

CITIZEN'S REDISTRICTING COMMISSION

Hearing Room: Secretary of State Auditorium
1500 11th Street
Sacramento, CA 95814

WEDNESDAY, JANUARY 12, 2011
10:30 A.M.

Reported by:
Kent Odell

APPEARANCES

MEMBERS PRESENT: (* via teleconference)

Peter Yao, Chair
Cynthia Dai, Vice Chair
Gabino T. Aguirre
Vincent Barabba
Michelle R. Di Guilio
Stanley Forbes
Elaine Kuo
*Connie Galambos Malloy
Lilbert "Gil" Ontai
M. Andre Parvenu
Jeanne Raya
Michael Ward
Jodie Filkins Webber

ABSENT:

Maria Blanco

STAFF PRESENT:

Dora Mejia, Secretary of State's Office
Donna Neville, Bureau of State Audits
Anne Osborne, Secretary, Secretary of State's Office
Cy Rickards, Counsel, Secretary of State's Office
Raye Zentner, HR Modernization Project

PUBLIC COMMENT:

Douglas Johnson
Brian Lawson
Jim Wright

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

2 JANUARY 12, 2011

10:30 A.M.

3 MR. RICKARDS: Okay, being closed to 10:30 and we
4 being wired in, we're ready to begin. My name is Cy
5 Rickards. I'm counsel with the Secretary of State's Office
6 and have been providing legal advice through this transition
7 period. And we'll be doing so until you hire your own
8 counsel, which I'm hoping will be really soon.

9 With me is Anne Osborne, who is going to act as
10 Secretary, and then down at the other end, who you all know,
11 is Dora Mejia, who along with a lot of staff has put
12 together the effort on behalf of the Secretary of State's
13 Office to move the transition and support this Commission as
14 it begins. But I just wanted to thank Dora because she has
15 orchestrated it and kept us all in line, not an easy task.

16 Could we have roll call, please?

17 MS. OSBORNE: Gabino Aguirre - Here; Vincent Barraba
18 - Here; Cynthia Dai - Here; Michelle Di Guilio - Here; Jodie
19 Filkins Webber - Here; Stan Forbes - Here; Connie Galambos
20 Malloy - Here via telephone; Elaine Kuo - Here; Gil Ontai -
21 Here; Andre Parvenu - Here; Jeanne Raya - Here; Michael Ward
22 - Here; Peter Yao - Here.

23 MR. RICKARDS: Okay, and let me indicate for the
24 record that Commissioner Galambos Malloy is present from
25 Columbia at a location where she has, against all odds,

1 complied with the Bagley-Keene Act, and for all those
2 citizens of Columbia who want to attend the meeting, there
3 is public access, so I think we are in compliance. And
4 then, of course, we have one Commissioner who is out of the
5 country, Commissioner Blanco, and unable to attend, but we
6 do have a quorum, so I think with that we can get started
7 and I will turn it over to Dora.

8 MS. MEJIA: Thank you, Cy. Let me begin by
9 congratulating the members of California's first
10 Redistricting Commission, congratulations. I'm glad you're
11 here today. And welcome, to those of you in the audience,
12 and those of you watching via the Internet. I know that the
13 Bureau of State Audits has concluded their workload related
14 to the selection process. The Secretary of State is
15 providing transitional support until such time as the
16 Commission has hired staff and is up and running.

17 So, before I administer the oath this morning to the
18 five new Commissioners, I'd like to introduce them to you
19 today. First off, at the very far end, I have Dr. Gabino
20 Aguirre, who is from Santa Paula, located in the County of
21 Ventura. Commissioner Aguirre earned his Bachelor's Degree
22 from UCLA, has a Master's in Education from USC, and a PhD
23 in Social Science, Comparative Education from UCLA. His
24 career in Education spans 30 years and he has founded and/or
25 served as a Board member of several successful community

1 based organizations. For the past eight years, he has
2 served on the Santa Paula City Council. Commissioner
3 Aguirre is registered with the Democratic Party.

4 Next, we have Ms. Michelle Di Guilio, who is from
5 Stockton, located in the County of San Joaquin.

6 Commissioner Di Guilio has spent the past 12 years working
7 with numerous agencies and the Central Valley. She earned a
8 Bachelor's Degree from the University of California, San
9 Diego, and a Master's Degree in Community Planning, Urban
10 and Regional, from the University of Cincinnati.

11 Commissioner Di Guilio has served as an Administrator for
12 the California Council for the Humanities Project and is a
13 Training Coordinator at the University of the Pacific.

14 Currently, Commissioner Di Guilio is a stay at home mother
15 by choice, allowing her to participate in family and
16 community activities. Commissioner Di Guilio is registered
17 as Declined to State.

18 Next, we have Mr. Gil Ontai, who is from San Diego,
19 located in the County of San Diego. Commissioner Ontai is a
20 practicing architect and a part-time lecturer at Springfield
21 College. Commissioner Ontai graduated with a Bachelor's
22 Degree from the University of Hawaii and received his
23 Master's Degree from Washington University. He has served
24 as a City Redevelopment Board Director for San Diego and as
25 a City Planning Commissioner for eight years. Commissioner

1 Ontai is a volunteer Board member of the Pacific American
2 Academy Charter School and Neighborhood Association.

3 Commissioner Ontai is registered with the Republican Party.

4 Next to him, we have Mr. M. Andre Parvenu, who is
5 from Culver City located in the County of Los Angeles.

6 Commissioner Parvenu is a Geographer, Urban Planner, and
7 Community Outreach Specialist, having received a Master's of
8 Science Degree in Geography from the University of
9 Wisconsin, Madison, and has completed Undergraduate work in
10 Geography, Cartography, and Urban Studies at Morgan State
11 University in Baltimore, Maryland, and Howard University in
12 Washington, D.C. He currently serves as a Zoning Analyst
13 with the Los Angeles Department of City Planning, has worked
14 as a Community Partnership Specialist with the United States
15 Census Bureau, and as a Migration Specialist with the United
16 Nations High Commissioner for Refugees. Commissioner
17 Parvenu is registered as Declined to State.

18 Finally, we have Dr. Michael Ward, who is from
19 Anaheim, located in the County of Orange. He has practiced
20 as a Doctor of Chiropractic and Sports Medicine since 2005,
21 and teaches Anatomy and Physiology at Marston Polygraph
22 Academy. Commissioner Ward has a Bachelor's Degree in
23 Communications with an emphasis in Public Relations, having
24 graduated with Honors from California State University,
25 Fullerton, and obtained a Doctorate of Chiropractic Medicine

1 with Honors from the Southern California University of
2 Health Sciences. Commissioners Ward is a proud Military
3 Veteran, having served as a decorated Military Officer, who
4 was awarded a commission with the U.S. Air Force.
5 Commissioner Ward is registered with the Republican Party.

6 **Item 2. Swearing-in of last [five] commissioners.**

7 I am honored to have the opportunity to administer
8 the oath for the new Commissioners that are present here
9 today. And I'll ask the new Commissioners to please stand.

10 Commissioners, raise your right hand. Repeat after
11 me, stating your name after I say "I."

12 I, _____, do solemnly swear that I will
13 support and defend the Constitution of the United States and
14 the Constitution of the State of California against all
15 enemies, foreign and domestic, that I will bear truth,
16 faith, and allegiance to the Constitution of the United
17 States and the Constitution of California, and that I take
18 this obligation freely, without mental reservation, or
19 purpose of evasion, and that I will well and faithfully
20 discharge the duties upon which I am about to enter.

21 Congratulations. [Applause]

22 And now I turn it back to Cy.

23 MR. RICKARDS: All right, the first order of
24 business, and hopefully my last order of business, is
25 selection of a Chair and a Vice Chair. Let me indicate at

1 the beginning for the purpose of the audience, both here and
2 those watching over the Internet that we are both recording
3 this and we have a Court Reporter doing a transcript. So,
4 the video recording and the transcript will both be
5 available on our website, and that's true, for those of you
6 just joining us, you can also get transcripts of past
7 meetings for the selection process if you want to go back
8 into that.

9 **Item 2. Discussion and selection of Chair and Vice Chair,**
10 **and introductory remarks.**

11 So, with that, I would open up the first item of
12 business. We need to elect a Chair and a Vice Chair. It
13 requires nine votes. And as you probably all know, the
14 Chair and the Vice Chair cannot be of the same political
15 party. Otherwise, it is up to you and I turn it over to you
16 for introductory remarks. I want to say, I don't know
17 everybody by face, and I cannot read your name cards, so
18 help me out as much as you can. Thanks.

19 COMMISSIONER RAYA: I am Commissioner Raya. We had
20 some discussion in our previous open sessions when we
21 selected a temporary chair about the possibility of a
22 rotating chairmanship - chairpersonship. And I don't know
23 whether that's still an item - I know it is of interest to
24 some people on the Commission. I personally am not
25 interested, so I'll take myself out of it right away, but

1 that may be something we need to address before we go into
2 the selection.

3 VICE CHAIR DAI: Yes. I think we had that
4 suggestion from a member of the public, from Professor Brian
5 Lawson, which I thought was an excellent suggestion. I
6 believe that everyone on this commission has tremendous
7 leadership skill and talent, and I think it will also spread
8 the burden of leadership around a little bit for those
9 members of the Commission who would like to serve as Chair
10 or Vice Chair. I think it's an excellent suggestion. I
11 believe that all of us will probably have to chair some
12 public hearings at some point and I think it's good practice
13 for everyone, so I agree with Commissioner Raya.

14 COMMISSIONER FORBES: Well, I'm going to take a
15 different view. I'm not sure that I think that is a useful
16 thing, and I say that because, I mean, my understanding
17 would be that the Chair would have to operate with staff,
18 and I think staff needs to know with whom they should be
19 speaking and to make them have to check a calendar to see
20 who is the chair that particular week gives me pause on
21 having a rotating Chair.

22 VICE CHAIR DAI: I would add that we could structure
23 it so that staff is very clear who the Chair is in a
24 particular week. I imagine that it would vary by meeting
25 that we would make a decision for some period of time, and I

1 think that staff will have to deal with every one of us
2 anyway.

3 COMMISSIONER ONTAI: Cynthia, how would we actually
4 do this? There are 14 members and we have eight months, I
5 believe, so I calculate roughly two weeks, or three weeks
6 per person, so we would actually synchronize it along that
7 direction?

8 VICE CHAIR DAI: Well, I believe that not everyone
9 probably wants to serve as Chair or Vice Chair, and I think
10 we could actually set it up so whoever is the Vice Chair
11 becomes the Chair next time, so it is actually quite smooth.

12 COMMISSIONER ONTAI: I see.

13 COMMISSIONER YAO: If I may, let me just comment on
14 the thought of having a rotating Chair. As the interim
15 Chairperson during the month of December, what I learned is
16 that the media often will only want the Chair to comment or
17 be present in certain situations, and by offering that
18 opportunity to more than one member of this Commission, as
19 compared to just having one person always speaking for the
20 entire Commission, is probably a good thing. In terms of
21 dealing with the staff, I think Cynthia's comment is
22 probably correct, we all probably have to work with staff to
23 a great extent outside of the formal meeting. And one
24 thought I have is perhaps maybe initially have one Chair,
25 and then have three Vice Chairs, maybe Vice Chair 1, 2, and

1 3, and then just keep on rotating it as a function of
2 whether we want to make it two months, or three months, or
3 whatever the period is that makes appropriate sense. This
4 way, I think we can serve the media community much better by
5 having one of us being close to the source of the request,
6 as compared to having one person having to deal with the
7 requests throughout the whole state. So, I support the
8 thought of the rotating person and whatever is appropriate,
9 I would want to make that motion.

10 COMMISSIONER RAYA: Could I ask for a show of hands
11 how many Commissioners would want to do this?

12 COMMISSIONER FILKINS WEBBER: To serve?

13 COMMISSIONER RAYA: Yeah, to Chair or to be a Vice
14 Chair, or rotate into the Chairmanship.

15 COMMISSIONER GALAMBOS MALLOY: Commissioner Galambos
16 Malloy is raising her hand.

17 COMMISSIONER RAYA: We know you're raising your
18 hand, Connie.

19 COMMISSIONER YAO: Connie, you have to raise it
20 higher.

21 COMMISSIONER RAYA: So that was what? About eight.
22 Was that about right? So not everyone.

23 COMMISSIONER YAO: So it looks like there is some
24 interest in considering it, so let me make the motion and
25 also generate a little bit of discussion in terms of having

1 a rotating Chair, as compared to having one Chairperson for
2 the duration of the Commission.

3 VICE CHAIR DAI: I second it.

4 MR. RICKARDS: All right, we have a motion and a
5 second. Discussion among the Commission?

6 COMMISSIONER FORBES: What do you think about - and
7 I don't have an opinion, I just want to get reaction to this
8 - the idea of having co-chairs? Because when we go out in
9 the public as groups, we'll be able to always have an
10 identified Chairperson, and as far as our collective
11 meetings, we can rotate that. Does that have any reaction
12 to that?

13 VICE CHAIR DAI: How is that different from a Chair
14 and a Vice Chair?

15 COMMISSIONER FORBES: I think with a Chair, you
16 would have, as Peter commented on, the media would keep
17 focusing on the Chair. But if you have co-Chairs, there's,
18 you know, half a dozen people, or five people, that the
19 media can talk to, you know, without having to worry about
20 who is up. That would be the main difference.

21 COMMISSIONER KUO: I think I actually would be more
22 intrigued to perhaps hear Peter, Commissioner Yao, talk a
23 little bit more about his idea of one Chair with three Vice
24 Chairs, I guess maybe some discussion about what the
25 responsibilities of the three Vice Chairs would be. It

1 certainly would ensure sort of smoother transition if we
2 operate in a rotating leadership fashion, in terms of what
3 those three Vice Chairs' responsibilities would be.

4 COMMISSIONER YAO: I don't see - obviously, the
5 first Vice Chair would assume the role of the Chairperson in
6 the absence of the Chairperson. At this point in time, I
7 don't see the second or third Vice Chairperson having any
8 immediate responsibilities other than the fact that, when it
9 comes time to rotate the first Vice Chair into the
10 Chairperson's role, then everybody would advance up one
11 position, anticipating that to be their next assignment.
12 So, on that basis, the person that rotates off the
13 Chairpersonship would just go back to the Committee. I
14 anticipate that, in the outreach meetings throughout the
15 entire state, it probably would be unlikely that we're going
16 to have all of us being there in every meeting, and it's
17 based on the Arizona experience, that we were briefed a
18 month or so ago, they have meetings with as few as one
19 Commissioner. And so, by having perhaps one of the
20 officers, whether the Chairperson or one of the Vice
21 Chairpersons there, it probably would add a little more
22 clout to the meeting, as compared to not having any of the
23 officials there. So, it may be interesting to make sure
24 that we spread the positions to cover at least the major
25 portion of the state, to make sure that we have at least a

1 recognized official being present. So, I haven't given it
2 anymore thought other than just having an orderly
3 progression of filling the seats.

4 COMMISSIONER FILKINS WEBBER: Before we go much
5 further, if I may have clarification from counsel, the Act
6 requires that the Chairman be of one party, the Vice Chair
7 be of another party. Correct me if I'm wrong, is it
8 Democrat/Republican, or may the Decline to State be a Chair,
9 Vice Chair? In other words, you just cannot have the Chair
10 and the Vice Chair being of the same party, and I know that
11 to be the case, but, I mean, it's not just one Democrat and
12 one Republican, a Decline to State can be a Chair or a Vice
13 Chair, correct?

14 MR. RICKARDS: I would suggest that that would be
15 the appropriate way to interpret that language, it isn't
16 crystal clear, as you mentioned, but it seems to me that is
17 the intent, and I would be comfortable recommending that you
18 proceed that way. You may get counsel who sees it
19 differently, but ultimately it is your choice, but it seems
20 to me that is within the spirit of the Act and it is within
21 the language of the law.

22 COMMISSIONER FILKINS WEBBER: Certainly, and I would
23 agree, as well. In that regard, though, we have to keep in
24 mind that, if you do have a circumstance, and Peter, if you
25 have thought about this a little bit further, that if we do

1 have one Chair and you have the three Vice Chairs, and as
2 far as the rotation, as well, we have to keep in mind the
3 requirements under the Act regarding the party designation
4 of the Chair and Vice Chair. The other question that I have
5 in your proposal is the period of time in which you're
6 suggesting that a designated individual would be a Chair and
7 the three Vice Chairs. Would it run for a period of weeks?
8 Would it run from one meeting to another? Obviously, you
9 cannot have a formal designation of a Chairperson until
10 we're in a public hearing, and so it appears as if you would
11 have those two individuals, or if you're considering four
12 individuals, you know, what period of time are you talking
13 about them being in position?

14 COMMISSIONER YAO: The majority of the work that
15 this Commission would do is between now and August, so, for
16 example, we have let's say one Chairperson and two Vice
17 Chairs, so that would be approximately two and a half or
18 three months tightly interval, and if we want to have four
19 people, in other words, three Vice Chair positions, then
20 every other month, or every two months, we'll switch over.
21 I would suggest we do it based on calendar as compared to
22 based on anything else.

23 COMMISSIONER FILKINS WEBBER: Well, for instance,
24 this is what I'm getting at, is after our vote today, and if
25 we agree that there will be a Chairman and three Vice

1 Chairs, and if we conclude, or at least adjourn for the
2 moment our public meeting, let's say, Friday, then those
3 individuals that are selected as the Chair and three Vice
4 Chairs would continue in that capacity until the next public
5 hearing? Is that your proposal? Or would they be going
6 until the end of the month? What is your suggestion? I
7 mean, where would the rotation be?

8 COMMISSIONER YAO: Well, let me just answer your
9 question by means of an example. Let's say we decide to
10 have four positions, one Chairperson and three Vice Chair
11 positions, and let's just go with the eight months that
12 we're going to be busy. So, the first Chairperson would
13 assume the responsibility for the first two months, through
14 the end of February, and then the first Vice Chair would
15 then become the Chairperson starting with the first meeting
16 in March, and go until March to end of April, and proceed
17 accordingly with the third and fourth Chairperson. So, I
18 think by having a real defined period, whoever is going to
19 be assuming that Chairperson position, can anticipate and be
20 ready -

21 COMMISSIONER FILKINS WEBBER: We have to understand
22 that because the new Chairperson would have to be designated
23 upon each public hearing when the transfer is going to be
24 made before we proceed with any further business.

25 COMMISSIONER YAO: Or between those two individuals,

1 we can certainly make a decision as to when it is the most
2 convenient point to make the transition. But, in general,
3 that is what I had in mind. And, again, that's just a
4 general thought.

5 COMMISSIONER RAYA: I have another comment because I
6 don't think we want to spend too much time over-thinking
7 this. Everybody here could be the leader, but I think it's
8 important to have consistency. I also think that, when we
9 get into discussing governance, that that's probably going
10 to have to include committees, sub-committees, or whatever
11 they're going to be called. And that will give everyone an
12 opportunity to assume leadership of a particular area, and I
13 think also possibly serve as the point of contact that Peter
14 is referring to, on particular subjects, so that there is a
15 little more clarity and not - I don't know, my head is kind
16 of spinning right now, it just seems like, whoa, we have
17 enough to keep track of without having to spend too much
18 time, I think, focusing on a shift every so often.

19 COMMISSIONER WARD: I have a question for Mr.
20 Rickards. Is there an increased legal sufficiency to the
21 process or to our final work product that the Chair is
22 static, or if it's rotating?

23 MR. RICKARDS: No, I don't think so. I think, in
24 the spirit of the last remark, one of the things you could
25 consider was to pick a Chair and a Vice Chair today. You

1 could discuss this further under governance or you could
2 have it put back on an agenda as a specific item somewhere
3 down the road. You know, it's not one of those things you
4 can get on the phone with each other about, unfortunately,
5 and you can't talk about it over dinner. So, perhaps
6 Bagley-Keene is a little inconvenient about those sorts of
7 things, as I sort of tried to point out. So, that would be
8 one thing. But I don't think there's any more legal
9 sufficiency, I mean, I think you have your flexibility to
10 choose however you like, so long as you have an agenda item
11 and so long as you have nine votes, you can do what you
12 want. But one of the things you might want to do is select
13 the Chair and the Vice Chair, and there seems to be an
14 understanding that there may be some variations on that
15 theme that you might agree with. And then we can move on
16 this morning, it is up to you, again, and I don't mean to be
17 too pushy, but I would just suggest that.

18 COMMISSIONER FORBES: One other point I wanted to
19 make, or observation, was that we talk about most of our
20 work being required to be done by the middle of August, but
21 this is a 10-year Commission and there could easily be
22 issues, legal issues or other issues, that come up after the
23 August 15th deadline, and so whatever structure we need to
24 put in place, it needs to be able to be continued after
25 August 15th. I mean, the Commission doesn't come to an end

1 at August 15th.

2 COMMISSIONER KUO: One possibility is, if we decide
3 to go on the rotating sort of position of leadership, is to
4 have one Chair and two Vice Chairs, and we could have a
5 representative from each of the party designations, so a
6 Democrat, Republican, and Decline to State/Other. And then,
7 at the leadership level, then we would have equal
8 representation in terms of visibility at that level,
9 especially if those positions are to rotate, and certainly
10 it would be most visible during the upcoming eight months.

11 COMMISSIONER DI GIULIO: Could I suggest that, maybe
12 for today, for the sake of keeping the meeting moving
13 forward, that we decide on maybe a Chair and either one or
14 two Vice Chairs? I do like Elaine's idea of maybe one from
15 each party, but to keep the agenda item open so we could
16 discuss it in further meetings. And I think there is so
17 much that we don't know yet, that we can anticipate meetings
18 as a group or when we're in the community, but it's kind of
19 hard to anticipate a rotating basis the number of meetings
20 that we're going to be having, where they'll be located, who
21 will be there, so maybe we could, for the sake of
22 simplicity, make a decision today, move forward, and know
23 that we can keep that agenda item open, or put it on the
24 agenda later in the process?

25 COMMISSIONER RAYA: Could we have the motion that is

1 on the floor read back? I lost track of what it was, so we
2 could maybe amend it?

3 MR. RICKARDS: Could you repeat the motion,
4 Commissioner?

5 COMMISSIONER YAO: I made the motion of having a
6 rotating Chairpersonship. The number is to be determined,
7 where maybe for simplicity, let me just throw out a number -
8 one Chairperson with two Vice Chairs and, between the three
9 positions, we will fill the eight months of leadership in
10 that manner, whether it is precisely two months, or three
11 months, we can make that as a secondary decision. But the
12 motion is for electing three people to fill the
13 Chairpersonships and the Vice Chairpersonship positions.

14 COMMISSIONER DAI: I wonder if we can just agree
15 that we like the idea of rotation in principle and then, as
16 Commissioner Di Giulio suggested, that we defer the details
17 on this to a governance committee that works out a -

18 COMMISSIONER YAO: If you would like to modify my
19 motion, I will support it.

20 COMMISSIONER DAI: That way we can, you know, not
21 have to discuss the details as a group of 14.

22 COMMISSIONER RAYA: And are we suggesting that it
23 will be one from each designated group?

24 COMMISSIONER DAI: Well, yeah. Legally, it has to
25 be anyway, so the rotation schedule just needs to be clear

1 that, you know, no one is from the same party in the
2 rotation.

3 COMMISSIONER YAO: All right, so I will yield my
4 motion to Cynthia Dai, who will make an alternate motion.

5 COMMISSIONER DAI: Okay, so I move that we, as a
6 Commission, agree in principle on the idea of rotating
7 leadership and that the Chair and Vice Chair, or however
8 many subsequent Vice Chairs, that the details of which will
9 be delegated to an advisory subcommittee which we will
10 appoint later, but that we can move forward with actually
11 appointing a Chair and Vice Chair for today's meeting, so
12 that we can move forward with the business of the
13 Commission.

14 COMMISSIONER YAO: I will second that motion.

15 MR. RICKARDS: Do you want the motion repeated or
16 re-read? No, all right.

17 COMMISSIONER DAI: We get the idea.

18 MR. RICKARDS: All right, any further discussion
19 from the Commission? Public input?

20 COMMISSIONER GALAMBOS MALLOY: This is Commissioner
21 Galambos Malloy. One question, [inaudible] leadership role
22 and so, if that could be [inaudible].

23 MR. RICKARDS: You know, Commissioner, I think we
24 had some difficulty hearing that, and at the risk of being
25 annoying, can I ask you to please try and repeat it?

1 COMMISSIONER GALAMBOS MALLOY: Yes, of course. I'm
2 in a public space, so - so, my question is, is it possible
3 for staff to prepare [inaudible]?

4 MR. RICKARDS: Yeah, that would be no problem. I
5 just - I think Anne will take care of that. We'll get that
6 list together. Do you have any further comment on that
7 item?

8 COMMISSIONER GALAMBOS MALLOY: No, thank you.

9 MR. RICKARDS: Okay, thank you very much. Public
10 comment?

11 MR. WRIGHT: Good morning, Commissioners. I'm Jim
12 Wright. You've heard me before. A couple of points in your
13 discussion that I think need to be clarified. First of all,
14 as to the leadership of your Commission being from different
15 party, that is literally true. I spoke with Steven Russo
16 about this particular matter when the rules were being
17 discussed earlier and it is technically possible, according
18 to him, that you could have a Chair and three Vice Chairs
19 and they all can come from the other group because they are
20 a different party, okay? So, keep that in mind, if you
21 will. One suggestion that I might push to you is that, if
22 you're going to change the Chairman position, it should be
23 done at the end of each agenda. In other words, you have an
24 agenda today which stretches from today through the 31st, the
25 end of that agenda item might be the right place to change

1 your Chairman if you're going to rotate Chairmen. The key
2 elements, I believe, in your Chairmanship that is a plus is
3 that, having one person who leads to consistency and
4 stability and a single voice to the public and to the media.
5 The down side of that is that that voice tends to take on a
6 coloration of the background of the individual, his empathy,
7 his various attitudes, and his party. So, those two things
8 are what you need to balance in the process of deciding
9 whether you're going to rotate or not. Thank you for your
10 time.

11 MR. RICKARDS: Just one thing. Just to clarify one
12 thing based on the public comment, just for your
13 information, and let me just stick it in here now before I
14 forget it. It's very clear in the Act that the Chair and
15 the Vice Chair must be of a different party, so if you chose
16 a Chair of one party and three Vice Chairs of the opposite
17 party, you might down the line face a situation of having a
18 Chair and a Vice Chair of the same party. I know that may
19 be obvious, but easy to forget, so you need to take those
20 things into consideration. I think it's absolutely correct
21 that, when you start out, if your Chair is a Democrat and
22 your three Vice Chairs are Republicans, you're probably okay
23 right now, as long as we know who the Vice Chair is. But
24 you just have to keep those in mind. Thank you. Any
25 further comment? Public comment? All right, with that,

1 we'll have a roll call.

2 MS. OSBORNE: So roll call on the first motion:
3 Commissioner Aguirre - Yes; Commissioner Barraba - Yes;
4 Commissioner Dai - Yes; Commissioner Di Guilio - Yes;
5 Commissioner Filkins Webber - Yes; Commissioner Forbes -
6 Yes; Commissioner Galambos Malloy - Yes; Commissioner Kuo -
7 Yes; Commissioner Ontai - Aye; Commissioner Parvenu - Yes;
8 Commissioner Raya - Yes; Commissioner Ward - Yes;
9 Commissioner Yao - Yes.

10 MR. RICKARDS: Okay, it is unanimous and we have a
11 quorum, unanimous among those present. I don't know what
12 your pleasure is. Do you want to now select a Chair and a
13 Vice Chair for today?

14 COMMISSIONER FILKINS WEBBER: Yes.

15 MR. RICKARDS: All right. That would be the item
16 for you to address. We need to select first a Chair.

17 COMMISSIONER FILKINS WEBBER: I would move that we
18 maintain the Chair and Vice Chair as we did previously for
19 the ease of efficiency in moving forward with the first few
20 meetings of the full Commission. So, I would move that
21 Commissioner Yao be Chairperson and Commissioner Dai be Vice
22 Chair.

23 COMMISSIONER RAYA: Second.

24 COMMISSIONER GALAMBOS MALLOY: I second the vote.

25 MR. RICKARDS: All right, so the motion is that

1 Commissioner Yao be Chair, Commissioner Dai be Vice Chair.
2 We've had a motion and a second. Any further discussion
3 with the Commission?

4 COMMISSIONER YAO: Before we close the nomination,
5 I'd like to move that Mr. Barraba be considered as the Chair
6 for the Commission, as well.

7 MR. RICKARDS: Well, why don't we find out if he
8 would be willing and consider that, and then we'll see how
9 people feel about that motion.

10 COMMISSIONER BARRABA: I would like to move a
11 motivation - if Peter doesn't want to do it, then I would be
12 happy to join, but if he is happy doing it, I would let it
13 go at his request.

14 COMMISSIONER YAO: The reason I wanted to bring that
15 up is because that was the decision we had to face back a
16 month ago and it was between Mr. Barraba and myself, and I
17 don't want to leave him out of the process.

18 COMMISSIONER BARRABA: At this point, I would
19 decline.

20 MR. RICKARDS: All right, is there any further
21 discussion on the motion for Chair and Vice Chair? Any
22 public input? All right, hearing no public input, can we
23 have a roll call, please?

24 MS. OSBORNE: Commissioner Aguirre - Yes;
25 Commissioner Barraba - Yes; Commissioner Dai - Yes;

1 Commissioner Di Guilio - Yes; Commissioner Filkins Weber -
2 Yes; Commissioner Forbes - Yes; Commissioner Galambos Malloy
3 - [Inaudible]; Commissioner Kuo - Yes; Commissioner Ontai -
4 Aye; Commissioner Parvenu - Yes; Commissioner Raya - Yes;
5 Commissioner Ward - Yes; Commissioner Yao - Yes, thank you.

6 MR. RICKARDS: All right, the motion passes.
7 Congratulations. We now have a Chair and a Vice Chair.
8 Now, let me clarify this, my mistake, I understood that to
9 be one motion to choose the Chair and the Vice Chair. Did
10 everybody understand that was the motion they were voting
11 on? Okay. My secretary is keeping me tuned in here. All
12 right, so, congratulations.

13 **Item 3. Appointment of Committee comprised of the last six**
14 **commissioners for limited purpose of receiving Bagley-Keene Act**
15 **training.**

16 MR. RICKARDS: And now, I believe what we would like
17 to do is move to the Bagley-Keene Training -- well, no, I'm
18 jumping ahead of myself -- what we'd like to ask the Chair
19 to do is to appoint a committee of the final six
20 Commissioners for the sole purpose of taking Bagley-Keene
21 training. Our intent here was to get the Bagley-Keene
22 training to those individuals, any of you who want to stay
23 around and hear that again are certainly welcome; for those
24 who perhaps might want to pass that up in view of almost
25 anything more interesting, you could be excused.

1 CHAIRMAN YAO: Would someone like to make the motion
2 of appointing the committee?

3 COMMISSIONER FORBES: So moved.

4 COMMISSIONER RAYA: Second.

5 CHAIRMAN YAO: Any discussion? If none, then I will
6 just take it upon my prerogative to appoint the six new
7 Commissioners to be the sub-committee to receive the Bagley-
8 Keene Training for the next period of time, after which the
9 entire Commission will reconvene.

10 MR. RICKARDS: Let me point out one thing, if I
11 would, and I beg your pardon to do that, we had - and I just
12 missed it, I was reminded - we had reserved some time at
13 this juncture for Commissioners to make introductory
14 remarks, if any. So, if you would like to do that now, or
15 do that when we come back, that's certainly up to you.

16 CHAIRMAN YAO: What's your pleasure? Why don't we
17 keep the ball rolling and start - it probably would be
18 appropriate for every one of us to say a couple of
19 sentences, as compared to just newly sworn-in Commissioners,
20 so let me have Mr. Aguirre start off and say whatever you
21 want to the audience that are listening to us.

22 COMMISSIONER AGUIRRE: Anything? Well, first of
23 all, let me congratulate Mr. Yao and Ms. Dai for assuming a
24 leadership position. I think that the rotation idea was
25 very good. We anticipate some kind of a committee structure

1 for the organization that should kind of fold in pretty
2 nicely if we work out the details through the governance
3 process for the Commission.

4 But, let me just mention that, for me, my interest
5 in the Commission is based, among other things, on the
6 Voting Rights Act, which essentially says that all eligible
7 should be able to vote, and that all eligible should be able
8 to elect representatives of their choice. I don't really
9 think that that's true at this time, and I think the
10 challenge of the Commission is perhaps to make it more true.
11 It's not a silver bullet as the work of the Commission, but
12 certainly it's incumbent on us as Commissioners to try to do
13 the right thing.

14 I feel that this is a great opportunity for
15 California to open up the political process to all citizens
16 and residents through an open hearing process and, as I
17 understand it, the Commission will be traveling throughout
18 the state to take testimony and evidence on perhaps what the
19 districts should look like for the next decade, and also
20 that there will be careful drawing of the districts based on
21 the 2010 Census and a careful analysis and consideration of
22 what are called Communities of Interest. And one of the
23 public comments that we received was that we should look at
24 establishing some parameters for the definition of the
25 conflict of interest, rather than trying to nail it down, so

1 although there is a tendency to fix a definition and try to
2 stick to it, you know, we have the prerogative of being
3 somewhat flexible. So, I would hope that that definition,
4 which I think is very important, would be something that we
5 could perhaps gel as we get more into the process. And so,
6 anyway, I appreciate the opportunity to serve the people of
7 California, and it's really a pleasure to serve with what I
8 consider an A-team. Thank you very much.

9 CHAIRMAN YAO: Mr. Barraba?

10 MR. BARRABA: I thought you wanted to get the new -

11 CHAIRMAN YAO: You want to go with the new
12 candidates first?

13 COMMISSIONER DI GIULIO: I'll just be brief. I
14 think that this whole entire process for the last year, for
15 us, and even more so for those at the State who have been
16 organizing this, has been a really impressive undertaking,
17 and one that I think all those who have been involved and
18 have been watching it, can be impressed with what has
19 happened up to this point. And having reached this far,
20 it's really been an honor to be a part of this Commission
21 and, having had the opportunity to meet my fellow
22 Commissioners, I can honestly say it's going to be a
23 pleasure to work with them, and I think that all of
24 California can be proud of the quality of individuals and
25 the dedication that they have to this process. So, again, I

1 thank you all for being here and I look forward to the next
2 eight, nine months, plus, together. Thank you.

3 COMMISSIONER ONTAI: I guess I'm next. I agree with
4 my fellow two Commissioners, that I am very honored and
5 humbled by this position to be a member of this Commission.
6 We have got a lot of work ahead of us, a huge task, with a
7 good transparency plan, a good outreach plan, a lot of hard
8 work, I think we'll get it done in eight months. And
9 California will be better off. Thank you.

10 COMMISSIONER PARVENU: Good morning, everyone. I am
11 truly honored, as well, and privileged to be a part of this
12 Commission. I have watched this process from the very
13 beginning, the integrity, the due diligence, the openness,
14 the transparency of this process has been truly tremendous,
15 and you have really, and the State Auditor's Office, and the
16 Applicant Review Panel, has really set the bar for other
17 states to emulate in terms of selecting citizens from a pool
18 of initially 30,000, to revealing all of the applications,
19 the work involved, and I'm truly impressed by their process.
20 And I want to thank the fellow Commissioners of eight who
21 have seen something in me to consider me among the remaining
22 28, and I'm convinced that you have selected me not based
23 simply on the color of my skin, but by the content of my
24 character and the strengths of my qualifications. And I
25 intend to use my analytical skills in terms of geography and

1 planning to the best of my ability, to be a team player, to
2 get this job done, it's a fast train, and we've got a
3 destination, and that's August 15th, we're going to pull our
4 resources together and make it happen. I've done my
5 homework, I've had time to review the videos of each
6 Commissioner here. I've read the materials. I've watched
7 the training, so I'm ready to get started. I'm ready to
8 roll up my sleeves and get busy. I'm not so much concerned
9 about the leadership rotation, I'm concerned about doing the
10 work and getting it done, quickly. So, I've done my
11 homework, I've read the works of - watched Stephen Lynne and
12 his experiences in Arizona, Hans Johnson's presentation on
13 Demographics, Justin Lewis' work on Redistricting, of
14 course, Donna Levitt's presentation on the Bagley-Keene Act.
15 Up to this point, I've been invited to speak at various
16 engagements, I've been reticent or reluctant to do so,
17 although I've watched the videos and I've trained myself by
18 looking at the handbook and manual, I have not received
19 formal training, and I realize how serious the Bagley-Keene
20 Act is, and I do not want to violate that, but now I'm ready
21 to go public, so to speak, and make my voice heard, and
22 bring as much attention to this process as possible, to get
23 as much as possible public involvement in this. And there
24 was some concern about Northern California. I, as a former
25 Crisis Relocation Planner, have had an opportunity to travel

1 extensively through Northern California, having traveled
2 through every road in Mendocino County, Trinity County, Glen
3 County, Modoc County, camping out at campgrounds and parks
4 and sites along the way, literally living out of my car,
5 traveling and getting to know the landscape very well. I'm
6 a geographer that follows the line of tradition, the school
7 of thought of the Carl Sauer tradition. I've been very
8 fortunate in geography to have learned and studied from some
9 of the greatest minds and Cartographers in this nation,
10 Frederick Ritter from Morgan State, the Chairman was a
11 Cartographer, in Advanced Cartography, he was a descendant
12 from Carl Ritter, I studied under David Woodward, who
13 literally wrote the book on map making, the history of map
14 making, Cartography, and David Ward, and Denevan*, and so
15 many other scholars, and I'm looking forward to using what
16 I've learned to the best of my ability. I also have a
17 strong appreciation for the Voter Rights Act. In fact, 1965
18 was a very significant year for me; in 1965, I integrated
19 the Public School System in Lunenburg County, Virginia, as
20 the first African-American to be there, and my name was
21 Andre Allen at the time if you want to Google that. But
22 that was quite a history making time, so the Voters Rights
23 Act is very important to me, the diversity of this state is
24 important to me. I've traveled extensively through Latin
25 America, Asia, Africa as a Geographer. I'm also a Tri-

1 Continental person, part Native-American, part African-
2 American, I have also European blood flowing in my veins, so
3 diversity is very important. But, beyond all of that, I
4 think what's most important is that we work together as a
5 team and make decisions and draw lines that will serve in
6 the best interests of the majority of the people and the
7 majority of the citizens in the great State of California,
8 and I am truly honored to be a part of this team. Thank
9 you.

10 CHAIRMAN YAO: Thank you. Mr. Ward.

11 COMMISSIONER WARD: Thanks. Good morning. I, too,
12 am humbled by the opportunity to serve and greatly look
13 forward to beginning the hard work of redistricting. I'm
14 blessed to be a part of an absolutely first-rate team, and I
15 know I speak for everyone when I say that we all look
16 forward to serving all of California. Thank you.

17 CHAIRMAN YAO: Would the first eight members like to
18 make a few comments at this point?

19 VICE CHAIR DAI: Welcome to the team.

20 CHAIRMAN YAO: Let me just make a couple comments
21 before we get going. First of all, welcome. Welcome, we've
22 been waiting all month for you guys to show up. I think all
23 eight of us, having worked with the Bureau of State Audits,
24 want to take this opportunity to thank them for the support
25 that they have given to us. The Bureau of State Audits not

1 only provided the eight of us exceptional support during the
2 trying period when we got to know each other, and uncertain
3 as to how often and how long we were going to meet, they
4 stuck with us, working long hours. So, at this point in
5 time, I think speaking for the first eight members, we want
6 to thank you for the great support that they have given to
7 us. [Applause] I think a clap of hands is in order for all
8 the staff of the Bureau of State Audits.

9 I think, without any further ado, we are ready to -
10 Connie, did you want to chime in a little bit?

11 COMMISSIONER GALAMBOS MALLOY: Yes, I just wanted to
12 especially say a big thank you to Dora and to Chris for all
13 of their support, trying to arrange the logistics for me to
14 be able to participate from far away. It was quite an
15 adventure trying to find a strong Internet connection from
16 the small island my family is from, and Chris and I were up
17 very late last night, we kept calling each other, although I
18 have not had the opportunity to meet any of you in person, I
19 appreciate your commitment to this important process. So,
20 thank you so much, I look forward to meeting you in person.

21 CHAIRMAN YAO: Thank you, Connie. I know we have a
22 very limited amount of time. I think each of us can go on
23 for hours in terms of thinking of all the things that we
24 need to thank the Bureau of State Audits, and that really
25 made us very productive during the month of December. I

1 think we all recognize that we have a great team, we are
2 ready to go to work. Today, we're going to make some
3 decisions on not only the hiring of staff, but also on the
4 planning for the next coming period of time. The last thing
5 I want to comment on is public outreach is extremely
6 important to us and we constantly want to seek your input to
7 this Commission. If you see us doing something - if you see
8 that we could do something better, by all means, let us know
9 because we welcome that kind of input. It would be
10 impossible for us to go to draw the maps without input from
11 you, and your input is absolutely essential. So I want to
12 take this point to speak for the entire panel, saying that
13 we are here because we want to hear from you. So, without
14 further ado, I will turn the mic back to Cy for the meeting.

15 MR. RICKARDS: All right, we're going to move into
16 the Bagley-Keene Training for the final six Commissioners.
17 Again, we've asked Donna Neville from the Bureau of State
18 Audits to conduct that training. She is here, okay. And
19 for those of you who haven't met Donna and don't know her,
20 she is a lawyer with over 20 years of State service. She
21 got her degree from the University of California at Davis,
22 first started with the Legislative Counsel's Office where
23 she advised members and staff particularly on matters of
24 environmental quality and education. She moved on to the
25 Bureau of State Audits and served as Associate Chief

1 Counsel. She was appointed by the Governor in 2008 to be
2 Chief Counsel to the Board of Education, so she has hands on
3 experience with a public body that has to comply with
4 Bagley-Keene, and as well with the Voters First Act. She
5 went back to Bureau of State Audits and, as those of you -
6 some of you - know, she has been intimately involved in the
7 Bureau's work to select the Commission and to support the
8 Commission, and to bring the Commission up to this point.
9 And the final reason why we asked her to come today, as I
10 watched her make the Bagley-Keene presentation, and realized
11 that you really have got to go with the A-Team, and she is
12 the A-Team, and so I ask her to come on up now and start.

13 CHAIRMAN YAO: All right, if the members of the
14 first eight group would prefer not to sit through it one
15 more time, you may be excused.

16 MR. RICKARDS: Yeah, we - what time would you like
17 to reconvene, giving the final six a chance to go to lunch?

18 CHAIRMAN YAO: The presentation will be
19 approximately how long?

20 MS. NEVILLE: I think probably an hour with
21 questions.

22 MR. RICKARDS: All right, so 1:15? Does that work?

23 CHAIRMAN YAO: It is 11:30.

24 MR. RICKARDS: Yeah, the sound is on, because the
25 green light is on and there is no sound.

1 CHAIRMAN YAO: Uh, 11:30, 12:30, 1:15? Does that
2 work? 1:15, it is. [Exit: Barraba, Dai, Filkins Webber,
3 Forbes, Kuo, Raya, and Yao]

4 [Pause]

5 **Item 4. Bagley-Keene training - last six commissioners.**

6 MS. NEVILLE: Good morning, Commissioners. And
7 thank you so much for giving me this really exciting
8 opportunity to talk to you about Bagley-Keene this morning.
9 I want to welcome you all to your positions, this is a
10 really exciting day. For the next hour or so, we are going
11 to be talking about the Bagley-Keene Open Meeting Act, which
12 turns out to be a critically important law that governs the
13 meetings of State bodies, it's designed to ensure that they
14 conduct their business openly and that they really engage
15 the public in their decision-making process.

16 Another thing that we'll also be talking about this
17 morning are some of the very specific requirements contained
18 in Prop. 11, the Voters First Act that apply to your
19 meetings and to your communications. I know that all of you
20 have been through this very extensive application process
21 and you know that, when the voters approved Prop. 11, it was
22 their design to fashion a redistricting process that is
23 incredibly transparent, and so one of the things that they
24 did was to put in place some requirements in the law, in the
25 Voters First Act, that go above and beyond what Bagley-Keene

1 requires. And I will be drawing your attention to those
2 differences today in talking about some of those specific
3 things.

4 I know that, before this meeting, you received the
5 Bagley-Keene Handbook, which is prepared by the Attorney
6 General's Office, I think you received that electronically,
7 and you also received a legal guidance memo. I strongly
8 promote the use of the Attorney General's Handbook, it is a
9 wonderful resource because it ties together the law with
10 practical examples, all in one place, and it's very readable
11 and useful, at least in my experience it's been great. If
12 you have questions at any point, please interrupt me, I know
13 you don't have mics, but if you have a question, just stop
14 me, raise your hands, or do whatever gets my attention.

15 Why do we even have an open meeting law? I think,
16 in some respects, the purpose of this law is almost self-
17 evident. It is to make government decision makers
18 accountable to the people they serve, and to give the public
19 a voice in the decision making process. There's a wonderful
20 phrase that a number of courts have used when they have been
21 addressing challenges to compliance with the Open Meeting
22 Act. They refer to the rights that the public has as
23 "having the right to a seat at the table," and I love that
24 phrase because what it really conveys this idea that they
25 are there with you, engaged in, and participating in the

1 decision making process, they are not passive observers of
2 what you do, they have the right to be heard by you and to
3 really be engaged in the process, and there are some very
4 specific ways, that we'll talk about today, that the law
5 ensures that those rights are protected.

6 If you're like me, and I'm a little bit of a law
7 geek, I always like to know where laws come from, and like
8 many other open government laws, it came about as a result
9 of some reform efforts. Back in the 1950's, some
10 journalists who worked for the *San Francisco Chronicle* were
11 trying to follow what they considered to be some very
12 important governmental decisions that were being made in the
13 City of San Francisco. And they spent weeks traveling
14 around the City, trying to figure out where meetings were
15 being held, and when, and all they could see was the end
16 result of important decisions being made, but they didn't
17 know when they were happening. They wrote an exposé that
18 they published in the *San Francisco Chronicle*, which they
19 entitled "Your Secret Government," which relayed to the
20 public the fact that important decisions were being made in
21 secret. That, in turn, led to the enactment of the Brown
22 Act in 1953. Many of you may be familiar with this law,
23 this is the law that governs city council meetings, county
24 Board of Supervisor meetings, school boards, and other local
25 agencies. That law was put in place in 1953 and, then, 14

1 year later in 1967, the Legislature basically embraced the
2 same elements of the law and put them in place for State
3 bodies, bodies that operate at the State level.

4 For those of you who may have served on local Boards
5 and Commissions, the Brown Act and Bagley-Keene are very
6 very similar, just a few minor differences and, if it's
7 helpful, I can address what those are as we move through
8 this training today, if you have questions about that.

9 The Bagley- Keene Open Meeting Act really all
10 centers around one very basic central premise, and that is
11 that meetings of state bodies have to be open to the public.
12 To understand what that requirement means, though, we really
13 need to look closely at how the Legislature has defined what
14 a meeting is, and who a State body is, because those two
15 terms tell us a lot about when the requirements of this law
16 are triggered. Let me talk first about who is subject to
17 the law, who is subject to it, what is a State body, what
18 does that mean? It's virtually every multi-member State
19 board or commission that is charged with decision making.
20 The list is incredibly long, almost every multi-member State
21 body you can think of - the State Board of Equalization,
22 CALPERS, State Water Resources Control Board, State Board of
23 Education, and the list goes on and on, multi-member State
24 decision making bodies are charged with complying with the
25 Open Meeting Act.

1 Another really important way in which a body can
2 become subject to this law is when there is an advisory
3 board or commission of three or more members that is created
4 by another state body. This may turn out to be very
5 important for you as Commissioners as you do your work on
6 the Citizens Redistricting Commission. You are a 14-member
7 commission, you have a very short time to perform an
8 incredibly extensive amount of work, and you have to travel
9 and reach out to the public to do that. One of the things
10 that you may decide to do as a body, as a 14-member body, is
11 to form smaller sub-committees that go out, perhaps, and do
12 fact finding, or that reach out in different communities.
13 If you form an advisory sub-committee that is made up of
14 three or more persons, that becomes yet another State body
15 that has to comply with all of the requirements I'm
16 describing here today, the prior notice, meeting openly,
17 etc., so something really important to keep in mind - not a
18 bad thing, but just an important thing to be aware of as you
19 do your business.

20 There is also a requirement under Bagley-Keene that,
21 even when two members of a State body are given what's
22 called "delegated authority," which means that they are
23 actually empowered to go out and make decisions on behalf of
24 the full State body, that they actually have to meet openly
25 in compliance with Bagley-Keene; that won't be relevant for

1 the Citizens Redistricting Commission because it has no
2 legal authority to delegate its decision-making power with
3 respect to redistricting, it must make all of those
4 decisions as a full State body. And so, as you think about
5 conducting your business, and I know you'll be talking about
6 this more today, the formation of various sub-committees by
7 law has to be for the limited purpose of sort of going forth
8 and listening to the public, doing fact finding, hearing
9 from people, and then bringing back what you hear to the
10 full Commission. There is no authority for this Commission
11 to delegate down to sub-committees any real decision-making
12 authority, which is a separate issue from Bagley-Keene, but
13 a very relevant legal concept.

14 Bagley-Keene clearly applies to the Citizens
15 Redistricting Commission. The Voters First Act makes an
16 unequivocal statement about that. It applies to the full
17 14-member Commission, it also applied to the first eight.
18 They in a sense acted as a State body for the limited
19 purpose of selecting the final six Commissioners. And,
20 again, as I mentioned, it will also apply if the full
21 Commission forms sub-committees of three or more to do any
22 business on its behalf.

23 A really important point to keep in mind as you do
24 your work is that the requirements of Bagley-Keene are a
25 floor, not a ceiling, in terms of the degree of transparency

1 and openness that you may choose to embrace as you do your
2 business. It sets out minimum requirements for notice, for
3 public comment, for those kinds of things. As you move
4 forward in your business, there may be circumstances where
5 you decide that there is more that you should do to reach
6 out to the public; there are some things you have to do
7 because the Voters First Act tells you that you have to do
8 them, and we'll talk about them now, but even if you're not
9 required by law to do those things, there may be times when
10 you want to reach out and do even more in terms of public
11 access.

12 To understand when the requirements of the law are
13 actually triggered, we have to know what a meeting is
14 because we know your meetings have to be conducted openly,
15 so what does that mean? The traditional definition of a
16 meeting is that it means a majority of the members meet at
17 the same time and place to hear, discuss, or deliberate on
18 any matter that is within the subject matter jurisdiction of
19 the body. That is kind of the traditional notion, you have
20 a quorum, a majority, a simple majority present. But I want
21 to really draw your attention to the verbs that are used in
22 that definition because a meeting has really broad meaning.
23 It includes circumstances not just where you act, or vote on
24 a matter, or commit yourselves to some formal course of
25 action, it is much much broader than that. It also

1 encompasses circumstances where you are hearing, discussing,
2 deliberating. So, for example, you may find as you do your
3 business that you have a need simply to take testimony and
4 listen to people, and you know that you will have to do
5 that, and you may be far from the point where you're ready
6 to make any decisions, but that hearing from the public, and
7 the questioning of the public, that is all something that
8 has to be done at an open public meeting. The public has a
9 right not only to see you make decisions, but to see your
10 full deliberative process, the process by which you acquire
11 an understanding, learn, get information, resolve
12 differences among yourselves, reach consensus, all of that
13 has to be done in an open public setting. When the Open
14 Meeting laws were in their infancy, there were some public
15 officials who thought, "Well, we know we have to vote in
16 public, but let's have a pre-meeting, kind of hash things
17 through, reach consensus, and then we'll come back into the
18 public meeting and vote." The Legislature and the Courts
19 quickly let everyone know that that was not what they had in
20 mind under the Open Meeting Act, it's a full deliberative
21 process that the public has a right to observe and
22 participate in.

23 Some of the other requirements, which you are
24 probably all very familiar with at this point, but I'm just
25 going to kind of give you a quick tour of them, everyone has

1 a right to attend a public meeting, there is no question
2 about that; public meetings have to be held in a place where
3 they are accessible to the public, they have to be
4 accessible to individuals who may need special
5 accommodations under the Americans With Disabilities Act,
6 and your agendas describes how to request special
7 accommodations if you need them. The media absolutely has
8 the right to attend and to record your meetings subject only
9 to reasonable restrictions in the sense that they can't
10 interfere with the ability of the public to observe or
11 participate in the meeting, just common sense kind of
12 application. People have a right to record your meetings,
13 there is no ability for a public body to say, "No, you can't
14 stand there recording me with your Smart Phone or your tape
15 recorder." The public has a right to record the meetings.
16 In addition, people can't be required to sign in to speak
17 and attend a meeting. Now, what many of you that have been
18 to public meetings have probably seen, and probably someone
19 here has a sign-in sheet, but signing-in is voluntary and
20 there is a statement that you need to include on your sign-
21 in sheet that indicates that it is voluntary.

22 I want to talk a little bit about notice. It turns
23 out to be a critically important aspect of the law and one
24 that is a constant source of litigation, and this is an area
25 where Bagley-Keene differs from the Voters First Act. The

1 Voters First Act imposes a greater obligation on you in
2 terms of the amount of notice you provide prior to your
3 meetings. Under Bagley-Keene, notice is sufficient when it
4 is published on the Internet 10 days prior to a meeting.
5 Clearly, the voters wanted more public access, greater
6 notice, when they drafted the Voters First Act. So, here is
7 how things work and I'm going to draw your attention also to
8 a little bit of a twist in the law. Under the Voters First
9 Act, the full Commission is generally required to provide 14
10 days' notice prior to its meetings. That's the general
11 rule, which is the rule that applied to this meeting, and
12 that is generally applicable. Here is where it gets kind of
13 interesting. With the approval of Prop. 11 in 2008, the
14 voters recognized that, at that point, the completion date
15 for the maps was September 15th, the voters recognized that
16 you would likely need to meet on fairly short notice in the
17 month of September, you were going to be very busy fine
18 tuning the maps, finalizing your work, so they created a
19 limited exception that allowed you to call meetings on three
20 days' notice. Then, what happened in this most recent
21 statewide General Election is that the voters approved Prop.
22 20 which expanded your responsibilities, but it also changed
23 the completion date for approving the maps from September
24 15th up until August 15; unfortunately, Prop. 20 did not pick
25 up and make what should have been a corresponding change

1 that should have allowed you to call your meetings on three
2 days' notice in August of this year. Okay, call it a
3 drafting issue, or a glitch, whatever you will, I drew the
4 first eight members' attention to this, as well, when we met
5 about a month ago, and I'm pointing it out to you, as well,
6 there is a fix, there are a couple possible ways that you
7 can fix it, and I can throw out what I see as a couple of
8 the easiest, most straightforward ways to fix the problem,
9 but you'll probably want to consult with your counsel
10 further on this issue. The Voters First Act actually has
11 specific provisions that allow the Commission to actually
12 propose in specific language change that they believe is
13 needed to the Act, and it requires a two-thirds vote. So,
14 you can certainly consult with counsel on that, a two-thirds
15 vote would be able to take effect immediately as an urgency
16 measure, but you would need to find a member of the
17 Legislature who is willing to carry that bill is an author.
18 That is one avenue for addressing this problem if the
19 Commission believes that it needs to fix that problem, so it
20 can meet on less notice - in August of this year.

21 I'm going to just highlight now - I touched earlier
22 on the fact that the Voters First Act clearly imposes
23 obligations on you that go beyond Bagley-Keene, and here are
24 just some of the ways that it does that. First of all,
25 it actually requires the Commission to conduct an outreach

1 program to solicit broad public participation. This may not
2 seem like a big deal, but it is. I mean, the voters clearly
3 said it's not enough to do what most State bodies have to
4 do, which is simply publish their notice on the Internet,
5 you have a real duty to reach out. You must go out and
6 actually have an outreach program where you solicit broad
7 public participation. And I know, as all of you have gone
8 through your interviews, you heard a great deal about this;
9 the Bureau of State Audits did extensive outreach when we
10 were doing the application process, and the law contemplates
11 a continuation of that kind of outreach to engage the
12 public. Another way in which the Voters First Act is
13 different from just the standard requirements of Bagley-
14 Keene is that you actually must conduct hearings before you
15 draw any maps. You must hear from the public before you
16 even start to construct the maps, it makes it very clear, it
17 is not permissible for you to deliberate and draw maps, and
18 then say to the public, "What do you think?" You must hear
19 from them first.

20 You also have a specific duty to publicly display
21 your maps for 14 days, and that goes hand in hand with the
22 14-day notice requirement for your meetings. And I really
23 have to highlight this requirement. It is, to me,
24 personally, it is one of the most effective ways that the
25 drafters of Prop. 11 have really ensured meaningful public

1 participation in the process. The normal rule that applies
2 under Bagley-Keene, when you hold a public meeting, is that
3 if the members of the State body have received written
4 documents or materials to assist them with their decision
5 making, those materials don't have to be posted on the
6 Internet, they only have to be made available at the
7 meeting. So, the typical interested citizen walks into the
8 meeting and sometimes sees a considerable amount of data and
9 information that they're just seeing for the first time at
10 the meeting, this is really different. Now, interested
11 members of the public are going to have a full 14 days
12 before the meeting where the maps are going to be on public
13 display. They'll really have a chance to review them and
14 contemplate and think about what kinds of public comments
15 they want to offer up. Sure.

16 COMMISSIONER DI GIULIO: [Inaudible]

17 MS. NEVILLE: Yes, you really do. You have to have
18 the basic substance of the final maps ready.

19 COMMISSIONER DI GIULIO: [Inaudible]

20 MS. NEVILLE: That is an issue that I would
21 encourage you to talk with your counsel about in terms of
22 what change would be permissible under the law because it
23 does talk about maps being on display for 14 days. Now,
24 whether minor changes can be made, those kinds of things,
25 you'll want to get some guidance on that. And you have to

1 take public comments -- all tied together, you have to take
2 public comments on the maps for at least 14 days. So, these
3 are very important requirements. You may want to use the
4 mic for recording purposes. That's actually a great point
5 since I know you are recording this.

6 MR. WARD: I wanted to understand your last point,
7 really, you said that [inaudible]?

8 MS. NEVILLE: Well, before you take any action, so -
9 and again, these are really good questions, and some of this
10 is going to - these are going to be the kinds of things
11 you'll get some really good guidance from your counsel on,
12 and depending on how often you fine tune the maps, or how
13 many iterations of maps you have, you could trigger a lot of
14 14-day review periods.

15 Although there are these respective 10 and 14-day
16 notice requirements under Bagley-Keene and under the Voters
17 First Act, I'll just draw your attention quickly to
18 provisions in the law that create some exceptions to that,
19 that do allow State bodies to meet when they provide less
20 notice, less of a notice period. One is called a Special
21 Meeting and, as its name suggests, a Special Meeting is
22 different from a regular meeting, it can only be called for
23 very limited purposes, usually it is called because you need
24 to take disciplinary action fairly quickly against an
25 employee, or there is pending litigation, and you have a

1 real urgency around taking appropriate action. When you
2 hold a Special Meeting, you only need 48 hours notice, but
3 one of the things that actually makes it sort of financially
4 burdensome is you have to actually post the notice in
5 newspapers of major circulation, it is not sufficient just
6 to post it on the Internet, so there is an added cost. But
7 there are certainly circumstances where it's simply
8 necessary to call a Special Meeting. In addition, there is
9 an ability in the law to call an "Emergency Meeting" on just
10 one hour notice, when there is some sort of real natural
11 disaster, or crippling disaster that requires immediate
12 action. Based on the jurisdiction of this Commission, it is
13 unlikely that you would find yourselves availing yourselves
14 of that exception.

15 In addition to the time before your meetings that
16 you have to provide notice, there are also really important
17 requirements related to the substance of your agenda. This
18 is another area that is very right for litigation, and it's
19 really important to be sure that, when you publish your
20 agendas prior to your meeting, that they meet the legal
21 requirements. What the law tells us isn't particularly
22 helpful, it says you need a brief description of each item
23 of business to be conducted. And the courts have told us
24 that has to be "specific," so, what does that mean? How
25 helpful is that? What we know from the case law is that,

1 when you publish your agenda, when you describe the ideas of
2 business that you're going to conduct, it should put a
3 reasonable person on notice of what you're going to do that
4 day. It should be descriptive enough that anyone who would
5 have an interest in that would want to know, well, what are
6 they going to do today? So, for example, if you get to that
7 point in your business where you're going to approve maps,
8 you don't want to have an agenda item that says, "Commission
9 will generally discuss redistricting," that's not very
10 descriptive, that hasn't really provided the public with
11 sufficient notice that this is, indeed, the meeting where
12 we're going to actually approve the maps. You want to be
13 more specific, but specific enough to give reasonable
14 notice. Now that I've told you that you should be specific,
15 the cautionary note that goes with that is that you don't
16 want your agendas to be so descriptive and so precise that
17 they end up tying your hands.

18 So, let me give you an example of what I mean by
19 that. There is an important Appellant case where an agency
20 published its agenda, and on its agenda it described, you
21 know, what particular problem it was going to be solving,
22 and it said that it would be taking up a certain solution to
23 that problem at the meeting that night - or, not that night,
24 but at the meeting. When the officials got into the meeting
25 and started hearing from the public, and deliberating among

1 themselves, they realized that solution wasn't going to
2 work, that there was another one that was better. So that
3 was the solution they decided on and adopted. Well, they
4 were challenged and they lost, and the Court said, "You
5 didn't provide the public with notice, there was no prior
6 notice to the public that the adoption of this solution was
7 even a possibility." So, be a little careful as you
8 formulate agendas, so they don't seem so precise that the
9 public might think you're only going to adopt one particular
10 solution, or don't narrow yourselves too much in your
11 agendas. And you'll have counsel, you'll have staff who
12 will have experience with this and will guide you on this.

13 There is a specific requirement in the law related
14 to taking public comment. And I know I mentioned this
15 earlier, a key part of Bagley-Keene is this notice that the
16 public really gets to participate. There is a legal
17 requirement to take public comment before you take any
18 action. Now, many of you may have sat on local or State
19 bodies before, and there is a reasonably standard sort of
20 structure to every item of business that public officials
21 usually do, where the Chair will introduce the item and
22 bring it forward, present it, set the stage for the
23 discussion, the members will deliberate among themselves,
24 some may make a motion, the appropriate time to call for
25 public comment is before, not after voting, of course,

1 calling for public typically while a motion is pending, but
2 before the vote has been cast on that matter. That's
3 required. You have the prerogative as the State Body, you
4 can set reasonable time restrictions on your speakers, it
5 should be done in a fair, even way. As a body, you may make
6 a decision that you're always going to allow a certain
7 amount of time, you know, for speakers. You may tailor it
8 more precisely to the kind of meeting you're having, or to
9 the number of speakers you see, you have that ability, but
10 you want to be fair. One of the things you don't want to do
11 is be in the middle of hearing testimony on an item and
12 decide mid-stream you're going to change the amount of time
13 allotted, the first 10 speakers five minutes, now we're
14 going to change it because we see that the line is growing.
15 You want to come up with fair, even-handed practices for
16 time limitations.

17 I mentioned earlier, speakers cannot be required to
18 sign-in, in order to speak. I know it's a matter of
19 convenience and we have a lot of legitimate needs as a State
20 body to know who is presenting to you, or providing
21 testimony, but you can't compel them to offer up their name
22 in order to offer testimony. Do you have a question?

23 COMMISSIONER AGUIRRE: [Inaudible]

24 MS. NEVILLE: They don't, and that's the interesting
25 twist. I know they don't. Many local agencies have - this

1 has been an issue recently, you can't actually require
2 people to identify themselves in order to speak. I
3 completely understand that it's desirable from the
4 perspective of the public officials, you want to know who is
5 talking, you want to know who they're representing, what
6 organization it is. In all my years of interacting with
7 various State and local bodies, I don't think I've ever seen
8 anyone refuse to identify him or herself, but they can't be
9 compelled to do so if they refuse, and they have to be
10 allowed to speak, so First Amendment issues.

11 Interestingly, the public has an explicit right set
12 out in the law to criticize the State body, which I find
13 really interesting.

14 COMMISSIONER PARVENU: A question. When a person
15 from the public speaks, should they address the full body of
16 the Commission? Or can they address one Commissioner,
17 specifically? Is that advisable?

18 MS. NEVILLE: Well, that isn't so much an issue
19 around the Open Meeting Act, if you're all present at the
20 podium and they direct your comments to one person, that is
21 permissible. Under sort of a strict purist view of how the
22 rules of procedure work, they should be addressing the Chair
23 or the full body, they shouldn't really be singling out a
24 particular member during public comment.

25 COMMISSIONER PARVENU: Thank you.

1 MS. NEVILLE: There is also a very customary
2 practice, it's not one that is legally required, but a
3 customary practice that many State and local bodies follow,
4 where they allow room on their agendas to take public
5 comment on issues not on the agenda, and the purpose of this
6 is to hear from the public about matters that they're not
7 dealing with that day, but for the purpose of future
8 planning and knowing what the public might be thinking about
9 that they're not taking up. So, the important issue to keep
10 in mind here is, if you decide to do that as a matter of
11 practice, and it is fairly customary, is that, when people
12 bring those issues to your attention, you can't deliberate
13 on them at that meeting or discuss them, or act on them at
14 that meeting because you haven't agendized that item, you
15 can just have a limited discussion for the purpose of
16 deciding whether you want to place that item on a future
17 agenda. And I think you're going to do that today - Cy,
18 are you going to have public comment not on the agenda
19 today?

20 MR. RICKARDS: No -

21 MS. NEVILLE: I didn't mean to catch you off-guard.

22 MR. RICKARDS: No, it's fine. I mean, [inaudible].

23 MS. NEVILLE: It's all new, yes. I mentioned this
24 earlier and I'm going to highlight it again, another
25 requirement under Bagley-Keene has to do with making written

1 materials available. As I mentioned earlier, the standard
2 rule that applies for most State bodies that are just
3 subject to Bagley-Keene is that, when the members have
4 written materials that have been provided to them prior to
5 the meeting, they only have to be made available at the
6 meeting. You have a special obligation that applies
7 strictly to your maps, but not to your other documents, to
8 make them available 14 days prior to acting. You may
9 choose, and this is an area where you may or may not choose
10 to hold yourself up to a higher standard in terms of making
11 other written materials available prior to your meetings,
12 the client that I advised previously had a special statute
13 that applied to it, they had to make all of the written
14 materials that were provided to the members of the State
15 Board of Education prior to a meeting available on the
16 Internet 10 days prior to the meeting, the idea, of course,
17 being they're making very complicated decisions, it's
18 putting the public at a disadvantage to walk into a meeting
19 and to find a binder this thick of data and information.
20 But the trade-off, I will tell you from prior experiences,
21 it is sometimes difficult to have all of that material ready
22 to be posted on the Internet prior to your meetings.

23 There is a limited ability under the law to hold
24 what is called a "Closed Session." This is the ability for
25 you to actually convene out of the public eye and not in an

1 open setting. It's limited to specific situations, you can
2 only meet in closed session for those circumstances that are
3 expressly allowed in the law, and there is a long list that
4 I won't go through now, most of the exceptions aren't going
5 to apply to you, but the two that are most likely to apply
6 to you are to do with personnel matters, and you have a
7 closed session today for that very purpose, and also for
8 pending litigation. There are a few others that might apply
9 to you, as well. When you hold a closed session, there is a
10 specific way of conducting it. Your Agenda has to state the
11 fact that you will be going into closed session and indicate
12 the legal authority for doing that. At that point in the
13 meeting when you go into closed session, you will indicate,
14 "We are now going into closed session, members of the public
15 will be asked to leave the room, the mics will be turned
16 off, the room is secure." Minutes must be taken of closed
17 session and a staff member has to be present. And if you
18 actually take any formal action or vote, commit yourself to
19 a course of action in closed session, when you come back on
20 the record in open session, you need to report out on that,
21 and typically counsel will report out on action you have
22 taken. So, you may be having a confidential deliberation
23 about hiring someone, the public does not have a right to
24 observe that deliberation, or to know what you might have
25 said about the person, but if you commit to hiring someone,

1 that decision must be reported out in open session.

2 There is an ability, and you know this from your
3 experience today, for members of the Commission to
4 participate by telephone. And I have to tell you that this
5 is an area of the law where the law hasn't really kept pace
6 with the way we all live our lives and use telephones and
7 cell phones, it's sort of set in a time when people had
8 phones with cords and were in one place, and so it has some
9 very specific requirements that apply to people, members of
10 the Commission who want to participate by phone, you have to
11 be at a location that is actually ADA accessible, you have
12 to be able to put your phone on speaker phones so that
13 interested members of the public who may want to be there,
14 you know, can hear the meeting. A member has to be at that
15 location. Probably the most significant thing is that the
16 address has to be noticed on the agenda, and this is the
17 thing that is always really difficult for many public
18 officials, is that somehow you have to know - in your case,
19 14 days in advance - that you can't make it to Sacramento
20 for that meeting, and you're going to be at exactly what
21 location, at what time, because that location has to be
22 published on the agenda. And this is the hard one, this
23 catches public officials all the time, especially busy
24 people who travel, you know, they do their best, but
25 sometimes they end up not being able to participate in a

1 meeting because of this requirement. And obviously you
2 can't talk on your cell phone while you're driving. You
3 can't do that anyways, for other reasons.

4 I want to talk now about what really is the primary
5 pitfall in this law, the way in which people end up
6 accidentally violating the law. I told you earlier what a
7 meeting is, it is when a majority of you meet in the same
8 place, same time, to hear, discuss, deliberate or act, but
9 what the law also contains is a very clear prohibition
10 against discussing the business that is within your
11 jurisdiction outside of a meeting, even if those discussions
12 take place not because you're all in one place at one time,
13 but because you have a series of communications among
14 yourselves that amounts, really, to a meeting, because you
15 communicated among a majority of the members. And I want to
16 talk a little bit about that prohibition because this is a
17 very significant issue and it's something that catches many
18 public officials off-guard. The courts have described
19 several different scenarios, several different ways that
20 people can have these sort of violate the law and have an
21 illegal meeting. They refer to - the use the term "serial
22 meeting" because usually an illegal meeting involves a
23 series of communications outside of a public meeting. It
24 can happen through e-mail, it can happen through phone
25 calls, text messages, it doesn't matter what the form of the

1 communication is, it is irrelevant, if there is a series of
2 communications that occurs among a majority of the members,
3 outside of a meeting, even if you don't reach an agreement
4 on the matter, but you are just discussing it, that is a
5 violation of the Open Meeting Act.

6 The other -- the courts have these interesting ways
7 that they have described the variations on how you could
8 have an illegal meeting, and they have used the term "wheel
9 and spoke" to describe another kind of illegal serial
10 meeting, and here there is a person at the center of the
11 wheel, a facilitator who is probably not a member of the
12 State body, or the commission, but that person ends up
13 facilitating an illegal serial meeting because they, in
14 turn, have a series of conversations with the members of the
15 State body, or sort of at the outer edges of the spokes.
16 Now, I hate to confess this, but the leading case in this
17 area is one where an attorney from a public agency
18 facilitated an illegal serial meeting because that attorney
19 called up each of the members of a Redevelopment Agency on
20 the phone prior to the meeting, and talked with them about a
21 really important decision they were about to make, learned
22 how they would be deciding, and in turn conveyed the
23 information from Member A to Member B to Member C, etc., and
24 so on, so that, after the series of phoned calls made by the
25 counsel, by the time the members of the Redevelopment

1 Commission got into the meeting, it was pretty much a done
2 deal, they all knew how everyone else would be voting, and
3 that was, of course, a violation of the law, it was an
4 illegal serial meeting. But I wanted to make a point here
5 about this because, even though I'm describing this staff
6 person and this attorney as having created an illegal serial
7 meeting, I don't want you to come away with the impression
8 that you cannot have communications with your staff outside
9 of meetings, that is not true. You absolutely can and
10 should communicate with your staff outside of meetings, it
11 will just be very important that the staff you hire and the
12 counsel that you hire understand how these rules work, and
13 they really take on the responsibility of ensuring that they
14 do not facilitate an illegal serial meeting. I mean, in my
15 role as counsel, I would talk to the individual members of a
16 Board, I would know what their concerns were, or issues, but
17 my job was to be sure that I never carried forward the
18 thoughts of one member of a Board or Commission to another
19 member, that is critically important and staff will
20 understand those protocols and work that way. And just to
21 summarize what this violation is, I mean, you have a
22 violation of the law when a majority communicate among
23 themselves, whether it is directly or indirectly through the
24 use of a facilitator or otherwise, it is happening outside
25 of a meeting, and it is a violation even if they don't reach

1 consensus on the matter, there was a lack of clarity in the
2 law that, until just a couple of years ago, and the
3 Legislature has made it very clear that jus the
4 communications among the majority, even if it falls short of
5 that majority of the members reaching a consensus or a
6 meeting of the minds on the issue, is still a violation of
7 the law.

8 I want to talk just a little bit about tips for
9 avoiding a violation of the law. And I mentioned earlier,
10 I'll turn to the second point first, but staff who assist
11 you should be trained appropriately so that they never act
12 as conduits for an illegal serial meeting. And the first
13 point I will just tell you, this is advice that is very
14 protective of the public's interest. My advice is that
15 members of a State body should not communicate among
16 themselves outside of a public meeting about matters within
17 their jurisdiction, that is my advice to you. And I will
18 give you that and you can certainly seek other advice and
19 counsel from the attorney that you hire to assist you as a
20 full commission, but I give that advice because it is kind
21 of a slippery slope. You may think that if you're talking
22 to one fellow Commissioner, you may feel confident that he's
23 not going to talk with anyone else, and hasn't talked with
24 anyone else, but there is too much uncertainty around that,
25 and you can't predict whether someone else has actually

1 communicated, and so it's just a slippery slope and it
2 really destroys public confidence in State bodies when there
3 isn't a perception that the members are really doing their
4 business in public.

5 COMMISSIONER AGUIRRE: Testing. Yes, the Board I
6 participated in, you know, we thought, "Well, that means we
7 can't talk to each other at all." And so, you know, we
8 decided that if I was going to talk with Michelle, I would
9 say, "Michelle, have you talked to anybody else about this?"
10 And if the answer was no, then we could have a little
11 discussion about it, but you're actually advising against
12 that?

13 MS. NEVILLE: I am. And I know that's the other
14 school of advice, and I've been to trainings where attorneys
15 will say to the members, "Before you have a conversation,
16 ask the person, 'Who have you talked to? Who else are you
17 going to talk to?'" And that's not the advice I'm giving,
18 you're right. But I do want to be careful to make sure - I
19 don't want you to come away with the impression that you can
20 never communicate among yourselves outside a meeting, you
21 can, and I'll talk about that in a minute. But the other
22 thing that most State bodies do, and commissions, and this
23 commission may well do, is designate certain people to go
24 forth. You may form sub-committees of three to go out, and
25 certainly, you know, they'll have certain obligations. You

1 might also designate certain people formally as liaisons to
2 go work in a certain capacity with the understanding that
3 those two and only those two will be communicating among
4 themselves about that issue, that's permissible under the
5 law. And then there is certainty; then everyone really
6 knows what the expectation is about who is and isn't talking
7 among themselves outside of a meeting.

8 The penalties for violating the law are very
9 serious, there can be criminal prosecutions for violations.
10 If actions are taken in a manner that is inconsistent with
11 Bagley-Keene, they can found to be void. Attorneys who
12 bring these cases get to recover their fees from the public
13 agency. And perhaps most significantly, it really causes
14 harm to the agency's reputation when it is not viewed as
15 really embracing this law and taking its requirements
16 seriously.

17 I want to talk just a little bit about
18 communications that you can have because I understand and
19 appreciate that people sometimes feel that it limits their
20 ability to communicate. You can, of course, have purely
21 social conversations with one another, and I would hope that
22 you would, and that you will get to know one another on a
23 social level. You can attend larger meetings or conferences
24 where other people are in attendance, as long as you don't
25 talk among yourselves about your business, that is perfectly

1 permissible under the law.

2 Now, here is another area that I want to talk about
3 where the Voters First Act gets really very interesting and
4 places very special rules on U.S. Commissioners, and these
5 have to do with the way that you communicate with the public
6 and other public officials. The Voters First Act actually
7 puts a restriction on you against communications regarding
8 redistricting outside of open meetings. This is a really
9 unique requirement and, for those of you who have
10 participated on other boards and commissions, you well know
11 that if you're on a School Board, or a City Council, or a
12 State Commission, wherever you go, interested members of the
13 public talk to you and want to talk with you about things
14 you do in that capacity, and share their concerns with you.
15 That kind of communication isn't allowed under the Voters
16 First Act. The Voters First Act almost contemplates what I
17 think of as almost more like a formal court hearing or a
18 Grand Jury type rule, where the members of the Commission
19 cannot have those outside the meeting conversations. It is
20 very unique and different. The law requires you, the Voters
21 First Act requires that you adopt protocols around this
22 rule, and that, I would assume, would be one of the first
23 things that you'll want to take up with your counsel, is
24 "How do we comply with this? What's the right way to go
25 about doing it?" Because, believe me, I do understand the

1 practical implications of this rule. You may have people
2 who e-mail you, you can't prevent that someone is going to
3 e-mail you something and talk to you, or try to communicate
4 with you about a matter, so how do you address that? You
5 know, in our guidance to you previously, we said, well if
6 someone does seek you out, then what these rules would
7 really contemplate is that you disclose that fact on the
8 record in your public meeting, and you would say, "So and so
9 is contacting me, so and so is contacting me about this, it
10 hasn't been a two-way conversation, I'm just bringing that
11 forward for the Commission's attention." But, again, you'll
12 want to adopt really specific rules around this because it
13 is a unique requirement, it is very unique.

14 COMMISSIONER AGUIRRE: So, I know that the media is
15 interested in what's happening with the Commission, and some
16 of us will probably be asked directly, "What are you doing
17 on the Commission?" So, are you saying we can't say
18 anything? Or, are you saying that perhaps we can share
19 information that is public right now, on the public record,
20 that includes the duties of ourselves as Commissioners, our
21 strong effort to conduct community outreach, those kinds of
22 things?

23 MS. NEVILLE: That is absolutely okay and, yes, and
24 really, I appreciate the sort of dilemma that I know this is
25 creating for the Commissioners, and I know the Press is very

1 desirous of communicating with you, and I appreciate that.
2 What I think this rule is designed to contemplate is that,
3 if there are matters that you really haven't taken up yet,
4 that really have to be discussed in public, you shouldn't be
5 having side bar conversations with interested persons
6 outside of a meeting. I don't think this rule was intended
7 to operate in a way that kept the Press from being informed
8 about your work, I just don't think that was the intent, I
9 don't.

10 COMMISSIONER PARVENUE: I understand the intent of
11 this rule and I'm okay with not speaking with elected or
12 public officials. I'm still not so clear on this first
13 point here, no communications regarding redistricting
14 outside of open meetings, because I've been invited to speak
15 with various radio programs about the process, in general.
16 So I'm still okay in talking generically about the process
17 of redistricting and what this means to the State of
18 California? Am I allowed to do that? Am I allowed to
19 actually go on the radio at all?

20 MS. NEVILLE: You may be, and I really want to
21 encourage you to talk to the counsel that you hire about the
22 parameters of this restriction because I completely
23 appreciate the concerns you have, and it's going to take
24 some real thoughtful analysis to come up with practical
25 workable rules for all of you, in terms of what this means.

1 What I really think this rule was designed to get at is
2 that, when you conduct your business, when you really are
3 conducting the business of redistricting, that deliberation,
4 that decision-making, can only happen in an open public
5 setting. I don't think the drafters meant to hamstring you
6 and prevent you from talking to anyone outside of a meeting,
7 I don't think that was their intent, but you're going to
8 need to interpret this language as a commission.

9 COMMISSIONER ONTAI: Donna, let me ask you, does the
10 Voters Act define what redistricting means?

11 MS. NEVILLE: No, and that's where you have some
12 discretion about, "How are we going to interpret this
13 prohibition? How are we as a commission going to apply and
14 interpret this restriction? What does it mean to have a
15 communication regarding redistricting?" And you've really
16 hit the nail on the head, and that is, that is really - and
17 I'm not trying to be hesitant in answering your question,
18 but it is really the prerogative of the commission to
19 analyze and interpret what that means and how that
20 restriction applies.

21 COMMISSIONER ONTAI: So you are recommending that
22 one of the first things we ought to do is set some rules as
23 to how we handle ex parte information.

24 MS. NEVILLE: That is exactly what the law requires
25 you to do. The law actually has an express requirement in

1 it that you adopt protocols related to communication, and I
2 suspect it ties directly to this prohibition, that they want
3 you to sit down as a body and figure out what it means and
4 how you're going to operate consistent with the law under
5 this rule.

6 COMMISSIONER ONTAI: I see. Thank you.

7 MS. NEVILLE: And you may want to watch - when we
8 were at our last Bagley-Keene, some of the drafters came
9 forward and spoke, at least briefly, about what they had in
10 mind when they adopted these rules, and I hope that I'm
11 being fair to what they said when I'm describing it to you
12 here because, what I really heard them saying is that they
13 want the Commission as a body, when it's discussing its
14 work, and the things it's going to act on, to be doing that
15 in public. They don't want any one member of the Commission
16 out there just hearing something from a group of citizens or
17 a person that the other Commissioners aren't privy to, that
18 is really what they were contemplating.

19 COMMISSIONER DI GIULIO: I have a general question,
20 too, in terms of how to interpret this. As Commissioners,
21 in our daily life, if people within our - if a neighbor
22 comes up and would like to express their opinion about
23 redistricting or what they feel about it, and I'm sure what
24 they intend, they are trying to engage us, or even
25 individuals who maybe have an opinion based on their

1 political connections, they may not be directly connected,
2 what is our position? At this point, I've just been saying
3 it's nothing that will be able to be discussed right now,
4 but I'm assuming that's the case, it's not even something -
5 of course, once they express their opinion, you can't close
6 your ears, but at what point do we engage or do we just
7 politely excuse ourselves from the conversation? I'm
8 assuming that's what is necessary.

9 MS. NEVILLE: And it probably is what is necessary,
10 but, again, the specifics of how you respond to that, that
11 is something that the Commission as a whole body should
12 decide. What is pretty typical under, you know, as Mr.
13 Ontai said, there are these ex parte rules that apply to
14 certain state bodies, what you would typically do is say,
15 "You know, I appreciate what you have to say, I can't really
16 have a two-way conversation with you about that and I
17 encourage you to offer those comments up to the full
18 Commission, please do that." And then, when you're in your
19 Commission meeting, you would disclose to the Commission "so
20 and so described this to me." Some communications aren't
21 even going to rise to the level that they need to be relayed
22 to the Commission, but others are, and that's where you can
23 decide as a Commission how are we going to handle this?
24 What kinds of communications do we have to disclose to one
25 another? What's even on the threshold, etc.?

1 Another thing I just want to talk briefly about is
2 using technology to promote access. It is so clear from the
3 Voters First Act that what the proponents intended was a
4 really open engaged process for redistricting, and during
5 many of the interviews that we heard from the applicants,
6 people spoke at great length about their desire to engage
7 the public and to use technology in really innovative ways.
8 So I don't want to sound like a naysayer, but what I want to
9 say to you are two things, first, I absolutely hope that you
10 will use technology in really progressive and innovative
11 ways to engage the public, but when you do that, be mindful
12 of Bagley-Keene and the fact that there are times where it
13 doesn't quite line itself up really neatly with the
14 innovative use of technology, for better or for worse. And
15 to give you an example, I mean, webcasting is a great thing.
16 We even did some public webcasts when we were doing
17 outreach. You can do webcasting and reach out to a very
18 broad audience and hear public comment, and do that all in a
19 way that is entirely consistent with Bagley-Keene. In
20 contrast, blogging can be a little more problematic,
21 depending on how you interpret the word "blogging." But if
22 one or more members of a commission were to be engaged in a
23 kind of online blog, where they were communicating among
24 themselves, outside of a meeting, even though it's public,
25 it's not a properly noticed meeting under Bagley-Keene.

1 Blogging can be problematic under Bagley-Keene. So you just
2 have to be mindful, work with your legal counsel about what
3 is and is not okay in terms of using technology.

4 A couple handy resources that we mentioned earlier,
5 the *AG's Guide to Bagley-Keene* is a tremendous resource, *The*
6 *Citizen's Media Law Guidance* is also very helpful, giving
7 pointers on Bagley-Keene compliance. I had just a couple -
8 apparently my questions are way too easy, but I do have a
9 couple questions for you just to see how comfortable you're
10 feeling with this. The first question is, Commissioner A
11 wants to attend the upcoming meeting of a State body,
12 however, she needs to be traveling when the meeting is held.
13 If she calls in to the meeting on her cell phone while
14 driving to the Airport, is her attendance consistent with
15 the requirements of Bagley-Keene? No, of course not. We
16 know you can't do that -- you're all saying no, but I've had
17 clients call and say, "Really, I'm in LAX, really." You
18 know, "The public can hear me, isn't it okay?" And
19 unfortunately, no, because you haven't posted that location
20 on the agenda. May a member of the public use his or her
21 iPhone or other recording device to record a State body
22 meeting and then post it on YouTube? "Yes?" "Yes, but only
23 if he or she intends to litigate the matter?" "Yes, but
24 only if advance notice is given to the Secretary?" Or,
25 "No?" Yeah, it's an unequivocal yes and we all see postings

1 of meetings on YouTube all the time. The third question, "I
2 offer my comments during the time allotted for public
3 comment on items not on the agenda at every meeting and the
4 members don't respond except to say thank you. Why?"
5 "They're not listening?" "They disagree with you and don't
6 want to argue in a public setting?" Or, "The issues you're
7 commenting on have not been properly placed on the agenda
8 for discussion, so it would be inappropriate for them to
9 deliberate?" It's the last one, of course. And you will
10 have members of the public who will be sort of disconcerting
11 because you aren't responding, and sometimes the Chair will
12 say, "Just to remind the public, we're hearing from you on
13 items not on the agenda, we can't really deliberate on those
14 at this meeting."

15 So, I know we've gone through this really quickly, I
16 know it's not the most scintillating subject in the world,
17 but it will turn out to be a tremendously important aspect
18 of your work. I know that from having gone through the
19 application process and just from having advice on other
20 clients that the way that you go about embracing Bagley-
21 Keene and the requirements of the Voters First Act is all
22 going to have a tremendous impact on how the public
23 perceives your work. I wish you great success in your work,
24 and I'm very excited about what you're about to embark on.
25 Do you have other questions?

1 COMMISSIONER ONTAI: I do, Donna. On the access
2 requirements, what officially are the avenues that we have
3 to post when we are having meetings?

4 MS. NEVILLE: You, under Bagley-Keene, it is on the
5 Internet, you need to post the notice on the Internet and
6 then you need to post the notice at the physical location
7 where you're meeting, and if there are telephonic locations,
8 at each of those. It's different, that's an area that is
9 different from the Brown Act, if that's what you're thinking
10 of.

11 COMMISSIONER ONTAI: Yes, I was. And, regarding
12 the Brown Act, you mentioned earlier that there are minor
13 differences between the two. Can you give me an example of
14 a minor difference?

15 MS. NEVILLE: That is probably one; another is the
16 notice period prior to meetings because, under Bagley-Keene,
17 it is 10 days, and under the Brown Act, it's just 72-hours,
18 if I'm remembering that correctly. And then, under the
19 Brown Act, there is another limited exception that allows
20 for temporary ad hoc committees to meet without complying
21 with the Brown Act. That does not - that exception is not
22 built into Bagley-Keene, there is no exception that allows
23 ad hoc temporary committees to meet without compliance with
24 Bagley-Keene.

25 COMMISSIONER ONTAI: I see, thank you.

1 MR. PARVENU: Question, Donna, while we have your
2 expertise here, and I appreciate your very concise and
3 thorough presentation here. I have a question, in the town
4 that I reside, they're planning on having - we're planning
5 having like a meet and greet session, meet the Commissioner
6 type thing, and it's very informal. That's on February 10th.
7 Does that have to be - do I have to go through the full
8 notification? It's going to be at the library in Culver
9 City.

10 MS. NEVILLE: It's just you, it's not a meeting,
11 it's just you.

12 COMMISSIONER PARVENU: Okay.

13 MS. NEVILLE: And the issue that you would need to
14 be more concerned about is not having - communicating about
15 redistricting and what that means.

16 COMMISSIONER PARVENU: That is going to be a
17 question.

18 MS. NEVILLE: You want to have general - confine
19 your comments to general things about the nature, you know,
20 things that are publicly known about the Commission.

21 COMMISSIONER PARVENU: Okay, but we haven't actually
22 have done any deliberations or discussions yet, so I should
23 be fine, but if we did, or if we had discussed pertinent
24 matters, then the pertinent matters would not be open for
25 discussion, of course, but I can speak generally about

1 redistricting, about the importance of it -

2 MS. NEVILLE: Generally about what you are about to
3 do, I mean, yeah.

4 COMMISSIONER PARVENU: Yeah, involvement and
5 participation, okay, I'm okay with that, then. All right,
6 thank you.

7 MS. NEVILLE: Well, thank you very much and I wish
8 you great success.

9 MR. RICKARDS: Donna, thanks very much, that was
10 great. And obviously they had their fingers on the right
11 questions, too. The problem is the questions are much
12 easier than the answers, but we'll be working with those.
13 And as I think Donna pointed out, and it's good to remember,
14 there are contradictory parts of this Voters First Act. For
15 example, the big emphasis on outreach, and then the
16 prohibition against talking to anybody. Obviously, that has
17 to be worked out and you will work that out among yourselves
18 with the advice of counsel, and I would just encourage you
19 before you hire you own counsel, you can contact me, and
20 when you get your own counsel, if you've got questions about
21 Bagley-Keene, ask them. Donna and I have a little
22 difference about this, but I still believe this is sometimes
23 counter-intuitive because, you know, we're all problem
24 solvers and we think, well, gee whiz, we have this expertise
25 and we want to get together, we want to talk about a

1 problem, we want to get it solved. But just remember what
2 she said at the beginning, the public has to have a place at
3 the table. That really is a lodestone in some ways and, if
4 you think about that, it leads you to the answers to your
5 own questions a lot of times. But, again, don't ever be
6 afraid to ask, there's no such thing as a dumb question
7 about Bagley-Keene, at all. Okay, we're adjourned. We can
8 break for lunch and I guess we've got to be back at 1:15.
9 Donna, do you have a second before you go? Thanks.

10 (Recess at 12:33 p.m.)

11 (Reconvened at 1:20 p.m.)

12 CHAIRMAN YAO: All right, it's 20 minutes after 1:00
13 p.m. I think everybody is present on the panel, on the
14 Commission, so we'll reconvene the meeting at this point in
15 time. I apologize to those in the audience that I did not
16 offer the public an opportunity to comment on our agenda as
17 the first item, so at this point, I'd like to invite anybody
18 that has comments on the agenda, to please come up to the
19 mic.

20 UNIDENTIFIED MALE SPEAKER: Thank you, Chairman Yao
21 -- can you hear me through the mic - for an opportunity to
22 make some general comments about your deliberations. I have
23 to say, you are a wonderful looking group, not just that
24 you're beautiful and handsome, which of course you are, but
25 you really look like California and that's great. As an

1 applicant who made it to the group of 314*, I'd like to
2 share with you some thoughts that I've had with respect to
3 Commission members, and these are general comments about
4 your deliberations as you're getting started on your work
5 and a lot of the agenda you've been talking about in this
6 meeting here. First of all, is the obvious thing that you
7 all are aware of, of the necessary - necessity of setting
8 aside your personal views. This particularly applies to
9 those of you who have backgrounds as very - activists,
10 participants in organizations, who I think really need to
11 have the courage to resist the calls from your friends, when
12 perhaps they come asking for some special favors. This
13 panel will lose its credibility with the public if it's
14 viewed as an organization that is a battle of special
15 interests, just basically fighting it out, doing business as
16 usual. And I know you're going to avoid that and take
17 efforts to being totally neutral.

18 Regarding neutrality, the second point I want to
19 make is hiring a staff which has a neutral outlook. We all
20 know how much influence can be wielded by staff members
21 because they're the ones that are the gateway of information
22 and the preparers of reports. And it's important that you
23 be extremely critical in your hiring decisions and avoid
24 those people who have had association or, even worse, been
25 employed by advocacy groups, and to really seek people who

1 are neutral. You need to challenge prospective bias that
2 comes to you from people that you'll be listening to, in
3 particular, that provided by staff, consultants, and the
4 general public. One of the most important things will be in
5 the training that you're about to receive. You're going to
6 be hearing from experts in various fields who may have very
7 strong opinions because, in fact, they are knowledgeable and
8 experts on those fields, and I strongly recommend that you
9 question them and challenge them throughout to make sure you
10 can separate their opinion from basically the minimum legal
11 requirements that they're teaching you about.

12 The next point I'd like to make is really what I
13 call starting with a blank slate. When I attended a
14 training session for the Applicant Review Panel, one of the
15 people that spoke to them said that you would be - you
16 should look at party registration as a proxy for communities
17 of interest. Absolutely, do not let that happen. I mean,
18 you know the text very clearly, communities of interest
19 shall not include relationships with political parties,
20 incumbents, or political candidates. I think, even seeing
21 this registration information cannot help but introduce some
22 potential bias into your consideration. And I know it's
23 almost impossible, but I think it would be, even ideal
24 world, that you wouldn't even see the current district
25 boundaries, you wouldn't know the names of the incumbents,

1 you wouldn't know where they live, so in fact you wouldn't
2 even have an opportunity to have that enter into your
3 thinking.

4 Finally, take into account terrain features in your
5 district work. Mr. Parvenu, I think, I see him shaking his
6 head. In other words, districts like the Third Senate
7 District that I live in, that jumps from the northern
8 counties across the Golden Gate into half of San Francisco
9 is clearly one of the most egregious examples of ignoring
10 geographic boundaries. So, Districts that leap across Bays,
11 over mountains, or even manmade features like freeways, to
12 combine districts for political purposes, I think, should be
13 a thing of the past with your efforts, and I hope so.

14 So, basically, good luck in your endeavor. We are
15 watching what you do, the people of California have high
16 hopes for you, and the best of luck. Thank you.

17 CHAIRMAN YAO: Thank you.

18 UNIDENTIFIED MALE SPEAKER: Good afternoon. Can you
19 hear me? I will read you a quick article that was printed
20 in the San Mateo County - I mean, San Mateo Journal, down
21 there, and I was the one that wrote it, real quick.

22 "California is divided into 58 counties and hundreds of
23 cities. Each county has a Board of Supervisors, and each
24 City has a City Council with a Mayor or a City Manager. The
25 Legislators in Sacramento and Washington, D.C. should be

1 accountable to these entities. We are asking the
2 Redistricting Commission to use County and City boundaries
3 when creating districts. Now, there are some counties too
4 small that would need to be combined with others to create a
5 district, these counties should be contiguous with each
6 other, some counties are larger and need to be divided, and
7 this should be done along city boundaries. Then, there are
8 some cities that are too large, that would need to be
9 divided into districts, and we recommend the Commission
10 utilize postal Zip Code boundaries, lines within cities.
11 Except for these larger cities, no town or city under
12 400,000 should be divided. The Commission should first
13 divide the State into 80 Assembly Districts; after the 80
14 Assembly Districts are created, they can combine two
15 contiguous Assembly Districts to form one Senate District,
16 this would equal 40 Senate Districts. This would be logical
17 and make State Senators more responsible. When dividing the
18 State into 53 Congressional districts, the Commission should
19 attempt to use Assembly District boundaries when possible.
20 We are hoping the Commission uses this opportunity to fairly
21 divide the State into functional Legislative Districts,
22 using existing boundaries, where the Legislators can be held
23 accountable to local officials and their constituents.
24 Please don't carve the State up; the 10th and 11th
25 Congressional Districts are perfect examples, both cover

1 five counties? Excuse me, who are they responsible to? You
2 know, somewhere there are Boards of Supervisors that sit on
3 58 counties who would really love to be able to go up to
4 their Congressman and go, 'Excuse me, Congressman, can you
5 get this done?'" Thank you.

6 CHAIRMAN YAO: Thank you.

7 MR. LAWSON: I will try to be brief. My name is
8 Brian Lawson and I teach Political Science at Santa Monica
9 College, and I had a couple of observations, so first of
10 all, mentioning as a lot of people have already the
11 incredible job done by the Auditor's Office, truly amazing,
12 the Auditor put a lot of resources into it that she didn't
13 need to, she could have just passed, but she did an
14 incredible effort. And, of course, the Applicant Review
15 Panel did an amazing job. It got 30,000 people to apply,
16 that is probably more people than will come to all of your
17 hearings, okay? So, you know, that is pretty amazing; 4,500
18 people wrote very detailed essays, and if those people came
19 to public comment and read their essays, that would take you
20 way through August, okay? So you have got a lot for your
21 \$500,000, okay? That was a huge thing that she did for you,
22 in addition to getting you all here on time, so really
23 great.

24 At the first hearing, not of you folks, but of the
25 hearings to get the process going, Mr. Munger made a quote

1 essentially from Benjamin Franklin; restating him, he said,
2 "You've got a Redistricting Commission if you can keep it."
3 Okay? To me, this suggests the idea that, you know, you are
4 putting forward a, you know, a plan that is more than just
5 drawing the lines for 2012, okay? You're going to be doing
6 things that potentially could last for a very long time, not
7 just the lines for 2012, but 2020, 2030, and so on. The
8 traditions of the precedent that you set here are going to
9 be really long lasting. If you do your job well, most
10 likely, those district lines will be used again in 2020,
11 2030, and so on because, although populations do shift, they
12 don't shift that much, okay? So, you really can do - you're
13 drawing a template not just for 2012, but possibly for way
14 down in future decades. On the flip side, if things don't
15 go so well, we know how things go in California, another
16 proposition, and a completely different way of doing
17 redistricting. So, you know, you've got your work cut out
18 for you.

19 Finally, in the words of Mr. Lynne, front load the
20 front end, okay? You really need to do that and that's the
21 handout that I've just given you here, five points that I've
22 put there, I'll just say a couple of sentences on each one
23 of those points, "Calendar with a budget." It's easy to put
24 dates up there, but if you attach numbers to that dollars
25 that you'll be spending, that can really make it work much

1 better. The Secretary of State needs the maps by a certain
2 deadline, figure that out, you don't have just the August
3 15th, you've got August 15th, you've got pre-clearance, and
4 then the Secretary of State needs it, so lots of stuff
5 there. Other preparations, what if someone resigns? One of
6 you resigns? There are 14 people, things can happen, the
7 remaining 22, you might want to keep in touch with and have
8 them ready to go. What if one of your executive people
9 resigns? Keep the applications of the people you don't
10 hire. Hiring the counsel - ask this person why they're
11 interested in the job, they'll be making less money, working
12 harder, and have more stress, why do they want to do this
13 job? Keep in good contact with the State Legislature, the
14 legislative leaders, and the Governor's Office. You may
15 very well need to ask for more money, let them know what's
16 going on. Subdivision (B), Section 8253, says that the
17 State Legislature and the Commission should work together to
18 set up a statewide database. Do that. You'll need it,
19 everybody else wants to see it, get that thing going, and
20 maybe it's already going, I don't know, but that's really
21 important. Number four on this pre-processing and
22 geographic information, that's perhaps controversial, but I
23 think important. The geographic regions that have been used
24 to this point, the seven regions, are not of equal
25 population, so I would suggest that you do something to

1 start using new regions because those regions, um, you know,
2 if you said, "Okay, we're going to go to all seven regions,"
3 that would not be a great plan, okay? So, just something.
4 I threw out the idea here of starting with the Board of
5 Equalization because those are four equally - equal
6 population groups as of 2000, they haven't changed that
7 much, but that's just throwing an idea out there, okay? And
8 the last thing here is the power of your "no" vote. Because
9 of the super majority voting, "no" votes are in some ways
10 much more powerful than "yes" votes. Two Decline to State
11 people vote "no," the other 12 vote "yes," the motion goes
12 down, okay? So the "no" vote is a big deal, but you don't
13 want to pressure someone, coerce someone, to switch from a
14 no to a yes, you want to listen to each other, you want to
15 know what they're doing. Anyway, there are some other
16 points in here, I hope you will take a chance to look at it,
17 and of course, you know, good luck, and congratulations, and
18 work hard.

19 CHAIRMAN YAO: Thank you, Mr. Lawson.

20 MR. JOHNSON: Good afternoon. My name is Douglas
21 Johnson. I'm with the Rosen Institute of State and Local
22 Government down at Claremont McKenna College. First, I just
23 want to join the many people thanking you all for your
24 commitment to take this job. I hope not too many of you
25 regret it in the few months from now, but hopefully it will

1 be a good experience. I just have three quick things I
2 wanted to mention, one is I understand you all should have
3 received by now the information on the National Conference
4 of State Legislatures Redistricting Seminar at the end of
5 the month, that is actually the fifth in a cycle of five
6 they have been doing. It is probably the best redistricting
7 training out there, especially that you can get in just
8 three days. I highly recommend that for anyone that can
9 make it back to D.C. for that.

10 The second piece is, I definitely appreciate all the
11 work that the Secretary of State's Office did in these job
12 descriptions, and I understand the thought in getting that
13 process moving, but I would caution you about them. They
14 are very specific, and be sure to look at the big picture of
15 what you want from your staff, and how you want it to
16 operate, and don't let that be too much of a straightjacket
17 in those job descriptions and the ways those are structured,
18 which ties into my other point, which is think about not
19 being based in Sacramento, it is very symbolic that the
20 offices are here, and that so far the meetings are here, you
21 may want to move your offices, it would get you two things,
22 one, it would be a symbolic step to get away from the
23 Sacramento entities that you're officially independent of,
24 and it may also widen the pool of people who would be
25 interested in being Executive Director, get you people who

1 aren't already in Sacramento, which by definition they are
2 focused on the government as it is, and not so independent.
3 So, a couple of things for you to think about. If the Rosen
4 Institute can be of any service or with any advice, we're
5 here, and that is what we're here for, so feel free to
6 contact us any time. Thank you very much and good luck.

7 CHAIRMAN YAO: Thank you, Mr. Johnson. All right,
8 seeing no one approaching the microphone, I will bring it
9 back to the Commission. Before us on the remaining of the
10 agenda, there has been a proposal to move Item 7 ahead of
11 Item 3 because Item 3 is going to involve a fairly extensive
12 discussion and the individual on Item 7 is here to make
13 their presentation to us. So, I wanted to gain concurrence
14 from the Commission to do so. Any objections? All right,
15 seeing none, we will change the order of the agenda,
16 accordingly. At this point, I would like to invite Dora
17 back up to the podium. Or would you rather speak from where
18 you are? Okay, thank you.

19 **Item 7. Recruiting and hiring, including training, criteria,**
20 **interviewing, and choosing staff and consultants.**

21 MS. MEJIA: Thank you. I have been told that this
22 is a better mic than that one. We have now Raye Zentner,
23 representing the Human Resource Modernization Project, also
24 known as HR Mod. Now that you're part of the Government,
25 you are going to hear a lot of acronyms, here's your first.

1 Raye has worked at various departments and her experience
2 includes administering personnel functions, overseeing
3 budgets, accounting, and leading fundamental organization
4 change in State Government. In December of 2003, in
5 recognition of her outstanding performance in the field of
6 Human Resources, Raye was awarded the Robert L. Negri Award.
7 The HR Mod project is re-engineering, simplifying,
8 modernizing, recruitment, selection, classification,
9 compensation, work force planning, performance management,
10 and training for the State's over 200,000 employees. The HR
11 Mod Project is jointly sponsored by the Department of
12 Personnel Administration, the State Personnel Board, and the
13 Department of Finance. Raye, thank you for being here.

14 MS. ZENTNER: Good afternoon. Thank you, Dora, for
15 the nice introduction. As she said, my name is Raye
16 Zentner. And just to give you a little bit of background
17 about the Human Resources Modernization Project, and if you
18 don't mind the acronym, you will probably hear me refer to
19 it as the HR Mod, some people call us the Mod Squad, but we
20 try to stay away from that. But the Human Resources and
21 Modernization Project was established in October of 2007
22 with the intent, and with the mission of revising and
23 updating the State of California's Human Resources Programs.
24 The State of California is under the Civil Service Act,
25 which was created in 1934. Now, if any of you know of

1 anything that was created in 1934 that is still effective in
2 this day and age and this technology, please talk to me
3 later after this presentation, and then maybe we can talk a
4 little bit.

5 But, when the State of California created Civil
6 Service, there were different kinds of workers, different
7 kind of work that had to be done, and as California has
8 moved beyond that, California's need as a Government has
9 moved beyond that, as well. When we started this project,
10 one of the things that we wanted to see is what are other
11 States, Cities, Counties, even Countries, doing. So, we did
12 a best practices research to see what they were doing. We
13 looked at Canada, Delaware, the State of Washington, North
14 Carolina, Oklahoma, Montana, New York, to name just a few of
15 the places that we looked at to see how they were changing
16 their structure. And we found that many employers, even in
17 the public sector, are moving from a strictly duties-based
18 program, or HR program, to a competencies-based program.
19 Competencies are measurable knowledge, skills, abilities,
20 and on-the-job behaviors that are needed to effectively
21 perform a job. And we believe that, once those competencies
22 are identified and established, they can be used as the
23 basis for your recruitment, selection, classification,
24 compensation, training, and performance programs. Moving
25 California from a strictly duties-based human resources

1 program to a competencies-based program will take some
2 doing, but we've begun by establishing a general competency
3 model for Supervisors, Managers, and Executives.

4 I was once told that moving the State of California
5 is like moving an Aircraft Carrier, it's slow. You have in
6 front of you a package - let me get to the right slide here
7 - that includes a picture of our competency model for
8 Supervisors, Managers, and Executives. This model was
9 created by soliciting input for more than 5,000 leaders in
10 California State Government, including -- we conducted
11 interviews with top-performing Supervisors, Managers, and
12 Executives; we also had panels of leadership experts that we
13 met with. We used their input to document the general
14 characteristics that are known as "soft skills," of a
15 successful Supervisors, Managers, and Executives. We also
16 surveyed incumbent Supervisors, Managers, and Executives, to
17 validate and improve the information that we had compiled.
18 We looked at other competency models that some State
19 Departments had already developed and, again, we looked at
20 best practices in private companies and other public
21 entities to see what we could learn from them about their
22 leadership competency models. We then organized the
23 competencies that we identified into six areas called
24 "Competency Clusters." And we grouped the competencies into
25 each of these three leadership categories - Core Leadership

1 Competencies, meaning those competencies that we believe are
2 necessary for all Supervisors, Managers, and Executives,
3 Manager and Supervisor Competencies, and then the Executive
4 Competencies. So, together, these six clusters of the 23
5 competencies create the State of California's Leadership
6 Competency Model. These competencies cover approximately
7 980 Supervisory and Manager and Executive classifications
8 that represent 16,000 employees in over 150 departments.

9 I understand you are soon going to be selecting a
10 Director for this Commission. This Competency Model, I
11 believe, can help you identify the most important skills,
12 which I think that you've already done, based on your hiring
13 criteria that I've reviewed, but also, it could help you
14 identify, I believe, the candidate that has those skills.
15 Having had a long career in State service, and as I tell
16 people, and I will tell you, as well, I started when I was
17 12, I have about 42 years of State experience, I reviewed -
18 and, again, I stick by the 12 number - I've reviewed the Job
19 Opportunity Bulletin and your hiring criteria that you
20 established, and I want to commend you on putting together a
21 very detailed list of qualities that you're looking for in a
22 Executive Director. When you can find that person, please
23 let me know because I would want to recommend them for a
24 Superman or Superwoman Award if they can do all of those
25 things, but you all, I think, very thoughtfully put together

1 a list of things that you were looking for in your Executive
2 Director, and I commend you for that. And having looked at
3 that, I agree with what I've seen in your hiring criteria,
4 that there are five competencies that we believe would be
5 most important to include for an Executive Director. Those
6 include results orientation, global perspective and
7 organizational awareness, personal credibility, ethics and
8 integrity, and I'm missing one here, oh, no, there are two
9 in one of the triangles, I'm sorry. Now, this is not to say
10 that the other competencies in the competency model are not
11 important, but I believe that these competencies are the
12 most pertinent to the position that you're trying to fill.
13 The following pages that you have in your package, if you go
14 to the next page, for each competency, we have defined the
15 competency; for example, if you look at ethics and
16 integrity, we have defined ethics and integrity - and when I
17 say "we" have, I don't mean just a group of employees
18 sitting in a vacuum in a room, this is part of the
19 information that we collected from the Supervisors and
20 Managers that were a part of these focus groups that we
21 worked with. So, for ethics and integrity, it is defined
22 for you, and then, in the pink color, you will see those
23 kinds of behavioral indicators that would show you the kind
24 of activities or the kind of things that the person should
25 have done, that would have showed you that they have that

1 kind of competency. Also at the bottom you will see a
2 proficiency level. Each competency identifies the expected
3 proficiency level required for successful performance of the
4 competency at the different levels. There are four possible
5 levels of expected proficiency, novice, skilled, advanced,
6 and mastery.

7 In looking at your hiring criteria and your duty
8 statement, I just wanted to walk you through one of these to
9 give you an idea of how I think that, when you're looking at
10 this competency model, how it can work. So, for example, if
11 you want to look at personal credibility, which is a very
12 strong competency that I would just assume that you would be
13 looking for in an Executive Director for this Commission, a
14 successful candidate would be one who is able to adhere to
15 technical and professional guidelines and standards, have
16 demonstrated management administrative leadership skills,
17 would also need to have a knowledge of principles,
18 practices, and trends of public administration,
19 organization, and management, and then we have excellent
20 communication skills, ability to clearly express their
21 ideas, thoughts, their expectations, and be an active and
22 empathetic listener. Some of those things that I've just
23 read came right off of your Job Duties Statement and were
24 very consistent with what we had in our Leadership
25 Conference, and I was very excited to see that, so I think

1 that this Competency Model can help you. Also, I know that,
2 as you're recruiting to fill this position, you are also
3 going to want to look for a person that has some
4 organizational awareness, or an awareness of what the
5 purpose and the scope of this Commission is, the knowledge
6 of functions in California State Government, because you're
7 going to have to work in a Governmental setting under the
8 laws and the rules of State Government, and that person
9 needs to understand how that works. This person is going to
10 need to understand and function within Civil Service so that
11 the Commission can achieve its goals, and that is why that's
12 important.

13 I could go through the rest of these, but I think
14 that they're pretty self-explanatory. But I wanted to
15 express to you how fortunate California is to have such a
16 varied and committed group of citizens, that are willing to
17 assume the responsibility for this very important job.
18 Thank you for your service. If you'd like to access the
19 entire Competency Model or any other information about the
20 Human Resources Modernization Project, it's available on our
21 web page and that is at www.dpa.ca.gov. I'm available to
22 answer any questions that you might have.

23 CHAIRMAN YAO: Any questions?

24 COMMISSIONER BARRABA: Yes, I do. My experience is
25 that - and even just a brief look at this, it seems like

1 there's a series of parts that you put together that you
2 want people to review and be better at. The sense that I've
3 gained over time is, it is really how you manage the
4 interaction of these parts that really identifies
5 leadership. And I guess my question is, is there a section
6 in here that deals with a more systemic look at what the
7 problem might be, so that you are outreaching rather than
8 trying to define and work on a more narrow description of
9 the problem?

10 MS. ZENTNER: As far as the leadership competencies
11 are concerned?

12 MR. BARRABA: Yes.

13 MS. ZENTNER: Well, there is - much more information
14 is available on our website about how this Leadership
15 Competency Model was put together. I was trying to put
16 together just a snapshot for you of how this Leadership
17 Competency Model can be used by you to help you sift through
18 some of the applications and resumes that you have. When
19 you talk about, is there any information about the systemic
20 problem, I guess I would have to - are you talking about the
21 systemic problem of maybe not having sufficient leaders or -

22 COMMISSIONER BARRABA: No, more how do you manage
23 the interaction of the parts of a problem rather than handle
24 the parts independently?

25 VICE CHAIR DAI: A holistic approach?

1 MS. ZENTNER: Yeah, well, one of the things that
2 we're trying to look at, I will tell you for the State of
3 California, is there are lots of challenges faced in
4 California, as you know. One of the biggest challenges
5 facing the State of California right now is what we are
6 calling, or some of us are calling, the "Silver Tsunami,"
7 and we are looking at the potential loss of many many very
8 experienced Supervisors, Managers, and Executives, and
9 trying to get Supervisors and Managers in the door that have
10 training. So, some of the other things, maybe I should talk
11 about some of the other things that the HR Mod has done to
12 assist with that, is we have focused some time and attention
13 on having exams that previously were only administered as
14 internal promotional exams to make them available online,
15 and making them available with an open filing capability so
16 that people can come in at levels that they've never been
17 able to come in to California State Government before. So,
18 people will be able to come in to Supervisor and Manager
19 levels, bring that experience that they have gained from
20 outside State service, into State service, so that they can
21 strengthen the State of California's Supervisor and Manager
22 ranks. We also know that, because there is going to be this
23 potential huge loss of experience from not only supervisors
24 and managers, but also state employees as a whole, we have
25 tried to broaden the ability for people to come in from

1 outside State service, but we've also been working on our
2 training programs, making training more accessible and more
3 available. We are working on a performance management
4 program. We are also working on a classification structure
5 so that it's made a little bit simpler, and not quite so
6 complicated as it has been in the past. So, as the
7 Commissioner next to you talked about, maybe a more holistic
8 approach to the problem, which in the past has tended to be
9 a little bit more, oh, an internal process, I would say, as
10 opposed to making it a little bit more externally
11 accessible. So, does that answer your question,
12 Commissioner?

13 COMMISSIONER BARRABA: Yes, it has.

14 MS. ZENTNER: Thank you. Any other questions?

15 CHAIRMAN YAO: Is there any effort in terms of
16 measuring where we are in the State of California with
17 regard to this particular model?

18 MS. ZENTNER: We have worked with several
19 departments, we are looking to - in fact, there are a couple
20 departments that are willing to pilot this model in their
21 organization, and we're looking forward to working with
22 them. This model, the Executive Competency Model, is fairly
23 recent, just within the last couple of months, and we are
24 still working on different parts and pieces of it to get it
25 implemented, but we are looking at piloting it with a couple

1 of departments, and so then measuring how much better this
2 will be. But, frankly, in the past, up until this point,
3 and I will tell you, again, I started when I was 12, they
4 really didn't have competencies or measures like this to
5 identify. We have had different kinds of programs,
6 supervision by objective, management by objective, which are
7 some old programs from the '80s, we've had strategic
8 planning, we've had different kinds of methods that have
9 come in; but frankly, you know, California is a very large
10 organization and we are taking steps to develop what we call
11 Performance Management for the State of California. We are
12 looking at how we can establish performance objectives
13 across organizations that Supervisors and Managers could be
14 measured against. But, again, that will take a while to get
15 implemented. It's the Aircraft Carrier.

16 CHAIRMAN YAO: Thank you. Any further questions?
17 If not, thank you very much for making the presentation to
18 us.

19 MS. ZENTNER: Thank you.

20 CHAIRMAN YAO: Would the public be interested in
21 commenting on what we have heard? All right, if not, then
22 we will close Item 7 and proceed to - Dora, would it be
23 appropriate to go with Item 6, addressing the State support
24 issue ahead of discussing Item 3? Again, Item 3 is going to
25 be very extensive.

1 MS. MEJIA: Commissioner, actually, if we could have
2 a further discussion on Item 7 regarding the hiring
3 criteria?

4 CHAIRMAN YAO: All right, thank you.

5 Ms. MEJIA: I think that would be a good thing to do
6 right now.

7 CHAIRMAN YAO: Okay. So, I'll open up the floor for
8 any Commissioner who has input in terms of what you want to
9 define as guidelines that we should follow.

10 COMMISSIONER FILKINS WEBBER: I do have a few -

11 CHAIRMAN YAO: Certainly.

12 COMMISSIONER FILKINS WEBBER: -- taken out of order,
13 but if anyone else has any comments, feel free.

14 CHAIRMAN YAO: Let me do a process check with
15 Connie. I understand, Connie, you are still with us on the
16 telephone. Are you with us? All right, we will just have to
17 make the assumption that she has been - oh, I hear something
18 - Connie, are you with us?

19 COMMISSIONER GALAMBOS MALLOY: I am. How is the
20 sound? Can you hear me?

21 CHAIRMAN YAO: Loud and clear, yes. Thank you.

22 COMMISSIONER GALAMBOS MALLOY: Okay, great.

23 CHAIRMAN YAO: Okay. You heard the presentation.
24 Do you have any questions?

25 COMMISSIONER GALAMBOS MALLOY: I don't. Thank you

1 very much. And I have the Powerpoint with me here.

2 CHAIRMAN YAO: All right, thank you. Jodie, are you
3 ready?

4 COMMISSIONER FILKINS WEBBER: Yes, thank you. I
5 believe this is the appropriate section in which to discuss
6 these issues, although - and I think it is something that we
7 do need to bring up as we are looking at some of the
8 requirements under the law, the Voters First Act, regarding
9 the applicability of certain standards in hiring staff. So,
10 in particular, my comments are not in regard to recruiting
11 or training or interviewing, but I do think it is an initial
12 qualification that we must discuss before we go into closed
13 session to discuss the particular candidates that have
14 submitted an application for Executive Director.

15 In particular, what I am referring to is Section
16 8253 of the Government Code. There has been some public
17 comments and some other information that seems to suggest
18 and makes inquiry regarding the manner in which this
19 particular provision - in particular, subsection (A)(5),
20 which specifically states that the Commission shall apply
21 the conflicts of interest listed in Paragraph 2 of
22 Subdivision (A), Section 8252, to the hiring of staff, to
23 the extent applicable. The sentence, as read, does not
24 contain any other commas, or parenthetical, etc. The code
25 section itself makes reference to - 8252 - the Commission

1 members are familiar with 8252 and I will not summarize
2 them, again, it is Government Code Section 8252 for members
3 of the public who are interested; 8252 does contain a
4 laundry list of conflicts of interest that the drafters of
5 the Voters First Act felt were necessary to make a
6 determination of whether conflicts of interest exist with
7 Commission members, the Commission members had to comply
8 with these particular requirements; to the extent in which
9 they didn't, they were ineligible for the applicant pool to
10 become a Commission member. The question becomes whether or
11 not, and what the interpretation is of 8253. From my
12 perspective, the terms "the Commission shall" is a mandatory
13 interpretation which does require the Commission to apply
14 the conflict of interest standards in 8252. As a matter of
15 statutory interpretation, it is pretty well established that
16 the Judiciary will take a look at the statutory - actually,
17 the regular usual and customary meaning of terms in a given
18 statute. What we're dealing with here is a circumstance in
19 which the Voters First Act has not withstood, as of yet,
20 Judicial interpretation. As such, I believe that we would
21 take a look at, at least, some guidance as exists in the
22 manner in which statutory interpretation and the general law
23 behind statutory interpretation. I can certainly get into
24 that, and I won't, but generally speaking, "shall" means
25 mandatory. The word "may" is also outlined in various

1 statutes and is generally understood as being permissive.
2 In this particular case, this provision actually indicates
3 the word "shall" which means the Commission shall apply the
4 conflicts of interest standards to the hiring of staff. And
5 I would content that this is a mandatory requirement, and I
6 believe it is something that we need to discuss in setting
7 the appropriate standards, and having the public understand
8 what the Commission's standards are in the manner in which
9 we are going to apply a mandatory provision under the law.

10 One further comment on that, so that the members of
11 the public also understand as to what the significance is of
12 this particular provision, is that we do have - we have to
13 consider that there may be some candidates who have
14 completed applications that might be deemed ineligible, so
15 this discussion is very relevant in making a determination
16 as we may need to do in closed session, regarding whether
17 certain candidates will be eligible, based on the manner in
18 which we interpret this particular section, and the manner
19 in which the Commission applies it. So, I'm certainly open
20 to further discussion, but I will make a motion if
21 necessary.

22 VICE CHAIR DAI: If we could ask Mr. Rickards to
23 comment on this because I believe there was a comment that
24 said "to the extent applicable."

25 COMMISSIONER FILKINS WEBBER: I have an opinion on

1 that portion of the laws.

2 MR. RICKARDS: You need to hire your counsel first.
3 I don't take issue with anything that has been said, other
4 than I think it is not as clear-cut a conclusion as has been
5 articulated. Let me just say really briefly, I haven't
6 briefed this, don't have cases to cite to right now. Part
7 of statutory construction is for you to reenact it as a
8 whole, the language applying the conflict criteria to
9 applicants for Commissioners is much stronger than the
10 language that relates those criteria to staff. It says that
11 the Auditor shall eliminate - the language with regard to
12 staff says "if applicable," that isn't - I have a - I think
13 that means something in that you need to give it some
14 meaning, which doesn't necessarily lead you to a conclusion
15 other than what you just heard from the Commissioner. But
16 part of statutory construction, some would say, sometimes is
17 in the eye of the beholder; the judicial panel reaches a
18 conclusion about a law and then goes and tells you why they
19 had to reach it. But one of the standards of statutory
20 construction is you are to give meaning to all the words,
21 lest they become surplus, that is the kind of legal jargon.
22 I think, in a nutshell, you have some flexibility with
23 regard to staff as far as those conflict provisions are
24 concerned. I do not think it applies in the black and white
25 way that it clearly does for the Commissioner pool. That's

1 simply my opinion, it has not been briefed. And, again, I
2 don't take issue with anything that has been said so far,
3 other than I just draw a different conclusion. But that is
4 for you to decide and, as has been noted, this has not been
5 interpreted by any Court, so I don't know, I mean, that's
6 kind of the basis of where I see it.

7 VICE CHAIR DAI: So we have a challenge in that we
8 are probably going to have to hire the Executive Director
9 before our counsel, so I think this is a matter the
10 Commission should discuss and come to its own
11 interpretation.

12 COMMISSIONER FILKINS WEBBER: I will provide further
13 guidance or at least in my comments, again, I don't think
14 leaving my law degree at the door was necessary in being a
15 Commission member, so I have taken a look at some of the
16 standards that is provided by the California Supreme Court.
17 In particular, and I won't bore the crowd or the Commission
18 members, but for instance, when an issue is presented of
19 statutory construction, the fundamental task is to ascertain
20 the intent of the lawmaker so as to effect the purpose of
21 the statute. You can begin by looking at the statutory
22 language because it is generally the most reliable indicator
23 of legislative intent; the language is given, its usual and
24 ordinary meaning and, if there is no ambiguity, then you
25 presume that the lawmakers meant what they said and the

1 plain meaning of the language governs. If, however, the
2 statutory language is ambiguous, we may then resort to other
3 extrinsic sources such as legislative history, then choose a
4 construction that comports most closely with the intent of
5 the lawmakers in viewing and promoting the general purpose
6 of the statute, rather than defeating it. Any other
7 interpretation that would lead to absurd consequences is to
8 be avoided. As a matter of statutory construction, again,
9 the word "shall" is mandatory. The word "may" is
10 permissive. This is generally accepted standard for
11 statutory construction, as outlined by the California
12 Supreme Court. Again, in another case, if the language is
13 ambiguous, again, the construction comports with that
14 closely and more apparent with the intent of the Legislature
15 which, in this case, would be the drafters of the Voters
16 First Act. If you take a look at some of the public
17 comments that were made earlier today, there was
18 encouragement earlier for neutrality in hiring staff, there
19 was also, in looking at the HR Mod Executive Competencies
20 and looking at ethics and integrity and personal
21 credibility. So, first, in the general analysis of this,
22 again, as I stated before, you have the word "shall" which I
23 contend is and can be interpreted by the Judiciary as being
24 mandatory. If there is -- in my reading -- the "extent
25 applicable" refers to the plural nature of conflicts of

1 interest; in other words, you would apply a particular
2 provision of the conflict of interest to a candidate only to
3 the extent it is applicable. For instance, if somebody is a
4 Lobbyist, you would apply that particular portion of the
5 conflicts of interest to that, again, to the extent
6 applicable, that is simply my personal interpretation. But,
7 if we then move beyond the actual words themselves and look
8 at the intent of the statute as a whole, the purposes, as
9 outlined in the Voters First Act, are also pretty clear and,
10 again, I won't go into it because it is evident that, by the
11 establishment of this Commission, itself, that the public
12 mandated neutrality, mandated no conflicts of interest, and
13 I think it is vital to this Commission to consider that the
14 same should be applied toward staff members to avoid any
15 appearance of impropriety, to avoid any other possibility of
16 there being substantial influence by an Executive Director
17 that may have a conflict of interest. And that's my full
18 and final discussion.

19 CHAIRPERSON YAO: Mr. Barraba.

20 COMMISSIONER BARRABA: Yeah, I not being a lawyer,
21 I'm really more concerned about the court of public opinion
22 in this one, and it seems to me that if we err in any
23 direction, we err on the side of being safe about not
24 opening ourselves to public criticism for hiring someone who
25 could even be perceived as being - having a bias towards a

1 particular point of view. So, I think I would lean in the
2 direction that the Commissioner has identified, at least for
3 the sake of all the effort that a lot of people have put
4 into this initiative. They were very very concerned about
5 how this is going to appear, and so should we.

6 CHAIRPERSON YAO: Anyone else? Stan?

7 COMMISSIONER FORBES: Thank you. I would concur. I
8 mean, I think you could make a lawyer's argument that the
9 "if applicable" might be a means of parsing out a potential
10 conflict. But I think that, as Vince has said, the purpose
11 of this Commission is to create a totally competent process,
12 and it is unnecessary - if we have capable candidates who
13 don't have any conflicts of interest, that those should be
14 the ones that we consider first. To me, I think to do
15 otherwise would be to have a - set yourself up for trouble
16 that you don't have to have, and I think we sort of have to
17 be like Caesar's wife, if you will. And so, I would concur
18 that, where there is a conflict of interest that would have
19 disqualified them from the Commission, then it would behoove
20 us, provided we have other candidates, to take the more
21 cautious approach and make our selection from those that
22 don't have those conflicts. I mean, as we all know, that's
23 going to cut out individuals that are very qualified, but I
24 think that the purpose of the Commission is more significant
25 than that.

1 CHAIRMAN YAO: I want to bring up the question of
2 time, if somebody has a conflict a long time ago, is that
3 still a conflict based on the requirement? If somebody is a
4 registered Lobbyist in an industry that is remotely
5 connected to the activity that we're about to embark on, is
6 that still a - in other words, I understand the intent, and
7 I understand the words, but somehow in my mind, there still
8 exists a gray area here, and I don't know whether I can
9 interpret that in a broad sense.

10 COMMISSIONER FILKINS WEBBER: I don't know if you're
11 asking counsel or not, but 8252 says 10 years -

12 CHAIRMAN YAO: No, anybody that is interested in
13 commenting.

14 COMMISSIONER FILKINS WEBBER: 8252 is 10 years
15 preceding the date of your application.

16 CHAIRMAN YAO: Okay.

17 COMMISSIONER FILKINS WEBBER: Which is the same
18 standard that was applied to all of us.

19 CHAIRMAN YAO: All right, so the date has been
20 answered, so - okay.

21 COMMISSIONER AGUIRRE: There was, regarding the
22 issue of Lobbyists, there is also a question of whether a
23 Lobbyist is a Registered Lobbyist or simply has the title of
24 a Lobbyist, and it appears to me that the Registered
25 Lobbyist is prohibited from consideration for the position,

1 whereas - and positions - whereas there is some question of
2 whether just calling yourself a Lobbyist or being called a
3 Lobbyist without that kind of [quote unquote]
4 "certification" or legal requirements that would be applied
5 to lobbying, whether that would serve to disqualify the
6 Applicants. It is my understanding that some of them, even
7 though are labeled Lobbyists, some of them may or may not be
8 Registered, and that would be a consideration for perhaps
9 taking them off the list if, in fact, they are not
10 Registered.

11 COMMISSIONER FILKINS WEBBER: 8252 does use the term
12 "Registered Lobbyist," so I would submit that, based on some
13 of the information we've seen from the Applicants, it's not
14 clear, so in closed session, we may need to make a decision
15 regarding whether further inquiry would maybe had of those
16 individuals that have identified themselves as Lobbyists.
17 That's my opinion.

18 CHAIRMAN YAO: Ms. Raya, it looks like you want to -

19 COMMISSIONER RAYA: It has been addressed, thank
20 you.

21 CHAIRMAN YAO: Okay. All right, do we feel we have
22 all the information we need to go into closed session? Or
23 is there additional -

24 COMMISSIONER FILKINS WEBBER: I do have one.

25 CHAIRMAN YAO: All right, please proceed.

1 COMMISSIONER FILKINS WEBBER: Based on the necessity
2 for this entire discussion, I would then move that this
3 Commission apply 8253(A)(5) as a mandatory requirement that
4 the Commission shall apply the conflicts of interest
5 identified in paragraph 2 of (A) of 8252, to the hiring of
6 staff, including the Executive Director, and that that
7 should be the criteria, or one of the criteria, as necessary
8 for the Commission to establish, in the hiring of staff as
9 outlined in 8253(A)(5).

10 CHAIRMAN YAO: All right, it's been motioned an
11 second. Any further discussion?

12 COMMISSIONER WARD: I would be interested to see,
13 look at the candidate pool and see what - apply those
14 criteria to it and see where that leaves us.

15 COMMISSIONER FILKINS WEBBER: It has been done, but
16 it needs to be discussed in closed session.

17 COMMISSIONER WARD: But if we make the determination
18 on how we apply that now, it's too late to make that
19 determination in closed session, correct? Right. Can we
20 defer that until after closed session?

21 COMMISSIONER FILKINS WEBBER: I don't believe so,
22 not from my opinion. I think the public needs to be aware
23 before we go into closed session the manner in which we are
24 going to apply hiring standards as outlined under 8253. I
25 just feel, procedurally, that is necessary.

1 COMMISSIONER DI GIULIO: Now, with that, there are
2 certain things that, in terms of the conflict of interest,
3 are very clearly defined, "10 years," "Lobbyists" and
4 things, but it is my understanding there are some areas even
5 as we as candidates, as well as the other candidates, when
6 through in terms of there is - the black and white is always
7 easy, it is the gray that comes into play, so if we move on
8 a motion here, I would like to know how much that ties our
9 hands to, I think, similar to what Commissioner Ward was
10 mentioning, into the black and white, without us having the
11 option to look at the gray areas individually, which I think
12 would be very important.

13 COMMISSIONER RAYA: That's going to a concern,
14 though, that I have about saying, "Well, let's kind of wait
15 and see how the gray areas look," then we have no standard,
16 the public doesn't know what standard we're applying, and we
17 could go anywhere, which I think could create a different
18 set of problems. I think we need to set a standard, whether
19 this is the one or not, that will be up to the Commissioners
20 to vote, but I have a concern about kind of waiting to see,
21 "Oh, but I really like all this about this person, maybe
22 this is just kind of barely gray." I just think that's not
23 the best approach to take.

24 COMMISSIONER DI GIULIO: Well, maybe I should say -
25 let's take an example instead of like the Lobbyist, which I

1 think is more cut and dry, but something along the lines of
2 their impartiality. Some people might suggest - I think
3 this is what the Applicant Review Panel had to vet out a
4 little bit with the interviews, was the level of
5 impartiality to some extent, beyond what was on the paper.
6 What was on paper was someone has worked for one side of the
7 Legislature or the other, or both, what do we feel as the
8 Commission, does that make them - do issues of impartiality
9 arise? Or, I guess it is some of those areas that I feel
10 that appear to me to be a little more gray in applying the
11 standards, and I do agree that we should have some similar
12 standards that were held accountable to us should be for
13 staff, as well, too. But I would imagine the Applicant
14 Review Panel and maybe even the first eight would feel like
15 there are some areas that -

16 COMMISSIONER RAYA: I don't - just to - if I could
17 respond to that, I don't think that a "yes" vote on this
18 motion precludes us from evaluating things that do not fall
19 under the statute. And I think when you watched our
20 deliberations in the selection of you six, we had discussion
21 very - you know, we had open discussion that obviously
22 everybody had been vetted already by the Auditors, but I
23 think there was discussion about public comments about
24 various candidates, and addressing those issues that don't
25 fall under the statute, but are still something for

1 consideration.

2 CHAIRMAN YAO: Allow me to put a pause on our
3 discussion at this point and let me get some public input on
4 this topic before we further deliberate, and I probably
5 should have done this earlier, as soon as the motion was
6 seconded. But this perhaps would be a good point to collect
7 a little more information from the audience before we
8 continue our discussion. So, let me open up the floor mic
9 at this point. Anybody in the public that is interested in
10 addressing this panel on the topic that we've been
11 discussing? Please.

12 MR. JOHNSON: Just very quickly, and not directly on
13 this point, but I am wondering if the Commission will
14 release the list of who has filed applications for the
15 various posts? That has not yet been released and I suspect
16 because the Secretary of State is probably waiting for your
17 direction on whether or not to do that. But I think that
18 would definitely open up a window of transparency on this
19 process a little bit. If you are going to do this in closed
20 session, it would be good to know who you are discussing and
21 how has applied to the post. So, I appreciate your
22 consideration for that. Thank you.

23 CHAIRMAN YAO: Thank you. Anyone else have thoughts
24 on the conflict of interest issue? All right, I will bring
25 it back to the Commission. Let's see, who was about to

1 speak next?

2 COMMISSIONER FORBES: I had just one question. The
3 document makes reference that the Commission shall apply the
4 conflict of interest listed to the hiring of staff to the
5 extent applicable. To what degree will that - I mean, I am
6 assuming that the Executive Director perhaps will hire some
7 clerical staff; will this apply to that, as well? I mean,
8 at what level of position does this conflict, does this
9 prohibition - which I agree with for the Executive Director
10 and counsel - how far down in the administrative chain does
11 this standard apply? Any thoughts on that?

12 COMMISSIONER FILKINS WEBBER: How do you define
13 "staff?"

14 COMMISSIONER FORBES: Well, you've got it, I mean,
15 that's part of the question. I mean, I think the discussion
16 here is completely appropriate for the Executive Director
17 and I think it would be completely appropriate for counsel,
18 but we're going to hire contract staff, I mean, our contract
19 people, we're going to hire. And the question is, maybe
20 they don't have that level of neutrality, but they've got
21 the information. And so, I mean, I think we need to have a
22 discussion to think about, let's say, again, how far down
23 the chain is this going to apply to.

24 CHAIRMAN YAO: I think the understanding is that we
25 make the rules and then we can make that call, okay? Today,

1 the decision before us is on the ED and on the Counsel.
2 And perhaps we should narrow our discussion to only those
3 two topics, and then after which we can determine as to the
4 applicability to the lower level staff. If you concur with
5 that thinking, we can go as deep as you want and make it an
6 absolute and go with it that way, but -

7 COMMISSIONER FILKINS WEBBER: Given the detailed
8 time that I have spent looking into the issue, obviously
9 because I find it fascinating, obviously since that's my
10 career of choice, so I will withdraw my last motion and
11 propose that, for the purposes of consideration of the
12 position of the Executive Director, that the Commission
13 shall apply Section 8253(A)(5) regarding the conflicts of
14 interest listed in (A), Paragraph 2, of Section 8252, and
15 again, for the limited purposes of applying the conflicts of
16 interest to Executive Director, and we will re-visit the
17 applicability to other staff members, legal counsel, and
18 consultants, as identified in 8253(A)(5) at another time.

19 COMMISSIONER FORBES: Second.

20 COMMISSIONER WARD: Again, I could be wrong on this,
21 but my understanding is that we have the option to take this
22 to the closed session and evaluate this against the
23 candidate pool, make a decision on it at that time, as long
24 as, according to Bagley-Keene, those decisions are reported
25 along with any other actions taken in the closed session.

1 COMMISSIONER FILKINS WEBBER: And, again, my comment
2 would be is that the public needs to be aware of the manner
3 in which the hiring criteria that will be used by this
4 Commission, in particular regard to conflict of interest
5 because this seems to be a particular portion of the statute
6 that is at issue, and therefore it is only in the interest
7 of transparency that the public is aware of what is going to
8 be applied in closed session, because it's very well aware
9 that some of the applicants are concerned regarding these
10 provisions, that they know very well how they may apply to
11 them, and decisions made outside of - or after - closed
12 session, they need to know how we're likely to apply these
13 provisions, and so, again, my motion stands and I believe we
14 apply it to our closed session meetings later today.

15 COMMISSIONER FORBES: Same with my second.

16 CHAIRMAN YAO: Cynthia.

17 VICE CHAIR DAI: Yeah, I just wanted to bring up the
18 issue, for those members of the public who have not dug into
19 this to the extent that Commissioner Filkins Webber has, or
20 know the detail of 8253 and all the subsections, this has to
21 do with people who, as has been mentioned before, are
22 Lobbyists. If we look at the spirit and the intent of the
23 law here, it is to preserve the credibility of the process
24 and the work that the Commission is undertaking. It also
25 eliminates from consideration governmental appointees, and

1 that is one of those areas of gray that I just want to bring
2 up now because there are all kinds of appointments,
3 Governor's appointments, essentially for operational roles
4 that are non-partisan positions, and in fact I think we have
5 people in the pool who have been appointed by multiple
6 Governors of different political persuasions because they're
7 good at their jobs. I believe that Commissioner Barraba is
8 an example of an appointee, he has been appointed by both
9 Democrats and Republicans because he obviously did a great
10 job. So, I think those are the areas of gray that I'm a
11 little bit concerned about, that we might be eliminating
12 some highly qualified people who, because they were good,
13 were appointed for their positions by people from different
14 political parties.

15 COMMISSIONER RAYA: I'm sorry, are you suggesting,
16 then, that - before we vote, I want to be sure I understand
17 - you're suggesting that perhaps some of these categories of
18 conflict we're going to treat differently than the category
19 of a Registered Lobbyist? Is that -

20 VICE CHAIR DAI: Yeah. I think that, to me, being a
21 Registered Lobbyist is really clear, you're being paid by
22 someone to advocate for a particular position.

23 COMMISSIONER RAYA: Okay, how about -

24 VICE CHAIR DAI: There are kind of nonpartisan, or
25 bipartisan, or multi-partisan kind of roles that I think it

1 is less clear that we want to eliminate those folks.

2 COMMISSIONER RAYA: But how about serving as an
3 elected or appointed member of a political central
4 committee, or serving as a paid staff, or officer of a
5 candidate's committee? I want to be sure I understand
6 Commissioner Filkins Webber is - are you agreeing to
7 consideration of these piece by piece? Or is your motion to
8 encompass all stated conflicts?

9 COMMISSIONER FILKINS WEBBER: My motion encompasses
10 all the stated conflicts as outlined and as directed by
11 8253. 8253 says the Commission shall apply the conflicts of
12 interest listed in 8252. So, it's inclusive of the entire
13 list. I do not believe that neither the law, nor the
14 public, would anticipate that we would make determinations
15 regarding the interpretation of this entire list.
16 Obviously, the Applicant Review Panel may very well have had
17 the same discussion. I think the applicability and the
18 interpretation of these items certainly can be done in
19 closed session as they apply to an individual candidate.
20 So, my motion is, at this point, for the interest of the
21 public, the necessity to have this discussion and in the
22 interest of time, broadly stated to apply to Executive
23 Directors, as listed, and how we interpret that for a
24 particular candidate may be done in closed sessions.

25 COMMISSIONER RAYA: Then, I would just reiterate my

1 position that, going into a piece by piece interpretation, I
2 think, is just an invitation to trouble.

3 COMMISSIONER FILKINS WEBBER: I don't know that
4 we're going to have a necessity to interpret any of these,
5 in particular, and it may very well come up as it comes up
6 with a particular candidate. I think we have to take it up
7 under closed session because the more detail that we get
8 into will arise out of the candidate's application, and that
9 is not something we can do in a public setting, we must do
10 that in closed session. So, that's why I'm saying that, to
11 apply the law as indicated, broadly inclusive of this entire
12 list for the time being. Obviously, we're going to come up
13 with questions regarding the interpretations of many of the
14 words that are in this statute, and that is something that
15 obviously this Commission cannot deal with today or at this
16 time, so that is why my motion stands broadly, and we can
17 take a look at it for each individual candidate in more
18 detail in discussing that particular application in closed
19 session.

20 COMMISSIONER DI GIULIO: I have a question in terms
21 of your motion, as well, too, because if we do adopt those
22 codes, 8252 and 8253, both, does that mean we're looking at
23 their family similar, the members of his or her immediate
24 family, as defined? Because, similarly, we had to fill out
25 - we haven't had access to that information from the

1 applicants unless - I don't know if staff has gone through
2 that, but does your motion include that we have to also look
3 at their immediate family? Because that is the language,
4 isn't that in 8253?

5 COMMISSIONER FILKINS WEBBER: Yes, 8252.

6 COMMISSIONER DI GIULIO: Or, I'm sorry, 8252. So is
7 that is something that we have the ability to even look at,
8 at this point?

9 COMMISSIONER RAYA: Are we not - would the
10 candidates selected for interviews not be required to sign a
11 conflict of interest before going through the process? Is
12 that correct? Or have they signed one?

13 MR. RICKARDS: Yeah, my understanding is they have
14 signed, Dora?

15 MS. MEJIA: No, the intent is for them to sign it
16 before they come to interview, before we schedule them.

17 COMMISSIONER DI GIULIO: So we don't have the
18 information on the families either, so -

19 MS. MEJIA: Not on the families, no.

20 COMMISSIONER DI GIULIO: So, is that something that
21 - does the Commission feel that we need to get that
22 information now? Or is that something we can put off later?

23 COMMISSIONER RAYA: It doesn't change the
24 application of the statute, in my opinion.

25 COMMISSIONER FILKINS WEBBER: No, it does not. And

1 so, the statute as phrased, regardless of whether that might
2 have been obviously a drafting error, maybe it's not, but my
3 motion is inclusive of that. I would suggest that, once we
4 get into closed session and we narrow the pool, and we
5 determine the application of these provisions, whether
6 further inquiry can be made of a particular applicant
7 regarding their family if we find that they may be at the
8 top of the list, that is something we can deal with later.
9 Certainly, we can deal with it later, but it must be
10 included in the mandate, in the way that the statute is
11 drafted, from my perspective, and that is the intent of my
12 motion, as well.

13 COMMISSIONER RAYA: Call for the question.

14 MR. RICKARD: We've got a new motion, so at least it
15 would be appropriate to ask for public comment.

16 CHAIRMAN YAO: All right, those who are interested
17 in addressing the Commission, please come up to the
18 microphone in addressing the new motion of the conflict of
19 interest, as applying the entire 8253 to the selection of
20 the Executive Director. And do we include Counsel as part
21 of that - no, just the Executive Director. All right,
22 seeing no one from the public is coming up to the
23 microphone, I'll bring it back to the Commission. But the
24 question has been called for, let me ask a question from
25 using a layman's language, and making sure that I understand

1 what I heard. If we do approve what has been moved, we will
2 basically be agreeing to applying the letter of the law in
3 its entirety in the selection of Executive Director in the
4 closed session. Obviously, we have the option of taking
5 exception from that and briefing and addressing it, or we
6 always have the privilege of reversing the decision in time,
7 as necessary; but, for the time being, we basically are
8 saying that we agree to apply the letter of the law in its
9 entirety in the selection of the Executive Director. If we
10 vote against it that means that we feel that we have enough
11 guidance with the information that's before us, we can still
12 make a good decision without having to agree ahead of time
13 to apply the understanding as it has been interpreted after
14 this point in time. Is that, in general, what I understand,
15 or the correct understanding of the motion?

16 COMMISSIONER FORBES: Who are you addressing the
17 question to?

18 COMMISSIONER FILKINS WEBBER: To me.

19 CHAIRMAN YAO: To Jodie, yeah.

20 COMMISSIONER FILKINS WEBBER: As I was listening, I
21 think the alternative is that, if the motion does not pass,
22 then there would have to be a further motion that you're
23 going to apply this permissively and not as a mandatory
24 provision, again, so that the public is made aware of the
25 manner in which you're going to go into closed session.

1 CHAIRMAN YAO: Yes, understood -

2 COMMISSIONER FILKINS WEBBER: So there is another
3 caveat that I would add, is that if you vote no on this,
4 then there would have to be a new motion to interpret the
5 statute permissively, and then say you're going to use your
6 discretion in a closed session, that is what you're telling
7 members of the public --

8 CHAIRMAN YAO: Correct.

9 COMMISSIONER FILKINS WEBBER: -- from my
10 perspective.

11 CHAIRMAN YAO: All right.

12 COMMISSIONER WARD: And once again, just to clarify,
13 I agree with your excellent opinion in principle, I'm just -
14 I'm not entirely positive that we have to make that decision
15 now. I just hate to make the decision if we don't have to
16 tie our hands now before we go into closed session, that is
17 not necessary, I would hate to do it given that all of our
18 top choices for candidates for Executive Director are going
19 to be effected by the decision, and in practicality we need
20 the best, most qualified person we can for this job, in this
21 crucial decision. And so I actually agree with your opinion
22 in principle, but I just hate to vote on a motion tying our
23 hands if we're going into closed session, if we don't have
24 to, if we can't see what the impact of that motion is going
25 to be, given that this is such an important position and we

1 need the best qualified person to step up and take that, if
2 we don't have to make that before closed session. That's my
3 question.

4 CHAIRMAN YAO: If you allow me, Mr. Ward stated it a
5 lot more precisely than I could previously. I think we do
6 have the latitude if we find that it's totally unworkable,
7 as a commission, to come back out to open session and
8 reverse our decision before we go back into closed session
9 again. If we vote yes and find that it's not workable, we
10 do have the option of reversing our decision because we can
11 always change our mind on it, it just has to be done in a
12 formal manner. But I don't want to suggest that that's the
13 normal operating procedure because, clearly, it's not. But
14 we as a commission can always reverse our decision based on
15 additional facts and findings. So -

16 COMMISSIONER FILKINS WEBBER: I would caution,
17 that's pretty dangerous, in my opinion, but -

18 COMMISSIONER KUO: But even though we're doing it in
19 good faith and [inaudible] data collection and
20 thoughtfulness, I don't know how [inaudible] [1:14:53] in
21 terms of making the decision, going into the closed session,
22 and saying, "Oh, we can change our minds."

23 CHAIRMAN YAO: We always have to explain our
24 decision, regardless of how we decide it, so that's - but,
25 again, with the way I see that we enter into this decision

1 is that, with the information we have, we need to make a
2 decision. But that does not necessarily have to be the
3 final and absolute decision, that is the only point I wanted
4 to draw on.

5 COMMISSIONER RAYA: I also think we don't want to
6 suggest that our vote on this procedural issue is determined
7 by what we think we know or don't know about any candidates
8 for the position, this is a process decision and a
9 structural decision, I think, and not, "Well, let's not do
10 it if it might create an issue for us in closed session." I
11 think it's just, do we want to follow this or not, that is
12 to me a pretty black and white issue.

13 COMMISSIONER FORBES: And I think, after Jodie's
14 presentation, which I thought to be quite forceful -

15 COMMISSIONER FILKINS WEBBER: Clear.

16 COMMISSIONER FORBES: Persuasive.

17 COMMISSIONER FILKINS WEBBER: Take it as my call.

18 COMMISSIONER FORBES: Okay, there you go. We may or
19 may not agree with what Prop. 11 said. I mean, I've had
20 more than one person say, "Gee, all these great people were
21 cut out of the Commission process because they had this
22 background, or that background, but they would have been
23 great Commissioners; that's all true. It's also relevant.
24 I mean, this is what the voters said, and so I think it
25 would behoove us to support what the voters said.

1 CHAIRMAN YAO: All right, the question has been
2 called for. I'm not sure I heard a second to the -

3 COMMISSIONER FORBES: I second.

4 CHAIRMAN YAO: You second it. Let's take a voice
5 vote on the motion that's before us at this point, let's
6 take a roll call.

7 MS. OSBORNE: Commissioner Aguirre - Yes;
8 Commissioner Barraba - Yes; Commissioner Dai - I'm going to
9 vote no, not because I want to do something underhanded in
10 closed session, but because I have a different
11 interpretation of "to the extent applicable; Commissioner Di
12 Guilio - I'm going to vote no, I also have some issues with
13 tying our hands before, I think we can keep this as an open
14 and public discussion before going into closed session;
15 Commissioner Filkins Webber - Yes; Commissioner Forbes -
16 Yes; Commissioner Galambos Malloy - Yes -

17 CHAIRMAN YAO: Connie, we could not hear you. Could
18 you repeat?

19 COMMISSIONER GALAMBOS MALLOY: I understand. Did
20 that come through?

21 MS. OSBORNE: Yes. Commissioner Kuo - Yes;
22 Commissioner Ontai - Aye; Commissioner Parvenu - I do have
23 some reservations, myself, but for the time being I'll say
24 yes; Commissioner Raya - Yes; Commissioner Ward - Yes;
25 Commissioner Yao - Yes.

1 Okay, we have three yes from the Democrats, one no
2 from the Democrats, three yes from the Decline to States,
3 one no from Decline to State, and five yes from the
4 Republicans. The motion passes.

5 CHAIRMAN YAO: All right, thank you very much. And
6 are there any additional items on Item 7 that we need to
7 address before we close up? Yes.

8 MR. RICKARDS: Dora asked me to ask you if you could
9 take a look at this Citizens Redistricting Commission hiring
10 criteria. We would like to at least propose that you take a
11 look at that and, if possible, decide on it. We could add
12 language to encompass the vote that you just took if that
13 would be preferable, but this way we would be required by
14 the Act to adopt criteria and we drafted up some criteria
15 and we could add, if you want, with regard to the Executive
16 Director, language to include the last vote and I would just
17 ask, perhaps, if Commissioner Filkins Webber would sum that
18 up in some way and add it to - if you could act on that.

19 CHAIRMAN YAO: Let me ask Dora a question. This
20 Duty Statement came out before we received the presentation
21 on the HR Mod Program. Has that been taken into
22 consideration?

23 MS. MEJIA: It has.

24 CHAIRMAN YAO: As part of this Duty Statement that
25 you presented to us?

1 MS. MEJIA: We did, we considered everything before
2 we did the Duty Statement, before we did the Hiring
3 Criteria. It should all mesh together.

4 CHAIRMAN YAO: Okay, thank you. I did not take
5 enough time to do the analysis, so thank you for your input.

6 MS. MEJIA: You're welcome.

7 CHAIRMAN YAO: I just remembered from the public
8 comment, the public asked for some information on the pool
9 of applicants. Is it appropriate to answer any or part of
10 that request in terms of the number of applications, any
11 kind of information that we can give? I know that we can't
12 pass out resumes and any other details, but is there
13 anything that we can share with the public on that regard?

14 MS. MEJIA: Commissioner, we have not shared that
15 information. I can tell you the number of applicants we
16 received as far as the Executive Director if you would like?
17 Is that what you wish?

18 CHAIRMAN YAO: Share as much information as you are
19 comfortable in terms of sharing without violating any of the
20 privacy associated with the applicants.

21 MS. MEJIA: I think I would just like to share the
22 number. We received 29 applications, actually 30
23 applications for the Executive Director, one did not
24 complete the qualifications statement and they did not move
25 forward. You received 29 applications to review.

1 CHAIRMAN YAO: All right, thank you. Comments on
2 the Duty Statement? Does the public have copies of this
3 Duty Statement?

4 MR. RICKARDS: I am referring to - I'm sorry if I
5 mixed - I'm referring to the Hiring Criteria.

6 CHAIRMAN YAO: I guess I don't have that. Thank
7 you.

8 MR. RICKARDS: And this has been published, by the
9 way, just so you understand.

10 COMMISSIONER FORBES: One word we might want to add
11 is the word "neutrality" since that has come up in our
12 discussion.

13 COMMISSIONER DI GIULIO: Is that covered under
14 ethics and integrity?

15 COMMISSIONER FORBES: No, not necessarily, because
16 that would assume the people who are not necessarily neutral
17 are unethical and I don't think that's the case.

18 COMMISSIONER DI GIULIO: Do you have a specific
19 place you would put that in?

20 COMMISSIONER FORBES: In the first sentence of the
21 second paragraph, or at some point, able to demonstrate -
22 I'm not going to wordsmith with staff, but I think it would
23 be that first sentence with one of the characteristics.

24 MS. MEJIA: Commissioner Forbes?

25 COMMISSIONER FORBES: Uh huh?

1 MS. MEJIA: I'll add it after "integrity."

2 COMMISSIONER FORBES: Okay.

3 VICE CHAIR DAI: There's actually nothing in here
4 about execution, which I think would be appropriate given
5 our tight timeline.

6 MS. MEJIA: What would you like me to add?

7 COMMISSIONER GALAMBOS MALLOY: Commissioner Dai,
8 would you repeat your last comment, please?

9 VICE CHAIR DAI: Sure. I said that there's nothing
10 in this Hiring Criteria about a demonstrated track record,
11 of execution under tight timelines, something to that
12 effect.

13 COMMISSIONER GALAMBOS MALLOY: I had a similar
14 observation regarding budgetary oversight, feeling like we
15 have our objective that might - but I'm assuming that an
16 Executive Director will also be playing a leadership role in
17 terms of finance, at least in conjunction with the
18 Commission, so you could add it in there in that regard.

19 CHAIRMAN YAO: You know, prior to coming into this
20 meeting, I reviewed the presentation and I also reviewed
21 this page called Duty Statement, and I find that the
22 combination of the two meets all my requirements, whereas,
23 depending on one or the other falls short of it, so I don't
24 know whether there's any consideration in terms of just
25 relying on a single document, as compared to relying on both

1 pieces of paper. I don't know whether that is what we're
2 being asked to consider, or the direction that we are
3 heading, I guess, is -

4 MR. MEJIA: Commissioner Yao, we could certainly
5 incorporate both and give you one document if that would be
6 easier for you, and then incorporate the changes you
7 suggested.

8 CHAIRMAN YAO: Yeah, just as an example, we need to
9 staff up and get going very rapidly, and even though that's
10 not going to show up as part of the competency, or criteria,
11 consideration of the Guidelines and the budget and these
12 type of hard constraints that we have, they are a very key
13 part of the selection criteria, and I'd like to find some
14 way of working that, as compared to just leaving that as a
15 standalone document, and this is just a very broad
16 statement, in general.

17 MS. MEJIA: Yes, and I purposely made this very
18 broad in the hopes that you could apply it to all your
19 staff, but we can certainly have specific ones for each of
20 your staff positions; where we thought the Duty Statement
21 would be specific to the duties of the particular position,
22 we were hoping that this would be more broad, in general,
23 that it would apply to every staff member that you would
24 hire.

25 CHAIRMAN YAO: Oh, okay.

1 MR. RICKARDS: I think the idea was that the Duty
2 Statement - this would not substitute for the Duty
3 Statement. This is the idea, again, just to reiterate, it
4 is an attempt to state hiring criteria broadly, specifically
5 to satisfy the Act. If you feel somehow that the kind of
6 person you want to hire, for example, as Executive Director,
7 or Counsel, would not fit under the broad Hiring Criteria,
8 that is what we would like you to focus on now. Or, maybe,
9 you know, in your minds we've missed the boat on this, but
10 that was what the idea was behind it, so that you would
11 certainly have the Duty Statement. And, frankly, within the
12 confines of the Act and particularly with regard to the
13 Executive Director, the way you would move to interpret the
14 Act, you are within those parameters free to pick the person
15 you think could do the best job. These are only as useful
16 as, you know, you make them.

17 VICE CHAIR DAI: So, Cy, if I understand you
18 correctly, just so - I know I was confused at the beginning,
19 so I hope I could clarify this for the rest of the
20 Commission, these are very broad hiring criteria that would
21 apply to any staff that is hired by the Citizens
22 Redistricting Commission, and it is based on the
23 competencies, not on the specific job duties or
24 responsibilities?

25 CHAIRMAN YOA: I think staff is seeking direction -

1 is there any additional comments on this input? I
2 personally can fully support it, so there are no changes
3 from my part.

4 VICE CHAIR DAI: With this clarification, now that I
5 understand exactly what we're moving on, I think it's fine
6 as is.

7 CHAIRMAN YAO: Right. Any additional comments? All
8 right, thank you very much. We appreciate you presenting
9 that to us.

10 COMMISSIONER RAYA: Do we need a motion on this or
11 not?

12 CHAIRMAN YAO: Commissioner Aguirre?

13 MS. MEJIA: Sorry. Would you like me to add
14 [inaudible]?

15 COMMISSIONER FORBES: The other Commissioner --
16 happy with it as is, after our discussion, I don't have to
17 have the word in.

18 MS. MEJIA: Thank you.

19 CHAIRMAN YAO: Commissioner Aguirre, go ahead.

20 COMMISSIONER AGUIRRE: I agree with our staff that
21 the intent of this was to give us wide latitude in terms of
22 comprehensiveness and general standards for us to apply, and
23 in selecting and going through the applications, so I think
24 this would fit what we need at this time to look at the
25 candidates, and if the Commission is agreeable, then I will

1 make the motion to accept the Hiring Criteria, the Citizens
2 Redistricting Commission Hiring Criteria, as submitted to us
3 by staff.

4 CHAIRMAN YAO: All right, I think we have unanimous
5 support for this. If you need to think we need to go
6 through a voting process to give you an answer, we can do
7 that, but maybe I can just simplify it by just have a show
8 of hands.

9 MR. RICKARDS: That is fine, we'd like to have votes
10 simply because it's required under the Act.

11 CHAIRMAN YAO: All right, let's do it that way,
12 then. Let's have a vote. It has been motioned and Mr.
13 Barraba has seconded it, so call for the question.

14 MS. OSBORNE: Commissioner Aguirre - Yes;
15 Commissioner Barraba - Yes; Commissioner Dai - Yes;
16 Commissioner Di Guilio - Yes; Commissioner Filkins Webber -
17 Yes; Commissioner Forbes - Yes; Commissioner Galambos Malloy
18 - Yes; Commissioner Kuo - Yes; Commissioner Ontai - Aye;
19 Commissioner Parvenu - Of course, yes, let's move forward,
20 yes; Commissioner Raya - Yes; Commissioner Ward - Yes;
21 Commissioner Yao - Yes.

22 It has been approved.

23 COMMISSIONER FILKINS WEBBER: If we may, we have
24 been going about an hour and a half, can we have a break? I
25 move for a break.

1 CHAIRMAN YAO: Who has the official clock?

2 COMMISSIONER FILKINS WEBBER: I show 2:54 and we
3 have been going since 1:20.

4 CHAIRMAN YAO: Would you like to take up one more
5 matter before you break?

6 MR. RICKARDS: This isn't a voting matter. You
7 asked me to make mention of Commissioner Blanco.

8 CHAIRMAN YAO: Yes, I did. Please.

9 MR. RICKARDS: I know there was some confusion from
10 the public who asked the Press whether she was still a
11 member of the Commission, let me just indicate that she is
12 out of the country, as far as we know, she is alive and
13 well, she remains a member of the Commission, and she will
14 be sworn in at the first meeting she attends when she comes
15 back. Does that do it?

16 CHAIRMAN YAO: Thank you very much, I appreciate the
17 clarification. The time is 2:54 or somewhere thereabout, so
18 we will re-adjourn at 3:15. Thank you.

19 (Break at 2:54 p.m.)

20 (Reconvene at 3:15 p.m.)

21 CHAIRMAN YAO: All right, it's 3:15, the entire
22 Commission is present and we're going to go back on the
23 agenda. At this point, I'd like to put a pause on the open
24 session and get us into the closed session because we need
25 to select the initial list of candidates that we want to

1 interview in order for the applicants to be here tomorrow
2 and on Friday, we need to make that decision today. So,
3 what we're going to be doing is to go into closed session in
4 a few minutes, and then, before the end of the day, we'll
5 come back to brief what was decided in the closed session,
6 and then continue with the agenda items that are on our
7 agenda. But before we go in closed session, let me open up
8 the microphone one more time to receive any input from the
9 people in the audience on topics that they want to address
10 this Commission.

11 MR. LAWSON: Yeah, hi. Brian Lawson again. I might
12 just mention possibly a procedure point, you might want to,
13 before you take a vote, just identify whether or not it is a
14 majority vote, or whether it is a special nine vote, or
15 something like that, so you know which type of vote it is
16 that you're voting on.

17 CHAIRMAN YAO: Okay, any additional individuals
18 interested in addressing the Commission? Let me make an
19 attempt to answering that question. I think every vote that
20 we take has to be three from the Republican Party, three
21 from the Democratic Party, and two - three from the Decline
22 to State, so I don't think we go with the simple majority
23 under any circumstances. Is that correct?

24 MR. RICKARDS: I don't think you need the super
25 majority for procedural items, you need it for hiring and

1 firing, you need it for Redistricting maps, I don't believe
2 there is a requirement, for example, for procedural matters
3 to have anything more than a quorum.

4 CHAIRMAN YAO: So a quorum is the majority, a simple
5 majority.

6 MR. RICKARDS: Nine.

7 CHAIRMAN YAO: Nine, okay. I hope that answers your
8 question. All right, let me pause the open session and have
9 the entire commission report to the conference room on the
10 second floor or third floor? Second floor. And we will
11 report back out before the end of the day on our closed
12 session decisions.

13 MR. RICKARDS: Mr. Chairman, let me just ask,
14 starting now, and maybe going forward, whenever we break for
15 closed session, if you could simply read the statutory
16 provision, "We are going in a closed session pursuant to...,"
17 and here it is Government Code 11126(a)(1).

18 **Closed Session**

19 **1. Consideration of personnel matters: Evaluation of**
20 **candidates for Commission staff positions. (Government Code**
21 **section 11126(a)(1).)**

22 CHAIRMAN YAO: Thank you. We're going to go into
23 closed session on consideration of personnel matters,
24 evaluation of candidates for Commission staff decision,
25 pertinent to Government Code Section 1126(A)(1). Thank you.

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(Break at 3:20 p.m.)

(Reconvene at 4:49 p.m.)

CHAIRMAN YAO: It is 4:49. The Commission has completed its closed session. We have now down selected from 29 applicants to four individuals that we're planning to interview tomorrow, if possible, and Friday at the latest, formulated questions to be asked of the applicants. Tomorrow we will reconvene at 9:30 and continue with the agenda items that we have posted. Let's see, anything else that I need to announce at this point in time?

MR. RICKARDS: No, I think that has got it.

CHAIRMAN YAO: Okay, so seeing no one else approaching the podium for any kind of comments, I will temporarily pause the meeting until tomorrow morning at 9:30. All right, thank you much.

(Recess at 4:50 p.m.)