead. This is the
6 lawyer.

7 MR. LEVITT: So, Karin is absolutely right in that
8 you want to try to get as low as possible while still
9 allowing yourself flexibility to meet your other criteria
10 that the Constitution gives you. Larios vs. Cox was a case
11 out of Georgia, after this last cycle, and there, the
12 evidence in the record was that, for purely partisan
13 reasons, the Legislature had redistricted so as to
14 systematically overpopulate some districts, and
15 systematically under-populate others, meaning that it was
16 systematically giving certain segments of the population
17 more voting power and certain segments of the population
18 less voting power, not to preserve County boundaries, not to
19 take into account any consistent state objective in their
20 state law, or any traditionally supported neutral state
21 objectives, but purely for partisan reasons. And the
22 Supreme Court said, even within a 10 percent threshold, not
23 okay. This is actually - it was found by a District Court
24 in the vagaries of redistricting litigation, it was what is
25 called "summarily affirmed" by the Supreme Court. The

1 Supreme Court didn't actually write a complete decision on
2 it, it just said, yes, that's right, checkmark. And people
3 still don't know exactly how much that means, but it
4 certainly exactly as Karin said, put people on notice.

5 MS. MAC DONALD: Thank you. Okay, now we'll move on
6 to Census data because we've just learned about deviations
7 and that we need to keep them small, so what do we do. Very
8 quickly, and I know that Hans talked about this yesterday
9 briefly, the 2000 Decennial Census used two forms, one was a
10 short form, we know this as a short form, and that was the
11 form that went to everybody's household, everybody filled it
12 out, hopefully, and it asked for basic demographic and
13 housing information, including age, sex, race, and
14 ethnicity, the number of people in the housing unit, and
15 then, whether they were renters or whatever, so that's the
16 short form, and that's all there was to it. The long form,
17 which was sent out in 2000 collected the same information as
18 the short form, but also a lot of other questions, such as
19 income, education, citizenship, language spoken at home, and
20 more. That went to one in six households. The long form
21 data in 2000 were also known as the "sample data." The
22 short form data, also known as the "100 percent data," or
23 100 percent "sample data," are the PL94-171. And this time,
24 in 2010, what we have is the new Census collection,
25 essentially. The 2010 Census only used the short form, so

1 that was went out this year, April 1, everybody received the
2 form, every household received the form, but people did not
3 receive the long form because they discontinued that and the
4 sample data are now collected by what is called the American
5 Communities Survey, or the ACS. What's old is, this is the
6 same process as the last time, is that the short form data
7 have to be released by the Census Bureau before April 1,
8 2011. And that's exactly one year, of course, following
9 Census Day. Now, from our experience here in California, we
10 can tell you that we're usually the last state to get Census
11 data, and that, of course, is because we're big, and the
12 Census Bureau, they like to get things off of their
13 checklist, as well, so it's a lot nicer to get some of those
14 small states processed first, right? But it also has to do
15 with deadlines, legislative deadlines, and redistricting
16 deadlines for the other states. So, we're going to get the
17 Census data last. The last time we got it the last day of
18 March, and I'm expecting it's not going to be a whole lot
19 sooner this time, so that is basically when we really know
20 what we have to work with, okay?

21 So, the 2010 Decennial Census, I promised you that
22 this was going to be second nature to you very quickly,
23 probably by the end of this talk, it is called the PL94-171
24 data. This is basically the short form data. So, you fill
25 out the form, it goes to the Census, and then it comes back

1 in this particular file. It is basic information, data,
2 that jurisdictions are required by law to use for
3 redistricting. Census 2010 redistricting data contains the
4 count of the U.S. population, now, this is pretty important
5 because that distinguishes it to some extent from the
6 American Communities Survey. And it's a block level data
7 set and that is also important. It includes data on
8 people's race and ethnicity for both the total and the
9 voting age population. And the information is based on the
10 answers, again, to the short form. There are five detailed
11 tables, and now I'm going to make your eyes glaze over just
12 a tiny little bit because I just want you to see what this
13 looks like when the Census sends out documentation. Next.

14 So, this is the documentation for the PL94 data
15 product. So what you see on the left is the subject line
16 and it is race, and below that it says Hispanic or Latino,
17 or not Hispanic, or Latino by race, then there's race for
18 the population of 18 and over, of course, 18 and over,
19 that's always your voting age population, and you'll be
20 referring to that very quickly as voting age population.
21 Then, there is Latino and not-Latino, voting age population,
22 and then there's occupancy status, and that's usually the
23 one we forget about, I don't know why. In the PL94,
24 everybody always talks about all the other categories, and
25 everybody forgets to talk about that. There are actually

1 housing units in there, as well. But that's not really used
2 for redistricting, so that's probably why. Next. And then,
3 the Census breaks it down even further for, you know, geeks
4 like us, so this is really what it looks like. You get p1,
5 which is race, the universe's total population, so basically
6 it is for the entire universe, everybody that was counted,
7 and then there's population of one race, and it will show
8 you "White alone," "Black," "African-American alone," and
9 then this "alone" refers to the fact that, since the last
10 Census, not the one this year, but in 2000, people had the
11 opportunity to check more than one race category, okay?
12 And, of course, there's a recognition, there are a lot of
13 people that don't fit into one race category, they may fit
14 into two, three, and maybe into race and into an ethnicity
15 category, as well. So, this is why this is delineated like
16 that, it says "White alone" because there's not another race
17 attached to that particular category. So, you will get this
18 first, p1 just basically refers to Table 1, that is just
19 your race variables for the total population of one race,
20 then P2 gives you all the Latinos, basically, and also by
21 race, so you'll see that you have the total Latino
22 population there and then it will say, you know, Latinos are
23 not Latinos that are White, Black, African-American, and
24 Alaskan Native, and so forth. But these basically are the
25 only racial categories that you get from the PL94. And

1 then, this all repeats. See at the bottom, it says "repeats
2 for the population of two or more races," so you get the
3 same lay-out for people that are, for example, White and
4 Black, or, you know, White and American Indian, and so
5 forth. So, this becomes actually, out of these very few
6 variables, when you multiply each with each, even though the
7 numbers are very small, this dataset is really big. I think
8 the last time we had -- I think it was about 280 variables,
9 just from these seven or eight questions. So, it's pretty
10 interesting, actually. Okay.

11 So, this is just a repeat in this summary of what
12 the other tables look like because, in the other tables,
13 what you are getting is the voting age population, so the
14 first two tables give you the total population, and then
15 Tables 3 and 4 will just give you the voting age population,
16 and then, again, Table 5 is about occupancy status. Now, I
17 want to point something out. When you're starting to draw
18 lines and you're starting to look at race, you're going to
19 have to make a decision of where you want to allocate
20 people. So, if you have people that are in multiple race
21 categories, right, if you have a category - and we don't
22 know what the data are going to look like, right? But we
23 know already because, you know, there is some research out
24 there that there are more people that checked multiple race
25 categories this time than the last time, there may be more

1 people, there may be more familiarity with this particular
2 topic, there are various reasons, most likely, for why that
3 happened. But basically, we are going to have larger
4 numbers in the multiple race categories, so you have to
5 figure out how you want to allocate those. And that's going
6 to be one of those more complex decisions that you will have
7 to make right before you start drawing the lines. Okay.

8 So, let's go over this really quickly. So, the 2010
9 Census and the American Communities Survey basically, again,
10 the ACS, was the nationwide survey that replaced the long
11 form, right? So we just talked about the PL94, and now
12 we're talking about the ACS, the American Communities
13 Survey. It collects the same information on people and
14 housing as the long form questionnaire did in 2000. And the
15 interesting thing about this is that, in 2000, it was
16 collected on the same day, so it was a one-day survey,
17 basically. You either got the short form, or you got the
18 long form, you filled it out, and you sent it back all done.
19 This is not the case anymore because, now the American
20 Communities Survey is actually constantly sampling, it's a
21 "rolling sample," as they call it. And it is collected
22 constantly, it is released in multi-year estimates on the
23 census block group level, and it's not census block level
24 data. I'm going to show you some slides in a second of what
25 these units of analysis, these geography units, look like

1 and then you'll know why this will be difficult data to use
2 for redistricting if you're actually, you know, equalizing
3 populations. But, just to make it very easy, really
4 quickly, to equalize populations you use the PL94, you do
5 not use the ACS. There's a lot of confusion out there now
6 because the ACS was also considered Census data, of course,
7 you know, but it's kind of apples and oranges because it's a
8 totally different sample, it is collected on different days,
9 it's range data, it's a rolling sample, there are just all
10 kinds of caveats to these data.

11 Detailed demographic social economic and housing
12 data are no longer collected as part of the Decennial
13 Census. Pointing this out one more time, and you know, this
14 is of course what we just talked about, what we're saying is
15 that the Decennial Census is really the PL94, it's the short
16 form. The ACS gets collected all the time, so it's not
17 really collected on the same day.

18 There are four main groups and types of
19 characteristics that the ACS data can be grouped into, and I
20 thought it would make sense to just go through this really
21 quickly, even though there are some limitations to these
22 data, just so you know they are out there. Okay, Nicole.

23 So, the first characteristic is basically
24 demographics, so what you have here in this particular
25 category is sex, age, race, and ethnicity, and that sounds

1 kind of familiar because that's also on the PL94, right?
2 But, again, it was collected at a different date. Right?
3 Because it's a rolling survey, it's a sample.

4 Then we have social characteristics, so some of the
5 variables are education, marital status, fertility,
6 grandparent caregivers, citizenship, Veteran status, and
7 disability status. Next. Economic characteristics that are
8 collected and released are income, benefits, employment
9 status, occupation, industry, commuting to work, and place
10 of work, and as you're looking at this, if you've ever had
11 the long form, or if you've been interviewed, you know why
12 it took so long, because there is a lot of questions on
13 there. I actually got a long form the last census, I was
14 very happy. Okay, next. And then there's housing
15 characteristics. And there's tenure, occupancy, and
16 structure, housing value, taxes and insurance, utilities,
17 mortgage, monthly rent, and a personal favorite, I always
18 say, is plumbing. Okay.

19 So, here, let's go into the difficulties really
20 quickly with the American Communities Survey and why it's
21 difficult to use. Is there any way I could use the
22 microphone over there, perhaps, for a second? Would that be
23 okay? May I? I think they did this on purpose to me
24 because I usually walk around a lot, and this time they
25 shackled me. Okay, so this is basically - this is not going

1 to work either, you know that? So this is the data release
2 schedule for the American Communities Survey, so what you
3 see here - and this is probably hard for you to see, right?
4 So, this says one-year estimates for data collected in --
5 and then it goes down to three-year estimates, and then
6 five-year estimates. These are the areas for which these
7 data are released, okay? These areas are 65,000 people and
8 above, 20,000 people and above, in all areas, so it is
9 actually not all areas, it's census block groups, and I will
10 show you what the difference is in a second. As you read
11 over here, it shows what the data are released for, on what
12 year the data are released for, and then these are the data
13 - these are the years in which these data were actually
14 collected. So, to read this chart, you can get five-year
15 estimates on a small unit of analysis, on a smaller area,
16 right, the census block group in 2011 when we might be
17 interested in using this data; however, these data were
18 collected between 2006 and 2010, and you can't just take
19 these data and average them and assume that you're going to
20 have a good number, it doesn't work like that because it's a
21 rolling sample. And I should tell you, the jury is still
22 out on what the ACS can be used for in redistricting. There
23 are definitely some limitations, probably, on the
24 citizenship data because there is a lot of suppression in
25 these data, as well. There may be a use for these data in

1 some aspects of community of interest definitions, but what
2 this chart shows here, and you will have this in your hand-
3 out later, is that these data are basically a little dated.
4 And what we're drawing with, what you are equalizing your
5 populations with, those are the freshest data out there,
6 right? These are data you're able to collect at this year.
7 So, really, there is a definite complication here if you
8 want to use both datasets, there is definitely an apples and
9 oranges issue here. And, again, I think, still, there are a
10 few researchers and demographers working on this issue right
11 now, and I will absolutely keep you posted and everybody who
12 is interested in it, you know, the results of what these
13 studies are.

14 COMMISSIONER FORBES: One question. Okay, the
15 question I have is that it says the data is released in
16 2011. When in 2011?

17 MS. MAC DONALD: Yeah, I actually just called the
18 Census Bureau, and we might actually get the data back by
19 the end of January, and that was a "might."

20 COMMISSIONER FORBES: Okay. Better than September.

21 MS. MAC DONALD: Yep!

22 COMMISSIONER DAI: The other question I had was you
23 said there was a lot of suppression in the data. What
24 exactly did you mean by that?

25 MS. MAC DONALD: Okay, I think your neighbor could

1 probably explain this even better than I could. For the
2 citizenship data, for example, we mapped the data for the
3 last release, and of course, remember, the citizenship data
4 the last time were on the long form, and we never had access
5 to citizenship data until after the redistricting was
6 already completed because it was usually released in the
7 year ending with "3." So, redistricting was over and then
8 we would get the data, okay. But, then, we would look at
9 citizenship and we would find -- we would map it, as I said,
10 we can map almost anything -- and we would find that there
11 were all these areas where you couldn't get any data, we
12 call them "holes." So, there was just nothing there, and
13 looking into this further, basically, it was suppression by
14 the Census Bureau. I mean, one of the things that the
15 Census Bureau is very very concerned about is to make sure
16 that people's confidentiality is preserved. And sometimes
17 you have units of analysis where you just don't have a lot
18 of what we call "data points," and then they make a decision
19 to not release these data. So, with citizenship, this is a
20 real problem. And I've had some conversations with Census
21 where I was told, and I have not seen the ACS data, that
22 there will be more suppression this time than the last time.
23 So, there will be many areas for which we will get no data.

24 COMMISSIONER BARABBA: Let me just amplify that.
25 The problem we run into is, if you have a community where it

1 is only two or three people of a particular heritage, and
2 you publish the detailed data of those two or three people,
3 you reveal a lot about them, and at that point, the Bureau
4 would be in a position of revealing private information,
5 which it is, by law, prohibited from doing.

6 MS. MAC DONALD: Okay. So let's talk about
7 geography and what we call "units of analysis." So, units
8 of analysis are really just data reporting units, so it
9 could be almost anything. It could be, you know, a block,
10 which is just the smallest unit of analysis on which data
11 reported by the Census Bureau, and a census block is roughly
12 like a city block in urban areas, and in rural areas, it can
13 be something completely different, it can actually look
14 quite creative. It can be defined by a rich line or a
15 creek, or a fence line, actually. There is all kinds of
16 definitions for census blocks and how they are delineated.
17 And we should know because we actually just did -- we were
18 in charge of the Block Boundary Suggestion Program for the
19 entire State of California, for the second time, so we
20 actually went up and down in the state and collected the
21 block boundaries for the State of California, and there are
22 some interesting ones in there. So, other units of analysis
23 that the Census Bureau released this data on are block
24 groups, tracts, places, that is the Census definition for
25 cities, essentially, and also unincorporated areas, and then

1 counties and state.

2 So let's look at some maps because I figure that
3 would be a nice break. So, one reporting unit, of course,
4 here is the State of California, and here are all 58
5 counties, and you see one county is shaded, that is the
6 county we are going to use as an example to kind of show you
7 how these different units of analysis kind of layer in each
8 other, or not. So, let's take a look. This is Alameda
9 County and this is a census tract, so when you hear "census
10 tract," this is what it can look like, it looks like
11 something under a microscope, but it isn't. So, this is a
12 census block with a number "435101," the Census, of course,
13 has a numbering scheme for the entire U.S. because that is
14 how they keep track of data, there is usually a prefix
15 before these - for California it is 006 because the states
16 all get alphabetized, and then basically get a number
17 assigned. There is basically an explanation for almost
18 everything here. Next.

19 This is census block groups, so these are census
20 block groups that we just overlaid onto Alameda County and
21 also onto this particular census tract, and -- can you go
22 back really quickly for one second -- so if you look at the
23 census tract here, and then the next slide, you see that
24 there are some fine lines right in the middle of this tract,
25 and -- okay, go to the next one -- and these are your census

1 blocks, basically, so what you can see is that there is more
2 and more finer units of analysis that are all pretty much
3 nesting in this particular census tract, right? So, this is
4 really just a visual kind of -- a visual way to think about
5 how these units of analysis relate to each other. Keep
6 going. So, this is a zoom-in, and again, this is our census
7 tract in Alameda. And these are the block groups. So,
8 these are the block group boundaries, essentially, in the
9 tract, so we have five block groups in this particular
10 tract, and we have 114 census blocks in this tract, so these
11 smaller units, these are Census blocks, and you see that
12 there are sometimes census blocks within a census block,
13 just to keep things a little more interesting.

14 This is what this looks like on basically just a
15 chart that the Census Bureau gives, and let me just show you
16 this. See how the blocks are at the bottom here? And then,
17 you can follow the blocks up to these other units of
18 analysis, what this means is that blocks nest in block
19 groups, next in census tracts, in census counties and
20 states. So, your blocks basically have a relationship to
21 absolutely every census unit here, and they are connected to
22 every single census unit that is on here. So, blocks are
23 really your smallest building block, which is good for
24 redistricting because, remember what we have to do is try to
25 keep cities and counties together, communities of interest,

1 all of these different units of analysis, so a small unit of
2 analysis to use as a puzzle piece, you know, as a building
3 block, is a really good thing.

4 CHAIRMAN YAO: How often do the block boundaries
5 change in --

6 MS. MAC DONALD: This is great, you're jumping ahead
7 already. Every 10 years -- no, no, this is good -- every 10
8 years, the census block boundaries actually change. So, and
9 this is -- and we will actually go into this because this is
10 a really important point because our census block boundaries
11 from the last Census to this Census, yeah, we're getting new
12 geography in December, just in time for redistricting. And
13 this is exactly actually why this chart down here, this is
14 just an overview of how the geography from the State of
15 California has changed, right? So, in 1990, it really is
16 just an info chart, right? Of course, we had 58 counties,
17 but then look at how the Census placed the cities, how they
18 went up from '90 to 2000. They went from 471,000 [sic?]
19 [44:36] to 1,080, and it is pretty amazing how the State
20 changed, right? And then, we had 5,874 census tracts in
21 1990, but then, in 2000, we had 7,000 of these units of
22 analysis, these building blocks to move around. Census
23 blocks went from 400,000 something to 533,000, and I just
24 made a phone call, our new ones are going to be 710,000, so
25 these are your building blocks. This is when you start

1 getting really excited about software, so you don't have to
2 do that all manually, that you can actually use a computer
3 to draw lines, that is a good thing.

4 MR. LEVITT: Are you going to talk about
5 [inaudible]?

6 MS. MAC DONALD: Yeah, we talk about that, yeah.
7 Well, I could talk about it now since Justin asked, okay,
8 Justin just asked me whether I was going to point out that
9 the ACS data that we're going to get released are actually
10 going to be on the last Census geography, and just, you
11 know, to make things a little more exciting, as I said, with
12 the ACS and the PL94, we already have a little bit of an
13 apples and oranges issue because one dataset was collected
14 this year, the other dataset was collected over a five-year
15 period of time. We have different units of analysis, right?
16 One was released on a census block group level, the other
17 one on a census block level, so the block groups are
18 obviously a whole lot larger. But, just to keep things a
19 little bit more interesting, the Census is going to release
20 the ACS data on the old geography from 2000, but the PL94 is
21 going to be released on the new geography from 2010. So,
22 can you go back to this one? So, just look at what this
23 looks like. So, census block group, right? So, we have in
24 1990, just as an idea, I don't know how many census block
25 groups we're going to have released, I only asked about the

1 blocks, and that's the answer I got, and it's probably an
2 approximation, but pretty close. So, basically we have, you
3 know, 180,000 or something more -- is it -- yeah, 180,000
4 more census blocks. So, we're also going to have a lot more
5 census block groups, right? So, we have more units, but the
6 data are going to be released on the fewer units, and, of
7 course, they're not just going to, you know, align, it's not
8 like they're going to annex a piece of California, and
9 that's where all these additional block groups go, right?
10 If it could only be that easy! This is going to a pretty
11 complex problem to figure out which block groups, you know,
12 basically to move the data from one set of block groups to
13 the new set of block groups. So, this is what Justin was
14 just referring to. So, in addition to all the other issues
15 we're going to have with the ACS, this is definitely a big
16 one.

17 So, and then, let's talk about election data. Now,
18 those are not data that we get from the Census, and why are
19 those needed? That's actually a question you get a lot and
20 you will probably get that question a lot, just because
21 people now think, well, it's a non-political exercise. Now,
22 you know, it's now a Citizens Commission, so why do we even
23 need election data? Well, you need election data for the
24 Voting Rights Act, that's why you need election data. And
25 specifically for Voting Rights Act Sections 2 and 5, and I'm

1 sure that Justin has told you all about this, I will just
2 refresh your memory really quickly because this is the way
3 that non-lawyers usually think about Section 2 and Section
4 5. Section 2, majority-minority districts, Section 5, pre-
5 clearance and retrogression. So, majority-minority
6 districts under Section 5, a really brief description of it
7 is, what is it - a minority group must be large enough to
8 constitute a majority in the district, and that means 50
9 plus percent; the minority group must be geographically
10 compact, so, remember, not the hand, but the square, that
11 sort of thing; minority group must vote cohesively, so they
12 must vote as a block; and then, finally, there has to be
13 evidence of polarized voting against the minority group.
14 One thing to really note is that Section 2 of the Voting
15 Rights Act does not prohibit the drawing of what we call
16 "influence seats," or considering racial or ethnic
17 communities of interest. What we mean by that is that, if
18 you have a large area of minorities, and you don't meet the
19 threshold of 50 percent, that doesn't mean you shouldn't
20 draw the district, it doesn't mean that the Voting Rights
21 Act says you can't draw that district, you just can't draw
22 that district and call it a Section 2 district. Okay? It's
23 a Section 2 District, it's got to meet the 50 percent plus.
24 But that doesn't mean you cannot draw, you know, districts
25 in which minority populations have basically a majority,

1 it's just the threshold of 50 percent basically gets it.

2 Section 5, to keep in mind, again, pre-clearance and
3 retrogression, there are four counties that are what we call
4 "covered" in California, those are Kings, Merced, Monterey,
5 and Yuba, and you probably went over that, so I'm going to
6 back away from it, unless somebody has questions. Yeah.

7 COMMISSIONER BARABBA: I had a question. Those were
8 established in a previous Census -

9 MS. MAC DONALD: Oh, yeah.

10 COMMISSIONER BARABBA: Are there likely to be other
11 counties show up if they find data in this Census, or is
12 that precluded from -

13 MS. MAC DONALD: For Section 5, you mean?

14 COMMISSIONER BARABBA: Yeah.

15 MS. MAC DONALD: No, I don't think so. I think that
16 test was - and I actually have a presentation on that, that
17 I'll gladly send you. But do you have the test memorized?

18 MR. LEVITT: No, but it was '72 --

19 MS. MAC DONALD: Yeah, it was like in the '70s,
20 basically, and it had to do with the discrepancy between
21 registered voters and minority populations, essentially, but
22 it's a pretty -

23 COMMISSIONER BARABBA: And those counties - nothing
24 will add to those counties?

25 MS. MAC DONALD: No, no. There is a trend around

1 the United States to actually try to bail out, what is
2 called "bail out," so counties or jurisdictions that are
3 covered, they're trying to get uncovered. And, you know, I
4 think some of these counties have looked into it, but I
5 don't think we're going to see anymore coverage, no.

6 Okay, let's talk about electoral geography because
7 we just established that we need election data and that, of
8 course, comes with its own set of geography. But when
9 people talk about electoral geography, they really mean two
10 different things, and one thing is basically reporting
11 units, and that's precincts, census precincts -- I mean,
12 election precincts. Precincts are the smallest unit of
13 analysis for the reporting of electoral data, so basically
14 this is the electoral data equivalency, you know, to the
15 census block. So census block on one end is the lowest unit
16 of analysis for reporting PL94 data, Census data, and for
17 electoral geography, it is precincts.

18 In California, in some states, people are lucky and
19 election precincts don't change at all between Censuses, or
20 very very infrequently in California because, again, we like
21 to keep it interesting. They change all the time. And
22 sometimes we have up to 80 percent of precincts that change
23 between elections. So, basically what that means is, when
24 you're looking at precinct number 5678 in Alameda County,
25 and you look at that in one election, and then you look at

1 it in another election, that doesn't necessarily mean you're
2 looking at the same underlying geography because it might
3 have changed.

4 Then there is also electoral geography that has to
5 be redistricted, of course, right? This is not reporting
6 geography, and I'm just pointing this out just because
7 people always come in with a lot of terminology, it's always
8 good to kind of figure out what they're talking about, you
9 know, if you're talking about reporting units, or you're
10 talking about, you know, geography that has to be
11 redistricted. So, just some examples are Assemblies, Senate
12 and Congressional Districts, as you know, Board of
13 Equalization, of course, but then, on the local level, there
14 are a lot of them, there is City Council, Board of
15 Supervisor Districts, there are the County Hospital Board of
16 Trustees, the Community College Districts, the Water
17 Districts, Transportation Districts, Mosquito Abatement
18 Districts, Mortuary Districts, there are so many special
19 districts, there are over 3,000 in the State of California,
20 it is really amazing. Go ahead.

21 CHAIRMAN YAO: Why are precincts changed?

22 MS. MAC DONALD: Precincts change for a couple of
23 reasons, but the most important one is that we have a law in
24 the Election Code that says you cannot have more than a
25 thousand registered voters per precinct, and that's

1 basically to keep the lines low at the polling place, that's
2 one explanation for it, so because we're a high mobility
3 state and we're more high growth state, if you think about
4 what's been happening in California with people moving, you
5 know, to the east, and then they're moving back, there's a
6 lot of development, they're going to the Central Valley and
7 all of that, every time somebody moves, basically an entire
8 area gets affected and then the Registrar has to re-
9 precinct. It also has to do with all of these different
10 districts that we have because they are all lying on top of
11 each other, but they don't share the same boundaries because
12 they're all created for different purposes. So, you know,
13 you have different populations in there, they all have
14 different reasons. So, once you add all of that up
15 together, that is basically what happens, you have this
16 different district, and then the re-precinct has to -

17 CHAIRMAN YAO: Is it done by computer, by software,
18 or do judgments go into changing the districts?

19 MS. MAC DONALD: I don't know that the precincts
20 actually -- I am sure that -- it's not a political activity,
21 it's really an administrative process. I don't think we
22 have yet at this point a computer program that can
23 completely do it on its own, but I may be corrected by one
24 of the Registrars, and I should probably check up on that,
25 actually. But it's a very involved process that just really

1 involves overlaying all these different districts, making
2 sure that people are, you know, in the same -- what they
3 call a ballot group, so they get the proper ballots and
4 then, you know, as soon as something changes, then of course
5 there is this little ripple effect that goes through the
6 entire district, as well.

7 Okay, here is a map. These are the precincts in the
8 State of California for the 2008 General Election, it is
9 pretty amazing, isn't it? You know, because we work with
10 these data a lot, people call up and they say, "Well, do you
11 have a precinct map for the State of California?" Our first
12 question is always, "What year?" You know? "What
13 election?" And sometimes it's not even just what year, if
14 there were two different statewide elections, those are
15 completely different maps, those are completely different
16 units, it is really pretty amazing. Okay, next.

17 This is, again, our tract in Alameda County, just to
18 show you what this looks like, it looks a little bit messy,
19 especially once we zoom in here a little bit, so these are
20 the precincts that are overlaid, and see how the Census
21 units were nicely nested in that? Well, this is what
22 election precincts do, they basically slice and dice that
23 particular tract because they really have nothing to do with
24 each other, one is a reporting unit from the Census, you
25 know, really designed to report population, and the other

1 one is for reporting of election results. So, you know, two
2 completely different purposes. Okay, next? Just to make it
3 a little more interesting, we put block groups onto this
4 particular tract, and also the census blocks, so this orange
5 - so this orange area up here, this is actually census block
6 that we just selected and, of course we selected it because
7 it has a couple of holes in it, too, so it's not actually a
8 continuous block. But, so what you see here, these are the
9 census block groups in the tract, and then these fine lines,
10 these here, those are your precincts, and then we also have
11 our census blocks, the little green lines here. So, they
12 really have nothing to do with each other, precincts slice
13 and dice pretty much everything. The Registrars really like
14 it if you can stick to some of the census boundaries, you
15 know, if there could be some clean-up, it would really make
16 their lives easier, but it's just often times, with all the
17 things you have to do in redistricting, once you start to
18 look at these lines, it just becomes very very difficult,
19 even with the best of intentions.

20 COMMISSIONER BARABBA: If we were interested in
21 registration data by census area, are the Address Coding
22 Guides available to run the address against?

23 MS. MAC DONALD: That's us, we have that already.

24 COMMISSIONER BARABBA: Oh, you have that already.

25 MS. MAC DONALD: Yeah, and for your sleepless

1 nights, I will give you the website, you can download them
2 and start playing around with it. Okay, this is just a
3 zoom-in of that same census block, that basically shows you
4 2008 precincts. And this is where you were going, this is
5 the slide for you and the next one afterwards, as well. So,
6 data and reporting geography, so I am pulling these
7 altogether, right? We have the Census here for the PL94-
8 171, so that is reported on the census block, and that stays
9 constant for 10 years, so as Commissioner Yao just pointed
10 out, or asked about, then we have the statement of vote,
11 which is reported on the voting precinct level, and that has
12 frequent changes, and then we have a statement of
13 registration, and this probably -- I'm going to explain this
14 in a little bit more detail - the registration file is
15 actually a public file for some purposes, okay? So, like
16 for research purposes, or political parties actually have
17 access to it, and you can purchase it either from the
18 counties, or you can purchase it from the State of
19 California. And the registration file is not a static
20 document because people every day re-register, move,
21 register anew, people turn 18, you know, first registration
22 form, all of that, the counties purge data, so some people -
23 you know, people die, all kinds of things happen, so the
24 registration file is a document that, right now, looks
25 different than five minutes from now. But the nice thing

1 about the registration file is, if you have access to it,
2 you have the addresses of people, and you also have some
3 information about people, like, for example, whether they
4 registered as Democrats, Republicans, or Declined to State
5 voters, you know how old they are because you have to
6 provide a birth date, because they have to provide that to
7 show their eligibility, that they are actually of voting
8 age. And what we do at the database is we actually geo-code
9 the registration card and that is available on the database
10 website, and we do it for each statewide election.

11 This goes into the variables that I just already
12 mentioned, so, on the statement of vote, you see usually the
13 total vote because, what we process at the database is the
14 statewide elections total vote, and then there are votes for
15 races and propositions. We don't have local data on the
16 database. Statement of Registration variables are total
17 registration, there is party I.D., as I mentioned, then
18 there is sex, gender, because people also have to put that
19 onto the registration form, and there is age, the cycles
20 registered, and race, and ethnicity, because we surname
21 match these data, and that is also for Voting Rights Act
22 purposes. So, the Census actually releases a Spanish
23 surname dictionary, and we're still working with the one
24 that was released, I want to say in 1985. They just
25 released a new one and we're just starting to look at that.

1 So basically we just take all of the last names and we run
2 it through that surname dictionary which basically tags the
3 data. And I should tell you that this is not information
4 that we release on an individual level at all because what
5 we do is we aggregate it up and we release it on the census
6 block.

7 So, the data complexities, as you of course all
8 figured out by now, is if you want a redistricting dataset
9 that you can actually redistrict with, that you can use for
10 Voting Rights Act purposes and all that, you really are in
11 the perfect world when all these data are on the same unit
12 of analysis because that makes it a whole lot easier than
13 looking at the slicing and dicing, and figuring out what
14 part of what is in the Census block as you're building these
15 districts. So, the task for us at the database is to build
16 the dataset comparable on the same unit of analysis over
17 time. And that has to be available for the redistricting in
18 2011. It's difficult, of course, because the election
19 results reporting geography changes frequently and the
20 solution is to basically put it on the census block because
21 the census block only change every 10 years, so that is a
22 whole lot easier to work with than if you have to re-do the
23 entire dataset every time a precinct changes in California.

24 And that gets us really to the Statewide Database
25 which I have alluded to numerous times. So, Statewide

1 Database is the State of California's redistricting
2 database, and our history is actually an interesting one,
3 this used to be the Assembly's redistricting database until
4 the early '90s and then there was a vote, essentially, and
5 it moved, but with bipartisan support, it moved the dataset
6 out of Sacramento into a nonpartisan environment, and that's
7 how we got it at UC Berkeley. So, in 1994, I was hired to
8 take on the dataset, it arrived there in 1993, and then
9 Nicole came on in '96, did you, Nicole? In '96, yeah. So,
10 basically our task was to make this dataset publicly
11 available because, as long as it was sitting in Sacramento,
12 just, shall we say, the select few had access to it. And it
13 was really -- it was quite a task because, you know, in '93,
14 we were looking at different computing and Internet
15 technology than we are now, and I still remember, what we
16 got delivered was a VOX [ph.], you may remember those. We
17 had this gigantic thing that I didn't even know what it was,
18 really. I mean, it had a screen, so it had something to do
19 with computing, but there was very little documentation and
20 we basically just, you know, worked our way through it. So,
21 I always tell people when they're starting to look at the
22 dataset, starting in '94, we actually started to have
23 documentation and we started to know what we really in it,
24 you know, we had all the counties processed, not just some,
25 and we were actually able to put a good longitudinal dataset

1 together and I think we've been getting better over time.
2 But one of the really great things about the dataset is that
3 it's free and it's publicly available, everything we have is
4 on the Web, so, you know, the public has been able to use
5 this dataset and there are so many academics that have used
6 this dataset, this dataset has been used by the Department
7 of Justice, by numerous researchers, you know, in academic
8 papers for all kinds of purposes that are absolutely not
9 related to redistricting at all. But it debugs the dataset,
10 too, because this is a huge dataset that is collected over
11 time, and we don't have the staff to go over absolutely
12 every file and make sure it's proper, everything is proper,
13 you know, there's a right file name in there, the right
14 variable name, and whatnot. But, as people are using it, if
15 there's a problem with it, it comes back to us and then we
16 fix it. And it also increases, of course, the buy-in to the
17 dataset because everything is public, everybody can use it,
18 you know, and they can compare it to other data that are
19 available, and make sure it is proper and it is correct.
20 So, that's why we went through really successful
21 redistricting with respect to data the last time, there were
22 absolutely no questions about it, and the other unique
23 thing, really, if you've ever worked with datasets is,
24 you're basically looking at the help line, so if there's
25 anything wrong with it, you know, you can call us or send us

1 an e-mail, we'll actually fix it or tell you what's going on
2 or what you should be downloading, and how you should be
3 working with it. So it's a really unique resource, and I
4 don't want to brag, but all the other redistricting
5 datasets that you find out there, that are not funded over,
6 always basically, over a 10-year period of time in other
7 states, they were all modeled on the Statewide Database.
8 And usually they're only available for like a couple of
9 years, right around redistricting, which is a problem, I
10 will tell you, because if you go back and you try to collect
11 election data from Registrars of Voters or County Clerks,
12 four or five six years after the election is over, these
13 data are just not there anymore. Oftentimes they are just
14 gone because they don't have the capacity to store data that
15 they don't need any more. But, for redistricting, for
16 Voting Rights Act assessments over time, you want those data
17 because you want to see how things have changed, you know,
18 you want to be able to see, has there been more
19 participation? No? How have people been voting on these
20 particular initiatives? So, for us, the challenge is
21 always, after each election, to just make sure that we
22 collect the data very quickly.

23 Okay, and just to remind you -

24 CHAIRMAN YAO: A short question?

25 MS. MAC DONALD: Yes.

1 CHAIRMAN YAO: Do you have the ability to take
2 historical data and translate it to the current data block,
3 census tract, and vice versa, taking the current data and
4 see what the historical tracts or blocks look like?

5 MS. MAC DONALD: Yeah, well, what we do is we start
6 basically with the Census geography, you know, once it is
7 released, so we don't have that yet. So, you don't have a
8 redistricting dataset yet because the geography isn't out.
9 But as soon as we get the 2010 geography, which will be
10 released in December, we take all of the elections for the
11 past decade, which we have on the precinct level, and we
12 have a statistician at Caltech on staff, who basically does
13 ecological inference and breaks the data down by particular
14 algorithms to the census block level, and then what you get
15 is you have basically one dataset that has, you know, let's
16 just say that you have census block, whatever, 5678910, and
17 you can look at all these different variables for all the
18 elections over time, but also the Census data, the race
19 data, the voting age population data, that's all going to be
20 associated with that one census block. Nicole can show you
21 what this is going to look like.

22 CHAIRMAN YAO: Okay, so for a community of interest,
23 just using that as an example, I can look at the historical
24 data for that community of interest?

25 MS. MAC DONALD: You could look at the historical

1 data, I don't know that you want to use that data to define
2 communities of interest because, remember, for communities
3 of interest, you're not supposed to use partisan data, you
4 know, or political data. We'll go through that in a second.

5 CHAIRMAN YAO: Okay, all right.

6 MS. MAC DONALD: So, there are other ways to get
7 communities of interest data, but you could use it for other
8 purposes. So there's definitely, yeah, it's never quite
9 that straightforward! So, here we're back to the language
10 that we're working with, in the State of California now.
11 We're talking about the Statewide Database because, really,
12 it's the Legislature's responsibility to make sure that you
13 all have a dataset because the language, "The Legislature
14 shall take all steps necessary to ensure that a complete and
15 accurate computerized database is available for re-
16 districting and that procedures are in place to provide the
17 public ready access to redistricting data, and computer
18 software for drawing maps. Upon the Commission's formation
19 until it's dissolution, the Legislature shall coordinate
20 these efforts with the Commission." So, based on that last
21 sentence, I'm going to guess that you will probably have a
22 visitor here from the Legislature talking to you about this.
23 And going to the sentence before, the computer software for
24 drawing maps, that is something that I think they are
25 considering right now, and I'm sure that they're going to be

1 talking to you about this, as well. But the first part, of
2 course, the complete and accurate computerized database
3 available for redistricting, that is already, you know,
4 we've already been doing that since 1994.

5 COMMISSIONER FILKINS WEBBER: Question.

6 MS. MAC DONALD: Yeah, go ahead.

7 COMMISSIONER FILKINS WEBBER: Is it considered
8 complete, accurate and computerized database at this point?
9 Or would you say that it would fully fit that definition
10 only after you receive the Census data at the end of 2010?

11 MS. MAC DONALD: You know, I have to tell you,
12 nothing is always completely accurate, I mean, these are
13 huge datasets and there is always a margin of error, so that
14 -

15 COMMISSIONER FILKINS WEBBER: Well, I was wondering
16 how up to date -

17 MS. MAC DONALD: Right, that is a good point, no,
18 it's a good point. I think it's accessible as of today,
19 it's as accurate as it can be and as complete as it can be.
20 Once the data are out, then we merge them in. So, the
21 deadlines that we've had in the past with the Legislature is
22 that, once the Census data come out, we have a month to move
23 in all of the elections, and that's really what we need
24 because it's a humongous task. And, you know, just so we
25 can troubleshoot some of the datasets. So, that is when

1 this entire dataset is available. However, you can start
2 looking at Census data before the election data are merged
3 in, or before the registration data are merged in, of
4 course. There are also things that you could do with this
5 dataset right now, even though it's not on the 2011 census
6 block, you can get this dataset right now on the precinct
7 level, for example. So, if there were some questions, you
8 could already do some things.

9 COMMISSIONER FILKINS WEBBER: Precinct level from
10 November?

11 MS. MAC DONALD: Good job! Exactly. Yeah, we're
12 just working through - I mean, we're just processing that
13 election. It usually takes us about four to six months to
14 process an election because, yeah, you saw all of this, but
15 during a redistricting year, of course, it's got to be
16 faster.

17 COMMISSIONER FILKINS WEBBER: Well, I wouldn't like
18 to see any of the Commissioners jump in right away unless we
19 have some reliability on where you're at accurately, based
20 on the information in the Statute. Thank you.

21 MS. MAC DONALD: No, I mean, again, it's accurate,
22 it's just not on the unit of analysis on which you will be
23 drawing data. And that is a really good question. Okay, so
24 just to summarize what we have in the database, there are
25 some things, you know, again, for those sleepless nights, if

1 you'd like to take a look, we have Census and electoral
2 data, Census and electoral geography, of course, and then we
3 have conversion - go ahead - did you want to ask?

4 COMMISSIONER BARABBA: No, just smiling at how much
5 is available.

6 MS. MAC DONALD: Then we have conversion files,
7 which basically just help you go from one unit of analysis
8 to another, so basically, if you want to look at -- you
9 know, you want to merge some data from the General Election
10 of 2006 and the General Election from 2008, a conversion
11 file will show you how these precincts relate, like what
12 proportion of that precinct is in this - these are also
13 called "equivalency files." I always have this conversation
14 when I call the Census and say, "Will you guys have a
15 conversion file for Block 2000 to Block 2010?" And they're
16 like, "What?" They call it something else, so people call
17 it "conversion files," they call them "attribute files," I
18 think they call them "equivalency files," so again, I would
19 just urge you, when somebody comes in with a big word, just
20 ask them what they're talking about, because there are
21 enough big words to go around in redistricting. And we have
22 a lot of data reports and maps, and redistricting census
23 news and a court case archive; the latter could probably be
24 more complete because we're not exactly over-funded, I don't
25 know if, you know, we're at the University of California,

1 need I say more? We're really not over-funded. And we have
2 some redistricting research, I'll tell you a little bit
3 about some of the projects that we've done, and that is not
4 funded by the State, so we're always looking when there is
5 not a redistricting going on, we're usually looking for
6 research funds, so where we can use the data and perhaps
7 contribute to the general knowledge base for redistricting
8 in California. And we actually did a couple of really
9 interesting projects earlier in the decade because, as you
10 remember, there were a few different attempts to move the
11 redistricting away from the Legislature, so every time
12 something came on, we were all of a sudden very busy, and
13 you know, when you're busy and when people are interested in
14 what you're doing, you can usually track some research
15 funds, too, so this is happy days for us! Okay, next.

16 Okay, back to the slide where we started. Now it
17 makes a little more sense, I hope. So, again, what do we
18 use for equal population? PL94-171, right, short form
19 Census data, and compliance with Federal law, the Voting
20 Rights Act, you use the PL94, Statement of Registration,
21 Statement of Vote, now you know why I didn't put the
22 citizenship data from the ACS on there, because that's a
23 problem and, again, it's a bit of a question mark. For
24 compactness, you use Census geography, contiguity, you use
25 Census geography. Respect for city and county boundaries,

1 that is also part of the Census geography. And then we're
2 going into a couple of other issues, which is respect for
3 neighborhoods, and then respect for communities of interest.
4 Respect for neighborhoods, and this is something -- and
5 actually communities of interest, that's what you were
6 asking about earlier, we'll go into this in a little more
7 detail in a little while, but basically public testimony is
8 very important when you're talking about neighborhoods and
9 also communities of interest. For one, I'm jumping ahead a
10 little bit, there is not one source where you can go and
11 say, "Give me some data for all the neighborhoods in the
12 State of California." Well, you could probably go to the
13 realtors, but I can also tell you that your next public
14 hearing is going to be very well attended, not by the
15 realtors, but by all the people that supposedly live in
16 those neighborhoods, because neighborhoods are delineated
17 for different purposes and, really, for redistricting
18 purposes, you know, the realtors' definition for
19 neighborhoods or some other groups' definitions for
20 neighborhoods, may just not be as applicable, you know, or
21 applicable at all. Really, probably what matters is how
22 people define their own neighborhoods. And sometimes, if
23 you're lucky, and you can actually get what we call a layer,
24 which is just basically a geographic - just a map, an
25 electronic map, that shows neighborhoods in some cities and

1 counties because some cities are really interested in their
2 neighborhoods, they organize around neighborhoods, and so
3 they have them delineated and they could just give you, you
4 know, here is a layer for this particular city, it has all
5 the neighborhood boundaries on there, and sometimes these
6 are actually good, sometimes they're not so good because it
7 always depends on how they were delineated, were they top
8 down delineated, or bottom up? So what we mean by that is,
9 somebody just kind of drew those boundaries without talking
10 to anybody, or you know, were people actually involved? Are
11 those actually the neighborhood boundaries? And I could
12 tell you a little bit about communities of interest because
13 that's my absolutely favorite topic, I actually did my
14 Masters on it, and I just love it, it's one of those things
15 that you can't really completely get your hands around
16 because it's a moving target, but it's sometimes related to
17 neighborhoods. Sometimes a neighborhood can be a community
18 of interest, and sometimes a community of interest is
19 something completely different. But, to find out what it
20 is, you really need public testimony. You really have to
21 bring people into the process and ask them. And essentially
22 how you delineate it would be by data and geography
23 submitted by the public, and, again, there may be some way
24 to integrate the ACS and some data from the ACS, in
25 particularly, about second language populations.

1 CHAIRMAN YAO: You previously defined a precinct as
2 a thousand voters or less than - fewer than a thousand
3 voters. What is the smallest neighborhood and the smallest
4 community of interest that I has been classified?

5 MS. MAC DONALD: You know, I have no idea, honestly.
6 I don't know -- I just don't know that anybody has ever
7 really looked at it from that perspective. I could imagine
8 that a neighborhood could be quite small, but it could also
9 be quite large, it depends on where you are really in the
10 State.

11 Okay, sticking with communities of interest, so,
12 again, this is something we have almost covered. So, what
13 is a community of interest? Well, it depends. And we could
14 have a complete hearing on just what it is and talk about
15 it, I would be very happily sitting in the front row.
16 Basically, it's a group of people with a specific common
17 interest, that, I think, we can all agree on it. And then
18 there is some language in some of the court cases, actually.
19 In Miller vs. Johnson, the language is actual shared
20 interests, and that is an interesting one because that goes
21 to that topic about, you know, who defines a community of
22 interest. This is just somebody saying, "Okay, you all are
23 a community of interest and this is for my favorite ACS
24 unit, the plumbing comes in. So, you take your ACS,
25 everybody has the same kind of plumbing, are you now a

1 community of interest, right? So, you know, you could have
2 a little fun with these definitions, but basically, looking
3 at Census data and just assuming that that's going to be the
4 definitive source to tell you about communities of interest
5 might be a little problematic, not just because of the data
6 releases and all of that, but also because of the variables
7 that are available, and you know, perhaps you should think
8 through what really is applicable and really ask people, and
9 ask people to bring in data, and tell us about the
10 communities of interest, then, you know, let us know what
11 they need, representation on, what and how big are they
12 organizing around, and all of that. But we have one helpful
13 hint and that is what communities of interest cannot be for
14 the purpose of this California redistricting, and that is
15 communities of interest shall not include relationships with
16 political parties, incumbents, or political candidates, and
17 that basically means that you cannot use the political data
18 to define a community of interest. Again, neighborhoods,
19 just as you've already alluded, they definitely vary in
20 size. I mean, I'm sure there are some very small ones and
21 maybe we'll find out about some. I mean, I'm hoping
22 somebody will keep track of the smallest neighborhood and
23 the largest neighborhood in the State of California. I
24 mean, this will be the place to find out it, I would guess.
25 Sometimes they are designed by cities, sometimes poorly, and

1 by communities. There are really no data sources available
2 that show neighborhoods statewide, and basically they just
3 need to be documented and submitted, and probably by people
4 that want to participate in the redistricting and people
5 that want to ensure that they have a good district, that
6 they get a good district drawn. Okay, next.

7 Since Prop. 20 just passed, we have a bit of
8 definition for community of interest, and it basically reads
9 that, "A community of interest is a contiguous population
10 which shares common social and economic interests, that
11 should be included within a single district for purposes of
12 its effective and fair representation." And, you know, that
13 sounds good. You know, a lot of people are probably going
14 to come in and tell us about what their social - what the
15 criteria that we should be considering under social
16 interests and also economic interests. It gives some
17 examples of what that may be. As I read those examples, I
18 thought that that were a little bit limited, so - and I'll
19 give you one example from my own neighborhood about a
20 community of interest, why this, I think, is a little
21 limited, and why we should probably not limit communities of
22 interest to the examples, but rather think a little bigger.
23 Where it says use the same transportation facilities, so
24 examples of shared interest will be defined by the use of
25 the same transportation facility. Well, in my neighborhood,

1 we have a BART Station, and we have a BART Station that sits
2 above ground, so it is very loud, and there is a community
3 of interest that organized around the BART Station, it was
4 like, "Why is our BART station above ground and all the
5 other ones are below ground?" Right? But what we also have
6 is, because we are the last BART Station, the hub BART
7 Station right before you go to San Francisco, everybody who
8 goes to a ballgame, everybody who goes to the opera,
9 everybody who goes anywhere parks in our neighborhood.
10 Guess who doesn't park in the neighborhood? It's us,
11 because there are people from outside the neighborhood.
12 Well, people come there to take BART. Well, so does that
13 mean that because the people that come to our neighborhood
14 and they use the same transportation facility, they are now
15 our community of interest? Or, are we the community of
16 interest because we deal with the fallout of the people that
17 come there to use the particular transportation facility?
18 Because, I'll tell you, not a lot of people in my
19 neighborhood actually use BART, so, you know, as I just
20 looked at that, you know, the longer you look at the
21 examples, the more you figure out that there is a whole lot
22 more to this. So, I think my recommendation would be as
23 somebody who is a little obsessed with communities of
24 interest, would be that, you know, to really take the
25 examples, there are some good examples there, but to just

1 keep it open and really listen to people as they come in and
2 tell you about their communities of interest because these
3 are really just examples. And there are more of them out
4 there, and I think the experts are going to be the people
5 that actually live in those communities.

6 So, here are some examples that we run into in
7 redistricting, so, as I said, we'll bring in a few examples
8 of our experiences. Oftentimes, people actually organize
9 around schools or school districts, that's a really big one.
10 If you have an elementary school and you have a lot of kids
11 in the neighborhood, and everybody is getting involved to
12 try to make that school into something that you want to send
13 your kids to, all of a sudden you have an entire community
14 that just really focuses on that school, you have
15 fundraisers, school facilities maybe used for all different
16 purposes like when school is not in session, things like
17 that, transportation hubs where you just have bake sales -
18 the transportation hub, you know, a BART station or
19 something like that because you're dealing with, you know,
20 as you live there, you deal with certain issues - it may be
21 noise, it may be pollution, maybe things like that.
22 Sometimes it's also good things, it doesn't have to be
23 something negative. But, you know, most of the time people
24 unfortunately organize to improve something, not to say,
25 "Hooray, we're just so great!" Community centers, of

1 course, and you'll find this a lot, for example, in second
2 language communities where oftentimes a community center
3 provides certain resources, you know, how to access language
4 information, you know, particular benefit programs, cultural
5 programs, and whatnot. So, people are drawn to that
6 particular community center and that is something that they
7 organize around, and that becomes a community of interest
8 very quickly. A dog park, you know, people get together and
9 they want to establish a dog park, basically, in their
10 neighborhood so they don't have to drive seven miles to the
11 next one, or whatever, any kind of a dog - because the dog
12 park had to be on the slide somewhat.

13 Often times when people come in and they start
14 talking about race and ethnicity with respect to communities
15 of interest, they are basically summarizing experiences,
16 they are oftentimes just saying, okay, it's not just that
17 it's race and ethnicity because sometimes it goes across one
18 race or two races, it's basically a shared experience.
19 Sometimes it is about access or a lack of access to
20 education, it's perhaps historic discrimination, it's all
21 kinds of experiences that get co-mingled in this testimony
22 that says, you know, "We're all of X ethnicity, we're all of
23 X race." So, sometimes it helps to probe a little bit when
24 people start telling you about it and it starts to define
25 it, because that is like the simple way, is to talk about

1 what we see. And, you know, as you probe a little bit more,
2 you get just a wealth of data. Sometimes it just shows that
3 there's a higher number of kids per household, for example,
4 our Latino populations oftentimes have younger populations,
5 so there are many many more kids. And just an overall
6 younger population is true for many immigrant communities,
7 actually.

8 Just very quickly, we just talked about this
9 already, so there is a question about whether you should,
10 you know, define them top down vs. bottom up. So, top down
11 would be you take basically data that was collected for
12 perhaps a totally different purpose, and you kind of squeeze
13 that data into the criterion that you're trying to work
14 with, you know, it's something that the courts didn't really
15 like, they talked about stereotyping in a few cases, you
16 know, that you just say, "Oh, yeah, just because all these
17 people can have the same plumbing," I mean, I'm sure they
18 came up with a better variable, you know, that basically
19 makes them a community of interest; well, it's just not that
20 simple. Bottom up basically refers to, you know, getting
21 testimony, just talking to people, having people come in and
22 tell you a little bit about their communities and where they
23 are. And one really interesting thing is, and this is
24 something that you may want to let people know before they
25 come in and talk about their communities of interest, they

1 should give us some geography with it. They shouldn't just
2 talk about how wonderful they are all organized around a
3 particular topic and what unites them, but also, and this is
4 something we got out of the last redistricting, people just
5 forgot to say, "And here are the boundaries, it's 7th Street
6 to Meadow Parkway," "It's West Grand Avenue, and it's Wood
7 Street." Or something like that. Because if you don't have
8 the geography, it's going to be pretty hard to deal with,
9 you know, because, really, redistricting is all about
10 building blocks and about geography.

11 COMMISSIONER BARABBA: Karin? If a group came and
12 said that they had X thousand members, would it be possible
13 to run their addresses through the Address Coding Guide and
14 see what their geography was?

15 MS. MAC DONALD: Yeah, absolutely. That is really
16 straightforward, actually. If anybody comes in with any
17 kind of address, you could just run it through the GIS and
18 it will basically just put a dot onto the map.

19 COMMISSIONER BARABBA: Would you provide that
20 service if they brought it to -

21 MS. MAC DONALD: I think you could just do that here.
22 Yeah, I suppose we could do it, but you have somebody with a
23 computer who will work for you, I hope. There is
24 redistricting software involved, it's really
25 straightforward. If people just give you the file, just

1 properly -

2 COMMISSIONER BARABBA: Thanks.

3 COMMISSIONER GALAMBOS MALLOY: May I ask a point of
4 clarification?

5 MS. MAC DONALD: Yes, of course.

6 COMMISSIONER GALAMBOS MALLOY: This may be a
7 question for you, or it may also be for counsel. I just
8 want to go back to the legal definition around communities
9 of interest and the piece of the definition that is
10 contiguous, and I think, from the various presentations
11 we've been seeing, what I'm taking away from that is that
12 there is some level of flexibility that contiguous may not
13 mean that it is physically proximate to each other, like
14 there may be some breaking up. So I just want to clarify if
15 you can run through that a little bit again and maybe for
16 Steven?

17 MR. RUSSO: I would refer to Justin on that, he's
18 our expert on -

19 COMMISSIONER GALAMBOS MALLOY: Okay, thank you.

20 MR. LEVITT: I am happy to give a short answer.
21 Again, when you are a full Commission, you will also want to
22 get advice from your counsel, and in part because there is
23 not one straightforward answer as with so much. Contiguity
24 means that things have to be connected. The trick here is
25 going to be by how much, and that's going to be fully within

1 your discretion. Communities - I take the requirement to
2 mean that a community of interest need not be all packed
3 together, that it is something much more than contiguity.
4 As you've seen from the Arizona example, that district that
5 I showed you was technically contiguous, even though it
6 involved pockets of people in different regions of the state
7 that were connected by not very much, and you'll have to
8 decide, in essence, how much connection you are comfortable
9 with. Generally, what contiguity means is that the
10 population is connected, but it can be connected by a thread
11 thin line.

12 COMMISSIONER GALAMBOS MALLOY: Thank you.

13 MS. MAC DONALD: Okay, so the last point back to the
14 communities of interest, it is about the API group, so Asian
15 Pacific Islander group. We think that, there, the
16 definition for community of interest may be particularly
17 important because Asian Pacific Islanders can get lumped
18 into this one big data category in the Census, so I think
19 bringing people in and actually having them testify about
20 their communities of interest is going to be very very
21 important to make sure that they get good representation.

22 Okay, so we'll look at a couple of maps and then
23 we'll go to the little demo here if that's okay. Does
24 anybody want to take a break, perhaps?

25 COMMISSIONER FILKINS WEBBER: Yes, please.

1 CHAIRMAN YAO: After a couple questions. Obviously,
2 we'll deal with the primary community of interest; based on
3 your experience and all the redistricting that you have
4 done, how often do you have to consider a secondary and so
5 on in the same area?

6 MS. MAC DONALD: Yeah, that's an interesting one.
7 You know, the way we've dealt with it when it came up was
8 usually when there was conflicting testimony, which can
9 absolutely happen, especially, since you're drawing
10 different levels of districts. So, community of interest in
11 like one district, in one area, may be completely different,
12 but have some overlap with another community of interest.
13 So, really, it hasn't been an issue because the approach
14 that I always took, and we took, was to just try to draw a
15 district, or just a boundary around all of them, if we
16 could, and just keep them altogether, you know, just
17 basically take the largest community of interest if we
18 could, and keep them together if it was possible, so, to
19 basically just incorporate all of them. It's not always
20 going to be possible, you know? I mean, you're going to
21 have to make some really hard decisions, you know, there's
22 going to be a lot of people that will not get what they're
23 asking for just because it's not possible, but that's where
24 public process comes in. And that's one thing I really
25 learned, particularly in those two redistrictings in San

1 Diego and San Francisco. In some, there was always at least
2 one situation where we got ourselves into a real pickle,
3 where the Commissioners really wanted to do something, they
4 had public testimony and something was very important to a
5 particular community, and everybody was really passionate
6 about it, and it just couldn't be done. It couldn't be done
7 because of the geography, it couldn't be done because of
8 equal population considerations, it couldn't be done because
9 the other districts were basically drawn already, I mean,
10 there were always reasons for why it couldn't be done, but
11 if you have a public process and people saw how you got
12 there, and you throw it open and you say, "Okay, people, we
13 can't figure out how to make it better. Can everybody
14 please just let us know if somebody can come up with a
15 solution?" Then you're having a totally different
16 conversation, you're not having finger pointing, you're not
17 having, "Oh, you didn't take us seriously," and whatnot, you
18 know? Basically bringing people in and giving them the
19 opportunity to participate is great, and sometimes somebody
20 really does come up with a better solution. I mean, you're
21 going to have a lot of work, you know, in a very brief
22 period of time, so use all the help you can get.

23 CHAIRMAN YAO: All right, let me at this point call
24 for a ten-minute recess. So we'll be convening at a quarter
25 'til three.

1 (Off the record at 2:36 p.m.)

2 (Back on the record at 2:48 p.m.)

3 CHAIRMAN YAO: Okay, the Commission is reconvening.

4 MS. MAC DONALD: Okay, well thank you. There we go.
5 The slide where we stopped, so I'm going to be walking
6 again, very much to the dismay to our sacred videographer
7 here. This is actually ACS data now, and this is what we
8 would call in my office an over/under map. So, what this
9 shows you is the Congressional District for the State of
10 California. We used the 2009 one-year estimate that the
11 Census released through the ACS, right? And we looked at,
12 based on the assumption is this is the total population for
13 the State of California, divided it by 53, figured out what
14 the ideal population for each Congressional District should
15 be, and then figured out which one is over and which one is
16 under, and why this is interesting is because it will show
17 you which way your districts are going to move. So, blue,
18 dark blue, shows that it's under-populated by 10 percent or
19 more and then basically, as the blue gets lighter, there is
20 less under-population, so basically the under-populated
21 areas have to grow, so they have to pick up people in the
22 over-populated areas, right? Because you have to balance
23 the entire State of California.

24 So, green are the over-populated areas, so the
25 interesting thing here is, and this is very -- I always say,

1 you know, Social Scientists, we usually prove common sense,
2 or -- so, basically what is interesting is that the eastern
3 areas, they have all grown relatively speaking, so they are
4 all over-populated and the coast is under-populated. Well,
5 what do we know about how people were purchasing homes,
6 moving to the east because the homes were more affordable,
7 and essentially there were a lot of people that moved away
8 from the coastal areas into the Imperial Valley and into the
9 Inland Empire, into the Central Valley, and whatnot. So,
10 this is really what we're seeing here. We looked at some
11 data and I didn't want to show you too many maps, I have
12 them if somebody wants to see them. We compared the 2009
13 data from the ACS to the three-year estimate that was 2005
14 through 2007, just to see if people were moving back already
15 because that was my guess, because foreclosure crisis hit,
16 right? So people lost their homes, so did they stay there?
17 And did they rent? Or did they come back? And we actually
18 saw a little bit of difference in that these areas are less
19 over-populated now than they were in 2005 through 2007, so
20 that was pretty interesting. But this is just to give you a
21 little bit of an overview because it just shows you that,
22 essentially, if you have all these areas along the coast
23 under-populated, then all your districts are probably going
24 to move a little bit eastward, right? Because that's
25 basically the easiest thing to do now. I'm not saying that

1 you couldn't, if you wanted to, throw the baby out with the
2 bathwater and just don't start with these districts at all,
3 and just start from scratch. Those are all decisions that
4 you're going to have to make. But if you were just to stick
5 with these old district lines, and you just wanted to
6 equalize the populations, do the best you can with that,
7 then that's the way it would probably go. Okay, next one.

8 These are just slides that show you some zoom-in
9 areas, so this is the San Francisco Bay Area. These are
10 unfortunately - these numbers are hard to read for you. It
11 just shows that these areas are between 6.3 percent, 8.3
12 percent under-populated, 7.4 percent, so essentially when
13 you're moving into the next district over, you already need
14 to pick up 6.3 percent here, or 8.3 percent, and this county
15 is under-populated, as well, right? Or this district. So,
16 once you're over here, you're already almost at 15 percent
17 under, and then you're moving into this district, which is
18 right now over by eight percent, but you still don't have
19 your ideal population because you still haven't picked it
20 all up, right? So, you just keep on scrambling to pick up
21 population, and that is essentially what you're going to be
22 doing when you're moving lines around.

23 This is the zoom-in for the LA Area, so this gets
24 even more tricky because all these are different
25 Congressional districts here in the LA Area because it's

1 just a very densely populated area, so there's a lot of
2 different districts, and they're all under-populated,
3 they're all blue. So, you know, it's cumulative to how many
4 people you're going to have to pick up, this is interesting
5 stuff - I like it, so...

6 Here is what we did. Again, because you can map
7 almost anything. These pie charts show the ethnicity for
8 the people, for the total population, the people that lived
9 in those districts. So, again, you can't really see a whole
10 lot, but yellow is Latinos, green is Asian, so a little
11 slice of green up here, and red is black, and this dark kind
12 of brownish, that's the White population. So, the reason
13 for why I'm going to put this on top and probably the next
14 zoom will illustrate this a little bit better, is that, as
15 you're moving to pick up populations, which populations are
16 you more likely to pick up, right? So which ethnicities are
17 you more likely to pick up? And this is really kind of over
18 the - I have to say this, too, because of course you have to
19 assume that, for example, if you have a high Latino area, or
20 here you have a high Asian area, I mean, they're not all
21 going to - all the Asians don't just live right at the
22 border where you're going to pick them up, obviously, right?
23 All the Latinos are not just going to - this is a total,
24 this is an aggregated chart here. But, again, it gives you
25 kind of an idea of what you're dealing with in terms of the

1 racial and ethnic breakdown, and also, you know, the over
2 and under of these districts.

3 This is the same thing for the LA area. What you
4 see here is that there is really a lot of Latinos in these
5 different districts, so you know, as you're moving, you're
6 most certainly going to pick up Latinos, and this gets
7 interesting because you see that there's a lot of Latinos
8 here that are probably more than 75 percent, and if you
9 recall, I'm sure Justin went over this, packing and
10 cracking, did you talk about that?

11 MR. LEVITT: Yes.

12 MS. MAC DONALD: So, you know, you're just, under
13 certain circumstances, you should not be packing high
14 minority groups into the same districts, you know, if you
15 can draw two districts, and you have all of those factors
16 that I outlined, as well, you have to just be careful the
17 way that you're moving and really just keep Voting Rights
18 and all that in consideration, along with all of you other
19 criteria.

20 Okay, actually, let's do a demo and then we'll go
21 back to this one. So, I'm going to pass the mouse, I guess,
22 to Nicole, who has of course been holding the mouse and
23 clicking. And she's going to do a demo of the redistricting
24 software that we've been using. And this is Maptitude for
25 Redistricting, we've been using it for quite some time.

1 I'll tell you why, they used to be the cheapest
2 redistricting software in the last redistricting. They were
3 actually just phenomenally inexpensive, and now they're a
4 lot more expensive, unfortunately. But -

5 MS. BOYLE: They had 10 years to add bells and
6 whistles that they're now charging a lot more for.

7 MS. MAC DONALD: Yeah, but, you know, it works. So
8 that's what we're using, so she's going to just show you how
9 to draw some lines around, and some of the kind of
10 interesting issues that you're going to run into just
11 because of geographic features and geographic uniqueness of
12 the State of California.

13 MS. BOYLE: So one of the reasons I chose this
14 district was it's on the Peninsula, so you have a
15 geographical constraint, you have water, and you also have
16 the narrowness of the Peninsula constraining on which
17 direction you can go to get a population, you have to cross
18 the water, you have to go down.

19 MS. MAC DONALD: It's an Assembly District, right?

20 MS. BOYLE: Yeah, this is an Assembly District plan
21 and these lines that you see, these red lines, are the 2001
22 Assembly Districts. Please stop me at any time if anything
23 is unclear, I'm used to working with myself!

24 MS. MAC DONALD: It's a lonely existence.

25 MS. BOYLE: Please stop me, it's all very clear to

1 me, what I'm doing!

2 MS. MAC DONALD: Pass the tissue. So, basically,
3 the red line here, that's the Assembly District.

4 MS. BOYLE: Yeah, that's the current 2001 Assembly
5 District 1 for the 12th Assembly District. Let me just back
6 out a little bit here and show you that they keep all of San
7 Francisco into these two districts for 2001, and in 1990,
8 this is what they were doing, this is the 1990 district.
9 So, all they did here was kick that out and bring this in
10 over here, and at that time, Daly City, which is a City that
11 I'm going to now keep together, put back wholly into the 12th
12 District, and show you some of the issues that causes. And
13 then, here, for the 13th, all they did, it was under-
14 populated and they picked up a corner of the 12th.

15 MS. MAC DONALD: What's the numbers?

16 MS. BOYLE: I don't remember what the over's and
17 under's - oh, here it is, it was 6,700 people over-populated
18 in 2001, the 1990 district was; and in 2001, the 13th
19 District, it is this number here, it was over-populated by
20 2,285, so there wasn't a lot of changing that had to occur.

21 MS. MAC DONALD: Do you have the census tract around
22 totals -

23 MS. BOYLE: Yes, so this is the Bay Area, this
24 yellow shaded area is actually the area of Daly City, so
25 there is this gray area in here, so the white areas are

1 parts of the State that are unincorporated, they are not in
2 a census place. The gray areas are part of census places.
3 And this beige area here is the area of Daly City, and you
4 can see that it was split here by the 12th boundary. And one
5 of your criteria to try to keep cities and counties
6 together, but it's not always possible, sometimes it's
7 tricky and sometimes cities have to be split. If you
8 notice, it has 103,000 people, so it could conceivably fit
9 into one Assembly District, which is 420 something thousand
10 people. So why don't we go ahead and kind of see what
11 happens. We're going to put Daly City back into the 12th
12 District and try to balance it out. So, this software
13 pretty much has all of the bells and whistles that you need,
14 anything that anyone ever conceived of when drawing a
15 redistricting plan has actually been programmed into this
16 software, though I'm sure someone can always find something
17 new.

18 So, as I zoom in, you see these green boundaries, so
19 these are the census tracts, and when you're moving census
20 blocks around, as you pointed out, you're going to have 700
21 and something census blocks that need to be assigned to
22 census districts, and that's every census block in the
23 state, you don't want to miss any. They are incredibly
24 small and they have these weird configurations, so when
25 you're working and creating districts, you're trying to work

1 with the largest area possible, you want to move the blocks
2 in groups. You can put a whole county in a district, like
3 in Northern California, you have districts composed of
4 multiple counties, you'll move that county, all the blocks
5 in the county, at one time. And in more populated areas
6 where county populations are much larger than the district,
7 as in the case of San Francisco, it has a population for two
8 districts, you'll need to use a smaller unit. And at this
9 level, it's appropriate to use a tract; in other areas, like
10 in LA where the cities and the census places are smaller
11 than districts, and they're boundary to boundary, you'll
12 probably be moving census blocks around in groups of census
13 places. Once you have the core of your district
14 constructed, then you start to move to the smaller units,
15 the tracts. Once you need to get the deviations down, you
16 saw that in some cases zero deviation is what you're going
17 to be shooting for if it's possible, then you'll be using
18 the census blocks.

19 MS. MAC DONALD: And let me just remind you, that
20 chart where I showed you how all of those units of analysis
21 are nesting in each other, so basically she's taking
22 advantage of that fact and she's taking the largest unit
23 that she can possibly grab so that she doesn't have to sit
24 there and click 710,000 times as she is, you know,
25 redistricting the state.

1 MS. BOYLE: There's no other unit of geographical
2 analysis for which the census data is available that will
3 split the census block. The census blocks will always get in
4 the census places, will always get in the census tracts.

5 MS. MAC DONALD: And I'm going to say something that
6 is kind of a little offbeat here. Somebody will probably
7 come in and ask you to split a census block at some point,
8 and that creates a huge mess, and also a legal mess because,
9 remember that census blocks are the smallest unit of
10 analysis on which we have population reported, once you
11 split it, you have no idea how many people are in each side
12 of that split, right? So that opens you up to some
13 interesting questioning, and perhaps, you know, questioning
14 in a court, about what your total population for the
15 District really is, especially if you have to keep the
16 deviations extremely low. I have never really seen a case
17 in the redistrictings that I have watched or performed
18 myself where a census block needed to be split, I think
19 there is always another solution, always.

20 MS. BOYLE: So there are some things here in the
21 software I'm going to explain real quick. These tools over
22 here allow me to navigate and move around on the map. This
23 little box here, this is my redistricting toolbox, this is
24 how I'm interacting with the map and moving - assigning
25 census places to districts. It allows me to target my

1 district; in this case, we're going to be putting Daly City
2 into the 12th District, so my target district would be the
3 12th. The source district allows you to control where your
4 building blocks run, once they've been assigned to a
5 district, you can control which blocks you're allowed to
6 select and to pull in. And then, here, this is the
7 selection layers. You are always wanting to move groups in
8 the largest hierarchy possible, so this allows you to
9 control and group together blocks for movement. And so, in
10 this case, I want to move all of Daly City, so my selection
11 layer is going to be census place, this beige area, the gray
12 areas, and this one here, they are census places. And then
13 these are my tools that allow me to select. I'm going to
14 use this tool and I'm going to click on the beige area, and
15 that will select all the census blocks in Daly City. Okay,
16 now, up above you see this data up here, I have three -
17 there are 80 Assembly Districts in California and this
18 particular plan, I have three right now that have been
19 created. I have the 12th, the 13th, and the 32nd, which is
20 down in the southern Central Valley in Bakersfield. If we
21 have time, we'll get to that example, if not, we're just
22 going to work on the 12th and the 13th. But it tells you -
23 this number up here without a district next to it, this is
24 the current population that is unassigned. The unassigned
25 population of blocks that currently are not assigned to a

1 district - in your jurisdiction, which in this case is the
2 entire State of California. This second column here tells
3 you by how many persons these districts are deviating. This
4 percent deviation gives you the same figure and percentage,
5 and then we have our demographic data - Hispanic origin, 18
6 and over Hispanic, not Hispanic. We have Black, Asian, so
7 basically this is all of the first part of the second table
8 of the PL94, the Latino and not of Latino origin. So, when
9 you're seeing black here, this "NH" stands for Non-Hispanic.
10 So, this figure here is reported for Black people who
11 indicated that they are not of Latino origin, and the same
12 for Asian, White, Not of Latino origin. If you scroll more
13 to the right, you'll see I have total registration and total
14 - that is for the 2000 General Election, that is the last
15 election that the Statewide Database has the census block
16 data available for. Come March, April, or May of 2011,
17 we'll have all of the 2000 election data available on the
18 2011 census block.

19 MS. MAC DONALD: For the last decade.

20 MS. BOYLE: For the last decade. Okay, so now, this
21 orange area here, this is the software showing me that this
22 is the part of Daly City that is currently not on the 12th
23 District, and the orange is indicating that they have been
24 selected for movement. So, there is another window here,
25 and this is called your "Pending Changes" window. It's

1 telling you what is in this orange area. There are 39,000
2 people in Daly City that aren't currently in the 12th
3 District, that is the population that is represented in that
4 orange area. Should I move that into my district, it's
5 going to increase the population, up to 463,000, I'll then
6 be over-populated by 39,958, so I'm going to have to remove
7 some people from the district now if I want to keep Daly
8 City in there. Then, this gives you the new breakdown for
9 the district. It doesn't show up, up here.

10 MS. MAC DONALD: Let me just say something about the
11 toolbox while you're clicking. So that particular toolbox,
12 once you have the entire redistricting dataset, you can
13 basically select on what variables you want in there, right?
14 But you could, in theory, put every single variable that we
15 have in the block level into that toolbox, and then you can
16 access that. The way she set it up is she didn't put any
17 voting data or anything like that into this particular demo
18 because she doesn't need to. But, as good as the software
19 has become, and as many bells and whistles as they are, it
20 still takes quite a lot of time to set everything up to the
21 proper level and to actually move lines around. And you'll
22 see this as she adds units of analysis because there is
23 processing time involved, as well. So, you know, it doesn't
24 go very quickly.

25 MS. BOYLE: This is what I will do to this 12th

1 district up here, if I add this orange area in, and to add
2 the orange area in, I'm going to use this green check and
3 it's going to update the district, so now you can see that
4 district is over-populated by 39,000, you see that up there?
5 Okay, and something else that you can't see is the new
6 boundary, I need to turn that on. Okay, so this dark
7 boundary, this is the boundary that we're working with. Can
8 you see it right there? So now the boundaries move down and
9 take in that part of Daly City. Now, something that you
10 might not be able to see is that - let me just highlight the
11 district.

12 MS. MAC DONALD: I'm assuming you want me to point
13 out those, yes?

14 MS. BOYLE: Pardon me? Right, that's Broadmoor,
15 that's within Daly City, but it's already in the district.

16 MS. MAC DONALD: It's a city within a city, so
17 remember I showed you a little bit of geographic quirkiness?
18 So we have cities within cities, we have one of those in
19 Oakland, as well -- Piedmont. So, when you're trying to
20 keep these together, or particular cities, and you're
21 looking just at, you know, how big is the city, okay, I
22 could just stick this city, you know, based on my stats that
23 I have, I could just stick this city into the district; you
24 stick the city into the district, either you're creating an
25 island because you then have a floating city in there, or

1 you stick the other city in there, as well, and that
2 oftentimes means you're just going over the population that
3 you were shooting for, so basically you're going over your
4 ideal population, so there are a few of those.

5 MS. BOYLE: So now we need to take some people out
6 and we'll go ahead and move them into the 13th district
7 because we don't want to take down from here. When you take
8 out from here, there aren't a whole lot of people in that
9 area, and I'll show you right now. See that? It's all zero
10 population, so we're not going to lose anybody by taking
11 that area out. So, yeah, it won't help us. And anyplace
12 else we're going to take out is already in the district,
13 it's all Daly City. Daly City is pretty much kind of
14 creating a block, like a bottleneck on this peninsula. If
15 you want to keep it together, you can't really go down
16 there, you have to go back up. So we're going to go ahead
17 and put these extra 39,000 people into the 13th district,
18 which is going to over-populate it. So, let's go ahead and
19 do that. So, now I'm going to switch my target district to
20 13, and I'm going to set the control district to 12, so I
21 can just pull out of 12. In this situation, that's not
22 really necessary, but when you're working in an area and you
23 have a lot of districts touching, it won't always be
24 apparent where you may be selecting from, especially working
25 in different units in census places. So I need to switch my

1 selection and lay another tract. And I'm going to look real
2 quick at what the previous boundary was. So, all this area
3 right here used to be in the 12th, I'm just going to go ahead
4 and I'm going to work in that same area, so I'm going to
5 zoom in so I can see a little bit better view, I'm going to
6 put some tracts back into the 13th district. And as I select
7 them, the total population will show up here, so as I select
8 red areas, it's indicating to me that, if I've put those
9 into the 13th district, the 12th district will be removing
10 approximately 10,500 people from the 12th, and I'll only be
11 over 29,000, so I still have to find 29,000 more people. So
12 now I'm over-populated 10,000 - oh, wait, I'm still under-
13 populated 10,000, so I still need to gather some more
14 people, and this tract has 6,000 plus two, and I need a
15 little less than three, so I'm going to go ahead and put
16 this tract in here, and then I'm going to remove some
17 blocks. So now we're under-populate by 311, but that's
18 okay, I'll find some more people to put back in, my software
19 will help me. So, now I'm going to go to that block unit.
20 And I think this looks like -

21 MS. MAC DONALD: So, you see how the block
22 boundaries are shaped, you know, very squarely in some of
23 these areas, and in other areas they're kind of rounded?
24 It's because they are following the streets, it's a densely
25 populated area, right? And, again, as I said earlier, in

1 urban areas, it's usually a city block that we're talking
2 about when we're talking about a Census block, so you can
3 really see that here.

4 MS. BOYLE: I'm trying to decide where I want to
5 pull 311 people from. I don't have any other input right
6 now, I'm not familiar with this area, I don't know about
7 these neighborhoods or communities of interest, but based on
8 the way this neighborhood looks, I'm guessing if I just pool
9 in a few of the blocks, that might not be a good idea. So I
10 think I'm going to pick on this corner over here. So, we're
11 going to go ahead and put those - we're going to find 311
12 people to put back into the 12th. Now, that's the whole
13 entire tract, what I need to do is I need to go down to
14 census block level, so I'm going to switch my layer to
15 census block, that's 96, I'm down 179 -

16 MS. MAC DONALD: So you see what she did, she
17 basically just labeled every census stock with the total
18 population because that's how you draw lines, you draw lines
19 with the total population, right? So, everybody who got
20 counted in the PL94. And this is a pretty nifty feature
21 when you are equalizing populations is to just have that
22 labeled, because then you can just kind of click around in
23 the dark and just look at the total and see if it goes up
24 or, you know, by how much.

25 MS. BOYLE: With any luck, there would be a block

1 with just 23 people, but that's usually not the case, you
2 have to work a little harder, but, again, the software has
3 some features. So I'm going to ask it to find me census
4 blocks that have more than one person, but less than 23, and
5 to color them for me. So right now, I'm telling it I want
6 to use population for my condition, and one thing I haven't
7 shown you is all of the data that is associated with a
8 census block; each of these fields is a data point in the
9 census block layer, starting with population, Hispanic
10 origin, this is all of the 2000 data. So, whatever data is
11 merged to your base layer is accessible in your
12 redistricting planet at any time, so if you want to have the
13 political data available in your redistricting plan as
14 you're tabulating, it needs to be merged to your base level
15 when the plan is being set up, as it was in this plan. So I
16 wanted blocks with a population greater than one, and less
17 than or equal to 23. I'm going to put that in what is
18 called a selection set, it's a feature of a software that
19 allows you to locate geographic units in a layer based on
20 certain criterion, it will put it in a subset for you. And
21 all of that selection set, selection sets can be interfaced
22 through this toolbox here. So there's processing time
23 involved, especially when you're working with a census block
24 layer, the larger the units and tracts, they move faster,
25 but the blocks take a lot of processing time. And I'm kind

1 of waiting to see how it's going to work with the new census
2 block since we're going to have more census blocks. So it's
3 colored in this red stippled, I'm going to go ahead and give
4 that a different coloring, make it solid so it's more
5 visible to me, so right now I'm changing the color of the
6 selected blocks that fit my criteria. So now the key is to
7 find stuff that is next to the border. Actually, we don't
8 have a lot. In rural areas, 23 is kind of a small size for
9 a census block in a very urban area; in a rural area,
10 they're easier to find the small numbers like that, so here
11 is one that is 15. Here's 10. So, together, that will
12 work. What the consequences of pulling this block here and
13 that block is, I'm not sure. You could evaluate it by
14 looking at satellite imagery as one way to see kind of what
15 you're doing there, or to get public testimony from someone,
16 or to look at other map features. So I'm going to go ahead
17 and put that into the 12th, and I'm going to go get that
18 other one. So, it's difficult, but it is doable with using
19 certain techniques to get these deviations down. So, now
20 there we are, we have our 12th district at zero population,
21 but now the 13th is over-populated by 39,000, so we're going
22 to work on him next. There he is, and he is very similar to
23 how he was in 1990, I didn't do a lot of changes. But now
24 that he's over-populated, we have to move a district into
25 him, and that means putting people that are currently in

1 this district in with people in Marin, or with people in
2 Oakland, and Karin can say a lot to you about being in a
3 district with people from San Francisco, but that is her
4 only choice, there is a bridge that goes across here, and
5 that is what we can do, but you can see there is a ripple
6 effect. Keeping cities together is a really nice concept,
7 and you can do it, it takes work, but there are trade-offs
8 and this is an example. And so an example of -

9 MS. MAC DONALD: Can you go back for one second? I
10 just want -- look at how the district boundary here looks.
11 See how the district boundary goes all the way up there, and
12 it creates a really funny shape? That's because these are
13 water blocks. And water blocks, there may not be anybody in
14 there, but the census assigns all geography, whether there
15 are people in there or not, so when people kind of look at
16 whether a district is compact, how the shape is kind of
17 distributed, and you don't show what's underneath it -

18 MS. BOYLE: I can make it look more compact real
19 quick, watch.

20 MS. MAC DONALD: Yeah, watch. This is the trick
21 from a redistricting expert. So it looks non-compact right
22 now because you're showing the water blocks, but as soon as
23 you take the water area out, let's see what happens.

24 MS. BOYLE: I don't think this is going to work,
25 I'll take the shading off. Sorry.

1 MS. MAC DONALD: While you are doing this, I just
2 want to make a couple of points.

3 MR. LEVITT: Just in the interest of relating what
4 we talked about this morning, to exactly the districts
5 you're seeing now, there are just two things that I'll call
6 to your attention, one is that, given California's
7 definition of what compactness is, given the definition in
8 the Constitution, the actual shape of this district doesn't
9 matter at all because there's no nearby population that
10 you're bypassing or you're not bypassing by including the
11 outer scope of the water district. So, even changing the
12 picture won't actually change the compactness according to
13 the definition that you've been given for purpose of the
14 Voters First Act. Different states have very different
15 definitions and there it would actually matter quite a bit.
16 The second thing I wanted to call your attention to is that,
17 as you'll notice, both Karin and Nicole just said that you
18 could go over water to put people from San Francisco in
19 either Oakland or in Marin, and that is something that you
20 will have to decide, whether you are going to include
21 contiguity, if so, when, over water boundaries. I can tell
22 you that, in other states, there are plentiful ways of
23 connecting land to each other over water, but that is
24 another place of discretion that you have, to decide what
25 you're going to consider contiguous, and by what standard.

1 And the standard that Nicole mentioned, that there's a
2 bridge both going north and going east, is one of the more
3 traditional and more familiar standards that is in place in
4 an awful lot of areas, but that is something for you all to
5 decide.

6 MS. MAC DONALD: Yeah, and I wanted to add something
7 to Justin's first point because he is completely accurate
8 about the definition that you have in the law, but as you're
9 looking at this district, you're going to be explaining that
10 district to a lot of people that haven't read the law, and
11 oftentimes people just look at a shape and they just now
12 "that's a gerrymander!" They just know. And that's going
13 to be the most frequent conversation you're going to be
14 having, with anything that looks funny, because I know that
15 is what happens to us. Did you just crash? Okay, so we
16 just crashed, so I think we're going to go back to the
17 Powerpoint for a second. Oh, no, we can't do Powerpoint.

18 MS. BOYLE: Yeah, we can if you want to, or do you
19 want me to show the boundaries of the cities real quick?

20 MS. MAC DONALD: Well, it depends on how quickly.

21 MS. BOYLE: It should go quickly.

22 CHAIRMAN YAO: While we're waiting, I guess a
23 question of you both, if we looked at, say, the ACS and the
24 work data and we found that actually more people worked in
25 the east that were coming to San Francisco than from Marin.

1 Would that, then, be a rationale for saying you want to go
2 east or west?

3 MS. MAC DONALDL: I don't know, I think those are
4 decisions that you have to make.

5 MR. LEVITT: That is entirely right. If you decide
6 that that constitutes a community of interest that has
7 shared economic interests because of a transportation link,
8 and you decide that is a community that should kept together
9 within the district, I think that's within your discretion
10 as far as the communities are concerned, but that is up to
11 you to decide.

12 MS. MAC DONALD: Oh, are you back? Okay.

13 MS. BOYLE: So, just something interesting, here is
14 another city boundary, Fresno. It is right on the border -
15 it is too big to be an Assembly district, so it was split,
16 but you can see that the geography would be very
17 challenging. It has got a population of \$427,000, but once
18 you incorporate all of what are called unincorporated county
19 islands, that increases the total population of the area.
20 So that is one consideration for city -

21 MS. MAC DONALD: Go back up. So basically, all of
22 those white areas that you see here, this is all in the
23 center of Fresno, but it's not part of Fresno, so when you
24 go out in Fresno, again, as I pointed out earlier, sometimes
25 you have a city within a city, but oftentimes what you have

1 is unincorporated areas also within a city because you have
2 to have contiguity, you're going to have to stick this
3 entire area into your district just because you can't just
4 leave these people stranded, you have to assign absolutely
5 everything, and that increases your total, so, again, you
6 know, in a note to self, don't just look at what your city
7 total is, but also look at the geography and see that you're
8 not going to be forced to actually put in more with that
9 city just because you want to keep the cities together.

10 COMMISSIONER GALAMBOS MALLOY: Is there anything
11 unique about the way that the data is organized for the
12 unincorporated areas that we need to be aware of?

13 MS. BOYLE: Not in terms of the data, but
14 technically, when drawing maps, just that often in the
15 white, unincorporated areas, the population is very sparse,
16 and within the census places, it's much more dense, and
17 that's pretty much the only consideration. And technically,
18 as a technician when working in an area like this, it gets
19 a little messy because you're picking up the cities, but
20 then you have to work with census tracts, and census tracts
21 split cities. But other than that, it's more a technical
22 consideration.

23 COMMISSIONER BARABBA: Wouldn't you have the
24 coordinates of the area for the non-incorporated part?

25 MS. BOYLE: What we have here, what we're looking at

1 in terms of coordinates?

2 CHAIRMAN YAO: Yeah, geographic coordinates, that
3 you could say this is within the area.

4 MS. BOYLE: You could probably get those from the
5 files, they have - the GIS geographic files have coordinate
6 information in them -

7 MS. MAC DONALD: From the TIGERLine.

8 MS. BOYLE: From the TIGERLine.

9 COMMISSIONER BARABBA: Yeah, okay.

10 MS. BOYLE: But it's good to keep in mind that these
11 boundaries that we are looking at are from the Census
12 Bureau, these are the boundaries of these census places as
13 given to the Census Bureau, and then as reported by the
14 Census Bureau. It may not accurately reflect the city
15 boundaries as the city has them, as the American Annexation,
16 so it is possible that you may have discrepancies between
17 what appears to be a census boundary here in your census
18 file, or a city boundary, and what the actual city has with
19 their actual boundary at that point in time.

20 MS. MAC DONALD: Did anyone explain or define what
21 the TIGER is? Okay, the TIGER, TigerLine file, is the
22 Census geography, and TIGER stands for, okay, Travel
23 Logically Integrated Geographically Encrypted Reference -

24 MS. BOYLE: Encoding.

25 MS. MAC DONALD: Encoding Reference -- we're always

1 waiting for that to come up on either Jeopardy or, you know,
2 something like that. But anyway, in short, it's called the
3 TIGER. So when somebody talks to you about the TIGER,
4 they're talking about census geography.

5 MS. BOYLE: This is Bakersfield, this is one of my
6 least favorite cities. When I was working on the Irvine
7 research, favorite in terms of ease of being able to keep it
8 together in a district, right. Karin mentioned we did some
9 research that we had a grant for, and part of - one of the
10 things that we looked at is, okay, we're going to draw
11 redistricting plans and we're going to only concern
12 ourselves with keeping cities together. And we drew,
13 starting from the north, and then we drew starting from the
14 south. In some cases, I think we tried a few other
15 variations of where we would start drawing, and inevitably,
16 personally, I always found myself stuck here, how can I get
17 Bakersfield all into the same district together? And I
18 think it was partially geography and partially a constraint
19 of the distribution of the population because you can lose
20 census blocks into and out of districts, but you can't move
21 people around, the population of the census blocks, right?
22 So you're going to find constraints, and we don't have the
23 2010 data yet, but it's going to be like a whole new
24 landscape in terms of what is possible in district
25 configurations for 2011.

1 MS. MAC DONALD: But just look at the shape of the
2 city boundary, I mean, I just love it. Usually when I'm
3 talking to people about, you know, do you really know what a
4 gerrymander is, because everybody knows what a gerrymander
5 looks like, right, knows. So, I usually just take
6 Bakersfield, I take everything off, including the name, and
7 then just say, "So what is this?" And inevitably, somebody,
8 at least one person, will say, "Well, it's an obvious
9 gerrymander" because here's the boundary, look. It goes all
10 the way down here, and it goes up here, and then you put
11 basically the name on and everybody goes, "Oh!" Well, you
12 find this a lot in California where you have these
13 annexations that just make these cities look really funny.
14 And if you have to keep cities and counties together, of
15 course it's going to influence the way that your districts
16 are going to look, right? So you can only do as much as you
17 can with the geography that you have to work with.

18 COMMISSIONER FILKINS WEBBER: Don't take the names
19 off, in other words.

20 MS. MAC DONALD: Make sure everybody knows this is a
21 city. Labeling is your friend.

22 MS. BOYLE: So I think that about ends my
23 demonstration. Are there any questions I can take, or
24 anything that you would like to see, any questions that you
25 have about how the software works, or what it can do?

1 COMMISSIONER DAI: Given that it's a number of years
2 later, how would you assess the software compared to other
3 mapping software that is used for redistricting?

4 MS. BOYLE: There aren't a lot of options out there
5 for redistricting software that can do a statewide plan,
6 especially for California. And other than other ones I've
7 used, I've used DGX back in the '90s, and I don't think
8 we'll be using that, that was a custom software. This is
9 what I'm most familiar with and I find it very easy. I know
10 that there are some other - there is a plug-in for ARC GIS,
11 but it was actually done by Caliper. ESRI had their own
12 product for 2000, and I guess they decided this time around
13 to team up with Caliper, so basically this product is
14 available on the ESRI platform, as well. And I'm not aware
15 of anybody else who is really in the market right now.

16 MS. MAC DONALD: There is a good product. There is
17 FREDS, which is -

18 MS. BOYLE: Right, that was traded by the State
19 Legislator in Florida for their redistricting processes and
20 it comes all pre-set with data, so it's a little different
21 from this program in that we can merge whatever data we
22 want, and interact with the change of plans, whereas FREDS
23 already had - the data is already a built-in feature of it,
24 and it's kind of everything is pre-set, it breaks everything
25 that you're going to see has already been set up and thought

1 out for you, so your menu is somewhat limited in that
2 system, but that is one way of doing it. The County of
3 Sacramento had a GIS system that they established for, I
4 think, their Board of Supervisors of State Council.

5 MS. MAC DONALD: It was very limited, so...

6 MS. BOYLE: And they just let you work with total
7 population, so there are other things out there. This is
8 kind of the wish list of everyone who has ever had to do a
9 large redistricting, they got on the phone with Caliper and
10 it was like, "Hey, can you put this in there?" And this is
11 the result. But you can find other packages, you can do
12 other things that can be used to create redistricting plans.
13 But, for California, technically it is a challenge because
14 it is such a large state and there are so many census blocks
15 and so many other data that need to be taken into
16 consideration aside from total population.

17 MS. MAC DONALD: And I think, also, you know,
18 redistricting software, that is a real niche, so for
19 somebody to put that much money into developing something,
20 you know, that only gets used every 10 years, that that's a
21 bit of a challenge for any business plan, I would say, so
22 that is why you don't see a lot of competition, and whatever
23 competition you see, if they didn't come with like really
24 deep pockets to actually put all these bells and whistles
25 in, they're just going to be very limited.

1 MS. BOYLE: Yeah, unfortunately my feeling right now
2 is that Caliper kind of has it cornered, there isn't anyone
3 out there who is competing with them on the same level, with
4 the same price. Does that answer your question? Any other
5 questions?

6 MS. MAC DONALD: Okay, so if we can just go back to
7 the Powerpoint for a second and, then, we can wrap up.
8 Okay, so we'll go back just to public input really quickly,
9 and we've already talked about this at various sections of
10 this presentation. So, "The Commission shall establish and
11 implement an open hearing process for public input and
12 deliberation that shall be subject to public notice and
13 promoted through a thorough outreach program to solicit
14 broad public participation in the redistricting public
15 review process. The hearing process shall include hearings
16 to receive public input before the Commission draws any
17 maps, and hearings following the drawing and display of any
18 Commission maps. In addition, hearing shall be supplemented
19 with other activities, as appropriate, to further increase
20 opportunities for the public to observe and participate in
21 the review process." So, this can be found, of course, in
22 your Legal Guide on page 9. And basically, so the intent of
23 this proposition in the law now is that, you know, you have
24 a transparent and accessible process. And you will have to
25 figure out how you want to implement that and how many

1 hearings you want to hold. I think most people that are
2 really interested in redistricting would like to see you
3 hold many many hearings, in many many different locations
4 throughout the State of California, and hopefully how you
5 would take input from populations that were perhaps
6 traditionally not involved in the redistricting process,
7 perhaps populations that were, you know, traditionally
8 underrepresented and didn't have a voice. That would be
9 great if we could get to that. Do you want to get to the
10 next slide?

11 Why is it important? I gave you a couple of
12 examples already, you know, if you have a public - if you
13 really have a public process, if people see what's going on,
14 they have more buy-in in the process, and this is obviously
15 an experiment, I mean, this is something brand new and all
16 eyes really, not just of California, but of the nation. So,
17 having a public process by which people can actually see
18 what you are doing and what the logic is of doing what
19 you're doing, and also getting people involved, how can they
20 participate, getting people involved so that, if you feel
21 like you have cornered yourself, you know, you just moved
22 all these districts and there are some really difficult
23 decisions to be made, you know, let people know that you are
24 grappling with these decisions, you're trying to do the best
25 thing, get some public testimony on it, that's always a

1 really good way to move forward. And I've actually seen
2 that successfully work in San Diego and in San Francisco,
3 and I will tell you, when we took the job to be a consultant
4 for San Francisco, there were bets being made during that
5 time that that redistricting would go to court, and both of
6 those redistrictings actually were incredibly open, every
7 line was drawn in public, and neither one of them went to
8 court because people could see what was going on and they
9 knew why the lines were drawn the way they were drawn. And
10 I saw that, actually, as a huge success. There was
11 incredible public participation in both of those
12 redistrictings. We made - and this goes, I guess, to my
13 next point, how can people participate. You know, what we
14 did in both of those cities, and San Francisco came after
15 San Diego, San Diego had Public Access Television film this
16 entire thing, and I think Kathay Feng was already talking
17 about this. This was really funny, I found out about this
18 two years after, that all of the redistricting hearings were
19 televised, and it was actually the highest watched Public
20 Access program over, I think, a three or four-year period of
21 time, it was amazing, people were really watching. I mean,
22 we knew they were watching because sometimes when we moved a
23 particular block, not knowing that there was something
24 special about that block, at the next hearing we would have
25 a lot of participants. Once, in fact, they had to shut down

1 the entire building because we moved a particular block, and
2 I don't know if anybody here is familiar with San Diego, San
3 Diego Father Joe's is a nonprofit, you know, deals with the
4 homeless populations and they had a service center in a
5 particular district and wanted to really stay in that
6 district, and that particular block where that service
7 center was, was accidentally moved into the wrong district,
8 and then all of the people that were the beneficiaries of
9 that particular service center were attending the next
10 meeting. So, this was really interesting and we had a lot
11 of participants that day, and those are the kinds of things
12 that happen, and then people then participate and they tell
13 you why it shouldn't be moved, and what the community is,
14 and whatnot. So, this was good.

15 In San Francisco, there were hearings sometimes at
16 2:30 in the morning where there were 200-300 people sitting
17 there, and I don't want to scare you, you don't have to stay
18 open until 2:00 or 3:00 in the morning, San Francisco had a
19 bit of a hard time getting started, there were some
20 contracting issues, and they got into the Registrar of
21 Voters and they had a Commission that had to be selected,
22 there were some appointment delays and whatnot, so they got
23 started really late. So, by the time we came on, we had six
24 weeks, basically, to draw the districts, and that meant for
25 us, I think, an average of three hours of sleep at night,

1 and we had at least two hearings a day. We had hearings in
2 every single supervisorial district, at least twice, I think
3 even three times, and every line was drawn in public at City
4 Hall, at night, everybody could participate, there were
5 transcripts made available immediately, and to top it off,
6 we set up a process by which people could call us and ask to
7 use the software, so we would actually go over to people's
8 houses with a laptop and the software so that they could
9 create districts or community of interest districts. You
10 have six weeks, you know, you can't really set up anything
11 more fancy, so it was really, you know, who goes to the
12 mountain? We just kind of went to the community members and
13 helped them participate, and then submitted the data. So,
14 it was an interesting process and there was a lot of buy-in
15 to the process. Of course, again, not everybody got what
16 they wanted, but at least everybody knows how we got there.
17 So, this was interesting.

18 Based on these experiences, San Diego, as well as
19 San Francisco, we made a suggestion and worked with the
20 Irvine Foundation, the James Irvine Foundation, to actually
21 set up redistricting assistance centers throughout the State
22 of California, and the James Irvine Foundation funded six
23 redistricting assistance centers like up and down
24 California, one is going to be at Berkeley, and then there
25 is one in San Diego, one in LA, one in Sacramento, one in

1 either San Bernardino or Riverside, which one did I forget
2 -- and Fresno. And so we have done that and it is partially
3 funded, these are not fully funded yet. So, at this point,
4 we can keep them open two days a week, and these are
5 basically places where community members can come in, use
6 the software, you know, we have part-time funding for
7 somebody, for a technician to basically help people, you
8 know, just access the software and kind of draw the lines,
9 and then submit testimony to you. But what you first have
10 to figure out, of course, is point three there, how will you
11 accept public testimony, maps and data? And so you have to
12 establish some sort of a process. Remember how I said
13 earlier when we were talking about communities of interest,
14 about sometimes people come in and they say, "Well, we're
15 all of a particular race," and then you can kind of prompt,
16 or when people come in and they tell you all about the
17 criteria that make up their community of interest, but they
18 don't define their boundaries, well, this is all something
19 that you can probably control just by saying, "Okay, this is
20 how we would like to see your community of interest data
21 presented," you know, "Just tell us, give us some variables,
22 just tell us what the streets are." It doesn't have to be
23 extensive, but it has to be good enough so you can actually
24 use it because, otherwise, you're going to put people
25 through a whole lot of work trying to document their

1 communities, and then if you can't use it, of course, it's
2 not going to look very good, and it's not going to make them
3 feel very good about the process. So, what we did in the
4 local redistrictings is, we accepted testimony in every
5 which way it came in. That, of course, is a little more
6 difficult to do when you're dealing with the state. So,
7 this is something that really has to be figured out, and
8 that you all need to talk about, like do you want to accept,
9 you know, your maps in a particular format? Do they have to
10 be electronic? If they are electronic, of course, they're a
11 lot easier to process, you can integrate them, you can index
12 them, you can figure out some sort of a system by which you
13 know about which area in the state, for example, you've just
14 received a map. Do you accept partial maps, partial
15 districts, statewide maps, you know, basically how do you
16 want to deal with that? So, this is all a challenge to you,
17 but, you know, I would really urge you to think broadly, how
18 can you accept as much as possible, and just give people
19 guidelines, just tell them what you're expecting from them
20 because, just being upfront about that is going to save
21 everybody a whole lot of work, including you. And, again,
22 you have a tight timeframe.

23 As part of this Irvine funded grant, there is also a
24 website that will have some educational materials and, of
25 course, we're waiting for you to set up some processes so we

1 can tell people really how they can participate. But,
2 basically, you know, explaining redistricting criteria,
3 explaining data, things like that, and that website will be
4 live probably within the next, we're hoping, maybe six weeks
5 or so. So, hopefully that will be helpful to all of you,
6 but I should also tell you that there is already a process
7 going on, you know, outside of what you're doing that is
8 going to feed information into your process. And that is an
9 ongoing one, and there are a lot of community organizations
10 that are already involved with this, and they know that
11 these centers are going to be open, and there is also a lot
12 of trainings that are going on right now. So many
13 organizations, and you actually heard from some of them, are
14 out there training their community members on how to collect
15 data for communities of interest, how to document their
16 neighborhoods, and then how to interact with you, again,
17 with the caveat that there are still a little missing piece
18 on really how you would like to be communicated with. Okay,
19 so next, I think.

20 Okay, really really quickly, because I know it's
21 getting late. Nicole alluded to the fact that we did some
22 research over the last 10 years and she called it the Irvine
23 Project. Basically we looked at how districts could be
24 drawn in California and I want to point something out,
25 competition is not one of the criteria on which you're

1 drawing lines, right? But there are a lot of people out in
2 California that think this is their job, to draw competitive
3 districts, right? If anybody is interested in what actually
4 competition as a criterion would do to California districts,
5 we did a study on it and was really interesting, this is
6 partially where we have people just draw maps with different
7 criteria and people that did not know anything about
8 redistricting, and definitely not political people, a couple
9 of them weren't from California or from this country,
10 actually, so they knew nothing about redistricting, they
11 just knew how to move lines around. And there were some
12 real interesting criteria interactions that happened, but
13 since you're not, of course, drawing competitive districts,
14 this may only be, you know, partially interesting to you.
15 But that report is available on our website, and I think
16 it's interesting to read because of the criteria stuff that
17 is in there. But, in some of the lessons that we learned
18 was that there are criteria interactions, of course, above
19 and beyond using competition as a criteria, and some of the
20 examples are, for example, compactness, so compactness is
21 one of your criteria that, if you can, you should draw a
22 compact district; however, as you are trying to draw
23 districts as compact as possible, you actually have an
24 effect on majority-minority districts, they become harder to
25 draw, or, actually, if you are prioritizing compactness,

1 which of course you are not because of the district, the
2 criteria are linked, but if you were to do that, you would
3 actually not be able to draw as many majority-minority
4 districts. The same with preserving city and county
5 boundaries is also an interesting one because, as you're
6 trying to preserve city and county boundaries, well, your
7 compactness goes down. Remember we just looked at
8 Bakersfield, we looked at Fresno, we looked at Daly City, I
9 mean, obviously, these are not going to create compact
10 districts, right? So your compactness suffers. And that is
11 the same for respecting communities of interest because
12 communities of interest most likely, many of them, will not
13 come in nicely palatable shapes, you know? Communities of
14 interest are not going to organize around, you know, streets
15 or -- but just around nice little digestible shapes, so
16 there will definitely be some interesting geography that
17 will be brought in, and all of that will have an effect on
18 your compactness.

19 And finally, the mapper effect, this is also
20 something that we found out, and this was really amazing to
21 watch. So, we had four people draw, and then more people
22 draw districts, and when people were familiar with a
23 particular area, they would just tend to spend more time on
24 that area, and it didn't matter what you told them, if you
25 told them to start from the north, from the south, take

1 various criteria into consideration, mysteriously, the line
2 that had to split the particular city that they knew, that
3 perhaps they had lived in, was always in the same place, it
4 didn't matter what happened because that was just the proper
5 place to split that city, and they just knew that. And I'm
6 pointing this out just to tell you that there is no such
7 thing as somebody who is not biased, you know? I think what
8 is important is that, when you are hiring people, is that
9 people understand that they bring a particular bias to the
10 table and they let you know what it is, because once they
11 realize they have a bias, they can usually control it, or
12 you know what to look for. So, of course, you don't want
13 people with a political bias, and whatnot. But there are
14 biases everywhere, and oftentimes it's just based on where
15 you grew up and what you know, and what you don't know, so
16 you just hold certain beliefs that you're just going into
17 the process. Okay, thank you.

18 Okay, so I think we're done unless you have any
19 further questions.

20 CHAIRMAN YAO: I think we have tons of questions.
21 We don't know what we can ask at this point in time or not!
22 Any urgent questions? Let me put it that way. If not,
23 well, thank you for that and I think we have your number and
24 we'll call you!

25 MS. MAC DONALD: Well, thank you.

1 MS. BOYLE: Thank you.

2 CHAIRMAN YAO: All right, public comments on this
3 particular agenda item? Please, come up to the podium.

4 MR. WRIGHT: Good afternoon, I'm Jim Wright, a voter
5 from San Jose. I know you're all tired, but I've got three
6 things for you. First of all, this is a question for Karin
7 or perhaps Nicole. Does the software give you the ability
8 to list the blocks by I.D. or by street, or something like
9 that? Does it provide a dataset that you could then hand to
10 the Commission for their use?

11 MS. BOYLE: You mean like a spreadsheet that tells
12 you - it's difficult to list census blocks by address.
13 Based on what I know, it would be difficult to list all 700
14 census blocks by street address, and some blocks do not fall
15 on streets, they fall on other types of boundaries.

16 MR. WRIGHT: Okay, that's not what I'm asking.

17 MS. BOYLE: Okay.

18 MR. WRIGHT: What I'm suggesting is that you draw a
19 particular district, okay?

20 MS. BOYLE: Okay.

21 MR. WRIGHT: Which contains census blocks. Does the
22 software give you the ability to produce a list of those
23 census blocks?

24 MS. BOYLE: Oh, yes, that's crucial, that is how the
25 plans are replicated and, yes, they're called "equivalency

1 files," "block I.D. files" is another name for them. And,
2 yes, it will output a spreadsheet with every census block
3 that has been assigned to that district, and the
4 corresponding district assignment. So, it's very typical to
5 have an equivalency file for every plan under consideration,
6 so it could be replicated in different softwares and
7 everybody had the exact same boundaries. And the only way
8 to do that is with what you're suggesting.

9 MR. WRIGHT: Okay, my suggestion to the Commission
10 would be that perhaps one of the methods that you might want
11 to accept, then, would be this list.

12 MS. BOYLE: I strongly recommend that, if you want
13 to reproduce people's work and verify the statistics that
14 they're giving you for these boundaries and these maps,
15 because obviously you can't do much with an image, but with
16 the file he's suggesting, this equivalency file, you can
17 replicate exactly in line with what someone is giving you,
18 and merge any data that you want to those lines, with this
19 census block equivalency file.

20 MS. MAC DONALD: That is one way.

21 MS. BOYLE: That is one way. That is a very
22 technical way and a precise way of doing it, what I would
23 approve with.

24 MR. WRIGHT: A hand-drawn map might be another way,
25 but -

1 MS. BOYLE: It would be difficult for community
2 groups, for instance, though, to give you a block I.D. file
3 for their community of interest, though it could be done,
4 they'd need to be more technical than your average person,
5 though.

6 MR. WRIGHT: Okay, now, if I wanted to get a
7 personal copy of the software and play with it along with
8 the data, what is it going to cost me?

9 MS. MAC DONALD: The software? A lot.

10 MR. WRIGHT: Okay, more than an individual would be
11 willing to spend?

12 MS. MAC DONALD: Yeah, but you can come to one of
13 the redistricting centers - well, it depends on the
14 individual, I suppose, right?

15 MR. WRIGHT: Median income? Rich hired individual?

16 MS. MAC DONALD: For use every 10 years?

17 MR. WRIGHT: Yeah, I understand. Thank you for
18 answering those questions, I appreciate it. To the panel, I
19 have a proposal for a starter panel for you to consider in
20 selecting your other six members. When would be a good time
21 that you would be willing to listen to my proposal, now or
22 perhaps at your next meeting?

23 CHAIRMAN YAO: I suspect it would be the next
24 meeting. The item following this would be - we are going to
25 talk about the process and not necessarily the individuals

1 at this point in time.

2 MR. WRIGHT: Does that happen today or tomorrow?

3 CHAIRMAN YAO: We're going to make that decision
4 today. I mean, under item 12.

5 MR. WRIGHT: Okay. So as part of Item 12.

6 CHAIRMAN YAO: Yes, you will have an opportunity to
7 speak at that point in time.

8 MR. WRIGHT: Okay, thank you very much.

9 CHAIRMAN YAO: All right, any further comments or
10 discussion on Item 11? If not, then we'll move on to Item
11 12, then. Steven, are you going to take the lead on this
12 item?

13 MR. RUSSO: I will, yes.

14 CHAIRMAN YAO: Okay.

15 MR. RUSSO: The way that we structured the agenda
16 for you, the next item of business for you to do is to
17 really start working on the issue of how you're going to go
18 about selecting the final six members of the Commission. In
19 drafting the agenda so that it would run from day to day,
20 throughout until December 17th, we did that because we want
21 to give you maximum flexibility to set the time so that if
22 you want to just run continuously every day from the
23 beginning until you finished, you have the flexibility to do
24 that, although that is not our recommendation. The way we
25 structured this is that you would receive this training to

1 give you some guidance as to how to go about making your
2 selection of the final six. We would recommend that, now
3 that you received that training, that you go back and you
4 review the application materials in light of that training,
5 before you start deliberating about who it is you think you
6 should select of the final six, or even what qualities
7 you're looking for in those final six. But, honestly, I
8 don't know that it would look real good if you go through
9 all this training and say, "Yeah, okay, that's great, now,
10 this is who I want," and you haven't had an opportunity,
11 really, to look at all the material in light of the training
12 you've received. Now, in saying that, and additionally, of
13 course, I would point out that we have written into the
14 regulation that the Commissioners are required to look or to
15 review all of the application materials prior to entering
16 into deliberation regarding the selection of the six. So,
17 given that we gave you an hour and a half per interviewee,
18 and there were 28 interviews and a whole lot of other
19 application materials, if you looked at all of the
20 materials, you probably would want a little bit more time to
21 really look at all of those materials before you start
22 making some very important decision.

23 So, our recommendation is that you take a recess at
24 this point and then come back at another time to start your
25 deliberations after you have fully looked at the material.

1 In setting up and deciding, though, where to proceed, when
2 to meet again, and what your schedule is, there are many
3 things that you need - there are several things you need to
4 take into account, and I have countered them out this way.
5 The first thing you need to decide is whether or not you're
6 going to want to receive any additional information about
7 the Applicants prior to making your decision before entering
8 into the deliberations. You have a lot of information as it
9 is, I mean, you have -- and you're familiar with it because
10 you've been through this process - all of the application
11 materials, the copies of the hour and a half interviews, the
12 public comments, and the reports on information gathered
13 about the Applicants. However, in crafting this process, we
14 provided in the regulations that, if you want more
15 information, then you can get that more information
16 regarding the Applicants, and we've provided a couple of
17 means to do that, one means is to make written requests of
18 Applicants for a particular information, and on that issue,
19 we've already had a suggestion, or a request from
20 Commissioner Barabba, to obtain information about the prior
21 residences of the Applicants because that goes to the issue
22 of diversity, I mean, not just, you happen to be living in
23 San Francisco today, but maybe you spent the last 30 years
24 living in Los Angeles, and so San Francisco may indeed be
25 your current residence, your connection, your history of

1 connections, your familiarity may be with Los Angeles, and
2 that might be something you would consider in just
3 evaluating the geographic diversity of the Applicant, that
4 is fine. That would be one thing we could do, keeping in
5 mind that, you know, the clock is ticking, and that's the
6 thing that kind of overshadows all of this, is that the
7 clock is ticking, that you have to make your decision by the
8 end of the month, that, for example, to obtain that
9 information, the way we would do it is we would send out an
10 e-mail to all of the Applicants, and we would also send it
11 to you so that you'll have equal information regarding
12 current members of the Commission and proposed members of
13 the Commission, to provide information about your prior
14 residences, that would take us, you know, roughly a day to
15 get it all worked out, get it set up, send it off to the
16 Applicants, give them some period of time to provide the
17 information, keeping in mind that folks are not going to be
18 checking their e-mail every hour on the hour, or even every
19 day, and then they'll need time to put that information
20 together, get it back to us, we process it, put it into a
21 report of some form, so you can evaluate it. So, that takes
22 some time. To the extent that you would like other
23 information, it is certainly more efficient for us to ask
24 other questions at the same time, just because, as you know,
25 it's just more efficient.

1 COMMISSIONER DAI: Steven, on that point, I think
2 that information -- we have to provide a lot of that
3 information in the original application. I think this was
4 just asking that information be analyzed.

5 MR. RUSSO: Okay, maybe if you could give me a
6 little bit better picture of what information you want,
7 because that would be another part that we would need, I
8 mean, we can ask people for every place they've ever lived
9 throughout their lives, we can go back for a particular
10 period of time, we can ask about -- because, you know, we've
11 gotten questions about, well, I went to college and I was
12 there for a year, and then I went somewhere else, and do you
13 really want all that information, those kinds of things
14 would be helpful.

15 COMMISSIONER BARABBA: But maybe one of the things
16 we could do is we could just get information about the
17 current date, that would give us a little better idea of
18 what our appreciation is, geographically, and then we could
19 move on that pretty quick. And then that way, when we are
20 looking at the other [inaudible] [1:08:47] from our own
21 experience, that would speed things up.

22 COMMISSIONER GALAMBOS MALLOY: And remember on the
23 application, I think it was the first -- the most recent 10
24 years that was asked on the application, so if we could get
25 -- which is information you already have, a listing by

1 Applicant of the last 10 years where they've lived, and the
2 same information for ourselves.

3 COMMISSIONER RAYA: Uh, Peter?

4 COMMISSIONER BARABBA: I lived 24 years of my life
5 in Los Angeles, but it was not within the last 10 years, so
6 I would be excluded from that [inaudible] really good
7 understanding of Los Angeles.

8 CHAIRMAN YAO: Vincent, I think the information from
9 this panel, I think we can react to it almost instantly. If
10 the request is for the additional 28, then it will probably
11 take a block of time.

12 COMMISSIONER BARABBA: I would say just us eight -

13 CHAIRMAN YAO: All right, so the request is really
14 for the existing eight Commissioners and not for the 28
15 potential Commissioners.

16 COMMISSIONER GALAMBOS MALLOY: How long of the time
17 horizon are you suggesting?

18 COMMISSIONER BARABBA: In my case, I left Los
19 Angeles in the mid-'70s, I grew up there and so I think it
20 is up to us to say where we think we've lived and have an
21 understanding of the area, but I wouldn't put any time -

22 CHAIRMAN YAO: Why don't we do it this way, so why
23 don't you make a written request to either Patti or to our
24 attorney, and they in turn would e-mail us with that
25 specific information. I don't know that we need to

1 wordsmith the particular request, but obviously it's
2 meaningful information, like X number of years to get
3 familiar with a typical area, not every place he lived type
4 of thing. So if it's okay with the panel, I think we can
5 handle that offline.

6 COMMISSIONER KUO: That's fine. I guess my caveat
7 would be, if you put somewhere, even if you were deeply
8 involved in that area, I think sometimes time can change an
9 area, as well, and so I think we should also keep that in
10 mind, especially given all the presentations we've had the
11 last couple of days, we've seen a lot of evidence of how
12 things can change over time, and so I'd also like the
13 Commission to keep that in mind, as well, that certainly all
14 of those experiences add up to what we can bring forth as a
15 Commission member, but in terms of that lived geography
16 experience, your most recent experience is also going to be
17 the most timely experience, at least from my perspective.

18 COMMISSIONER RAYA: I share that, and I think how
19 old you were, or what you were doing at the time, I think,
20 is a big factor in how you assess your impression of any
21 given area.

22 COMMISSIONER GALAMBOS MALLOY: So, if there is a way
23 as the information is being tabulated we could also have the
24 years assigned to it, and have it sorted so that our most
25 recent experience is listed first?

1 CHAIRMAN YAO: All right, we'll do that, and the
2 question will come to you by e-mail, and hopefully we can
3 all respond to it in a timely manner. All right, thank you.

4 MR. RUSSO: Okay, the other way the Commission can
5 obtain additional information from the 28 applicants in the
6 pool is to conduct additional interviews of their own,
7 beyond the interviews that were conducted by the Applicant
8 Review Panel. Obviously, that is a time consuming process.
9 There is a pro to it, obviously, it gives you the
10 opportunity yourselves to see and hear these other
11 Applicants, ask them your own questions about their
12 qualifications and so forth, but it will take a lot of time,
13 and while it isn't the most important consideration, it is a
14 consideration, it will cause some significant expense to the
15 State Auditor's Office to arrange to transport these people
16 here and other accommodations. Now, what we have done is
17 we've put out a mock-up calendar of what it would look like
18 if you conducted interviews, and Patti, do you have that?
19 And while she's getting that out, I'll note that we made,
20 just for the purpose of illustration, but we made certain
21 assumptions, and these certain assumptions were that you
22 would start the interviews on Monday, that you would be
23 conducting the interviews two hours apart, that would end up
24 being four interviews per day, and that you would be taking
25 the weekend off and that would still, then, get you through

1 the interviews by, I believe, December 14th.

2 COMMISSIONER RAYA: May I ask a question? If we
3 choose to interview anybody, we have to interview everybody,
4 correct?

5 MR. RUSSO: Well, that's a decision you would have
6 to make. We certainly recommend that, if you're going to
7 interview one person, you interview all the people so you
8 have everybody on an even playing field, and also so that
9 you're not essentially pre-selecting certain folks just
10 based on who you decide to interview. So, yes, our
11 recommendation would be all or nothing on that.

12 COMMISSIONER RAYA: Can we call the question?

13 COMMISSIONER DAI: Yeah, I would like to suggest we
14 have a lot of information and -

15 CHAIRMAN YAO: Well, let's see what the schedule
16 looks like and then we can perhaps have a show of hands as
17 to whether there is any interest, and then proceed that way
18 if that is all right with the Commission.

19 MR. RUSSO: And we're locating that mock-up,
20 apparently.

21 CHAIRMAN YAO: Well, I think maybe just a verbal
22 description would do if you don't have the chart.

23 MR. RUSSO: Sure. Well, again, it would be,
24 assuming that you're starting on next Monday, the 6th, then
25 it would take you through to -- looking at the calendar here

1 -- it would take you through until the 14th and then that
2 would leave you essentially three days until you get into
3 Christmas week to make a decision about who you want to
4 select, and you can work through Christmas week, you can
5 work through New Year's week, all of those things, and you
6 have until the end of the month, but it would take up a
7 significant chunk of your time to do that.

8 CHAIRMAN YAO: All right, let me ask for a show of
9 hands, this is not to vote on whether we are going to do an
10 interview or not going to do an interview, I think we need
11 perhaps a little bit of discussion prior to taking that
12 vote, but do you have any interest in proceeding with the
13 interviewing process if there is sufficient interest, and
14 we'll proceed with the next step, but if there is no
15 interest across the board, then perhaps we don't need to
16 take the next step, so let me have a show of hands, those
17 Commissioners who --

18 COMMISSIONER GALAMBOS MALLOY: Can I ask a point of
19 clarification before you --

20 CHAIRMAN YAO: Sure.

21 COMMISSIONER GALAMBOS MALLOY: I think, you know,
22 taking a step back, it would be useful as we reconvene to
23 have a discussion about some of kind of the framework we're
24 going to use by which to make the decisions, what are some
25 of the qualities we're really looking for, and then to

1 identify whether we have all that information in front of us
2 with the materials that we have, so at this moment, I feel
3 like my inclination is to try and use the materials we
4 already have in the interest of time and efficiency, but I
5 don't feel comfortable voting now on the idea of doing
6 interviews in the event that, as we go back and do that
7 analysis we feel like we're actually missing some key
8 information.

9 CHAIRMAN YAO: I think we have to consider the fact
10 that, if we do decide to hold an interview, it's going to
11 put a lot of pressure in terms of being able to make the
12 decision because the interview is just collecting additional
13 data, okay? So we can't even start the discussion in terms
14 of the selection process until that stuff is completely
15 complete. So, again, what I'm trying to sense is it sounds
16 like you are not ready to make that decision, and maybe on
17 that basis, I was hoping to perhaps see an unanimous opinion
18 on that, but maybe that's not where I am at this point in
19 time.

20 COMMISSIONER RAYA: My question, then, would be to
21 follow what you may be suggesting, Connie, is, if we would
22 have to reconvene, I would think, just in terms of time, we
23 would still have to reconvene on Monday, and set out
24 whatever criteria, whatever it is we think we want, and then
25 stay, I would assume. I mean, then we would have to -- if

1 we decided to interview, we would then have to notify
2 people, so we're still looking at this sample, I would
3 think, we're still talking about coming back on the 7th and
4 moving forward in order to get the job done.

5 COMMISSIONER KUO: I think, though, we would
6 probably need to make a decision about whether or not we'd
7 like to move forward with the interview in terms of
8 providing the remaining Applicants in the pool time to be
9 able to adjust their schedules, and to be able to come and
10 speak with us if that is what we decide as a Commission.
11 I'm not comfortable, I think, walking away today without
12 having made that decision, in all fairness to those people
13 that are still in the pool.

14 COMMISSIONER GALAMBOS MALLOY: I'm happy to agree to
15 move forward, knowing that we can, if we identify there is
16 information that we don't have in front of us, that we can
17 create a framework for folks to provide us that in written
18 form.

19 CHAIRMAN YAO: Right, this is about interviewing as
20 the means to collect the data, it's not about collecting the
21 data we may need, okay.

22 COMMISSIONER FORBES: I think what I would suggest
23 is that -- I'm disinclined to interview, but if we don't
24 want to make that decision today, I think what I would do is
25 I would schedule a meeting for next Monday to talk about the

1 bases that we're going to make our decisions on. At that
2 point, we can make a decision and then identify the people
3 who are available to come immediately, basically, and I
4 would schedule five interviews a day, not four, and try to
5 pick up the extra time that way. I mean, as I say, I think
6 it puts a lot of pressure on us, but if we're not prepared
7 to cut out that option right now, then that is what I would
8 suggest.

9 CHAIRMAN YAO: Any other comments?

10 COMMISSIONER BARABBA: Yeah, my only point would be
11 that there was an incredible process of sorting out the
12 criteria on which we were supposed to select people, right?
13 And we were the beneficiaries of being lucky enough to have
14 a little ball picked out with our names, and so it just
15 seems to me that I don't know what else we could be asking
16 people beyond what they've already been asked, relative to
17 the criteria for being on the Commission. So it's up to us
18 to look at what they said and how they said it to see how
19 that meshes with the group that is already here, and it
20 would seem to me that I don't see the value of the
21 additional interviews.

22 COMMISSIONER FILKINS WEBBER: I certainly agree with
23 Commissioner Barabba. I can't think of anything among the
24 criterion necessary for our consideration for the next six
25 Commissioners that would otherwise be missing, potentially,

1 from the application materials that the Review Panel had an
2 opportunity to review for the interviews. So, I certainly
3 concur with him.

4 COMMISSIONER DAI: And back to Steven's comment
5 about, you know, an even playing field, it's not clear to me
6 why these six Commissioners, because they didn't get the
7 luck of the draw, should be subjected to additional scrutiny
8 over and above what we were.

9 COMMISSIONER GALAMBOS MALLOY: Let me give an
10 example of something that comes to my mind. So, through the
11 presentations yesterday and today we have heard about
12 potentially some specific areas of content, expertise, or
13 skills that might be useful, that might be gaps in what we
14 currently have on our Commission; now, my assumption is that
15 the remaining Applicants would have probably brought those
16 capacities to light when they submitted their application,
17 however, for example, if we see there is nobody on our
18 Commission, or nobody in the pool that immediately comes to
19 light as having some expertise around the Voting Rights Act,
20 for example, maybe that is a question we want to pose via e-
21 mail to the group, to find out if there is anybody who would
22 rise to the surface as competitive in that area. That is
23 just one off the top of my head, but it would be the kind of
24 thing that would be of interest to me.

25 CHAIRMAN YAO: All right, may I suggest the process

1 as follows. Commissioner Malloy, would you make the motion
2 to hold off the decision of the interview until a later
3 date, and I'll second it, and then we'll take a vote on it
4 and see whether there is sufficient support for delaying the
5 interview decision?

6 COMMISSIONER GALAMBOS MALLOY: I am actually happy
7 to make the motion to not do interviews, and if there is
8 additional material to be gathered that we do it via
9 written.

10 CHAIRMAN YAO: All right, it I has been motioned. I
11 need a second.

12 COMMISSIONER RAYA: Second.

13 CHAIRMAN YAO: Second.

14 COMMISSIONER KUO: Second.

15 CHAIRMAN YAO: All right, let me get some public
16 input before we make our decision. Anybody in the public
17 that would be interested in addressing this issue of
18 interviewing?

19 MR. WRIGHT: Jim Wright again, my suggestion to you
20 is that, if you are going to interview people, you need to
21 have a plan, you need to have a list of questions, you need
22 to know what it is that you're seeking from them that you
23 don't already have. Thank you.

24 CHAIRMAN YAO: Thank you, Mr. Wright. Any further
25 discussion on the topic? All right, let me have a show of

1 hands of those that would support the motion of getting data
2 outside of interviewing the candidates by saying "aye."

3 (Ayes.)

4 Any opposed? Abstained? All right, the motion
5 carries. We are not going to go through the interview
6 process with the candidates.

7 MR. RUSSO: Okay, the next issue that you face is
8 when you're going to meet next and what kind of a schedule
9 you think you would like to adhere to, and you can change
10 your schedule at some point, but we're trying as part of the
11 transparency of this process to keep people advised of when
12 you're meeting, and you're actually meeting, as opposed to
13 generally what dates you may be meeting. And Patti has had
14 an individual conversation with each of the members of the
15 Commission to try to find out what dates you would be
16 available, or what dates you may have a conflict, and based
17 on that calendar, it looks like there are very few days
18 which you're all available. So, keeping in mind that you
19 need to complete the process by the end of the month, you
20 need to make some decisions about how you want to schedule
21 your time.

22 COMMISSIONER FILKINS WEBBER: And I presume that the
23 names are on the dates that the Commission members are
24 unavailable on the calendar we were just handed?

25 MR. RUSSO: That is correct.

1 COMMISSIONER FILKINS WEBBER: Thank you.

2 CHAIRMAN YAO: Does the public have the same
3 information?

4 COMMISSIONER GALAMBOS MALLOY: I have a
5 clarification on my availability the week of the 27th, I
6 would be able to participate, it would be via telephone, so
7 I would need to note that in our meeting announcements.

8 CHAIRMAN YAO: Okay. Any other correction or
9 clarification on the data that is before us?

10 COMMISSIONER FILKINS WEBBER: Yes -

11 COMMISSIONER FORBES: I - okay - since I am the only
12 person on the 21st to make it wildly inconvenient, I could
13 meet the 21st.

14 CHAIRMAN YAO: Okay.

15 MR. RUSSO: Now, if you're not going to conduct
16 interviews, then that would be the biggest reason why -
17 well, obviously it depends how quickly you can reach
18 agreement, but if you're not going to do interviews, then
19 that gives you a lot more time to deliberate about how to
20 select for the six. So, in terms of -- I guess, what I'm
21 saying is that, at this point, I don't know that you need to
22 specify all of the dates that you're going to need, but we
23 do need to know when your next going to meet and get a sense
24 of, at least for that week, whether you're going to be
25 meeting every day of that week, as needed, or if you're only

1 going to be meeting a day or two, or some sense of that, so
2 that we can keep the public updated in advance as to what
3 your schedule would be.

4 COMMISSIONER RAYA: I have a question. And I did
5 ask this of Patti during the break, whether Saturdays are
6 acceptable meeting dates because that might help us to, you
7 know, kind of ease the stress of getting it done in such a
8 short time.

9 MR. RUSSO: If you want to meet on Saturday, we can
10 facilitate that.

11 COMMISSIONER RAYA: I don't know how the rest of the
12 Commission feels.

13 COMMISSIONER FILKINS WEBBER: I believe that's fine.
14 I would like to add, I was just assuming a holiday -- that
15 my unavailability on December 25th that my name is not on
16 there!

17 COMMISSIONER DAI: And I wonder if anyone else has
18 clarifications like Connie did, where you could be available
19 by phone and we could just notice -

20 COMMISSIONER GALAMBOS MALLOY: I am happy to make
21 myself available on the 13th, which is a day I'm the only
22 person unavailable. I can also open up the 9th.

23 COMMISSIONER RAYA: I can do the 6th and 7th by
24 phone, and I can be in my office and make it accessible to
25 whoever wants to try.

1 COMMISSIONER DAI: Would that be a problem with our
2 notice period since we didn't do that in advance?

3 MR. RUSSO: It - we can amend the notice, but -

4 MS. NEVILLE: Right, I'm glad we're talking about it
5 now because we can post another agenda in order to satisfy
6 the location requirements -- it's great that we're having
7 this discussion now, we would need to post another agenda
8 that would identify the different telephone locations, but
9 as long as we're not meeting before the 11th, we're okay. If
10 we're trying to post a telephonic location within this 10-
11 day period, then we would have a problem.

12 CHAIRMAN YAO: We're talking about the 6th and the
13 7th, so that would be within the 10 days again?

14 MS. NEVILLE: Right.

15 COMMISSIONER DAI: Another option is just to go for
16 it on the 10th, and if they have to run into the 11th -

17 COMMISSIONER BARABBA: And that gives everyone the -

18 COMMISSIONER KUO: I think I would second that -

19 COMMISSIONER BARABBA: Yes, I would too.

20 COMMISSIOENR KUO: -- to start on the 10th, and it
21 seems like you need to have some flexibility -

22 MS. GALAMBOS MALLOY: Yeah, I can be here on the
23 13th. I will say, I am conceptually supportive of meeting on
24 Saturdays, but the Saturdays in question, I am really booked
25 this month, so it might not work as well.

1 COMMISSIONER KUO: Would you be available by phone
2 since it would be after the 11th and it -

3 COMMISSIONER GALAMBOS MALLOY: No, I have some
4 previous work commitments those days.

5 CHAIRMAN YAO: So on the 11th, you're not available?

6 COMMISSIONER GALAMBOS MALLOY: No, unfortunately
7 not.

8 CHAIRMAN YAO: Okay.

9 COMMISSIONER DAI: But you can do the 10th?

10 COMMISSIONER GALAMBOS MALLOY: I can do the 10th, I
11 can do the 13th.

12 COMMISSIOENR KUO: Why don't we just really go for
13 the 10th?

14 COMMISSIONER BARABBA: Go for the 10th and if we
15 have to roll over to the 13th, we roll over to the 13th.

16 CHAIRMAN YAO: In looking at the schedule, and
17 trying to manage the risk of missing the deadline, it looks
18 like we may have to run with less than a full panel and just
19 go for starting, perhaps on the 6th, or on the 5th, and go all
20 the way through the 10th, 11th, 12th, 13th with the less than
21 full panel. I know that's not the ideal situation, but if
22 we go beyond -- if we just start on the 10th, that only gives
23 us about four days of clear working days before we run into
24 the same problem again, and I suspect as time goes on, those
25 problems will get worse as compared to getting better.

1 COMMISSIONER FORBES: Yeah, but I think it's
2 unrealistic to do the 7th, 8th, and 9th, I think there's too
3 much conflict, but I do think we should meet on the 6th and
4 set out what we need to do, if we can't finish on the 6th,
5 set out what we need to do, and that gives us the 10th and
6 the 13th to do that.

7 CHAIRMAY YAO: Well, the 6th and 7th, perhaps, skip
8 8th, and then continue on the 9th, 10th, 11th and 12th. You
9 know, I hate to hold any meeting at this point without the
10 full panel, but it doesn't look like it's going to happen
11 during the month of December and allow us to get the work
12 done.

13 COMMISSIONER KUO: I hear all the concerns, but I'm
14 just wondering if our first meeting should not make that
15 attempt to have a full eight members, Commissioners here, at
16 least for that first sort of discussion about criteria,
17 framework, information we would like to perhaps gather.

18 CHAIRMAN YAO: All right -

19 COMMISSIONER DAI: I have a question, too. I mean,
20 we have an option to run beyond 4:30 today if we want to
21 start that discussion while we're all here now.

22 COMMISSIONER FILKINS WEBBER: Except that we have
23 not had an opportunity take in the training we received and
24 apply that to the information that we've already been
25 provided by State Auditor's Office. I would also like to

1 comment on the fact that, I know our first meeting, I would
2 like to see a full panel because I certainly would like to
3 hear from all of my fellow Commission members regarding what
4 their analysis of the data has been thus far based on the
5 recommendations that have been provided to us through the
6 training we've had the last two days.

7 CHAIRMAN YAO: Now, if we start on the 4th, that
8 will only give us a couple days of work time. Do you feel a
9 couple good days is enough to do your homework?

10 COMMISSIONER FORBES: No.

11 COMMISSIONER RAYA: I'm sorry, you are suggesting
12 coming back on Saturday the 4th?

13 CHAIRMAN YAO: Right, that will give us the 4th and
14 5th.

15 COMMISSIONER RAYA: Working Sunday? Sunday is also
16 available?

17 MR. RUSSO: We can do that, yes.

18 COMMISSIONER FORBES: I can't realistically look at
19 the data between Thursday and Friday, that's just not going
20 to happen.

21 CHAIRMAN YAO: So let's say the 5th is the starting
22 date. Would that give us enough time to do the homework,
23 the 2nd, 3rd, and 4th? And then we convene on Sunday the 5th?
24 That would give us a full panel. I know, Jeanne, you're
25 going to have to do a lot of traveling for the meetings --

1 COMMISSIONER RAYA: I just want to be sure, so we
2 would come on the 5th, which I think I can do, and then keep
3 going, or come back at the end of the week? That's my
4 questions, for the actual deliberation?

5 CHAIRMAN YAO: I think it would run with less than a
6 full panel with the exception of Wednesday, because we're
7 having three Commissioners out, probably, is not manageable,
8 then continue with Thursday, Friday, Saturday, Sunday.

9 COMMISSIONER KUO: Well, you'll have three out the
10 7th and 8th, for sure.

11 CHAIRMAN YAO: Oh, I'm sorry.

12 COMMISSIONER KUO: And the hesitation with not
13 starting on the 10th? Just - is it just concern that we
14 would not be able to be efficient enough to make our
15 decisions? I guess, I'd just like to hear sort of an
16 argument against starting on the 10th. I know that I
17 certainly would like some time to digest not only the
18 materials that have been presented these two days, but also
19 to go back and review the 28 Applicant materials.

20 CHAIRMAN YAO: Right. Starting on the 10th will
21 give us a full day on the 10th, one missing on the 11th, a
22 full panel on the 12th, and a full panel on the 13th before we
23 run into the same problem, so that will give us six or seven
24 days to look at all the data we have. Same, perhaps, as
25 well as getting additional data in a written form.

1 COMMISSIONER KUO: If we want additional requests -
2 I think that would also be -- sorry to interrupt -- but to
3 give us some time to process, as well. I think sometimes
4 with this kind of dense information, you just want to let it
5 settle instead of making a hasty decision because we're
6 feeling the pressure to make this decision as soon as
7 possible, so that would just be sort of my additional
8 comment on waiting until the 10th to begin.

9 COMMISSIONER FILKINS WEBBER: I certainly agree,
10 based on the fact that once we've had an opportunity to
11 review the materials and re-review for most of us, I think
12 it will speed up the process of discussion in putting
13 together a panel.

14 COMMISSIONER FORBES: And for what it's worth, I
15 know on the 15th, 16th, and 18th, we're only missing one
16 Commissioner.

17 CHAIRMAN YAO: Right. Okay, that's our best thought
18 at this point, so before we proceed to make a decision, let
19 me open up the floor to members of the public that would
20 comment on this.

21 COMMISSIONER GALAMBOS MALLOY: Chairperson Yao,
22 could you do me one favor and repeat the dates that are up
23 for consideration?

24 CHAIRMAN YAO: We will convene on Friday the 10th,
25 work Saturday, Sunday, Monday -

1 COMMISSIONER KUO: If necessary.

2 CHAIRMAN YAO: As necessary, and also continue
3 through 14th, 15th, 16th, 17th, 18th, 19th with less than a full
4 panel. I understand that, on the 11th, Commissioner Malloy
5 will not be present.

6 MR. RUSSO: I would note that, on the 14th, you will
7 not have sufficient Republicans present to take a vote.

8 COMMISSIONER FILKINS WEBBER: Point of
9 clarification, I am available all day until - I just need to
10 be back in Southern California by 4:00 or 5:00, so I can
11 certainly commit to most of the day on the 14th.

12 COMMISSIONER BARABBA: And I can get the morning in,
13 as well, because I've got to be in [inaudible] [1:37:52] by
14 5:30.

15 CHAIRMAN YAO: So the a.m. of 14, we have a full
16 panel?

17 COMMISSIONER FILKINS WEBBER: Yes.

18 COMMISSIONER FORBES: And again, for what it's
19 worth, for any day that I am conflicted, I could make the
20 morning if we start at like 8:00, as opposed to 9:30.

21 COMMISSIONER DAI: Same thing for me on the 16th.

22 COMMISSIONER FORBES: So an earlier start of the day
23 if we need to works better for me.

24 CHAIRMAN YAO: Mr. Forbes, on the 17th, you're
25 available -

1 COMMISSIONER FORBES: I mean in the morning.

2 CHAIRMAN YAO: Okay, the a.m. And Commissioner Dai,
3 on the 16th, you're available?

4 COMMISSIONER DAI: Probably most of the day, I
5 probably have to leave by 3:00 or so.

6 CHAIRMAN YAO: Okay, 2:00 or 3:00, okay.

7 COMMISSIOENR FILKINS WEBBER: And I believe I can
8 free up the 15th, actually, since I am the only one that
9 would be unavailable right now.

10 CHAIRMAN YAO: All right. So let's make this
11 official. Would somebody make a motion?

12 COMMISSIONER FORBES: I move that our next meeting
13 be held on the 10th of December.

14 CHAIRMAN YAO: Okay, and continue -

15 COMMISSIOENR FORBES: Continue as needed.

16 CHAIRMAN YAO: Continue as needed until we select a
17 full panel.

18 COMMISSIONER GALAMBOS MALLOY: Second.

19 COMMISSIONER RAYA: I'm sorry, I was going to ask
20 what time we would convene.

21 MR. RUSSO: We would prefer if you would set it at
22 9:30.

23 COMMISSIONER FORBES: On the 10th it could be 9:30.

24 CHAIRMAN YAO: All right, again, since we should
25 modify the proposal a little bit, anyone from the audience

1 interested in commenting on the latest motion? All right,
2 seeing none, let's take a voice vote on this just for
3 clarification, will you restate the motion?

4 COMMISSIONER FORBES: Yes. The motion is that our
5 next meeting will take place on Friday, December 10th,
6 beginning at 9:30.

7 CHAIRMAN YAO: All right. We have a second already.

8 COMMISSIONER FORBES: And continue through Friday
9 the 17th, as needed.

10 CHAIRMAN YAO: Okay. All those in favor, please
11 indicate by saying "aye."

12 (Ayes.) Opposed? All right, it is a unanimous
13 decision. All right, thank you.

14 COMMISSIONER RAYA: May I say something? I just
15 want to thank everybody for being so willing to be flexible
16 and try to work this out. Very helpful.

17 CHAIRMAN YAO: Any other item we need to discuss
18 before we adjourn, or not adjourn, recess this particular
19 session?

20 COMMISSIONER GALAMBOS MALLOY: May I ask a question
21 regarding the open meeting requirements? If we are going to
22 have - I don't believe the 11th and 12th, that the weekend
23 dates were included in the initial -

24 CHAIRMAN YAO: Yes, they were.

25 COMMISSIOENR GALAMBOS MALLOY: They were, okay,

1 great.

2 CHAIRMAN YAO: Yes. Let me go through my list here
3 and make sure I have everything. We were unclear as to
4 whether the possibility of being able to swear in the
5 Commissioners, if we're able to make a decision prior to the
6 end of the year, and have the swearing in take place prior
7 to January so that perhaps we can get going in 2011. Can
8 you comment on what that process is likely to be like?

9 MR. RUSSO: I certainly can. As you are only eight
10 members of the Commission and your sole responsibility as
11 just the eight members of the Commission is to pick the
12 final six, you don't have the ability to make decisions on
13 behalf of the full Commission. Making decisions on behalf
14 of the full Commission would include things like setting a
15 meeting of the full Commission. So, setting up that meeting
16 would be something that would be performed much as we did,
17 it would be performed by the Secretary of State's Office.
18 However, having said that, if you have a preference as to
19 the day that you would like to have the first meeting of the
20 full Commission to take place, then you can certainly decide
21 on that and make a recommendation to the Secretary of State'
22 Office, and the Secretary of State's Office can notice the
23 meeting. As far as getting that done and starting the work
24 of actually performing redistricting, that's - well, that
25 depends on the Secretary of State's Office setting you up to

1 do that, setting up the meeting space, setting up the
2 process, getting it all in place. We at the Auditor's
3 Office have been conducting meetings with the Secretary of
4 State's Office for over a year, trying in anticipation of
5 the transition from the application process to the actual
6 work of the Commission, and as part of transitioning,
7 turning responsibility for support services from the
8 Auditor's Office to the Secretary of State's Office. As
9 part of that, we have provided a to-do list of things that
10 we have felt, based on our evaluation of the process, a list
11 of things that we believe need to be taken care of by the
12 Secretary of State's Office immediately for you to be able
13 to get up and running, and certainly by early December
14 because, as we all know, you have a hard deadline that
15 you're facing on August 15th, and a lot of work to do between
16 now and then.

17 Yesterday, we received a communication from the
18 Secretary of State's Office from the Chief of Staff for
19 Secretary of State, stating that, and I'll quote from it,
20 that "we have a work and transition plan in place and we are
21 working as expeditiously as possible to create the
22 equivalent of the state agency," meaning the Commission.
23 Further, it states from the Secretary of State's Chief of
24 Staff, "I am very confident that the transition will be
25 successful." So, I would say that we have not seen that

1 transition plan, but they are providing us assurances that
2 they are working on it, that they have a plan in place, and
3 that there will be smooth transition. So, that's what I can
4 tell you at this point. So, in terms of getting the
5 meetings set up, I suggest that, when you next convene, if
6 you could take up as one of your items of business some idea
7 of when you would like to have the first meeting, then we
8 can communicate that to the Secretary of State's Office and
9 that would presumably facilitate that happening sooner,
10 rather than later.

11 CHAIRMAN YAO: I know Mr. Wright, at one point, did
12 want to address this Commission on Item 12. So far we have
13 had limited discussion to the motion that was at hand, if
14 you would like to address the panel at this point, please
15 come up to the podium.

16 MR. WRIGHT: Jim Wright again. Being that it's very
17 late and you want to get off on your trips home, I'm very
18 willing to hold this off until the start of your next
19 meeting if that is your choice. We are looking at 10 or 15
20 minutes for the presentation. And what I have to present is
21 a suggested panel that one of you might want to propose.

22 CHAIRMAN YAO: Thank you. We will take you up on
23 that when we convene.

24 MR. WRIGHT: You'll take me up on the offer?

25 CHAIRMAN YAO: We'll take you up on that when we

1 convene.

2 MR. WRIGHT: On Saturday the 10th.

3 CHAIRMAN YAO: It's not a Saturday, it's a Friday.

4 MR. WRIGHT: I'll be here Friday the 10th, and I'll
5 be glad to do it then.

6 CHAIRMAN YAO: Thank you very much.

7 MR. WRIGHT: Thank you, Chair.

8 CHAIRMAN YAO: All right, before we recess, anything
9 else from the panel? Any final words?

10 COMMISSIONER FILKINS WEBBER: I just had one point
11 of clarification, just in getting us up and running, is it
12 generally accepted, or generally appropriate procedure that
13 we would accept public comment on an agenda item prior to
14 the panel's discussion of that item, first of all? And
15 then, were we going to establish either today or at the next
16 meeting proper procedures regarding public testimony, time
17 limits on testimony as we progress into the next series of
18 our meetings?

19 CHAIRMAN YAO: The item of time limit needs to be
20 agendized and it needs to be agendized 14 days in advance,
21 so it's unlikely that we can make it happen during the
22 timeframe that we have because we want to give the public an
23 opportunity to address the issue of time limits on that, so
24 I would like to ask staff to put that on the agenda during
25 the early phase of the 13-member meeting, so that we can

1 discuss it at that point in time.

2 COMMISSIONER FILKINS WEBBER: But did we give notice
3 under Item 16 regarding deliberation and action to select
4 the final six members of the Commission? I mean, it sounds
5 broad enough to me that we could consider establishing
6 procedures regarding the manner in which we will deliberate
7 the selection of the next six.

8 CHAIRMAN YAO: I'll let counsel address that item.

9 MR. RUSSO: Sure. I think that, well, of course,
10 when we crafted the agenda, we tried to be very broad in the
11 language so that it would give you flexibility in terms of
12 making decisions about how you're wishing to proceed. So,
13 if you want to establish limits on public testimony, on time
14 limits and so forth, as part of your process for making the
15 selection, and that's the way you frame it, I think you
16 probably can do it.

17 COMMISSIONER FILKINS WEBBER: Then, I would ask that
18 maybe our Commission members think about some proposals for
19 the procedures of the meeting and maybe consider that as the
20 first item -- subcategory item -- under 13 on December 10th.

21 CHAIRMAN YAO: All right, we will put that on the
22 early part of the agenda when we reconvene this particular
23 meeting. Final chance on last comments. All right, have a
24 good week and we'll see you back on the 10th. Thank you,
25 everybody. Thank you for being so patient with us.

