

BEFORE THE  
CALIFORNIA STATE AUDITOR  
BUREAU OF STATE AUDITS

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

555 Capitol Mall, 5<sup>th</sup> Floor  
Sacramento, CA

TUESDAY, NOVEMBER 30, 2010  
9:30 A.M.

Reported by:  
Kent Odell

APPEARANCES

COMMISSIONERS:

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

STAFF:

Elaine Howle, State Auditor  
Steven Russo, Counsel for the first eight Commissioners  
Patti Alverson, Secretary to first eight Commissioners

PRESENTERS:

Donna Neville, Associate Chief Counsel  
Bureau of State Audits  
Steve Lynne, former Chairperson, Arizona  
Redistricting Commission  
Hans Johnson, Senior Fellow and Associate Director of  
Research, Public Policy Institute of California

PUBLIC:

Brian Lawson  
Kathay Feng  
Isaac Kight  
Trudy Schafer  
Malika Kopel  
Sam Walton  
Jim Wright

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P R O C E E D I N G S

NOVEMBER 30, 2010 9:30 A.M.

MR. RUSSO: It is now 9:30 and I believe we are ready to begin. I'm Steven Russo. I am Senior Counsel with the California Bureau of State Audits and I will be serving as counsel for the first eight members of the Citizens Redistricting Commission as they proceed with the selection process of the final six members of the Commission. With me is Patti Alverson, who will be serving as Secretary to the first eight members of the Commission as they proceed with this process.

I welcome everyone to the first meeting of the first eight members of the Commission. Madam Secretary, would you please call the roll?

MS. ALVERSON: Thanks, Mr. Russo. Vincent Barabba - Here; Cynthia Dai - Here; Jodie Filkins Webber - Here; Stanley Forbes - Here; Connie Galambos Malloy - Here; Elaine Kuo - Here; Jeanne Raya - Here; Peter Yao - Here.

MR. RUSSO: With all eight members present, we have what will constitute a quorum and, at this point, I would turn the meeting over to State Auditor Elaine Howle for some opening remarks and the swearing in of the members of the Commission.

MS. HOWLE: Thank you, Steven. First of all, I wanted to start out by congratulating the first eight

1 members of our first ever Citizens Redistricting Commission.  
2 I want to welcome those of you in the audience here with us  
3 at the State Auditor's Office today. Thank you for  
4 participating in this historic event, the first meeting of  
5 our first eight Commissioners, and also those of you who are  
6 watching via the Internet, the streaming video of this  
7 particular meeting. Again, thank you for joining us. Thank  
8 you for participating in this very important process,  
9 eventually selecting the full 14-member Citizens  
10 Redistricting Commission, which will now have the  
11 responsibility not only to draw the lines for the  
12 Legislative Districts, Board of Equalization Districts, but  
13 now Congressional Districts. So, very very historic times  
14 in the State of California, and I'm honored to be a part of  
15 it.

16 As I said at the drawing a couple of weeks ago when  
17 we identified our first eight, this has been a long road and  
18 a very historic process for my office, something we never  
19 anticipated being responsible for, but certainly are honored  
20 to have been part of this process. We will continue to  
21 support these eight Commissioners in any way we can up to  
22 the point they select those 14 members, and then the process  
23 transitions to the Secretary of State's Office. But our  
24 commitment to you is to provide you the support, legal  
25 counsel, any other administrative support that you need in

1 your chore and your responsibility of selecting those  
2 remaining six Commissioners to establish our 14-member  
3 Commission.

4           Again, I want to thank the public and I want to  
5 thank those of you who have been following this process, and  
6 ask you to continue not only to follow your selection  
7 process, but to continue to participate in the process of  
8 redistricting. This isn't about us, this is about the  
9 voters of California and the District lines that are going  
10 to ultimately be run by these members and the remaining six  
11 members that they identify, that 14-member Commission. So,  
12 again, continue to participate in the process. Again, as I  
13 mentioned, the action that this Commission members will  
14 take, is to identify those remaining six members to fill out  
15 that 14-member Commission. They will certainly receive  
16 advice from Steven Russo, our legal counsel, and again, any  
17 support my office can provide.

18           As Steven indicated, I'm honored to have the  
19 opportunity to administer the oath for the first eight  
20 Commissioners, so if I could ask the Commissioners to please  
21 come out in front of the table?

22           Okay, first of all, raise your right hand, please  
23 repeat after me: I do solemnly swear that I will support  
24 and defend the Constitution of the United States and the  
25 Constitution of the State of California against all enemies,

1 foreign and domestic, that I will bear truth faith and  
2 allegiance to the Constitution of the United States and the  
3 Constitution of California, and that I take this obligation  
4 freely without any mental reservation or purpose of evasion,  
5 and that I will well and faithfully discharge the duties  
6 upon which I am about to enter.

7           Congratulations! [Applause]

8           What I would like to do at this time is just take a  
9 few minutes as the members are taking their seats and,  
10 again, congratulate them, I am going to spend a couple of  
11 minutes introducing these new members, there is information  
12 about all eight Commissioners on the website,  
13 WeDrawtheLines.Ca.Gov. Certainly, visit that website; of  
14 course, the information of the remaining candidates who are  
15 eligible to be selected by these eight Commissioners, that  
16 information is on the website, as well, so we want you to  
17 participate and certainly go on and look at those  
18 individuals, as well, and their biographies.

19           It is my honor to introduce our recently sworn in  
20 Commissioners. First of all, Vincent Barabba from the City  
21 of Capitola, County of Santa Cruz. In 2003, Vincent founded  
22 Market Insight Corporation. This corporation provides real  
23 time online shopper preferences, to help companies reach  
24 their target audiences, and he provides values to the  
25 enterprise and tracks shopper preferences using a website

1 called "MyProductAdvisor.com." But prior to this, his  
2 career included two stints as Director of the U.S. Census  
3 Bureau, with being appointed by both President Nixon and  
4 later by President Ford. Vincent is registered with the  
5 Republican Party.

6 Next to Vincent is Cynthia Dai. Cynthia is from the  
7 City and County of San Francisco. For the past 18 years,  
8 Cynthia has held the position of CEO of Dynamic Consulting  
9 Incorporators. This is a management marketing firm for high  
10 tech, start-ups and growth [ph.] companies. She leads the  
11 company's client relations, development, conducts primary  
12 and secondary research, analyzes data, pretty much does it  
13 all for this organization. Cynthia is registered with the  
14 Democratic Party.

15 Next to Cynthia is Jodie Filkins Webber. Jodie is  
16 self-employed, working as an attorney, practicing with the  
17 law offices of Susan Gorelick. Before becoming self-  
18 employed in 2004, she was a litigation defense attorney,  
19 representing self-insured employers, including the Regents  
20 of California, other insurance companies in the defense of  
21 Worker's Comp claims, subrogation, personal injury and  
22 insurance coverage. Jodie is registered with the Republican  
23 Party.

24 Stanley Forbes from Esparto, Yolo County, is the co-  
25 owner of Avid Reader, a very small, but really neat retail



1 book store. He selects merchandise, sells and markets the  
2 books. But, in addition to that, he also has spent the last  
3 32 years operating a ranch, managing crops, market research,  
4 financial planning operations, etc. Stanley is registered  
5 as Decline to State.

6 Connie Galambos Malloy, from the City of Oakland,  
7 County of Alameda, the last approximately four years, she  
8 has been employed with the Urban Habitat. Urban Habitat is  
9 an entity that serves low-income communities in the Bay Area  
10 by providing education, advocacy, research, and coalition  
11 building. She is a member of the Urban Habitat Management  
12 Team, responsible for staff supervision, organization,  
13 development, strategic planning, coalition building, policy  
14 analysis, etc. Connie is registered as Decline to State.

15 Our next Commissioner, Elaine Kuo, is from the City  
16 of Mountain View, County of Santa Clara. Before becoming a  
17 full-time caregiver to her father, Elaine was a Senior  
18 Research Analyst at UCLA. Elaine evaluated seminar courses  
19 for first-year students, she did senior exit surveys on  
20 broad academic experiences, assessed student outcomes on  
21 curriculum initiatives within the Department of Reviews,  
22 managed data, wrote evaluation reports, made presentations  
23 at national conferences. Elaine is registered with the  
24 Democratic Party.

25 Next to her is Jeanne Raya from the City of San

1 Gabriel, County of Los Angeles. She has been employed by  
2 John Elyria [ph.] Insurance Company for more than 24 years.  
3 She is an agent and principal of the company and is in  
4 charge of marketing, sales of commercial insurance, risk  
5 management consulting, primary training, performance  
6 evaluation of personnel, managing external relationships  
7 with carriers and regulatory agencies. She is registered  
8 with the Democratic Party.

9 And our last of the eight Commissioners is Peter Yao  
10 from the City of Claremont in Los Angeles. Peter currently  
11 serves as the Mayor for the City of Claremont. He is  
12 actually serving his second four-year term as Mayor. Prior  
13 to that, Peter was a Director of Engineering at Raytheon  
14 Corporation. Peter is a registered Republican.

15 Again, I want to congratulate all of you and pledge  
16 to you that my office will provide you any and all support  
17 that you need in the work that you're going to do over the  
18 next two weeks. As you know, these remaining six  
19 Commissioners need to be selected by December 31<sup>st</sup>, by the  
20 end of this year, and again, we will do anything we can to  
21 support you in that endeavor. So, with that, again,  
22 congratulations to you. And I will turn it back over to  
23 Steven.

24 MR. RUSSO: Thank you. Would any of the  
25 Commissioners like to make a short statement now that you've

1 been sworn in and you actually now are a member of the  
2 Citizens Redistricting Commission?

3 COMMISSIONER FORBES: I'm not shy. First, I want to  
4 thank and appreciate - and commend the work that the  
5 Auditor's Office has done in the selection process. It's  
6 been a remarkable process, both as a participant and as an  
7 observer, the openness of it, and the thoroughness of it, I  
8 think - I hope - will keep the Commission in good stead. I  
9 personally am very excited and I'm also humbled about being  
10 a Commissioner. I'm excited because of the challenge and  
11 the nature of the work, and the opportunity to work with a  
12 very interesting and competent group of colleagues. But I'm  
13 also humbled because this is the public work, we are truly  
14 public servants here, and the public is counting on us to do  
15 a good job. It is no secret that California has a variety  
16 of issues, shall we say. And I think that this Commission  
17 is one of the responses that the public has developed to  
18 address those issues. I hope I will do my very best to have  
19 this Commission achieve these objectives, and I do pledge my  
20 utmost to have it succeed. And I thank the public for the  
21 opportunity to serve on this Commission.

22 MR. RUSSO: Thank you, Commissioner. Anyone else?  
23 Please.

24 COMMISSIONER BARABBA: The thing I find interesting  
25 is that all of us have benefitted from the State of

1 California's educational system. And I think it's incumbent  
2 upon us to provide a little payback for the amount of  
3 resources that get us educated, so it's a real opportunity  
4 to provide a sense of contribution for a really gracious  
5 gift.

6 COMMISSIONER GALAMBOS MALLOY: I would just  
7 underscore the enormity of the task at hand, and I think  
8 that, as the nation's most populace state, the entire  
9 country is really looking at California to see how can we  
10 set the standard around making sure that the redistricting  
11 process really results in equal voice and equal access for  
12 all of our many diverse regions and communities within the  
13 state. And so, you know, to do the job well, we really have  
14 to create and cultivate a Commission that is representative  
15 of the state in all the different meanings of that word,  
16 that is responsive to the public that we were brought here  
17 to serve, and so I really look forward to working with these  
18 eight folks and also the six that are yet to be identified.

19 COMMISSIONER YAO: For the better part of last year,  
20 we were all candidates and just become a realization that  
21 we're now part of the Commission, and a few of us went out  
22 to dinner last night, and it really is a very very enjoyable  
23 group of Commissioners. Looking forward to working with  
24 them for the next year to year and a half. I just wanted to  
25 correct my bio. I have been a Council member in the City of

1 Claremont for two terms, eight years, and I was Mayor for  
2 just two years in '06 to '08. Thank you for the promotion,  
3 nevertheless. We're going to be wearing a different hat  
4 now, beyond just coming from a different region, we're all  
5 going to be wearing the hat of the State of California, and  
6 we have a very important task before us. And we're all  
7 ready to get started and I think, most importantly, is the  
8 name of the Act - this is the Voters First Act, it is more  
9 than just redistricting. I think the obligation on our part  
10 is to do a good job so we can continue to change process to  
11 the California infrastructure that we all see as requiring a  
12 little bit of improvement. So, again, very honored to be  
13 here, and looking forward to working with all of you the  
14 next many months.

15 COMMISSIONER RAYA: I know that we all share a great  
16 sense of honor and responsibility, and it's an exciting day  
17 for us, but it's only the beginning, just a few minutes old,  
18 and I think, if anything, I would encourage, since  
19 everything has been so public, encourage voters, citizens,  
20 everyone who can observe the process and participate, to do  
21 so because this is only the one step and, without the  
22 response from voters, then our work might not have as much  
23 meaning.

24 COMMISSIONER KUO: I guess I should update my bio,  
25 as well, taking Peter's lead. I was recently fortunate

1 enough to start a new job with the Foothill De Anza  
2 Community College District, and I'm currently a College  
3 Researcher at Foothill College, so I just wanted to make  
4 sure that that was updated. And, again, I just wanted to  
5 echo what a lot of the other Commissioners have stated, in  
6 that I really do feel it's an honor and a privilege to serve  
7 the public, and certainly a great sense of responsibility,  
8 and hoping that the opportunity to work with my colleagues  
9 here, but, as well with the citizens and the folks of  
10 California, I'm looking forward to perhaps serving them as  
11 best as I can and having their voices heard as part of the  
12 process, as we represent the people of the State.

13 COMMISSIONER FILKINS WEBBER: I certainly echo  
14 everything that my colleagues have said today. I am very  
15 appreciative of this entire process and what the State  
16 Auditor's Office put together in the selection process, and  
17 the opportunity provided to all of us, and to many of the  
18 participants throughout the entire last year. I am also  
19 quite humbled, as Stan had said, and I certainly look  
20 forward to serving the citizens of California as a  
21 Commissioner, and so far, in meeting each and every one of  
22 my colleagues, I think we have a very enjoyable group and I  
23 look forward to the full Commission next year. Thank you.

24 COMMISSIONER DAI: And I don't know if I have much  
25 more to add, but definitely it is an honor and privilege to

1 serve. As Peter mentioned, all of us just met for the first  
2 time last night and I think I can say that we all share, as  
3 Jeanne talked about, a profound sense of responsibility to  
4 do a thoughtful and meticulous and equitable job of  
5 redistricting, consistent with the high expectations and the  
6 trust and the faith the people of California have placed in  
7 us, and I know that we will all work our hardest to make  
8 sure that we do the best job that we can.

9 MR. RUSSO: With that, I think we can proceed to my  
10 part of this, which is the Report of Counsel. The purpose  
11 of my report today is to provide a bit of background on this  
12 meeting and provide some clarification, some further  
13 information regarding, regarding where we expect this  
14 meeting to go over the next couple of days, at least, as we  
15 proceed with the selection of the final six members of the  
16 Commission. And as we've stated, the purpose of this  
17 meeting, the sole purpose of this meeting, is the selection  
18 of the final six members of the Commission from the  
19 applicant pool currently consisting of 28 of what were at  
20 one time 60 finalists for selection to the Commission.

21 The first eight members of the Commission at this  
22 point have no authority to take any other action regarding  
23 the redistricting process beyond the selection of the final  
24 six members, although I am sure they are all quite anxiously  
25 looking forward to the opportunity to get started, to

1 actually perform the task of redistricting.

2           This meeting is currently set on the agenda to last  
3 from today through December 17<sup>th</sup>. We've set it as one  
4 continuous meeting throughout that period in order to  
5 provide the Commission with maximum flexibility in the way  
6 that they conduct their business, but also to comply with  
7 the 10-day Notice requirements of Bagley-Keene. Although  
8 staff has at this point put together a fairly comprehensive  
9 agenda as to how things will proceed over the next couple of  
10 days, which will largely be devoted to training, the members  
11 of the Commission will need to select a temporary Chair and  
12 a temporary Vice Chair while they conduct their business of  
13 selecting the final six members. And they will receive  
14 training on a number of topics, which I will discuss. And  
15 then, after we finish the training part of this, then we  
16 will call upon the members of the Commission to make some  
17 decisions about how they wish to proceed with the selection  
18 process and providing to them various options for how to  
19 proceed and some idea of how the calendaring for those  
20 options may look as they move forward with the process.

21           By law, the first eight members of the Commission  
22 must complete the selection of the final six members by  
23 December 31<sup>st</sup>. The way we've set the agenda is with the idea  
24 of completing the process by December 17 if at all possible.  
25 Certainly, we can notice additional days if that's



1 necessary, but, of course, if the Commissioners are able to  
2 complete the process in a much shorter period of time, then  
3 so be it, we've completed the process and the Commissioners  
4 then can move on to the next step of actually performing the  
5 work of redistricting.

6           Once the final six members of the Commission are  
7 picked, then there will be a full 14-member Commission,  
8 which will be a stand-alone Commission, separate from the  
9 State Auditor's Office. At that point, they will be  
10 receiving their support functions from the Secretary of  
11 State's Office until such time as the Commissioners have  
12 staff in place and an office that is functioning, so that  
13 they can then at that point be independent of any other  
14 State agencies.

15           This meeting is, as those watching us know, this  
16 meeting is being streamed live over the Internet. We are  
17 also recording this meeting, we are video recording the  
18 meeting, and we have a Court Reporter taking notes during  
19 the meeting so we will have a transcript of this meeting.  
20 The videos of this meeting, the transcripts, as well as  
21 other documents that are presented at the meeting, such as  
22 Powerpoint slides and so forth, will be posted on our  
23 website so they can be viewed by members of the public at  
24 their leisure. Folks who are working or otherwise occupied  
25 right now and can't be watching this live can certainly go

1 to their computers later and watch how the process is  
2 progressing, as we have tried throughout this process to  
3 make this as transparent as is humanly possible, with  
4 today's technology, so that everyone would know exactly how  
5 this process is being conducted and, wherever possible, to  
6 obtain public input into this process through our public  
7 comment process, through allowing public comments at  
8 meetings, and so forth, because we have been trying, and we  
9 continue to try, to engage the public in this process.

10           Looking ahead at the items on the agenda for today  
11 and tomorrow, again, after we pick the Chair and the Vice  
12 Chair and, as we move on to that item, I will provide  
13 additional information regarding how the law requires that  
14 to be done and what we're proposing as the process for doing  
15 that; but we will be providing over the next couple of days  
16 training regarding various topics that we believe are  
17 essential for the first eight members of the Commission to  
18 have training on, so that they can conduct their work of  
19 selecting the final six members.

20           The list of topics, as you can see in the agenda, is  
21 what it is like to be a member of a Redistricting  
22 Commission; a discussion of California's demographics; a  
23 discussion of the process and the procedures for selecting  
24 the final six members of the Commission as set forth in the  
25 Voters First Act and its implementing regulations; the legal

1 concepts that apply to redistricting, which is entitled  
2 Redistricting 101; and then the practical aspects of  
3 Redistricting, including working with the relevant data,  
4 working with the computer software, and engaging in feedback  
5 from the public into this process.

6 Now, at this point, I think I should make some  
7 comments regarding the nature of this training because I  
8 think there has been some confusion among members of the  
9 public as to what this training is all about. This training  
10 is only intended to provide, as I indicated, the training  
11 that is necessary for the eight members of the Commission to  
12 select the final six members. In that sense, it's very much  
13 like, and it is patterned after, the training that we  
14 provided to the members of the Applicant Review Panel before  
15 they went to work at identifying the 60 finalists for  
16 selection to the Commission. Therefore, it is geared toward  
17 helping the first eight members of the Commission understand  
18 some things about demographics, the diversity of the state,  
19 because that's one of the things they have to look at in  
20 determining who to pick as the final six members, and also  
21 developing an understanding of the skill sets, of the  
22 qualities -- stated more broadly -- of the qualities of the  
23 individuals that they may want to choose to have as their  
24 Co-Commissioners, so that they end up in the final analysis  
25 with a 14-member Commission with skills that will complement

1 each other and, most importantly, skills that will enable  
2 them to perform the task of redistricting. It is not in any  
3 way intended to be the comprehensive training to provide all  
4 the information that even these first eight members would  
5 need to perform the tasks of redistricting, that's a far  
6 more involved training than what we need at this juncture of  
7 the process, or what we feel we even have the time to  
8 provide. Once there is a full Commission, we anticipate  
9 that the Secretary of State's Office will be providing far  
10 more extensive training on the details of the law, the  
11 details of the process, and the mechanics of redistricting,  
12 and we certainly expect that would be important training for  
13 them to receive. The training that we are providing at this  
14 point, then, will be essentially an overview of the  
15 qualities that are needed for a Commissioner who is selected  
16 to fill one of those six spots.

17           And I would note that, in our training, because we  
18 are dealing with it at a fairly high level, we are dealing  
19 with, I think, what are pretty much the well established  
20 concepts of redistricting and, by not getting into details,  
21 we are not dealing with some of the more controversial  
22 aspects of what the law requires with regard to  
23 redistricting, or what data - what information -- should be  
24 used in making a determination of how to conduct  
25 redistricting. We would anticipate that, in fact, when you

1 get into those areas, there can be differences of opinion  
2 among experts as to what is required or isn't required, and  
3 how one should proceed. For that, we would anticipate that,  
4 when the full Commission is put together, there would be  
5 training from a variety of points of view, so that the  
6 Commissioners themselves would have all of the information  
7 available to them and can judge how they wish to proceed  
8 under their authority to conduct redistricting within the  
9 confines of the law.

10 Today we will start the training with training  
11 regarding the Bagley-Keene Open Meeting Act. That training  
12 will be provided by Donna Neville, who is the Associate  
13 Chief Counsel of the Bureau of State Audits. During her  
14 training, as with all of the training, we would encourage  
15 the members of the Commission to ask questions to better  
16 understand the nature of the training, and we will certainly  
17 provide full opportunity for you to ask questions. After  
18 the presentation is completed and the Commissioners have had  
19 their questions answered, as time permits, we will also be  
20 allowing an opportunity for members of the audience to ask  
21 questions of the trainers. We have set up a system where,  
22 on the backs of the chairs here, we have cards that folks  
23 can complete; if they have a question, they can write down  
24 their question, submit it to staff, and we can do our best  
25 to make sure that, if the questions hasn't already been

1 asked and answered, that it is answered to everyone's  
2 satisfaction. This is similar to what we did during the  
3 training for the members of the Applicant Review Panel. It  
4 seemed like it worked well, and so we've tried to structure  
5 that into the process.

6           After the Bagley-Keene training is concluded, we  
7 will open it up for a general public comment period for  
8 items not on the agenda, which is an opportunity for anyone  
9 to make a public comment regarding the process in a general  
10 sense before we deal with any specific topics. We will have  
11 a sign-up sheet at the back of the room for folks to  
12 complete and we can take comments in the order that names  
13 appear on the sign-in sheet. The sign-in sheet is  
14 voluntary, but if folks will fill that out, that makes the  
15 process move more quickly and more smoothly. After we have  
16 received the comments from the folks on the list, then we  
17 will take other comments.

18           The training we will be providing today is, again,  
19 the Bagley-Keene training, the training on what it's like to  
20 be a redistricting Commissioner, information on California  
21 demographics, and on the process and procedures for  
22 selecting the final six members. That should wrap up the  
23 events of today. Tomorrow, we will resume with training  
24 regarding the legal requirements of redistricting and the  
25 practical considerations of redistricting. Once we have

1 completed the training, then, we will be asking the members  
2 of the Commission to make some decisions regarding how we  
3 proceed from there, as we discussed earlier. Of course,  
4 throughout the process, we will be allowing an opportunity  
5 for members of the public to comment prior to the Commission  
6 taking any action on a matter of business. Again, this is  
7 in keeping with the law, it is also in keeping with the  
8 transparency and the public participation element of this  
9 process that we have been trying to promote throughout the  
10 year plus that we have been doing this.

11           And with that, that concludes my report at this time  
12 to the members of the Commission. Do any of you have any  
13 questions?

14           So, the next item of business on the agenda is the  
15 selection of a temporary Chair and temporary Vice Chair.  
16 Now, the person selected as the temporary Chair and  
17 temporary Vice Chair will serve in those positions only so  
18 long as we are operating with just eight Commissioners,  
19 which is to say that, once the final six members of the  
20 Commission have been chosen and we have a full Commission,  
21 then those persons selected will no longer be serving as  
22 Chair or Vice Chair. The full Commission will then have to  
23 select who they want to act as, for lack of a better term,  
24 permanent Chair and Vice Chair as they proceed with the  
25 business of redistricting. For the selection of the Chair

1 and Vice Chair, there is in our regulations a requirement as  
2 to how the election takes place, which is to say that a  
3 person is elected to either of those positions by the  
4 affirmative vote of five of the eight members of the  
5 Commission. That group of at least five people have to  
6 consist of at least two Republicans, two Democrats, and one  
7 who is neither a Democrat or Republican, and with this  
8 group, that would be someone who is registered "Decline to  
9 State." Now, I should add, too, that the Chairman and Vice  
10 Chairman cannot be a member of the same political party, so  
11 we cannot have a Republican holding both positions, or a  
12 Democrat holding both positions, but we can have any other  
13 combination, including theoretically two members who are  
14 Decline to State because, even if they were in the same  
15 applicant subpool, they're not members of the same political  
16 party.

17 To proceed, we would begin by taking nominations.  
18 Any of you can nominate someone to serve. I should say we  
19 shall start with the selection of the Chair, and then move  
20 on to the selection of the Vice Chair. Anyone can make a  
21 nomination, you can even nominate yourself. We will collect  
22 all of the nominations and, at that point, once we have the  
23 list of nominees, then we would proceed to vote. We will  
24 vote on each of the nominees in the order in which they are  
25 nominated. The first person who receives the requisite



1 number of votes, that is to say, five affirmative votes,  
2 from two Republicans, two Democrats, and one Other, then  
3 will become the Chair and we wouldn't need to proceed with  
4 any further voting, regardless of whether we have additional  
5 nominees or not. That is consistent with the provisions of  
6 Roberts Rules of Order. After we select the Chair, then we  
7 will proceed with selection of the Vice Chair and, depending  
8 on who is selected as Chair, that may limit who can be a  
9 nominee for Vice Chair, but we'll deal with that at the  
10 time. And that's the process. We will, of course, provide  
11 the public an opportunity for public comment prior to any  
12 vote so that, to the extent any member of the public has  
13 some input or some thoughts they would like to share with  
14 the Commission regarding who should be selected, then the  
15 public will have that opportunity. Are there any questions?

16 COMMISSIONER RAYA: I have a question. Is it  
17 acceptable to first ask who might be interested in serving  
18 as Chair, rather than - I mean, before there's a formal  
19 nomination? That might be helpful to us.

20 MR. RUSSO: You may do that.

21 COMMISSIONER RAYA: Well, I will ask. Is anybody  
22 interested in doing it? And that might help us move the  
23 process along.

24 COMMISSIONER BARABBA: I would be interested.

25 COMMISSIONER YAO: Likewise.

1           COMMISSIONER FILKINS WEBBER: I would like to  
2 nominate Commissioner Yao for Chairman.

3           COMMISSIONER GALAMBOS MALLOY: Second the motion.

4           COMMISSIONER FILKINS WEBBER: I will nominate  
5 Commissioner Barabba.

6           COMMISSIONER KUO: I will second that Motion.

7           MR. RUSSO: Any other nominees? Hearing none, Madam  
8 Clerk, we have two nominees. We will begin with Nominee  
9 Yao, as that was first in order.

10          COMMISSIONER YAO: Excuse me, shall we get some  
11 public comment before we -

12          MR. RUSSO: Oh, yes, please. Thank you. I said we  
13 were going to do that, and then I promptly forgot. Yes, are  
14 there any comments from the public?

15          MR. LAWSON: My name is Brian Lawson and I would  
16 like to congratulate you like everyone else has. I think  
17 it's wonderful that you're going to do this, you're going to  
18 have an amazing opportunity. I teach and do research on  
19 Political Science at Santa Monica College, have my PhD in  
20 Political Science at UCLA on Analysis of Deliberative  
21 Procedures and did a Masters in Public Administration at  
22 USC. I have not been studying or involved with  
23 Redistricting before Prop. 11 passed, and then when it  
24 passed, I got interested and started doing a lot of research  
25 on it. I have not done any consulting work and I do not

1 work with any group or anything like that, so these are just  
2 my own views, my own ideas, so moving forward here, I do  
3 have a lot to say, so don't worry about that. I am not  
4 going to promote a particular candidate. I'm going to try  
5 and maybe throw out some ideas, something a little outside  
6 the box and, you know, obviously you should only do - you  
7 know, follow counsel, they always give you good advice, so,  
8 just throwing something out there. I am going to suggest  
9 something which I thought was not a good idea when I first  
10 saw it done, but what the Applicant Review Panel did  
11 actually worked and I was really amazed, where they did the  
12 rotating Chair. And when I first read the rules and saw  
13 they were going to do that, I said, "Oh, no, this is going  
14 to be a disaster, they're not going to get anything done,  
15 it's going to slow everything up, it's going to hinder what  
16 they do." And it seemed to me the opposite happened, that  
17 instead, because in particular they were constrained, they  
18 had to do everything unanimously, and they were all involved  
19 or sort of committed to the process, each one at one point  
20 had served as a Chair at one point or the other, and so they  
21 all bought in even more than they would have if, you know,  
22 there was one leader and everybody else kind of followed  
23 along. So, I'm just throwing that out there as a  
24 possibility that you might want to consider. Now, there is  
25 a possibility of how do you do that and there are things on

1 the agenda here that you're going to repeat every day, so,  
2 1) you're probably going to do every day number 4, you're  
3 going to do it every day, and it's conceivable that, if you  
4 wanted to, you could do number 5 every day, select a  
5 temporary Chair and Vice Chair. Just throwing it out there  
6 as a possibility. I had no thought that it would work with  
7 the Applicant Review Panel, but they committed themselves to  
8 it and I've never seen people work as hard as they did on  
9 that process, and I think that that helped them to really  
10 get into it. And the great thing about it is, right now you  
11 are very very strictly constrained about what you can do, so  
12 you wouldn't have a huge problem if it sort of doesn't work  
13 out, and then you could just say, "Eh, that didn't work,"  
14 and then when you get to the 14, or anywhere along the  
15 process, you could say, "Okay, we've done enough of this and  
16 we're just going to stick with the same Chair." So just an  
17 idea, throwing it out there, that is what public comment is  
18 for.

19 MR. RUSSO: Thank you. Any other public comment?  
20 Seeing none, so, Commissioners, given the nature of that  
21 public comment, is there any response that any member of the  
22 Commission would like to make?

23 COMMISSIONER DAI: I think that's a great idea. I  
24 don't know if we should do it for the eight-person one, but  
25 I think for the 14-member one, I think that's a great idea.

1           COMMISSIONER FORBES: I would be disinclined to do  
2 it for the group of eight; I think that's a precedent that  
3 we would want to set with the whole Commission.

4           COMMISSIONER DAI: I agree with Stan's comment just  
5 because we are very time constrained.

6           MR. RUSSO: And I would just note that the way that  
7 we drafted the regulation regarding the selection of the  
8 Chair and Vice Chair, it was done with the notion in mind  
9 that you would have a Chair and a Vice Chair, and it was  
10 precisely for the reason that you have such a short time  
11 period to operate in that efficiency seemed to be a prime  
12 consideration. So, shall we proceed with an election?

13           COMMISSIONER FILKINS WEBBER: Yes.

14           MS. ALVERSON: To confirm the motion, Mr. Yao was  
15 nominated by Ms. Filkins Webber?

16           COMMISSIONER FILKINS WEBBER: Yes.

17           MS. ALVERSON: And seconded by Ms. Galambos Malloy?

18           COMMISSIONER GALAMBOS MALLOY: Yes.

19           MS. ALVERSON: All right, we will vote by roll call.

20 Mr. Barabba - I will pass; Ms. Dai - I will affirm; Ms.

21 Filkins Webber - I will affirm; Mr. Forbes - Yes; Ms.

22 Galambos Malloy - Affirm; Ms. Kuo - Affirm; Ms. Raya - Yeah;

23 Mr. Yao - I have to think about that - yes, thank you.

24           MR. RUSSO: Looking at the vote count, it appears  
25 that we have sufficient votes. We have at least two

1 Democrats, at least two Republicans, and at least two  
2 Decline to State members of the Commission who have voted to  
3 support Commissioner Yao being elected as the Chairman of  
4 the Commission. So, with that, Commissioner Yao, you have  
5 been elected Chairman.

6 COMMISSIONER YAO: Thank you, everybody.

7 MR. RUSSO: And at that point, we will next proceed  
8 with selection of the Vice Chair. Madam Secretary, who is  
9 now not eligible to serve in the Vice Chair position, as two  
10 members cannot belong to the same party as Chair and Vice  
11 Chair.

12 MS. ALVERSON: The members of the Commission not  
13 eligible to serve as Vice Chair would be Mr. Barabba, Ms.  
14 Filkins Webber and Mr. Yao.

15 MR. RUSSO: With that, we can receive nominations  
16 regarding any other member of the first eight members of the  
17 Commission to serve as Vice Chair.

18 COMMISSIONER FILKINS WEBBER: I would nominate  
19 Commissioner Cynthia Dai.

20 COMMISSIONER GALAMBOS MALLOY: I second the motion.

21 COMMISSIONER DAI: I accept.

22 MR. RUSSO: Any other nominees? Any public comment?  
23 Madam Secretary, would you take the vote?

24 MS. ALVERSON: All right. Commissioner Dai has been  
25 nominated for temporary Vice Chair by Ms. Filkins Webber and

1 seconded by Ms. Galambos Malloy. And we will take a vote by  
2 roll. Mr. Barabba - Affirm; Ms. Dai - I guess so; Ms.  
3 Filkins Webber - Affirm; Mr. Forbes - Affirm; Ms. Galambos  
4 Malloy - Affirm; Ms. Kuo - Affirm; Ms. Raya - Affirm; Mr.  
5 Yao - Yes.

6 MR. RUSSO: And with that, we have sufficient votes;  
7 that is to say, at least two Democrats, two Republicans, and  
8 two Decline to State Commissioners voting to approve  
9 Commissioner Dai as Vice Chairman of the first eight members  
10 of the Commission, and so we now have our Vice Chairman.  
11 Congratulations, Ms. Dai.

12 COMMISSIONER DAI: Thank you, everyone.

13 MR. RUSSO: With that, now that we have a Chairman,  
14 I think I can turn over the control of this meeting to our  
15 new Chairman, Commissioner Yao, to move on to the next item  
16 of the agenda, which I believe is to start the actual  
17 training.

18 CHAIRMAN YAO: Thank you, everybody. I just want to  
19 ask the Commission panel as to whether we should reverse  
20 Item 7 with Item 6, perhaps it is more important to get the  
21 public comment on the entire agenda, including the training  
22 and the open meeting, as compared to starting the open  
23 meeting and training first, and then having the public  
24 comment.

25 COMMISSIONER FORBES: I concur.

1           CHAIRMAN YAO: It appears that we - I don't know  
2 whether Bagley-Keene requires us to vote on that particular  
3 issue or not, but I think we have enough acknowledgement  
4 from the Commission to change the order of the agenda.

5           MR. RUSSO: If you wish to change the order and take  
6 public comment at this time, we can proceed to do that.  
7 Please.

8           MS. NEVILLE: Good morning, Commissioners. If I  
9 might just make one comment that might influence how you  
10 would proceed. One of the issues that I will be discussing  
11 is what is and is not appropriate in terms of your response  
12 during the receipt of comments on items not on the agenda,  
13 that is part of my training. I'm more than happy to give  
14 you a word on that and sit down while you take comment if  
15 that would be your pleasure if you'd like to do that, and  
16 then I can come back up and do a full training.

17           CHAIRMAN YAO: With the approval of the Commission,  
18 I would like to perhaps have two public comment sessions to  
19 allow the public to speak on this particular topic, and  
20 then, after that, allow them to speak on the items not on  
21 the agenda, as well as the items on the balance of the  
22 agenda. If it is acceptable with the counsel, I would like  
23 to proceed in that order.

24           MR. RUSSO: I don't know that I quite understand  
25 what your proposal is.



1 CHAIRMAN YAO: I would like to give the public an  
2 opportunity to address this issue of training in open  
3 meeting before we actually start on that, and then we will  
4 receive the training on the [quote unquote] "Training on  
5 Open Meeting Requirements," and follow the agenda from this  
6 point on.

7 MR. RUSSO: Fair enough, yes.

8 CHAIRMAN YAO: All right, I would like to at this  
9 point invite any member of the public to address the  
10 Commission strictly on the item of training and Open Meeting  
11 Act requirements. Just to clarify my intent, after we  
12 receive the training, which is Item 6 on the agenda, we will  
13 allow the public to speak on Items not on the agenda, as  
14 well as the balance of the agenda, so you can reserve your  
15 comment on that at that point in time. So, if there is any  
16 member of the public that would like to address the  
17 Commission, please come up to the podium. Seeing none, we  
18 will continue with Item 6, which is Training on Open Meeting  
19 Act Requirement and Commission Communication.

20 MS. NEVILLE: Thank you so much, Chairperson Yao. I  
21 think we need just a couple of minutes to set up the room  
22 with the Powerpoint, so I don't know if the Commissioners  
23 would like to take a five-minute break while we get ready?

24 CHAIRMAN YAO: We will take a five-minute break.  
25 Thank you.

1 (Off the record at 10:18 a.m.)

2 (Back on the record at 10:25 a.m.)

3 CHAIRMAN YAO: Are the Commissioners ready? Yes, we  
4 are.

5 MS. NEVILLE: Great, thank you. Good morning,  
6 Chairperson Yao, Vice Chair Dai, members of the Commission,  
7 members of the public. My name is Donna Neville and I'm an  
8 attorney for the California State Auditor. It's really an  
9 honor for me to have this opportunity to talk with you this  
10 morning about the very important issue of the way in which  
11 you go about conducting open meetings and communicating  
12 outside of meetings.

13 Some of the things we're going to talk about today,  
14 first of all, we're going to talk about the Bagley-Keene  
15 Open Meeting Act, and our talk today will last for about 40  
16 minutes or so. I'm going to give you a run through some of  
17 the basic requirements of that law, and talk about its  
18 application to you as a State body. I'm also going to be  
19 talking this morning about some of the specific requirements  
20 that are contained in the Voters First Act, or Prop. 11,  
21 that also apply to your meetings and your communications.  
22 One of the things that is abundantly clear is that the  
23 drafters of Prop. 11 wanted their redistricting reform  
24 effort to be incredibly transparent and open to the public.  
25 And to achieve that goal, they put in place some very

1 specific requirements that go above and beyond the  
2 requirements of Bagley-Keene, so I will be sure to highlight  
3 those differences as we go through our talk this morning.  
4 I'm also going to be talking about how to avoid a violation  
5 of Bagley-Keene, it is a law that it is possible to violate,  
6 accidentally or otherwise, and so I will be attempting to  
7 give you some guidance on ways to avoid doing that,  
8 particularly with respect to communications that you can or  
9 cannot have among yourselves outside of an open public  
10 meeting.

11           Before we proceed, I just want to mention for the  
12 benefit of those watching on the Internet or attending in  
13 the audience, copies of the slides that I'm using are in the  
14 back of the room, copies are also posted on our website,  
15 WeDrawTheLines.ca.gov, in addition. Members, I'll also just  
16 draw your attention to two different documents that you  
17 received in the packet of materials that was mailed to you.  
18 One was a legal memorandum, a guidance memo that came from  
19 Sharon Reilly, the Chief Counsel, and from me, and in that  
20 there was a summary description of the law; and the other is  
21 this book that I really can't promote enough, which is *The*  
22 *Handy...* -- as it's name suggests -- *...Guide to Bagley-Keene*  
23 *Open Meeting Act*, which is published by the Attorney  
24 General's Office, and it's a wonderful compilation that  
25 brings together the law and the practical application of the

1 law. You don't need to have those here in front of you as  
2 we talk today, but they're just great references and I  
3 encourage you to peruse them on a rainy afternoon. Good  
4 reading.

5           So, with that, I'm going to move forward into our  
6 discussion of the law. First, I just want to talk a little  
7 bit about the purpose, why do we even have an open meeting  
8 law. And in some respects, I think the answer to this  
9 question is almost self-evident. We have this law so that  
10 we can make government decision makers accountable to the  
11 people they serve, and to give the public a real voice in  
12 the decision making process. There's a wonderful phrase  
13 that the courts have used when they have addressed  
14 challenges to Bagley-Keene. They refer to the public as  
15 "having a seat at the table," and I love that phrase because  
16 what it conjures up is this image of the public really  
17 participating in an active way, not as a passive observer of  
18 the process, but really as a participant in the decision  
19 making process, and we will talk this morning about the  
20 specific ways that the law makes sure that that really  
21 happens. And I've also shown on the left-hand side of this  
22 slide one of the Statements of Intent contained in the law  
23 that makes very clear what the goal of this law is.

24           If you're like me, you like to know why we have  
25 laws, and like many other good government laws, this one

1 came about as a result of some very good investigative  
2 journalism. What seems like a long time ago in 1951, a *San*  
3 *Francisco Chronicle* Reporter, Mike Harris, was trying to  
4 report on some of what he believed to be important  
5 government decisions that were being made in the City of San  
6 Francisco, and after weeks of traveling around the City,  
7 trying to figure out where meetings were being held, and  
8 when, and who was attending, all to no avail, he wrote this  
9 seven-part exposé in the *San Francisco Chronicle* that he  
10 entitled "Your Secret Government." And it put the San  
11 Franciscans and others on notice of the fact that government  
12 decisions were being made in secret. That, in turn, led to  
13 the enactment in 1953 of the Ralph M. Brown Act, a law with  
14 which many of you may be familiar, a law that requires local  
15 government bodies, school districts, city councils, county  
16 Boards of Supervisors, to conduct their meetings openly and  
17 in a way that is accessible to the public. And then, 14  
18 years later, the Legislature embraced a very similar law and  
19 enacted the Bagley-Keene Open Meeting Act, which is the law  
20 that governs state bodies.

21           This law that we're going to be talking about this  
22 morning has one really really basic central premise, and  
23 that is that the meetings of state bodies must be open to  
24 the public. Everything else in this law kind of ties back  
25 to that basic concept. And to really understand how this

1 law operates and applies to, we need to take a little bit  
2 closer look at how the law defines what really is a meeting,  
3 how do we know when the requirements of the law are even  
4 triggered, and who are these state bodies that are subject  
5 to the law.

6 I'm going to talk for just a minute about who these  
7 state bodies are and who this law applies to because I  
8 think, even though you know it applies to you as  
9 Commissioners, I want to give you a sense of the scope of  
10 this law. It applies to virtually every state board,  
11 commission, or other similar multi-member decision making  
12 body. It doesn't matter whether the members are appointed  
13 or elected to their positions, it also doesn't matter  
14 whether they are purely advisory, or can make actual  
15 decisions, and it applies regardless if you have multi-  
16 member decision making bodies. Interestingly, this law has  
17 a very broad reach and there are circumstances where it even  
18 applies to entities that we would think of as being purely  
19 private. And the reason it ends up applying to them is  
20 because they are commissioned with making a governmental  
21 decision, withholding meetings, and they receive public  
22 funds, so they, in effect, are transformed into a state body  
23 by virtue of that.

24 The Bagley-Keene Open Meeting Act also applies when  
25 a state body forms an advisory body of three or more members

1 to assist it. And I direct your attention to this because  
2 it's possible that, as the full Commission is formed and  
3 meets that, as a 14-member body, you may decide there are  
4 circumstances where you want three members to go forth and  
5 do something as an advisory subcommittee; or, you may want  
6 to form multiple three-person subcommittees, and it's  
7 important to recognize that even those three-person  
8 subcommittees need to comply with Bagley-Keene and with all  
9 the requirements that I'm describing here today.

10 And finally, there's another way in the law in which  
11 even two people can become subject to Bagley-Keene, and that  
12 is when they are actually empowered to go forth by a state  
13 body and make decisions on its behalf. I don't think that  
14 will actually become applicable to the Citizens  
15 Redistricting Commission, mostly because there is no  
16 authority for the full Commission to actually fully delegate  
17 its authority.

18 I should mention before I proceed, if I didn't say  
19 this, please stop me at any time if you have questions. I  
20 think we mentioned that earlier.

21 Bagley-Keene clearly applies to the Citizens  
22 Redistricting Commission; there is no question about that.  
23 The Voters First Act contains an unequivocal statement that  
24 the law applies to the full 14-member Commission. And then  
25 people say, "Well, gee, does it apply to the first eight?"

1 The answer to that is, yes, absolutely, it also applies to  
2 the first eight, even though the law doesn't explicitly say  
3 that, you are a multi-member decision making body, and on  
4 that basis, you fall under Bagley-Keene. And, again, it  
5 would apply if you formed three-member advisory bodies, as  
6 well.

7 The other point that I want to make before we go  
8 through some of the other requirements is that Bagley-Keene  
9 is a floor, not a ceiling, in terms of the level of  
10 transparency and openness that you as a state body can or  
11 should provide. So, when I describe the requirements, there  
12 are minimal requirements, there is no reason that you can't  
13 embrace other practices that provide even greater public  
14 access, or more notice, or do more to bring the public into  
15 your decision making process. And, in fact, I'll be sure to  
16 highlight those areas where the Voters First actually does  
17 just that.

18 COMMISSIONER RAYA: May I ask a question?

19 MS. NEVILLE: Absolutely.

20 COMMISSIONER RAYA: I just want to be sure I  
21 understand when you say "an advisory body of three or more,"  
22 that would be a group of three of us, not other people that  
23 we might want to use as some kind of advisory?

24 MS NEVILLE: Thank you for asking, that's a great  
25 question. The way the law reads, it's an advisory body of



1 three or more when formed through formal action of the state  
2 body. Typically, it refers to a subset of three of you, but  
3 it conceivably could apply to others who are not on your  
4 body, depending on what you task them with doing.

5 COMMISSIONER RAYA: Thank you.

6 MS. NEVILLE: To really understand how the  
7 requirements of this law come into play, we also need to  
8 take a look at how the law defines what constitutes a  
9 meeting because, again, we know that your meetings need to  
10 be open. So, what's a meeting? The law defines it as a  
11 congregation of a majority of the members at the same time  
12 and place to hear, discuss, or deliberate on any item that  
13 is within your jurisdiction. Now, in the case of this  
14 eight-member body, a majority of you is five, so you need  
15 five to have a simple majority plus one. If you hear,  
16 discuss, or deliberate on anything that is within your  
17 jurisdiction, that constitutes a meeting.

18 I want to talk a little bit more about those verbs  
19 because they're very very important. When these laws were  
20 first enacted, when the Brown Act was new and Bagley-Keene  
21 was new, there were some public officials who believed that  
22 what the law contemplated was making sure that you voted in  
23 open public session, but that it was okay to have a pre-  
24 meeting where you worked out your differences and achieved  
25 consensus; as long as you walked into the room and took your

1 vote in open session, they thought that was okay. The  
2 Legislature quickly responded and let everyone know that  
3 that was absolutely not what they had in mind when they  
4 called for open public meetings. What the public has the  
5 right to participate in and observe under the Open Meeting  
6 laws is the entire deliberative process. It includes not  
7 only a meeting where you vote or commit yourselves to a  
8 course of action, but it includes the whole process, it even  
9 includes circumstances where you are briefed by staff and  
10 simply ask clarifying questions to inform yourselves on a  
11 matter. It includes circumstances where you are just  
12 discussing a matter and know you're not even at a point  
13 where you can formally act on it, you're still achieving  
14 consensus. Nonetheless, all of that has to be held in open  
15 public session. The concept of what constitutes a meeting  
16 is very broad; it includes the full deliberative process.

17           It probably goes without saying, but the law clearly  
18 requires that, in addition to being open, you have to  
19 provide access to everyone. The location where you meet has  
20 to be accessible under the Americans With Disabilities Act,  
21 and, in fact, one of the requirements, which I'm sure your  
22 staff will assist you with, is making sure that your agendas  
23 indicate how someone can request a reasonable accommodation  
24 if he or she needs one for a meeting. The media has a right  
25 to attend your meetings. They have the right to record --

1 not only media, but everyone has the right to record your  
2 meetings if they so choose -- the only limitation is they  
3 can't interfere with the conduct of your business. In  
4 addition, people can't be required to sign in as a condition  
5 of attending a public meeting. That said, it's often a  
6 common practice for state and local bodies to ask people to  
7 voluntarily sign in, in order to sort of expedite the flow  
8 of public comment during meetings, so that's perfectly  
9 permissible, but you can't actually require it as a  
10 condition of attending a meeting or speaking.

11 COMMISSIONER GALAMBOS MALLOY: Excuse me, point of  
12 clarification. Can you talk about any guidance around  
13 language accessibility?

14 MS. NEVILLE: In the actual -- do you mean different  
15 languages?

16 COMMISSIONER GALAMBOS MALLOY: Yes, non-English  
17 speakers.

18 MS. NEVILLE: Well, there's a specific law, and I am  
19 not an expert in this law, which is called the Dymally-  
20 Alatorre Act, which requires agencies that provide services  
21 to make their materials available in different languages.  
22 Some state bodies do make their agendas available in other  
23 languages. I have to tell you, I'm not an expert on that  
24 point, but I know that I could certainly look into it and we  
25 could get back to you on what, if any, might be the

1 obligations of this Commission to publish its agendas in  
2 other languages.

3 COMMISSIONER GALAMBOS MALLOY: Yeah, I'd like to  
4 request that. I anticipate it will be something of  
5 interest. And then, the second clarification is in regards  
6 to what constitutes a meeting and, for example, if there  
7 were three Commissioners who were discussing some matters,  
8 so we don't have a majority, we don't have a quorum, it  
9 wasn't officially an advisory board that was designated by  
10 the full Commission, would that qualify as a meeting? Or  
11 no?

12 MS. NEVILLE: I'm going to get to that in just a  
13 moment, and the answer is it depends, but I'll give you fair  
14 guidance on that in just a minute because you're getting at  
15 the key issue for how you can violate the law and, in fact,  
16 a point that I did not make before I went on to this next  
17 slide, I was talking to you about what the traditional  
18 definition of a meeting is, and what I'm going to turn to in  
19 just a few minutes is this very very important prohibition  
20 that is contained in the law, which clearly prohibits  
21 communications among a majority of the members outside of a  
22 public meeting about a matter within your jurisdiction, and  
23 you can violate the law even when you're not all in the same  
24 place at the same time, through a series of communications.  
25 But, if I don't answer your specific question when I get to

1 that part, please remind me again.

2 Providing notice of your meetings is critically  
3 important. And this area is one where I need to tell you a  
4 little bit about some of the differences between Bagley-  
5 Keene and the Voters First Act. The general rule under  
6 Bagley-Keene for most state bodies is that they need to  
7 provide 10 days notice prior to a regular meeting, and they  
8 do that by publishing an agenda on the Internet. That same  
9 rule of 10 days notice applies to any meetings that this  
10 group of the first eight Commissioners will hold, this  
11 meeting it applied to, and if you were to agendize a  
12 subsequent meeting, it would be subject to the 10-day rule.

13 Now, here is where things get really interesting.  
14 The Voters First Act clearly, as I said, wanted to promote  
15 inclusion and wanted to provide meaningful notice to people,  
16 so it expands on that requirement and it generally requires  
17 14-days notice before meetings of the full Citizens  
18 Redistricting Commission. Now, here is where it gets even  
19 more interesting. Tied to that, in the Voters First Act,  
20 was a limited exception that applied in September of any  
21 year ending in the number 1, which, as you know, will be  
22 this coming September of 2011, when you would have been  
23 busily finalizing your maps and getting ready to adopt them  
24 by what was a September 15<sup>th</sup> deadline. So, the purpose of  
25 this exception was that it allowed you to call meetings on

1 just three days notice in September of 2011, thinking that  
2 you'll need to call meetings on fairly short notice, you'll  
3 be in a crunch time then. Prop. 20 came along at the last  
4 election it was approved, as you know, by a wide margin by  
5 the voters, it changed the deadline by which you have to  
6 adopt the maps from September, moved it up to August, but  
7 unfortunately, it did not change that corresponding  
8 requirement in the law. Ideally, it would have moved that  
9 requirement, that allowance in the law, that lets you hold  
10 your meetings with three days notice in September, it would  
11 have moved it up to August to make that corresponding  
12 change. Call it an oversight drafting error, whatever you  
13 will, it's not something that we can fix now, but I just  
14 want to draw your attention to it, there are ways in which  
15 it can be remedied in a timely way, and that is something  
16 that I would encourage you to take up with the Commission  
17 Counsel once you are fully convened as a 14-member body. I  
18 just want to draw your attention to it now.

19           And I want to talk a little bit more here about the  
20 Voters First Act and some of the ways in which it really  
21 expands on Bagley-Keene. There is actually a clear  
22 requirement in the Voters First Act that requires the  
23 Commission to actually conduct an outreach program to  
24 solicit broad public participation. This is really really  
25 important language. The law doesn't tell you exactly what

1 the proponents intended by that, and it leaves a lot of  
2 discretion to the Commission as to how to do that, but this  
3 is a really important duty. Unlike Bagley-Keene where you  
4 post your agenda on the Internet, you've more or less  
5 fulfilled your obligation, you have no affirmative duty  
6 under Bagley-Keene to reach out to the public and really  
7 encourage their participation, but the Voters First Act is  
8 clearly different and does impose that duty on you. It also  
9 actually requires that you conduct public hearings before  
10 you even draw maps. It makes it very clear, the public's  
11 voice is important, hear from the public, hold those  
12 hearings even before the 14-member Commission draws maps.

13 Another really important difference, and I think  
14 this is in some ways one of the most meaningful differences  
15 in terms of public involvement in the process, are these  
16 last two requirements which require public display of maps  
17 for 14 days, and the taking of public comment on maps for at  
18 least 14 days before acting on them. Those of you who have  
19 been on state bodies before may know that the general rule  
20 is that state bodies, if they have certain written documents  
21 that are provided to them in anticipation of the meeting,  
22 that they're looking at and making decisions based on, those  
23 documents only have to be made available at the meeting.  
24 So, imagine the difference between being a member of the  
25 public who walks into a public meeting and sees maps for the

1 first time at the meeting, and a member of the public who  
2 has the opportunity to see those maps on display for a full  
3 14 days before the Commission can act - very very important  
4 distinction.

5 COMMISSIONER FORBES: Can those two 14-day periods  
6 be the same? Or do they have to be in serial?

7 MS. NEVILLE: I think they are the same, but it's a  
8 good question and, you know, you can see, too, from the  
9 language here, there is some discretion here, especially  
10 some decisions that the Commission will need to make about  
11 how it's going to go about doing that, you know, what is the  
12 best manner of making that public display of maps available  
13 using technology, using other means.

14 COMMISSIONER BARABBA: Excuse me, if we were in the  
15 process of looking at alternative ways of making maps, in  
16 this case, looking at the capabilities of different software  
17 packages, does that fall under this?

18 MS. NEVILLE: Not really under the plain language.  
19 What the plain language of the Act says is that you have to  
20 take comment on the maps, themselves. But, again, you can  
21 always adopt practices that provide for more notice. Just  
22 really briefly, I'm going to skim over a couple of very  
23 limited exceptions that allow state bodies to call meetings  
24 on less notice. One is called a "Special Meeting" and if  
25 you've ever had to call one, you know they're not always



1 really that special because usually you call them because  
2 there's pending litigation you've just been served, and  
3 you've got to really hurry and file your response, and so  
4 you really need to meet with your client and discuss the  
5 issue with them, or you might need to meet to discuss  
6 disciplinary action. For a Special Meeting, you have to  
7 justify the need for it to making certain findings. You can  
8 call it on 48-hours notice, but the notice requirements are  
9 actually a little, I would say, burdensome in a financial  
10 sense because you actually have to post the notice on the AP  
11 Wire Service and do some other things that actually cost you  
12 more than posting your notice on the Internet. Similarly,  
13 there is an exception for calling an "Emergency Meeting,"  
14 but it is a true emergency, and I don't know that any of  
15 those criteria will ever apply to the Citizens Redistricting  
16 Commission, it's usually for bodies that really deal with  
17 things like natural disasters and other things, where they  
18 can call their meetings on an hour notice, if needed.

19 I want to talk a little bit more about the substance  
20 of an agenda. Agendas are more important than we sometimes  
21 realize for really providing notice to the public. I've  
22 said earlier that the public has a right to come to your  
23 meetings, they have a right to prior notice, but they also  
24 have a real right to know what it is you're really going to  
25 be talking about at that meeting because this is really one

1 of the key ways that they participate in a meaningful way,  
2 is if they really have an adequately and informed agenda  
3 that tells them what is going to happen. By law, the agenda  
4 that you publish prior to your meetings has to have a brief  
5 description of each item of business that you will conduct  
6 at that meeting. The courts have used the word "specific"  
7 to refer to this; that doesn't tell us a whole lot, but I  
8 call it the "reasonable person standard." You should put  
9 enough information in your agenda so that someone who cares,  
10 or is interested in your work, will really know what it is  
11 you're going to do at that meeting. The sort of cautionary  
12 note, though, that I have to make here is that you have to  
13 be a little bit careful when you craft the language in your  
14 agendas because sometimes state and local bodies end up  
15 being so descriptive in their agendas that they find out  
16 when they get into the meeting that they've unwittingly tied  
17 their own hands and prevented themselves from doing  
18 something useful. Let me give you an example of what I mean  
19 by that. There is an important case where a local agency  
20 published its agenda on time prior to a meeting, and in the  
21 agenda it indicated that it was going to consider a  
22 particular solution to this problem that it was trying to  
23 solve. Sounds good, right? Well, they got into the  
24 meeting, heard from the public and deliberated, and said,  
25 "Oh, that's not a good idea at all, that's not what we

1 should be doing, we're hearing about this much better  
2 solution, this is really going to serve the public interest  
3 much better." And that's what they voted on. Well,  
4 unfortunately, that was challenged. Plaintiffs challenged  
5 that action and said, "We did not have notice. There was  
6 nothing in the agenda to put us on notice of the fact that  
7 that solution that you ultimately adopted was even on the  
8 table." And the court agreed. The court said, "You're  
9 absolutely right." And the remedy for this is for the  
10 public agency to do a re-do, you know, to properly agendize  
11 the meeting, provide notice, and then those folks who would  
12 have cared about that other option can come forward and  
13 offer their comments. So, when I say don't be so specific,  
14 think about what is the business that we need to conduct at  
15 this meeting, and you want the language in your agenda to be  
16 crafted so it's really going to allow that. And the other  
17 key point about your agenda is, once it's fixed and  
18 published, there is very very limited ability to deliberate  
19 on anything not on that agenda. There is a limited  
20 exception in the law that allows you to take up something if  
21 you really have to, but the general principle is, you are  
22 confined in your deliberation to what has been noticed on  
23 the agenda. And, again, as you move forward in your work as  
24 a full 14-member Commission, you'll have staff working with  
25 you on developing your agendas and moving forward, and it

1 will all become sort of a routine part of your business.

2 COMMISSIONER BARABBA: So, if we were at a meeting  
3 and someone in the audience brings up a subject that needed  
4 to be dealt with, and it wasn't on the agenda, we can't deal  
5 with it?

6 MS. NEVILLE: No, it is a dilemma, the answer is  
7 generally no. But, and the reason, you know, you do allow  
8 -- in fact, one of the things you'll see on this agenda is  
9 you do absolutely want to encourage the public to come up,  
10 and on this agenda we have a placeholder for what we call  
11 "Items Not on the Agenda." That's an opportunity for the  
12 public to come to you and say, "Here is something you should  
13 be thinking about." And you can have just a limited  
14 discussion, enough to know if you want to agendize it for a  
15 future meeting.

16 CHAIRMAN YAO: Before you go on to the next chart,  
17 could you make a few comments on how Commissioners can put  
18 items on the agenda?

19 MS. NEVILLE: Sure. There are a couple of ways that  
20 state bodies approach this. You may find as you move  
21 forward as a full 14-member Commission that a regular item  
22 of business at your meetings is for future planning for the  
23 next meetings, or meeting or meetings. That's one way to  
24 have that discussion and sort of a planning element as part  
25 of your meetings, and to agree among yourselves these are

1 the items of business that should be on the subsequent  
2 meeting agendas. But there is also this ability for you to  
3 direct staff to develop the agenda consistent with direction  
4 that you give them. And you can also, as Chair -- or any  
5 member of the Commission, really, can ask staff to put a  
6 particular item of business on the agenda for the next  
7 meeting. And the only reason I'm a little hesitant in  
8 answering this is because different state bodies do this in  
9 slightly different ways and, in some respects, the way that  
10 the full 14-member Commission decides to do this, it's  
11 really a matter largely of your design, how you want to work  
12 as a Commission, and work with your staff.

13           One of the really key elements of Bagley-Keene is  
14 this requirement that you take public comment before you  
15 take action on any item of business that you act on.  
16 Anything that you're going to act on, like, for example,  
17 today your action is limited today to the selection of the  
18 temporary Chair and Vice Chair, you took public comment  
19 before that, you always need to take that comment before you  
20 take action, hear from the public.

21           It is permissible under the law for state bodies to  
22 impose time limitations on speakers, it is fairly customary  
23 to do this. It's important that those time limitations be  
24 fair and uniformly applied. Again, I mentioned earlier,  
25 speakers cannot be required to sign in if they want to

1 speak. And very interestingly, the law gives an explicit  
2 right to criticize the state body, just thought I'd mention  
3 this, it is always a great part of the law.

4 COMMISSIONER FORBES: So they are not required to  
5 identify themselves when they come to the microphone?

6 MS. NEVILLE: They're actually not. And I know  
7 that's not convenient for many reasons. There's also, as I  
8 mentioned just a little bit earlier, a very customary  
9 practice that many state bodies do, it's not legally  
10 required, but it's the custom and practice of providing for  
11 public comment on items not on the current agenda, and  
12 really the essential purpose of this is to allow the public  
13 to bring matters to the attention of the state body that it  
14 might wish to play on a future agenda. And the key thing  
15 about this is that - and I know I mentioned this and I'm  
16 sort of repeating myself, but when you're doing this part of  
17 your agenda, when you're hearing from the public on matters  
18 not on your agenda, your ability to really deliberate among  
19 yourselves about what they're bringing to your attention, or  
20 do you even engage them, is limited just to clarifying your  
21 own understanding enough to know whether you want to  
22 agendize it for a future meeting. And I know that is  
23 probably going to be, I think, your next agenda item after  
24 this training, is going to be the taking of public comment  
25 on issues not on the agenda.

1           There is also a very important requirement in the  
2 law which is designed to make sure that the public is really  
3 able to participate in a meaningful way in meetings, and  
4 here is another area where -- and I mentioned this earlier,  
5 but I'm emphasizing it again -- it's an area where the  
6 Voters First Act differs from Bagley-Keene. What Bagley-  
7 Keene requires in terms of making written materials  
8 available is that written materials that were provided to  
9 you prior to the meeting have to be made available at the  
10 meeting, there is no requirement to make them available  
11 prior, so things like the guidance memo that we sent to you,  
12 the legal handbook, all of that, there are copies in the  
13 back, but the difference here is that maps that the 14-  
14 member Commission ultimately draws have to be made available  
15 for 14 days prior to your action. So, it would not be  
16 consistent with the law if they were only made available at  
17 the meetings.

18           There is a limited ability under the law to meet in  
19 closed session. It is limited -- and I'm going to kind of  
20 go through this fairly quickly because some of these  
21 requirements are just technical, and when and if you need to  
22 do this, you will have counsel to assist you. But you can  
23 only meet in closed session if the law expressly allows you  
24 to do so. Meeting in closed session is limited to very  
25 specific situations where, by necessity, there would likely

1 be confidential discussions or information at hand. For  
2 example, meeting with legal counsel about pending  
3 litigation, negotiating a collective bargaining agreement,  
4 various things like that are permissible to do in closed  
5 session. But, when you are going to hold a closed session  
6 at your meeting, your agenda has to put the public on notice  
7 of the fact that you will be meeting in closed session, and  
8 it has to reference the legal authority for doing so. When  
9 you meet in closed session, you actually have to have a  
10 staff member present, Minutes have to be taken. Now, it's  
11 sort of interesting that there's no actual legal requirement  
12 to actually take Minutes at an open session, partly because  
13 the public is observing and recording, and we're recording,  
14 but in closed session, you do need to have a Minute taker  
15 and that Minute Book can be a very important way of  
16 demonstrating that you have stayed within the confines of  
17 what you should be doing in a closed session. If you take  
18 action in closed session, you do have to report out on it in  
19 public session. So, for example, if you meet in closed  
20 session with your counsel and you agree to accept a  
21 settlement agreement, and you all agree on it and vote, the  
22 specifics of that discussion may be confidential, but  
23 counsel will then report out in open session the fact that  
24 the state body has approved the settlement agreement, or  
25 that it is hiring someone, or approved a contract, any



1 number of things like that.

2 CHAIRMAN YAO: The 14-day or 10-day meeting notice  
3 requirement, does that apply to closed session, as well?

4 MS. NEVILLE: Yes, in fact, the closed session is  
5 something that occurs within the context of an open meeting,  
6 so the meeting actually opens up as an open meeting, and  
7 then, while you're in open session, you literally will say,  
8 "We now need to go into closed session for this reason," you  
9 cite the legal authority, and the public leaves the room,  
10 and you meet in closed session, the same degree of notice,  
11 yes.

12 COMMISSIONER FILKINS WEBBER: Excuse me, I have  
13 another question. Pursuant to the Government Code, it does  
14 provide a list under Section 11126, and most of it is fairly  
15 clear, with the exception of a few provisions, which then  
16 indicate that you can -- this prohibition against closed  
17 session, meaning shall not prohibit a state body from  
18 holding a closed session to deliberate on decisions to be  
19 reached in a proceeding required to be conducted under  
20 Section 11500, but it also says "or similar provisions of  
21 the law." So, given that I am an attorney, I know that  
22 there are often times maybe circumstances in which case  
23 authority has interpreted this. Can you give me an example  
24 of anything you may foresee that the Commission would hold a  
25 closed session?

1 MS. NEVILLE: Not under that specific reference, not  
2 off the top of my head, because it's a reference to an  
3 Administrative Procedure Act hearing, a quasi-judicial  
4 hearing, where the rights of some party are at stake.

5 COMMISSIONER FILKINS WEBBER: That is what 11500 is?

6 MS. NEVILLE: Yeah.

7 COMMISSIONER FILKINS WEBBER: That is all I got to  
8 when I was able to look at it briefly.

9 MS. NEVILLE: Yeah. I don't believe so, I mean,  
10 given the nature of the work this Commission is involved in,  
11 and especially how transparent the work is expected to be,  
12 and to be honest, how little the information it is working  
13 with is confidential, I really can't think of reasons for it  
14 to meet in closed session.

15 COMMISSIONER FILKINS WEBBER: I couldn't either, so  
16 I was just -

17 MS. NEVILLE: Pending litigation - hope not, right?  
18 But perhaps personnel matters. But, for the basic substance  
19 of the work that this Commission will do with regard to  
20 redistricting, I don't see closed session exceptions  
21 applying.

22 COMMISSIONER FILKINS WEBBER: Thank you.

23 COMMISSIONER GALAMBOS MALLOY: Another question for  
24 you. Would these same notice laws apply post-August?

25 MS. NEVILLE: If I'm understanding you, when you say

1 "post-August?"

2 COMMISSIONER GALAMBOS MALLOY: So, our official work  
3 is done in terms of having the maps done, and having the  
4 narratives drawn up, we're no longer -- in my understanding  
5 -- officially seated as the Commission, but were there to be  
6 a challenge to the maps, what is our role and what are the  
7 notices that would apply to that scenario?

8 MS. NEVILLE: A great question, yes, and technically  
9 your term is for 10 years, surprise, surprise. But you are  
10 right, the bulk of your work will be completed by August  
11 15<sup>th</sup>, but you really still exist as a body, and the notice  
12 requirements would still apply if you needed to convene  
13 again for some subsequent reason.

14 Now I'm going to talk a little bit about telephone  
15 meetings and I'm just going to tell you right from the  
16 outset that the rules related to the telephone meetings  
17 don't fit in with the way that most of us live our lives and  
18 conduct business these days with our cell phones, okay?  
19 When these rules were written, they envisioned people with  
20 phones that stayed in one location, so keep that in mind as  
21 I describe the rules. Bagley-Keene does allow you to hold  
22 telephonic meetings, that is absolutely permissible. But  
23 there are some really specific requirements that you apply.  
24 The location -- and these requirements apply to members,  
25 members of the state body -- the location where a member

1 might be calling in from has to be noticed on the agenda,  
2 that location has to be ADA accessible, and the meeting has  
3 to be audible to some member of the public who might wish to  
4 come. So, if you're envisioning being at home, in your yoga  
5 pants drinking cappuccino, this doesn't always work so well.  
6 So, the idea is it really is an ADA accessible location.  
7 There are public officials, nonetheless, people lead busy  
8 lives, sometimes it's difficult to travel to be in a  
9 particular location, so they will find public space in a  
10 school district office, or a library, or somewhere where  
11 they know they are able to participate from afar.

12 COMMISSIONER GALAMBOS MALLOY: An additional  
13 question about this. So, would there ever be a scenario in  
14 which maybe the majority of the Commission is in-person, but  
15 one Commissioner has an extenuating circumstance and they  
16 call in from a public location?

17 MS. NEVILLE: Absolutely. And when they do that,  
18 the agenda will actually notice the location that they're  
19 calling from, and these requirements apply wherever they  
20 are. Under Bagley-Keene, unlike the Brown Act, they don't  
21 even have to be within the state, necessarily.

22 COMMISSIONER FORBES: So if an emergency shows up,  
23 or occurs for a Commissioner, and they can't make the  
24 meeting, but they did not know that at the time the agenda  
25 was issued -

1 MS. NEVILLE: It's a very unfortunate problem and  
2 it's a problem with the law, really. It makes things very  
3 difficult. Imagine a situation where just one member knew  
4 he or she needed to call in from afar, or didn't know until  
5 the last minute, that location hasn't been noticed on the  
6 agenda and it's a problem for a number of state bodies.  
7 When you do hold a telephonic meeting, you need to vote by  
8 roll call for the obvious reason that people cannot always  
9 recognize your voices. So, you can imagine under these  
10 rules, you can't call into a meeting while you're on your  
11 cell phone. What the rules really contemplate is that the  
12 person who is calling in, or the persons who are calling in  
13 from the remote location, know ahead of time where they're  
14 going to be, that location is noticed on the agenda, it is  
15 accessible to the public, and audible.

16 COMMISSIONER GALAMBOS MALLOY: When -- an additional  
17 question -- you mentioned that the call-in does not have to  
18 be from within the state. What about international?

19 MS. NEVILLE: The law in -- Bagley-Keene doesn't  
20 address that issue, the Brown Act tells us you have to be  
21 within the jurisdiction. I won't tell you stories that I  
22 know, but there are public officials who call in to meetings  
23 from Europe, and so you have to kind of wonder what purpose  
24 that is really serving if they're not even in the country.

25 CHAIRMAN YAO: The person that is calling in can

1 listen in on a meeting, but they cannot participate. That  
2 is allowable, correct?

3 MS. NEVILLE: They can participate. They're  
4 actually participating -

5 CHAIRMAN YAO: Let's say they did not notice and, at  
6 the last minute, they don't want to miss the meeting, but by  
7 not participating in a meeting, they can be on a car remote  
8 and listen to the conversation that goes on in the meeting,  
9 and that's permitted. Is that correct?

10 MS. NEVILLE: Yeah, it is. I know, it seems very  
11 odd, but this is an area where Bagley-Keene really sort of  
12 hasn't kept pace with the fast pace of our lives and the way  
13 we use our phones. I want to talk now about a really really  
14 important topic. And this goes back to an earlier question  
15 that Ms. Galambos Malloy asked earlier. There is this  
16 really really clear prohibition in the law that says that a  
17 majority of the members of the state body cannot, outside of  
18 a meeting, use any series of communications of any kind,  
19 directly or through intermediaries, to discuss, deliberate,  
20 or take action on an item within your jurisdiction. So,  
21 this is often referred to as a "serial meeting violation,"  
22 some of you may have heard this term, because we all know  
23 that there is kind of a traditional way you could violate  
24 the open meeting law if a majority of you were to get  
25 together at the same place and the same time, behind closed

1 doors, to discuss business. That would clearly be a  
2 violation of law. But you can also do it, even though a  
3 majority of you are not ever present in the same room, or at  
4 the same location, at the same time, through a series of  
5 communications that can take place in any way -- it can be  
6 with one phone call, a text message, it can be e-mail, it  
7 can be any number of ways, if collectively there is  
8 communication among a majority of you outside of a public  
9 meeting about a matter within your jurisdiction. That  
10 amounts to a violation of the law. Very significantly, and  
11 I'm not going to talk in detail about this appellate case  
12 that came down a few years ago, but there was a case where,  
13 under the facts, the court did not find that there was a  
14 violation of the law, and the Legislature responded by  
15 clarifying that it considers it to be a violation of the law  
16 when there is a deliberation among a majority outside a  
17 meeting, even when there is no meeting of the minds, or a  
18 consensus on a matter. You don't violate the law only  
19 because you actually reached some consensus. If there is  
20 simply a communication about your business among a majority  
21 outside of a meeting, that can amount to a violation of the  
22 law.

23           There is a term that the courts use for a way that  
24 you can have an illegal serial meeting, and they refer to it  
25 as a "wheel and spoke" meeting because, in this case, an

1 illegal meeting occurs not because the members are  
2 communicating with one another, but because some  
3 facilitator, some conduit who is at the center of the wheel  
4 acts as a facilitator and causes a serial meeting by having  
5 a communication with the members of the state body who are  
6 sort of at the end of the spokes. Unfortunately, the  
7 leading case that deals with this kind of unlawful serial  
8 meeting is one where the attorney for a public agency had a  
9 series of phone calls with the members of a local body  
10 outside of a meeting and, in those conversations, learned  
11 how they were all going to vote on a particular upcoming  
12 matter, and sort of passed that information along to the  
13 other members, so that by the time they all went into the  
14 open meeting, it was all done. The deliberation was done,  
15 which is the pro forma vote, and the court found that, under  
16 the circumstances, there was a violation of the law.

17           And I'll just mention here a couple of points that I  
18 want to mention to you, is that all of us who will be  
19 working with you as you engage in your selection of the  
20 final six will be very careful never to act as conduits of  
21 an illegal meeting, you are all very familiar with the law.  
22 But the other thing I want to be sure you know is that  
23 there's nothing in the law that prohibits any of you from  
24 contacting staff. The prohibition in the law is against  
25 communication among yourselves outside of a meeting. The



1 law is not designed to prohibit you from calling up Mr.  
2 Russo and asking questions of him, that is absolutely  
3 permissible and encouraged, right, Steven? So, again, a  
4 violation occurs when there is communication among a  
5 majority, either directly or indirectly, outside of an open  
6 meeting, even if they don't reach consensus. And I'll just  
7 throw in my own little two cents here, even though the law  
8 says outside of an open meeting, I have a theory which  
9 hasn't been tested yet, which is that it is possible to have  
10 an illegal serial meeting at an open public meeting through  
11 the use of cell phones and texting. If a majority of the  
12 members are sitting in an open public session, texting one  
13 another about the matter at hand, and the public can't  
14 observe that, I believe that a court would likely find that  
15 to be a violation of the law. No court case yet, but we'll  
16 see where that goes.

17           Just a couple of tips about avoiding a Bagley-Keene  
18 violation. The advice that I'm about to give you is very  
19 protective of the public's interest. My advice is that you  
20 should not communicate among yourselves outside of your  
21 meetings about the business that is within your  
22 jurisdiction, you shouldn't be communicating. There are  
23 lawyers who will tell you that, under a strict reading of  
24 the law, there's only a violation if a majority of you  
25 communicate, so it's okay if two of you talk, you make sure

1 you don't talk to anybody else. So, I think you can see the  
2 danger in that practice, because we can't control who our  
3 colleague may talk to after us, or may have talked to before  
4 us. My advice is conservative: do not discuss these  
5 matters outside of a public meeting. And, again, as you  
6 work with your staff, and you'll have this opportunity to  
7 hire staff when you are a fully convened Commission, you  
8 know, hire staff, please, who really embrace the values of  
9 this law and do take it very seriously.

10 COMMISSIONER RAYA: May I ask a question?

11 MS. NEVILLE: Sure.

12 COMMISSIONER RAYA: When you are defining an item of  
13 business within our jurisdiction, for example, talking about  
14 scheduling - just kind of talking about schedules, in  
15 general, who is available this week, that week, whatever?

16 MS. NEVILLE: That should, even though it sounds  
17 administrative, it should be done in open session, or,  
18 instead of communicating among yourselves, you should  
19 communicate with staff, who will kind of compile the  
20 information and work on it for you. So, even some things  
21 that seem administrative really should either happen in an  
22 open session or, rather than communicating among yourselves,  
23 the question should be channeled up through staff.

24 COMMISSIONER RAYA: Thank you.

25 MS. NEVILLE: Penalties for a violation of Bagley-

1 Keene are really serious, some of you may already know this.  
2 A violation can result in a misdemeanor criminal  
3 prosecution. The actions that are taken in violation of the  
4 law can be void. Attorneys' plaintiffs who bring these  
5 cases are able to recover fees, but perhaps, as significant  
6 as anything else, is the harm to the agency's reputation and  
7 the public embarrassment when it is not perceived as taking  
8 this law very seriously.

9           A couple things I just want to mention here,  
10 sometimes people feel kind of like their hands are tied, you  
11 know, they say, "Oh, there's so much we can't do. What can  
12 we do?" Well, you can certainly have purely social  
13 conversations with one another, and I hope that you will do  
14 that and get to know one another well. You can also attend  
15 conferences or other meetings where lots of other people are  
16 in attendance, even if a majority of you are present, that's  
17 fine, as long as you don't discuss the matters that are  
18 within your jurisdiction.

19           I want to talk to you again about some very special  
20 rules that the Voters First Act imposes on you. And this  
21 has to do with your communications with the public and with  
22 other public officials, and it is an area where the Voters  
23 First Act really is very unique. There is a clear  
24 prohibition in the Voters First Act against communications  
25 regarding redistricting outside of open meetings. Now, I

1 have to tell you, for those of you who have participated on  
2 any number of local or state bodies, you know that your  
3 constituents often approach you outside of meetings and, in  
4 fact, you feel it a duty to hear them and to listen to them.  
5 This law really contemplates something different, a more  
6 formalized kind of communication where the communication  
7 around redistricting will only take place in open public  
8 meetings. There are no side bar conversations. Things have  
9 to take place in a public setting. In the memo that I  
10 provided to you before the meeting, there was a little bit  
11 of guidance around that because I know it is awkward, you  
12 know, you will have people in your communities who will want  
13 to engage you in conversation, and you do need to say to  
14 them, "I can't have this conversation outside of a meeting.  
15 I encourage you to participate in the process." And what I  
16 also advise here is that you disclose the fact that someone  
17 has even approached you and attempted to have that kind of  
18 communication outside a meeting. When the full Commission  
19 is formed, it is required by law to adopt some protocols  
20 around communication. And my guess is that this is an issue  
21 you will want to take up and define the rules around that  
22 somewhat more. There is also a restriction contained in the  
23 law on communications with Legislators, members of Congress,  
24 members of the State Board of Equalization, or the  
25 representatives regarding the selection of the final six

1 members, an even more specific restriction.

2 I just want to make one point here about using  
3 technology to promote access. I was really excited when I  
4 listened to many of your interviews, and interviews of other  
5 applicants who are not here, because people clearly  
6 understood the importance of getting the public involved in  
7 this process, and they had many great ideas for using  
8 technology to do that. So, part of me was really excited,  
9 and then every once in a while the lawyer part of my brain  
10 would say, "Oh, Bagley-Keene doesn't let you do that." So,  
11 the point I want to make here is, I do hope the 14-member  
12 Commission will be really creative about using technology  
13 and doing whatever it can to encourage public involvement,  
14 but do keep in mind, there are some twists and turns and  
15 ways in which Bagley-Keene might not allow certain things,  
16 let me just give you a quick example. Something that's  
17 great and works really well with Bagley-Keene is webcasting,  
18 okay? We even had a few webcasts ourselves. You can do  
19 webcasting in a way that is completely consistent with  
20 Bagley-Keene. In contrast with that, blogging among members  
21 of the Commission, outside of a public meeting could be very  
22 problematic and could amount to an illegal serial meeting,  
23 potentially. So, my advice to you is just that, as you are  
24 fully formed and you meet with your counsel to really make  
25 sure whatever you do is very inclusive and very public, but

1 keep in mind some of the limitations that we've talked about  
2 here.

3 COMMISSIONER FORBES: Can I ask a question about  
4 that, then?

5 MS. NEVILLE: Sure.

6 COMMISSIONER FORBES: Not that it's happened yet,  
7 but if we get communications from the public, either e-mail,  
8 or blogging, Twitter, or however they come, we're not  
9 supposed to discuss those, but are we supposed to tell staff  
10 that we got those?

11 MS. NEVILLE: That is my recommendation, is that --  
12 there's two parts to it, really, one is to let the person  
13 know you can't have a conversation or not respond, but I do  
14 think, ultimately, as your work evolves and you're fully  
15 formed, I think one of the protocols you'll probably want to  
16 formally adopt is a requirement to disclose the fact of even  
17 having received those communications. Those protocols don't  
18 really exist yet, so the guidance that I gave you prior to  
19 this meeting is sort of informal.

20 A couple handy resources you may want to consult as  
21 you're going through your work as a Commissioner, and I want  
22 to see where I am on time -

23 MS. ALVERSON: It is 11:20.

24 MS. NEVILLE: So I have just a couple more minutes.

25 COMMISSIONER GALAMBOS MALLOY: Can I jump in with

1 one follow-up question to the section we just reviewed?

2 MS. NEVILLE: Sure.

3 COMMISSIONER GALAMBOS MALLOY: So, a question around  
4 providing general comments to the media, general requests,  
5 not so much about the technical matters of the redistricting  
6 process, but around who we are as Commissioners, what our  
7 vision is for the State of California, much more broad  
8 strokes. What is your guidance on those types of  
9 interactions?

10 MS. NEVILLE: Well, all that the law prohibits is  
11 public discussions about redistricting, but doesn't tell us  
12 just what that means, right? My advice would be to be a  
13 little bit cautious, and I say that because, even as you  
14 suggested, your comments broadly about the State of  
15 California and where it might go with redistricting, those  
16 might be things that would very much be a part of your  
17 deliberations. I would probably keep things that I think  
18 are likely to come before the Commission and be deliberated  
19 by the Commission in the open public meetings. One of the  
20 things that is really important as a State body is for you  
21 ultimately to have a pretty singular voice, ultimately. And  
22 I'm going to not give you a lot more guidance than that  
23 because you're going to have legal counsel when you're fully  
24 formed who will have lots more to offer you on that. So, I  
25 don't know if Steven has some thoughts, too, if you want to

1 offer them about press contacts.

2 MR. RUSSO: Well, I don't know that we can build on  
3 much more than what we provided in the written materials,  
4 that obviously you want to be very careful with your press  
5 contacts because whatever you say can - will -- reflect on  
6 the entire Commission, and can reflect on the credibility of  
7 the process. And even with the best intentions, and you may  
8 have one particular thing in mind, and it could be quoted  
9 out of context, or quoted in a way that reflects something  
10 that you weren't trying to communicate. So, what we would  
11 encourage you to do with press contacts, at least while  
12 you're working as the first eight members of the Commission,  
13 is to notify us of press contacts, let us help you to  
14 navigate those waters. We can provide a lot of information  
15 to the press in response to their inquiries. If they want  
16 to talk to a particular Commissioner, and you're willing to  
17 do that, certainly you want to keep this process accessible,  
18 you will want to make it work, we certainly aren't trying to  
19 shelter you or keep you from the press, but we can set it up  
20 in a way that works for the press people and also works for  
21 you, where you're prepared, you're ready to deal with the  
22 issues, you're not being caught off guard, and I think that  
23 the process works much better that way because you can  
24 communicate in a more effective way what it is you want to  
25 communicate and, in turn, we can make sure that whatever the



1 press is interested in, that it really is answered. I think  
2 that would work best for you, and at this point that is our  
3 recommendation.

4 COMMISSIONER GALAMBOS MALLOY: My final question, I  
5 promise, so I have actually received communications through  
6 social media, have not responded to any of them, but  
7 Facebook messages, etc. So, in the interim period while we  
8 are not fully formed, and do not have the protocols  
9 established, does Counsel have guidance on particular  
10 language that we might want to use in interacting with those  
11 requests?

12 MS. NEVILLE: Well, I think if I were to receive an  
13 electronic communication, I probably wouldn't respond. If  
14 someone were to encounter me in the public, I certainly  
15 wouldn't turn and walk away, I would tell them very  
16 politely, "I'm really sorry, the law does not allow me to  
17 discuss that with you outside of a meeting. I would  
18 encourage you to attend a meeting, or participate, or submit  
19 your comments in writing." That would be the first part of  
20 it. But I do think, as you move forward, and you're fully  
21 convened as a Commission, you will probably develop a  
22 practice of disclosing the receipt of those kinds of  
23 communications. And the Commission will have some latitude  
24 about -- latitude may not be the right word, but --  
25 discretion about what has to be disclosed, not everything,

1 perhaps. You know, some things don't rise to that level,  
2 some do, that kind of thing. These are almost like the  
3 kinds of rules that apply in a more formal hearing context,  
4 when you can't speak outside of a hearing. Do you have a  
5 question? I had a couple questions, really quick ones, just  
6 to kind of test where we're at. So, the first one is,  
7 "Commissioner A wants to attend the upcoming meeting of a  
8 State body, she needs to be traveling when the meeting is  
9 held. If she calls in to the meeting on her cell phone  
10 while driving to the airport, is her attendance consistent?"  
11 Right, we all know, of course not, that one was easy. "May  
12 a member of the public use his or her i-Phone or other  
13 recording device to record a State body meeting and post it  
14 on YouTube? A) Yes; B) Only if he or she intends to  
15 litigate the matter; C) Yes, but only if advance notice is  
16 given to the Secretary; or D) No?" The answer is yes, and  
17 we've probably all seen what YouTube snippets of public  
18 meetings. "I offer my comments during the time allotted for  
19 public comment on items not on the agenda at every meeting  
20 and the members don't respond, except to say thank you.  
21 Why?" A) They're not listening; B) They disagree with you  
22 and don't want to argue in a public setting; or C) The  
23 issues you're commenting on have not been properly placed on  
24 the agenda for discussion, so it would not be appropriate  
25 for the members to deliberate on the issues you raise." You

1 can tell I'm not a tester - I make it way too easy. C is  
2 clearly the answer and I know that you're about to take  
3 public comment on items not on the agenda, so that is the  
4 perfect segue. I thank you very much for your time and I  
5 wish you all luck and great success in your endeavors. Did  
6 anyone have other questions before I step down?

7 MR. RUSSO: We also have provided an opportunity for  
8 members of the audience to ask questions. The question is,  
9 "Does the requirement that maps be displayed for 14 days  
10 mean that, to meet the August 15<sup>th</sup> deadline, a map must be  
11 displayed by August 1<sup>st</sup>? So, that would mean that the  
12 working deadline for a map would be August 1<sup>st</sup>, rather than  
13 August 15<sup>th</sup>?"

14 MS. NEVILLE: I think that is correct.

15 CHAIRMAN YAO: On that related question, can you  
16 comment on typo type of changes and so on?

17 MS. NEVILLE: To an agenda?

18 CHAIRMAN YAO: Not to the agenda, for example, a  
19 map, we receive public comment and it is to correct an  
20 obvious error. Does that start the clock over again?

21 MS. NEVILLE: That's a really good question and, of  
22 course, I was thinking about that at 5:00 this morning, and  
23 I think the answer is that the Commission is going to have  
24 to really, as a group, decide and discuss what its  
25 understanding of that requirement is because, you're right,

1 there will be some fine tuning, does that trigger the 14  
2 days or not? There will be some interpretation and that  
3 will be a matter for the Commission with its legal counsel  
4 to discuss.

5 MR. RUSSO: We also have a question from Kathy Feng,  
6 but I don't know what the question is, so -- is it a  
7 question or a comment? Can we take that during the public  
8 comment period? Because then we'll have a microphone  
9 available? Okay, thank you.

10 MS. NEVILLE: I now know someone has worse  
11 handwriting than me.

12 MR. RUSSO: "Can all members of one political party  
13 strategize together?"

14 MS. NEVILLE: Well, the rule is that -- outside of a  
15 meeting, I assume you mean. And this is a good question  
16 because it gets to the difference between my advice and what  
17 the law really prohibits. The law prohibits a majority from  
18 meeting outside a meeting to discuss something. Three  
19 members of one party, or three of another is not a majority,  
20 it is strictly speaking, not a violation of law, but I  
21 strongly advice against that because I don't think that is a  
22 good practice, and I think it would be very counter to the  
23 goals of this process.

24 MR. RUSSO: In addition to that, I would note that,  
25 in our Regulation 60858, we've provided specifically that

1 the members of the first eight members of the Commission  
2 shall conduct all deliberations in public and not meet in  
3 closed session, except as permitted by the Bagley-Keene Open  
4 Meeting Act. So, with that, I think what we're saying is  
5 that, if the discussion is one that amounts to a  
6 deliberation of who to pick, and so forth, that would be  
7 prohibited by our regulation as we have been aiming  
8 throughout this process to keep the selection as public as  
9 we possibly can as to how people are being selected.

10 MS. NEVILLE: Well, thank you very much.

11 CHAIRMAN YAO: At this point, I would like to open  
12 up the microphone to any members of the public who would  
13 like to address the Commission on items that are not on the  
14 agenda. If you do have a comment, please step up to the  
15 podium.

16 MS. FENG: Good morning, Commissioners. My name is  
17 Kathay Feng. I am the Executive Director of California  
18 Common Cause, and we are an organization that was formed in  
19 the 1970's specifically around the notion that government  
20 should be transparent and fully accountable to the public.  
21 And I just want to say on a personal note that today is a  
22 very exciting and thrilling day to have the first eight  
23 Commissioners seated, and represent such a broad diversity  
24 and skill sets and talents of California is, I think, a  
25 credit to the applicants who made it through the very long

1 application process, as well as the Bureau of State Audits  
2 for really conducting what everybody has said is a very  
3 exemplary and open process. I just want to say I'm glad  
4 that Elaine Howle swore you in before you found out that you  
5 had a 10-year term, that you would have to sit through an  
6 18-day continuous meeting, and that you would be limited in  
7 your conversations with each other outside of chit chat, so,  
8 good, we've got you! I thought I would just share with you  
9 a few of the reasons why we came up with some of the rules  
10 that we did in Proposition 11 and, to some extent,  
11 Proposition 20, in part because I think, when you think  
12 about what the spirit of the law is, there may be some  
13 things that are left unanswered, or even some things that  
14 were unintentionally not synchronized between the two  
15 propositions. But, as you think about how to try to live up  
16 to the spirit of the law, you might think about some of  
17 these real life examples. Before I came to Common Cause in  
18 2001, I was a Civil Rights Attorney with the Asian Pacific  
19 American Legal Center, and I was representing Asian Pacific  
20 American Communities, many of whom for the first time were  
21 participating in the census process, and then eventually  
22 meeting together to talk about where their communities were,  
23 and why it was important that they be respected through the  
24 2001 new line drawings. And what was interesting was that  
25 there were a lot of people who were testifying before the

1 assembly and senate committees for the first time and they  
2 had never gone before a public body to stand in front of a  
3 podium to talk about anything, let alone the importance of  
4 their communities. And, in some cases, their testimony was  
5 so moving and personal that the Committee members elected to  
6 sit through hearings day in and day out actually had tears  
7 in their eyes about, you know, how important it was to try  
8 to respect these communities. I will just say that part of  
9 the reason why we eventually moved to a place where we  
10 thought that it was important to have a more transparent  
11 process was because, after several months of public  
12 hearings, those committees went behind closed doors and  
13 essentially negotiated the lines between Legislators and, in  
14 many instances, not always, but in many instances there were  
15 lines that were moved, and ones where the public never had  
16 any chance to provide input into. Specifically, in the very  
17 last rounds of the redistricting process, I think that there  
18 were about a dozen or so public hearings, the last one, I  
19 believe, was September 4<sup>th</sup> and 5<sup>th</sup> of 2001, and then there was  
20 radio silence with the Legislature as they went about  
21 negotiating with each Legislator how to get as many votes on  
22 as possible, moving lines, and making negotiations to  
23 accommodate specific Legislators, and when ultimately the  
24 Legislature decided to vote on the maps, and I think it was  
25 September 12<sup>th</sup> or 13<sup>th</sup>, the public didn't know what the maps

1 finally looked like, and the public also didn't even know  
2 when that vote was going to happen. And so, we were really  
3 left in the dark. And so, when you think about this whole  
4 notion of a 14-day requirement, part of it is, you've got to  
5 give notice to people who, frankly, have to take time out  
6 from work, or from their busy lives, to try to make it to  
7 the Commission to talk about where their communities are,  
8 and rearranging that is not easy, especially if it's done  
9 only on, you know, two or three days notice. And the other  
10 part of it is to make sure that, whatever decision is  
11 ultimately made, is one that has the full trust, that the  
12 public feels like their input was taken, and the process was  
13 above board. Let me give you another example of something  
14 that didn't happen in California, so it's good to know that  
15 we're not the only ones who bend the rules, but in New York  
16 City, I was recently talking to a Commissioner who sat on  
17 the New York City Commission to Redistrict, and they had  
18 through a lot of effort come up with a set of maps that they  
19 were very pleased with, that they thought had properly sort  
20 of represented where the community had provided input to,  
21 and that they could get the votes on. And over the course  
22 of 24 hours, somebody had gone into the computers where the  
23 maps were stored, swapped out the map that they thought they  
24 were voting on, and put in another map so that the map that  
25 they ultimately voted on was different. And none of the



1 Commissioners realized that that had happened until,  
2 unfortunately, they had voted on the different maps. So, as  
3 you think about this, you know, part of that whole public  
4 display requirement is in part for the public, but also for  
5 the integrity of the process, as you make that decision, so  
6 that whatever is on display, that is the thing that you vote  
7 on, and somebody couldn't just come in, swap it out, and  
8 then that becomes the thing that you vote on. In terms of  
9 how you allow for the public to provide comment and access,  
10 I would just say that there are at least two examples that I  
11 think are worth looking into. In San Diego, as with many  
12 cities in California, there are City Commissions that do the  
13 redistricting, and in San Diego, the City had a process  
14 which was widely hailed as being very inclusive, where the  
15 Commissioners decided to have at least one hearing in every  
16 City Council district, not as challenging, obviously, as  
17 trying to do that in California, but at least what they made  
18 a decision about was to make sure that every geography was  
19 heard. And they also publicized the deliberations and the  
20 moving of the map lines on Public Access Television. And  
21 what is interesting to note, although I'm not sure if it is  
22 a great achievement, but certainly something interesting to  
23 note was that the Public Access viewership at that time was  
24 the highest that the San Diego Public Access had ever had,  
25 so who says that you can't make redistricting at least

1 somewhat interesting to the public? In Arizona, when they  
2 adopted the Commission process, and I believe that there are  
3 about a half dozen or so other states that have some type of  
4 Commission, none quite as independent, nor as brilliant as  
5 the California Commission, I'm sure, but in Arizona, when  
6 they had their Commission process, they actually had 57  
7 hearings around the state, and so, when you think about that  
8 by comparison to California in 2001, when we only had about  
9 a dozen, you should think about how it is that you want to  
10 make sure that the hearings are easily accessible and  
11 frequent enough that people feel like they have an  
12 opportunity to give input. When we established the law, we  
13 thought about the redistricting process in three different  
14 phases, one was before you begin drawing maps, just to  
15 receive testimony from the public, and to some extent people  
16 -- before the Census data comes out in approximately late  
17 March of 2011, there may be folks already ready to talk  
18 about where their communities are or, you know, even how the  
19 rules should be that you may want to put in place. After  
20 you have a first set of draft maps or you are tweaking along  
21 the way, you will want to have hearings to receive public  
22 comment about those draft maps. These days, we sort of  
23 thought about it in three different stages, it may be that  
24 technology allows you literally to have maps that you are  
25 tweaking along the way, that are publicly displayed, but you

1 can have a continuous hearing on it, but however you decide  
2 to do that, we certainly wanted to make sure that, if there  
3 were a set of draft maps, that the public would have a  
4 chance to comment on that. And then, the final set was,  
5 when you believe you've got your final maps, to allow those  
6 to be publicly displayed and to receive public comment. And  
7 our idea was actually that the 14 days would be the same  
8 concurrent set of 14 days, not a full 28 days, because there  
9 was not that kind of time. I believe that we had a concept  
10 that not only would you have very open hearings to receive  
11 public oral testimony, but also that you should establish a  
12 process for receiving written or electronic comment. And  
13 comment could be comment to maps that you've already posted,  
14 but also to receive maps that people are proposing,  
15 sometimes of specific communities, sometimes maybe of a  
16 whole district, maybe some organizations will even want to  
17 put forward an entire statewide map that puts all of the  
18 districts together, and the hope was that you would not only  
19 receive those, but also turn around and publish those so  
20 that, in a single website, people could come see all of the  
21 different possibilities and alternatives. We envision,  
22 again, that these days, with the availability of software  
23 and data, that you might make this process as public as  
24 possible, but that doesn't mean that, to some extent,  
25 agreeing in advance what formats you can receive things in,

1 and so that is helpful to lay out for the public so that  
2 they know as they're providing information that it's in the  
3 right format, that you can turn around and publish, but also  
4 that it's useful for you. Just a small little note, I do  
5 remember a number of hearings in 2001 where people came up  
6 and testified about their communities, and talked about why  
7 it was important, and all of the characteristics, but forgot  
8 to talk about the streets that bound what they were talking  
9 about. And so, there are small guidelines that you may  
10 think about that would help the community folks who were  
11 coming forward to you, who may never have done this before,  
12 to give you useful information that you could then turn  
13 around and use as you're drawing the maps. At the end of  
14 the whole process, and I just wanted to commend Donna  
15 Neville for doing a fantastic job of presenting this really  
16 comprehensive presentation on what Proposition 11 requires,  
17 as well as what Bagley-Keene and some of the other open  
18 hearing rules are, but I would just say that the additional  
19 thing is that Proposition 11 requires that you issue a  
20 report that talks about how you complied with the law in  
21 terms of the mapping criteria, and perhaps, if there are any  
22 deviations, why that was. That's just a way of, in essence,  
23 issuing an opinion like the Supreme Court might, where  
24 collectively you're talking about how you came about  
25 deciding on the maps that you did. When we say that you are

1 seated for 10 years, I don't think that we envisioned that  
2 you would have to meet for the full 10 years, and certainly  
3 it wouldn't be a continuous meeting. But we did think that,  
4 after August 15<sup>th</sup>, assuming that everything goes well, that  
5 you might anticipate that there could be legal challenges  
6 because this is a very contentious area, that you would have  
7 to, for instance, put together this report, and then,  
8 additionally, because this is the first go-around, and  
9 because the authors do not purport to have been all  
10 omniscient, and we made mistakes along the way, that you  
11 might think about making a set of recommendations that the  
12 Legislature could consider to improve, tweak, fine tune the  
13 process. We've already heard some things that we may want  
14 to address in the future, but I think, as you go through  
15 this process, you might have a running list on the side of  
16 things that worked and don't work, that you could leave as  
17 guidance for the next Commission that comes around in 2021.  
18 Finally, on a different note from the open meeting process,  
19 I just want to say that, as you embark on choosing the final  
20 six Commissioners, there are a lot of people who are  
21 watching this process, and while I do think that the  
22 Commission pool is exceedingly talented, and I think that  
23 picking any one of the Commissioners -- or the potential  
24 Commissioners -- from that pool will be a very good  
25 complement to you, I do hope that you will think about the

1 mandate of Proposition 11, which is that the last six are  
2 intended to be chosen with an eye towards balancing the  
3 diversity in terms of geography, ethnicity, race, and  
4 gender. And so, as you think about that, and I'll just be  
5 explicit, certainly a lot of groups have talked about this,  
6 that given the state's diversity, we probably need to think  
7 about having more people from Southern California, Central  
8 California, Southern Coastal, possibly supplementing the  
9 current balance of Commissioners with more Latinos, more  
10 whites, possibly Native Americans, or Pacific Islanders.  
11 So, these are all part of the larger conversation, but  
12 you're going to also want to look at in terms of thinking  
13 about what talents people bring to the table, do you have  
14 amongst yourselves people who might be familiar with Civil  
15 Rights or Voting Rights law? Is that something that is a  
16 skill set that a Commissioner out there has? As you think  
17 about that, certainly, we hope that you take the mandate of  
18 Proposition 11 both in terms of the letter of the law, but  
19 also the spirit of the law. And I am very excited and want  
20 to welcome you, and hope that I haven't scared you off, and  
21 that you're not all turning in your resignation letters  
22 today, but this is a very big day and I wish you all good  
23 luck. Thank you.

24 CHAIRMAN YAO: Thank you for your comments.

25 MR. KIGHT: Good morning. My name is Isaac Kight.

1 I'm from the Gold Country, the Sonora area. And I am an  
2 enterprise architect which, when I grew up, that didn't  
3 exist, so I'm one of those kids that said, "Someday I'm  
4 going to be a firefighter," well, I became an Enterprise  
5 Architect, and the reason Silicon Valley invented this was  
6 we needed to combine business process management with  
7 business strategy and IT. So, in that you are going to be  
8 working on a process, and I heard software mentioned before  
9 that will involve probably some software, I wanted to come.  
10 I know there will be a better time to talk about it, but I  
11 wanted to come at the beginning and offer some insights and  
12 I have a letter prepared - unfortunately, I only brought one  
13 copy, but I will submit it to the Secretary for your review.  
14 One thing I wanted to stress about software is flexibility.  
15 One of the things I'm seeing in business today is there is a  
16 lot of software that serves very specific purposes, and  
17 everyone is asking, well, how do I run my whole business  
18 like QuickBooks? Or, how do I run my whole business like  
19 this other thing? And the answer is you develop it and you  
20 expand it. There will be firms, I am sure, that will come  
21 with different software packages and I'm certain that they  
22 will be willing to work with you to expand the capabilities  
23 and offer you the flexibility to add new data, new criteria,  
24 and that sort of thing. In terms of the process of  
25 developing the districts in the software that will be

1 involved, we have many different ways of developing software  
2 and working with it. Checks and balances are very  
3 important, and I think it would be easier if you started  
4 with one set of districts, and districts sort of in the  
5 middle, and I would recommend starting with the State Senate  
6 Districts, I don't know what your legal requirements are,  
7 because, once you have used the software to create some  
8 districts, you'll have a chance to review it and look at it  
9 and see how is the software working, what do we want it to  
10 be able to do, and what additional criteria do we want to  
11 set, and start playing with it right at that phase, then it  
12 can easily be grouped into, you know, 10 districts for the  
13 Board of Equalization, and then divided in half for  
14 Assembly, and then, eventually, when Congress gets around to  
15 finishing the reapportioning process, how many  
16 representative districts to design from there. And finally,  
17 I did want to suggest that, perhaps as a basis for the  
18 software, we might enter just for experimental purposes the  
19 Senate Districts that were designed in the 1991  
20 redistricting, which were *fairer* and obviously would have to  
21 be adjusted for population if they were to be of any use,  
22 but these might be a firm basis, something to build on. And  
23 with that, I'm very proud to be here and be part of this  
24 particular day in history, and I look forward to seeing what  
25 you guys are able to create. Thank you very much on behalf



1 of the people of California, and it's a proud day. Thank  
2 you.

3 CHAIRMAN YAO: Thank you, Mr. Kight.

4 MS. SCHAFER: Good morning. I'm Trudy Schafer. I'm  
5 Senior Director for Program of the League of Women Voters of  
6 California, and I echo what a momentous day this is and how  
7 very pleased and proud we are to be part of this historic  
8 day. The League of Women Voters' mission is to encourage  
9 the active and involved participation of people in  
10 government, and to influence public policy through education  
11 and advocacy. League of Women Voters members around the  
12 State studied redistricting in the late '80s in order to  
13 have some impact on the process following the 1990 Census  
14 and, again, we were very interested and involved after 2000.  
15 But it was about six years ago that our State Board  
16 recognized redistricting reform of the process as a real  
17 potential, and we have worked with groups like Common Cause  
18 and a number of the other groups that you will be hearing  
19 from for the next eight or nine months, as a real project to  
20 achieve fairer redistricting for California. We always  
21 talked in terms of three elements, an independent Commission  
22 that really represented the diversity of the state, a fair,  
23 open and transparent process, and finally, very good  
24 criteria for the drawing of the lines. And we feel that  
25 what we have now ahead of us satisfies all three of those

1 criteria, and we're extremely absolutely thrilled that we  
2 are now embarking on that process. I think you've heard  
3 much of what I might have talked about in terms of what has  
4 led to this day from Kathay Feng, and so I won't go into any  
5 detail, but just to comment on the importance of the  
6 independent Commission and that you represent the diversity  
7 of California as you go about selecting the remaining six  
8 members of the Commission. We know that you will, but I  
9 wanted to impress upon you how very important we feel it is  
10 that you look at not only the ability to be impartial, or  
11 the analytical skills, the ability for the remaining  
12 Commissioners to work with all eight of you to achieve a  
13 goal. But also, please keep in mind the requirements of  
14 diversity and of an ability to understand and respect the  
15 Voting Rights Act. In terms of the open transparent  
16 process, this Commission is going to, and the process of  
17 selecting the Commission has already achieved a level of  
18 transparency that just has not been at all possible in the  
19 preceding redistricting processes, we do recommend that, as  
20 Donna Neville commented, there are ways in which you can  
21 make the process even more transparent and open to public  
22 participation than the requirements of Bagley-Keene would  
23 dictate, and we certainly urge you to look for those ways at  
24 every step of the way. I think that some of the comments  
25 from Kathay about the ways in which we can make the maps,

1 the input, all the different things that you can do to not  
2 only allow, but really invite public participation, is very  
3 important for the process and for the reputation that your  
4 process and your results will have, and the good standing  
5 that you will have with the people of California. And then,  
6 finally, strong fair criteria for the drawing of maps went  
7 into Proposition 11, especially, of course, after adherence  
8 to population equality in the Voting Rights Act, a real  
9 respect for communities of interest, and cities, counties,  
10 and neighborhoods. And we are very pleased that those are  
11 the things that you will be looking at as Commissioners and,  
12 also, that you will be looking at as you select the  
13 remaining six Commissioners. Keep in mind, as Kathay said,  
14 that Proposition 11 did provide for amendments to the  
15 process, and so, as you go through the process, and that you  
16 look back on the selection procedures that you experienced  
17 to this point, I hope you will be keeping the possibility of  
18 tweaks that you might see would be valuable to recommend to  
19 the Legislature to enact for the next census in the next  
20 redistricting process. League of Women Voters members  
21 around the state are looking forward to observing your  
22 process, I am sure there are many people who are watching  
23 the webcast at this moment, and we certainly appreciate the  
24 opportunity for people all around the state, no matter where  
25 you are meeting, to have the chance to observe, to watch

1 what is happening, and to share those observations with the  
2 people of California, and we will be doing that, we look  
3 very much forward to the opportunity that this whole  
4 procedure is allowing, and we wish you the very best as you  
5 go forward. Thank you.

6 CHAIRMAN YAO: Thank you, Ms. Schafer, for your  
7 input.

8 MS. KOPEL: Good morning. I'm Malka Kopel and I'm  
9 from California Forward, which is a statewide non-partisan,  
10 nonprofit organization, it works on government reform. And  
11 I just wanted to add my voice to those of the others  
12 congratulating you for serving on the Commission, and  
13 thanking you for your willingness to engage in this  
14 particular task for the next few weeks, which we, as others,  
15 think is a very very important part of the work, and we wish  
16 you the best of luck.

17 CHAIRMAN YAO: Thank you, Ms. Kopel.

18 MR. LAWSON: Brian Lawson again. I have some  
19 thoughts, because I spend a lot of time researching this, I  
20 read a lot of the transcripts from the Arizona Commission,  
21 and I think there are a lot of fun questions you could ask  
22 Mr. Lynne and he could give you great, wonderful advice  
23 about a lot of your questions. One particular thing that  
24 you may get to deal with is asking the Legislature for more  
25 money, okay? You only have a limited amount of money and

1 he had \$6 million for a state which is a lot smaller than  
2 California, and he went through that, and he was able to get  
3 another, you know, \$1.5 million from the Legislature, so you  
4 might want to ask him how he did that, you might want to  
5 keep track of your burn rate, how fast you're going through  
6 the money, so I would suggest you keep asking about that.  
7 Lawsuits, you know, he was dealing with lawsuits for a long  
8 time, and ask him about that. The pre-clearance process,  
9 they were rejected the first time, ask him about that. What  
10 was it like - they had to replace their Executive Director  
11 at one point, there were closed session issues, things like  
12 that, ask him about those things. A lot of things - and  
13 this is just from my reading the transcripts, I don't know  
14 him, I don't know what he's like, but you know, there's a  
15 lot of stuff they had to do with it and he's coming in here  
16 right after lunch, so a lot of stuff you should ask him. I  
17 would definitely reinforce what Kathay Feng just said about  
18 making sure to pay attention to racial, ethnic, geographic,  
19 and gender diversity, and I've made a bit of a case, at  
20 least in my written comments, that Southern California  
21 really does need to be represented better, that's where I'm  
22 from, and you know, I probably won't be coming to a lot of  
23 meetings, this is expensive, and so you know, if you can get  
24 people who are from there, that would be great, and even  
25 have some meetings there, that would be a wonderful thing.

1 I have a question for counsel because, again, you all  
2 learned about public comments, so you shouldn't probably  
3 respond to my question, but will it be possible to submit  
4 written comments during this period when the eight people  
5 are deliberating?

6 MR. RUSSO: Written comments regarding...?

7 MR. LAWSON: What they're doing, selecting the six  
8 applicants.

9 MR. RUSSO: We have on our website a process for  
10 individuals to make comments regarding the individuals who  
11 are in the applicant pool at this point, and we have not yet  
12 set a date for when that will shut down, so it is certainly  
13 available to use at this very moment and onward.

14 MR. LAWSON: And how about if someone wanted to make  
15 a comment about more than one individual, but a group of  
16 individuals or something like that?

17 MR. RUSSO: We have received comments of that kind  
18 and what we do is we will make multiple copies and attach it  
19 to each applicant's file so that it's available with regard  
20 to each applicant.

21 MR. LAWSON: Okay, so just send it to the Voter's  
22 First - the e-mail?

23 MR. RUSSO: That is correct.

24 MR. LAWSON: Okay, great. Okay, and once again,  
25 thank you - oh, the other thing you might want to ask Mr.

1 Lynne is what was it like holding meetings for nine years,  
2 okay? So, not continuously, not all the time, but there's a  
3 lot there.

4 CHAIRMAN YAO: Thank you, Mr. ...

5 MR. WALTON: Good morning. My name is Sam Walton  
6 and I'm a consultant with the National Association for the  
7 Advancement of Colored People, NAACP, and we have been  
8 involved in the process for quite a while. We supported  
9 Proposition 9 and - I mean, Proposition 11 and Proposition  
10 20. And our organization has a history of standing for the  
11 people who have less of a voice, fewer speeches, and who  
12 have not had much access to government processes, that don't  
13 have an opportunity to get their voices heard, so that is  
14 why we supported Propositions 11 and 20. We believe that,  
15 finally, California has reached a point where the majority  
16 is now saying open the door for everyone and stop doing the  
17 back room deals, stop listening to political bosses. And  
18 that I commend each of you, I've watched the interviews and  
19 was impressed as you stood before the panel to answer those  
20 questions, I don't know how you did it, but you ought to be  
21 commended for having done it, and we hope that you have a  
22 successful experience as you go forward. We believe that  
23 this opportunity that you have will be long-lasting. It  
24 will certainly make a difference for our country and has the  
25 potential to create hope and belief in the American voter

1 and the California voter, that government can be responsive,  
2 that's what we hope to achieve by having supported the  
3 redistricting propositions. There are elements in it that  
4 require diversity and we believe that the Applicant Review  
5 Panel was a very transparent process. We've been around a  
6 long time and our organization would have to say we've not  
7 seen that kind of a process in a long time, it was very  
8 transparent. The Commissioners seem to have, the Applicant  
9 Review Panel seemed to have respected one another, there was  
10 no dominant player in the group, they sought to achieve the  
11 best of California. And we hope that, as you go through  
12 your process, that you will recognize some of those same  
13 principles of respect for one another, the pursuit for  
14 objective decision making, the pursuit to seek information  
15 from sources actually traditionally we'll not hear from.  
16 You provide something that hasn't been available. You  
17 provide an avenue for voices to be heard. Your make-up will  
18 constitute a welcome sign, so, as you travel around the  
19 state and conduct hearings, whether you do them here, or in  
20 57 other locations, you are going to be a body that we hope  
21 the public will come to and want to share with you the  
22 subtleties of their views about what their communities are  
23 really made of, the things, their values, their hopes and  
24 dreams. And to do that, I hope that you will definitely  
25 recognize the requirements of the law and make sure that, as



1 you go forward selecting the remaining six members of the  
2 Commission, it will be very critical that, when you walk  
3 away, when you sit here on the panel and people have to come  
4 and make a presentation, that everyone feels that there is  
5 an opportunity to have their cultural presentations heard,  
6 their geographic presentations heard, that people will be  
7 sensitive to the needs of their particular community. And,  
8 in particular, as I said, we speak - our organization has a  
9 history of speaking for the people who haven't had a voice.  
10 And to that end, we would hope that the silence that has  
11 been present in the process for African Americans and  
12 Latinos will be overcome with the actions that you take, as  
13 you go forward in filling out the Redistricting Commission.  
14 So, I commend you for standing for those interviews. I  
15 mean, it's just remarkable. You were all so resilient. I  
16 don't think I could have been. So, I commend you and I  
17 encourage you to continue in the vein of the Applicant  
18 Review Panel; it was such a transparent process, and I  
19 believe California is going to be better because of it, and  
20 I hope that California will be better because of the work  
21 you do. Thank you.

22 CHAIRMAN YAO: Thank you, Mr. Walker [sic]. Anyone  
23 else interested in addressing this Commission? Seeing no  
24 one else approaching the podium, I will close the public  
25 comment section. At this point, while we can't discuss the

1 item that was addressed to us, we certainly can give  
2 direction to staff to put any items on the future agenda if  
3 you so like. Any inputs from fellow Commissioners based on  
4 what you have heard? Seeing none, I will move on to the  
5 next item. For the balance of the agenda schedule for  
6 today, do we have time for lunch?

7 MR. RUSSO: Yes, we do. We have time for lunch. We  
8 have scheduled the next trainer to be here at 1:00., I  
9 notice it's a little bit after 12:00, but I'm sure he  
10 wouldn't mind starting a little bit later if you want to  
11 take a full hour for lunch. It's your option.

12 CHAIRMAN YAO: What is the Commissioners' pleasure?  
13 Do you want to take an hour or do you want to come back at  
14 1:00?

15 COMMISSIONER RAYA: I'd like to take an hour.

16 CHAIRMAN YAO: All right, we will adjourn one hour  
17 from this time, which is according to my clock 12:04. So we  
18 will adjourn [sic] at five after one. Thank you.

19 (Off the record at 12:04 p.m.)

20 (Back on the record at 1:06 p.m.)

21 CHAIRMAN YAO: The Citizens Redistricting Committee  
22 will reconvene our meeting at this point in time. We are on  
23 Agenda Item 8. Commission, welcome Mr. Steve Lynne to  
24 address us on the Arizona experience of the Redistricting  
25 Commission.

1           MR. LYNNE: Good afternoon, Mr. Chairman, members of  
2 the Commission. First of all, I'd like to thank the  
3 Commission and the Auditor's Office for asking me to come  
4 and talk a little bit about where I've been, where you  
5 started I was about 10 years ago. And not to say that this  
6 is a difficult or laborious process, but I'm only 29-years-  
7 old and it wears on you in different ways, and I think what  
8 I'd like to do today is talk a little bit about that  
9 experience and how some of the things you've already heard  
10 this morning in terms of either being briefed on open  
11 meeting laws, and ways to go about getting input, and so on,  
12 how that may have been instructive in what we did in  
13 Arizona, but there are some terrific differences between our  
14 Commission and yours, and I don't want you to take away the  
15 notion that I know how to do your job, I know how to do a  
16 job, and that job was the job that we were given as an  
17 Arizona Commission.

18           The first and most glaring difference is that there  
19 were only five of us and I have a number of degrees in  
20 interpersonal communications, and the one thing I know about  
21 adding people to a discussion is that the difficulty  
22 increases exponentially, not arithmetically, with the number  
23 of people you add. So, I do not envy the task of having 14  
24 people, each with his or her own ideas about how this job  
25 ought to be done, interacting at any given time as members

1 of the Commission in trying to do the work that the  
2 Commission has to do, that it's going to be difficult, at  
3 best. It's going to be laborious, and it will take an  
4 inordinate amount of time. Having said that, you had the  
5 opportunity and have the opportunity to be far more  
6 representative of the diversity in this state, which is  
7 tremendous and admirable, than we did. In fact, Arizona,  
8 which has a significant minority population, primarily  
9 Hispanic, but Native American, as well, African American to  
10 a much lesser degree, there were five of us on the  
11 Commission and, because of the way we were chosen, there  
12 were no minorities, and one woman of five. And so, the  
13 first thing that happened to us was around criticism about  
14 our ability to deal fairly and equitably with minority  
15 populations in the state, when none of those populations  
16 were represented on the Commission. I remember distinctly,  
17 the day I was chosen by the Commission -- and I will digress  
18 for a moment -- those of you who may have studied  
19 redistricting elsewhere know that the first four members of  
20 our Commission are chosen by the Legislative leadership, the  
21 Speaker of the House, the Minority Leader of the House, the  
22 President and Senate Minority Leader in the Senate make the  
23 first four picks from a list that developed by the Appellate  
24 Court Commission. Those four meet as a Commission, it's a  
25 quorum, they meet, are sworn in, take the oath, and they

1 have one agenda item in their first meeting, and that is  
2 selecting their Chair. Their Chair is selected from a group  
3 of five individuals who are in neither major political  
4 party. They may be registered Independent or no preference,  
5 they may be Green Party, Libertarian, Socialist, Labor,  
6 Communist, whatever else might be out there, other than the  
7 two major parties represented. And so, it was February 13<sup>th</sup>,  
8 it was a Tuesday, it was sunny as I recall, and it was an  
9 interesting day to have a public interview, which is  
10 essentially what happened. The four were sworn in, there  
11 were only four of us left on the list, one person had  
12 actually gotten the memo early and bailed, knowing what was  
13 in front of us at the Commission, and decided not to offer  
14 himself up for Chairmanship. And so, the four of us were  
15 interviewed by the four sitting members of the Commission.  
16 They then voted to select the Chair, I don't think it was  
17 the 14<sup>th</sup> or 15<sup>th</sup> ballot where I was selected, it was actually  
18 the first ballot, and I was very gratified my future  
19 companions on the Commission saw something in me that  
20 suggested that I might be a good leader for the group.

21 I will get to the topic on the screen in a few  
22 moments. I thought I would do, in the spirit of David  
23 Letterman, a Top Ten list, which I think, if you don't  
24 maintain a sense of humor in this job, you will wind up in  
25 Hotel California, which, as those of us who studied rock

1 music know, is the State Mental Hospital. It's clear that  
2 this task requires you to maintain a certain level of not  
3 only your own integrity, but your own sense of right and  
4 wrong. And I will tell you that, on the day that the five  
5 of us were sworn in, each of us spoke to the press. That  
6 was the last time we decided to speak to the press as  
7 individuals, not because there was anything misquoted in  
8 what we said, but because the reality of the task did not  
9 really match the first impression that we gave everyone.

10           As you may know, in Arizona there are six criteria  
11 that are in the law, the sixth and last criterion is one  
12 that deals with competitiveness, but it is a subordinate  
13 criteria, the law is written in such a way that the first  
14 five criteria, many of which are identical to the ones in  
15 the California law, take precedence over competition, and  
16 the reason that's in the law that way is that the framers of  
17 our initiative did not want the Commission to engage in  
18 reverse gerrymandering for the purposes of creating  
19 competitive districts. So, the last criterion that we dealt  
20 with was that competitive districts should be favored where,  
21 to do so, creates no significant detriment to the other  
22 goal. And it meant that, if we were trying to make  
23 districts more competitive, if that meant we were going to  
24 run into one of the other goals in a detrimental way, we  
25 needed to back off, rethink that, and maintain the integrity

1 of the other goal. Well, that's what we did. But the day  
2 we were sworn in, we all said to the press, you know, "The  
3 reason we're here is to make more competitive districts,  
4 that's why Citizens Redistricting was developed, that's why  
5 it was initiated in several states, that's why you are  
6 sitting here today, because of the desire to have not a  
7 continuation of what most people think is a bipartisan  
8 gerrymander every 10 years in California." And so, what I  
9 would ask you to do first and foremost, before we get to the  
10 Top Ten list is, whatever part of the state you come from  
11 geographically, whatever portion of the community you  
12 represent ethnically, or in age, or nationality, whatever  
13 piece of the political landscape you represent in terms of  
14 party, try as best you can to not remember any of that. Try  
15 as best you can to represent the millions and millions of  
16 Californians -- I'm a recovering Californian myself, I was  
17 born in Los Angeles and moved to Arizona in the '50s, I  
18 didn't want to go, my parents actually kidnapped me to go to  
19 Arizona, I would have stayed, I still visit the state with  
20 fond memories -- but your job is really not to represent any  
21 of those groups, or organizations, or philosophies that you  
22 bring to the table, your job is to be fair to all of them.  
23 And the difficulty is that the law will dictate how you do  
24 your business, no matter how you think you're going to do  
25 your business. We all said we wanted more competitive

1 districts, but in Arizona, because we have a Republican  
2 leaning state by registration, the Voting Rights Act is the  
3 enemy of competition. Now, in California, with a Democrat  
4 leaning population, it may assist you in making more  
5 competitive districts. But, I will tell you that it was a  
6 great disappointment to us when, briefed by legal counsel  
7 about our duty to the law, that we could not do things that  
8 we thought we might have been able to do in terms of making  
9 more competitive districts, simply because the law would not  
10 allow it.

11 Another section of the law which does relate to  
12 California, because the words are identical, is this concept  
13 of communities of interest. It is in our legislation, it is  
14 in your law. I think some of you may know where that  
15 language comes from, it comes from a 1994 Supreme Court case  
16 in which the Supreme Court was asked to rule on a  
17 redistricting matter, or an election matter, and the opinion  
18 that was written by then Justice Sandra Day O'Connor of  
19 Arizona coined the phrase "communities of interest," that  
20 they should be respected and they should be adhered to when  
21 redistricting occurs. Some months ago, I had the  
22 opportunity to be in the presence of Justice O'Connor, who  
23 is still visiting on various panels of Federal courts around  
24 the Country, even though she's retired from the Supreme  
25 Court, but I happened to be with her at an event in Phoenix,



1 and I said, "Justice O'Connor, we struggled mightily with  
2 the concept of communities of interest, could you elaborate  
3 on exactly what you meant when you coined that phrase?" And  
4 her answer was extraordinarily instructive. She said, "I  
5 have no idea." And she wasn't joking. It was at the time  
6 something she felt needed to be said in the context of that  
7 case, but apparently did not have any particular definition  
8 beyond her use of that in the Opinion she was writing.

9           So, we adopted essentially what Courts across the  
10 country have been using for years, and that's the same  
11 standard for the definition of pornography: we know it when  
12 we see it. There is no absolute standard for a community of  
13 interest, and what you will find is that people will appear  
14 before this Commission in a variety of settings and in a  
15 variety of ways, and they will very explicitly and  
16 eloquently tell you what their communities of interest look  
17 like, and then people from the same communities will stand  
18 up and give you opposite opinion as to how the communities  
19 ought to be structured. And so you will have a great deal  
20 of latitude in figuring out which of those to listen to,  
21 which have credibility, which simply are a political, or  
22 otherwise, statement that has something behind it, and you  
23 will be able to discern all of that and make the judgments  
24 that you need to make in order to come up with the right  
25 answer.

1           Now, let's talk about the right answer. As I have  
2 been instructed over the last 10 years, the number of ways  
3 that you could develop a map for any particular assignment  
4 that you have, and you now have four, there are infinite  
5 ways to do it, it's a zero sum gain, to be sure, but the way  
6 you start and the way you end can take you through an  
7 immeasurable number of twists and turns to get to a  
8 solution. And there is no such thing as a perfect map, so  
9 if you think there is one out there that you're aiming for,  
10 good luck with that, there's no such thing as a perfect map.  
11 And, in fact, with as many people as there are in  
12 California, as organized as they are in subgroups, and  
13 organizations, and interest groups, and communities, someone  
14 will be a little ticked off, hopefully it won't be everyone.  
15 And the fact is that you probably will have to withstand at  
16 least one legal challenge, if not more, to the maps that you  
17 create.

18           Now, Arizona was quite ahead of its time in putting  
19 a Commission together, and I'm glad that California waited  
20 because California's law does one very very important thing  
21 that I both advocated when I appeared before the State  
22 Senate some years ago in support of then pending  
23 legislation, this was prior to the passage of Prop. 11, but  
24 in Arizona, the Supreme Court does not have original  
25 jurisdiction over our case, and so we were a trial court,

1 then Court of Appeals, then trial court, then Court of  
2 Appeals, then finally Supreme Court in a five and a half  
3 year odyssey after the lines were all drawn. In California,  
4 thankfully, if there is a challenge, the Supreme Court will  
5 adjudicate that, hopefully in a very quick and decisive  
6 manner, and you can move on with your lives. One other big  
7 difference, and I'm quite envious about this, I must admit,  
8 you are all getting paid to be here. I was a volunteer,  
9 which shows how much more intelligent you are than I, and  
10 the fact is that I now have about 3,500 hours of volunteer  
11 time over the course of the 10 years in, as Chair of the  
12 Commission. I didn't do the math, but if I'd gotten \$300 a  
13 day, I could have retired by now, I think.

14           At any rate, I do want to suggest that this  
15 Commission has the opportunity to do some terrific things on  
16 behalf of the people of California. And the way you go  
17 about choosing the six remaining members who will comprise  
18 the full complement of your Commission is a very serious  
19 matter. You've heard from other interest groups today on  
20 the manner in which you should consider doing that. I would  
21 only add to that, that I want you very very carefully to  
22 consider the personalities involved. The eight of you have  
23 been thrown together by the luck of the draw, which is a  
24 very interesting way to do business. I am sure you are  
25 going to be fast friends when this is over because you will

1 have spent more time with each other than with others in  
2 your community with whom you now consider yourself friends.  
3 And hopefully that time together will be spent in cordial,  
4 respectful dialogue - oh, there is a microphone here -  
5 dialogue and disagreement that will not become in any way  
6 objectionable, hurtful, or personal. And I can only suggest  
7 that the other six members of the Commission might be judged  
8 as much on their demeanor as on their resume, their demeanor  
9 will be quite important, as will yours because your ability  
10 to get along will in many ways enhance your ability to  
11 produce a product.

12 Let me now turn to the Powerpoint and give you kind  
13 of my top ten suggestions, albeit really presumptuous of me  
14 to suggest any way for you to do business, but based on the  
15 experience that we had in Arizona and some of the things  
16 that we learned along the way, I'd like to suggest these,  
17 and these are not Ten Commandments, by the way, these are  
18 the Ten Suggestions, that's a different standard of review  
19 on your part. So, if you will indulge me, I will go through  
20 these, and then I'd be more than happy to answer any and all  
21 questions that the Commission may have.

22 The first suggestion that I have, number 10, is I  
23 suggest that you elect a Chair and a Vice Chair who are  
24 neither Republican, nor Democrat, and I say that because the  
25 Chair will have an infinite number of decisions to be made

1 during the course of your deliberations, on a day to day  
2 basis, that are going to be subject to review by all of the  
3 wags and pundits out there, as to whether or not it was a  
4 partisan decision, did it favor one group or another, and it  
5 just makes it easier. In Arizona, they didn't have a  
6 choice, they had to take somebody who was in neither  
7 political party; in California, you have a choice, but my  
8 strong suggestion is that you elect leadership that is not  
9 affiliated with one of the two major parties.

10           Number nine, hire staff who are professional, not  
11 partisan. To the extent you can, staff the Commission with  
12 individuals who are not necessarily known for one bent or  
13 another, it will give additional credibility to your work  
14 product, and it will allow you to do your work in a much  
15 more bi-partisan fashion.

16           Number eight, and I mean no disrespect to anyone  
17 sitting at the table already, if you hire independent  
18 counsel, or if it is co-counsel, make sure that you're  
19 balanced, that is, if you hire two, make sure you have one  
20 of each; if you hire one, make sure that that one is not  
21 known as, or related to one of the two major parties. That,  
22 too, will help you in terms of your credibility. In  
23 Arizona, we had two counsel, they were co-counsel, one was a  
24 known Democrat, he was a former U.S. Attorney for the State  
25 of Arizona, and the other was the preeminent authority on

1 election law in the State of Arizona, she happened to be a  
2 Republican. And the two of them, in giving us counsel over  
3 the years on a variety of issues, both related to the law  
4 and related to process, really never disagreed on anything  
5 substantive. And so, with that agreement between the two  
6 counsels, we knew we were probably in the sweet spot in  
7 terms of going in the right direction.

8           Number seven, \$3 million was your original  
9 allocation, I understand that that has already been  
10 supplemented, but I certainly suggest to you that you stay  
11 as friendly with the Legislature as you can during the  
12 process because you may need more. And if it turns into a  
13 litigation battle at some point, you're going to need a lot  
14 more. So, in Arizona, we originally had doubled the amount  
15 that you had, we had \$6 million to start, we actually  
16 completed redistricting for a little more than \$3 million of  
17 the \$6 million, and this was in Arizona, this was indeed, as  
18 you heard earlier this morning, with some 57 public hearings  
19 around the state, not attended by all members of the  
20 Commission. I'm quick to point out, there was at least one  
21 member of the Commission present at every one of those  
22 hearings, but very few of those hearings had all five  
23 Commissioners present. We split up the state and went out  
24 there and tried to get as much input as we could, and we  
25 actually got around 15,000 data points of one kind or

1 another through the website, through paper submissions,  
2 through e-mails, through appearances at public hearings, and  
3 so on. And so we believe our outreach was, in a state that  
4 had barely six million people, pretty extensive. And I  
5 certainly would encourage you to be everywhere, at least in  
6 small groups around the state, so that people have the  
7 feeling that they have had the opportunity to provide you  
8 input. But we had \$6 million, did our redistricting for \$3  
9 million, a little over, and had to go back to the  
10 Legislature on two subsequent occasions to get additional  
11 allocations of resources. The total that we spent over 10  
12 years with five and a half years of litigation was a little  
13 over \$10 million. So, I suggest you maintain those  
14 relationships if you can.

15           Number six, double-check every statistic you use  
16 before you use it. We had an occasion to, through one of  
17 our consultants, who was only a consultant for a short  
18 period of time, based on the work that they did and the  
19 quality of that work, we released some information which  
20 subsequently turned out to be erroneous information. It was  
21 related to the census, it wasn't census information, it was  
22 a permutation of the census that we had done to help us with  
23 some of our deliberations. We then had to not only correct  
24 that for the record, but we had to correct it in the press,  
25 and we had to disseminate that correction so that other

1 people would not rely on that information to do any of their  
2 work in terms of providing us input. Double-check every  
3 statistic before you use it once.

4           Number five, choose your consultants wisely, and  
5 have them draw all the maps through public direction from  
6 the Commission. Now, this may seem strange in a time when  
7 each of you has or will have a laptop, has or will have  
8 Maptitude, or other software that is used to draw maps, but  
9 I will tell you that every change in a map, a draft map,  
10 that was the result of public information and debate at the  
11 Commission was given by direction of the Commission, a  
12 majority vote, to our consultant, and the consultant drew  
13 all of the changes to the maps. That meant that any change  
14 that the public saw meeting to meeting was explained clearly  
15 by the record as to how we told the consultant to proceed,  
16 based on information that we got from the public.

17           Number four, whenever possible, try for a consensus  
18 rather than a majority or quorum vote. With 14 people, it's  
19 going to be more difficult, clearly it was difficult enough  
20 with five. I will tell you that most of our substantive  
21 votes were 5-0, some were 4-1, we very rarely had a  
22 substantive vote that was 3-2, and in the cases where we had  
23 3-2 votes, I was the third vote all the time, but I was the  
24 third vote on both sides of different combinations of 3-2,  
25 they weren't all R's and D's split, they weren't all



1 geographic split, they weren't all the same split, and I  
2 found myself simply in a position to go with what I felt was  
3 the best decision, and sometimes I was siding with a  
4 combination of Republicans and Democrats, sometimes I was  
5 siding with the Republicans, or the Democrats. In the case  
6 of this Commission with 14 members, consensus may be  
7 difficult, if not impossible, but to the extent that you can  
8 get a vast majority of the Commission behind the decisions  
9 you make, it gives better meaning to what you do, and it  
10 gives a feeling of confidence to the public that this is a  
11 real citizens' effort.

12           Number three, in the various ways that you can,  
13 allow for the most input that you can get. Social media has  
14 come a long way since we did our redistricting, as has  
15 technology, and so you have opportunities for a variety of  
16 inputs. And you've heard some of the litigations on those  
17 inputs this morning, but I would suggest to you that you  
18 make it very easy for the public to engage with you no  
19 matter how sophisticated or unsophisticated they may be in  
20 drawing maps, or drawing portions of maps, or drawing what  
21 their neighborhood looks like, and how that neighborhood  
22 fits into a larger structure, so that you can get a sense of  
23 where that community of interest might be placed in the maps  
24 that you ultimately will draw. And I will say to you that,  
25 the more information you get, the better decision making you

1 can have. Again, 15,000 data points allowed us to make a  
2 series of decisions primarily with respect to communities of  
3 interest and, in those cases where we had to split  
4 communities, because, inevitably, you will have to split  
5 communities in order to reach population goals, you will  
6 have to draw lines within counties and cities and towns that  
7 bifurcate those towns in some ways, and knowing where  
8 communities of interest happen to be makes a huge difference  
9 in your ability to do that and to be fair to those who live  
10 there. When national consultants do presentations on  
11 redistricting, they will often site one of our Congressional  
12 districts and, by the way, we only had two jobs, we had  
13 Congress and the Legislature, those were the two maps that  
14 we needed to draw, and even though it's possible because  
15 yours may be nested in some way where the Assembly and  
16 Senate Districts might look two for one, and so on, and then  
17 a larger expanse for the Board of Adjustment, we have one  
18 Congressional district that is a very odd looking district.  
19 And if you look at that district, your conclusion  
20 immediately would be that that was a gerrymander for some  
21 clear reason, and there's no question that it was. Now, in  
22 the best sense of that word, a gerrymander is any decision  
23 you make on a district that has some implication, not  
24 necessarily political, there's a political gerrymander, but  
25 there are all sorts of other adjustments that can be made

1 that are much more benign and, in some cases, beneficial.  
2 The district I'm talking about is the Second Congressional  
3 District, which begins wholly within the First Congressional  
4 District in Arizona, and by a connector, connects down the  
5 west side of the state and into the area of the City of  
6 Phoenix. And the reason that that district is the way it is  
7 is because that district begins and is formed around the  
8 Hopi Tribe, which is completely surrounded by the Navajo  
9 Nation. And, in testimony from the Navaho and the Hopi,  
10 clearly, the Navaho thought that they ought to be in the  
11 same Congressional District, the Hopi had very different  
12 understandings of what was appropriate because they had been  
13 in conflict over land and water for many years at the  
14 Federal level. They do exist in the same Legislative  
15 district, however, because the issues between the two Indian  
16 communities were not the same in the state as they were at  
17 the Federal level. But we separated the Hopi from the  
18 Navaho, and had to do it through a very circuitous connector  
19 that goes along the Colorado River through the Grand Canyon,  
20 and into the next Congressional District. Again, it looks  
21 like a bad gerrymander, it frankly was a very good  
22 gerrymander for those who lived in those areas.

23           Number two, the press, the wags, they're always  
24 going to spin what you do and I would simply - the simplest  
25 word of advice is ignore all of them. Ignore all of them

1 because you're going to get bad press, you're going to get  
2 unfair press, you're going to get the kind of press that  
3 everybody gets. And frankly, there isn't too much you can  
4 do about it. Now, in our Commission, we made a deal that  
5 the Chair would speak for the Commission during the process.  
6 You may want to make that deal, you may not want to make  
7 that deal. You've already been advised that the things you  
8 say to the press should be very carefully thought out if you  
9 say anything at all. And in our case, they allowed me to  
10 speak to the press because my background is in  
11 communications, in marketing, in public relations, and so my  
12 experience with the press was somewhat greater than the  
13 other members on the Commission. And I dare say that I  
14 tried very hard not to speak to the press, but when forced  
15 to do so, I was very very careful in not committing to  
16 anything that the Commission was doing at the time, not  
17 committing to any outcome that we might have under  
18 consideration at some point in the future. But if you stay  
19 true to one another, you will build a sense of camaraderie  
20 and bond among you that will stand you in good stead through  
21 the entire process.

22           And I wish we had a drum roll because this is the  
23 number one suggestion for the Commission, and that is that  
24 the members of this Commission should never draw your own  
25 maps. And I say that with full conviction, that one of the

1 best decisions that the Arizona Commission made very early  
2 on in its process when we were talking about the ways in  
3 which we would deal with one another, even though we all had  
4 laptops, we all had Maptitude, we all had been briefed on  
5 the software, the software is fantastic, you move a line and  
6 it recalculates everything, tells you exactly what's in that  
7 district every step of the way, and we each could have drawn  
8 our own maps, but then they become your maps, they become  
9 Elaine's map, or Jeanne's map, or Stanley's map, not the  
10 people's maps. And once you have a map, you're going to  
11 like that map a lot, and you're going to like that map more  
12 than you like the other person's map, and that map is going  
13 to have some kind of cache that you're going to be compelled  
14 to support and defend at some point in the process. So, my  
15 firm suggestion and the number one suggestion to this  
16 Commission is, to the extent that you can, please arrive at  
17 consensus instructions for your consultants and allow them  
18 to produce your map collectively for you, rather than  
19 drawing your own.

20           At this point, herein at the epistle, we can  
21 probably take up a collection, but I doubt that anyone will  
22 be in a giving mood, but what I would like to do at this  
23 point is just pause and answer any and all questions that  
24 Commissioners may have.

25           COMMISSIONER FILKINS WEBBER: I have a question. In

1 regard to Item 7, where you were talking about the funding  
2 for your redistricting, what did you find to be the greatest  
3 expense? Was it the actual process, or was it the  
4 subsequent litigation?

5 MR. LYNNE: Litigation. As I mentioned, the entire  
6 mapping process was done for a little over \$3 million. The  
7 litigation was more like \$7.

8 COMMISSIONER FILKINS WEBBER: Thank you.

9 MR. LYNNE: But, again, we were trial court twice,  
10 Court of Appeals twice, Supreme Court once.

11 COMMISSIONER FILKINS WEBBER: Thank you.

12 COMMISSIONER GALAMBOS MALLOY: My question is around  
13 your staffing and your timeline, roughly. Were you on a  
14 similar timeline to what we were on? What were you doing at  
15 different points in the process? How large was the pool of  
16 consultants and staff that you were working with?

17 MR. LYNNE: That's a great question and what you  
18 will find is the arc was, as you might imagine it, we  
19 started obviously with no staff, hired one person who then  
20 staffed the office. We brought in a significant amount of  
21 part-time staff for a long period of time, and they worked  
22 part time in part because they were coordinators that went  
23 out ahead of our public hearings and actually drummed up  
24 community support for the hearing on the day that it was  
25 supposed to be there, and then they staffed that hearing in

1 those locations. With respect to consultants, we hired two  
2 attorneys, we had an Executive Director who directed the  
3 office, and then we hired several consultants, the primary  
4 consultant was a consultant that actually was involved in  
5 the demographics of the Commission, drawing the maps,  
6 producing the maps for publication, advising us on questions  
7 regarding the implications of the instructions we gave them,  
8 and a group that had been involved in mapping before. We  
9 then engaged two additional consultants, one on the issue of  
10 competitiveness; we had a specific competitive consultant,  
11 and then we engaged a consultant whose expertise was in  
12 minority voting efficiency. We, like you, will have to  
13 satisfy the Department of Justice on the Voting Rights Act,  
14 and the entire State of Arizona is subject to Voting Rights  
15 review. So, both of our maps needed to clear the Department  
16 of Justice and the first go round they did not. We then  
17 instituted interim maps through the courts for the first  
18 cycle in 2002, and by 2004, we had cleared the Department of  
19 Justice hurdles by making very small, but meaningful,  
20 changes to the original maps, and then those maps were used  
21 from 2004 through 2010. So I guess at its height, if I may,  
22 with part time staff we probably had 40 or 50 people. Core  
23 staff, we probably never had more than 10 or 12, never.

24 CHAIRMAN YAO: While you were going through the  
25 process, obviously you always thought about litigation and

1 challenges, and so what were some of the things that you did  
2 that was effective, also ineffective, in terms of dealing  
3 with the potential lawsuits?

4 MR. LYNNE: Well, it's a terrific question, Mr. Yao,  
5 and I would say that the best thing that we did along the  
6 way was, when we - because none of us had done this before,  
7 I mean, this clearly was not something that any of the  
8 Commissioners had expertise in, but when we got to a place  
9 where we thought we might be on shaky grounds, either we or  
10 our counsel would stop us, we would perhaps have an  
11 Executive Session, where we would get attorneys' advice on  
12 matters of potential litigation, and they would advise us of  
13 the choices that we had, what the implications were in terms  
14 of potential litigation, based on either a point of law, or  
15 a point of the guiding principles that we had in place, and  
16 we rarely made decisions in advance of that; in other words,  
17 we didn't get too far in front of our legal expertise. So,  
18 we would stop the process, talk about it, and I would say  
19 that, in most public meetings that we held, we reserved time  
20 for an Executive Session, and often times used that time to  
21 get advice from the attorneys so that we would avoid as many  
22 pitfalls as we could.

23 COMMISSIONER DAI: I have a question about the  
24 Executive Director. You mentioned one particular quality,  
25 not being partisan, but I'm curious if you have other



1 thoughts on what kind of qualities we should look for in an  
2 Executive Director, and I understand you had to replace your  
3 Executive Director. Could you explain a little bit more  
4 about those circumstances?

5 MR. LYNNE: Sure. Without going into personnel  
6 matters that are not a matter of public record, the  
7 Executive Director needs to be a quietly confident person,  
8 and by that I mean taking direction from 14 people is not  
9 easy. To the extent that the communication with the  
10 Executive Director is going to be channeled through the  
11 Chair, that might make it somewhat easier, but my guess is  
12 that each of you from time to time may have things that you  
13 wish to discuss with your Executive Director, and that is  
14 certainly something that that person should be amenable to  
15 do. They need to be highly organized. The biggest thing  
16 is, for each of you to come to a meeting is a logistical  
17 nightmare in and of itself, I mean, you're going to have 14  
18 people flying to a central location, wherever that is,  
19 driving or however you get there, and just the fact that  
20 each of you needs to be accommodated in that regard is  
21 enough of a headache for somebody to deal with, just to get  
22 everybody in the same place, never mind that they then have  
23 to have the right place, the right set-up, the right  
24 equipment, all of those things, so logistics becomes an  
25 extraordinarily large part of that. The other thing that I

1 think is very important is they need to be able to run a  
2 staff, they need to have staff experience and be able to  
3 delegate that authority so that you're not counting on one  
4 person to get all of that done. The issue with our  
5 Executive Director became one where simply things that we  
6 thought were being done to a certain degree, and to a  
7 certain level, we found were not. And on more than one  
8 occasion, we were put in a position where the Commission  
9 could have been either in jeopardy in terms of our own  
10 process, or not held up properly to the public because of  
11 things that weren't done properly, or weren't done well  
12 enough. We made one change and, in 10 years, to have only  
13 two Directors is not too bad in State government, as you  
14 well know, and the second Director that we had was the  
15 Director for the balance of the entire process. And  
16 interestingly enough, that Executive Director is now an  
17 applicant for the Commission in 2011. I wish him well.

18 CHAIRMAN YAO: Any further questions?

19 COMMISSIONER RAYA: I have a question about the  
20 outreach that you did, what particular things you found  
21 effective, especially in reaching, you know, not the  
22 citizens who are already active participants or well-  
23 informed, but really getting out and connecting with the  
24 broader communities?

25 MR. LYNNE: That's a great question. What we tried

1 to do, using outreach people, people who were familiar with  
2 the communities in which they were working, to use both  
3 formal and informal networks. Obviously, people are  
4 involved in their communities in a variety of ways, either  
5 with their churches, or with community groups, or with civic  
6 organizations, or whatever. And the knowledge that those  
7 folks are out there and how to get to them, I mean, we had  
8 notices going out in church bulletins, for example, that  
9 there was going to be a hearing, as well as working through  
10 the traditional press and through the traditional methods of  
11 getting information out to the public, press releases, and  
12 so on. We had one person on staff who was in charge of all  
13 of that outreach, and she is the exceptional public  
14 relations person who has remained in State government in  
15 other capacities through the years. So, we used both formal  
16 and informal networks, and the key to that is perhaps  
17 bringing, even temporarily, people from around and across  
18 the state, which I know, in California, is a much more  
19 difficult task. I mean, Arizona is a lot of land and very  
20 little population, except in two or three key places.  
21 California is quite different in that regard. But, to the  
22 extent that you have people from Northern California who  
23 understand that part of the state and understand where  
24 communities might be addressed, it makes it so much easier  
25 because they can use those informal networks to get

1 information out. The other thing is lead time. The best  
2 thing you can do is not surprise people and show up for a  
3 hearing, but rather make a schedule, stick to that schedule,  
4 and make sure that people have one to two weeks of notice so  
5 that they can get their people together and, in many cases,  
6 even prepare their materials for you so that, when you do  
7 come, you get meaningful, good, rich information.

8 COMMISSIONER RAYA: Thank you.

9 COMMISSIONER GALAMBOS MALLOY: I'd like to go back  
10 to the previous question. I feel like we didn't get too  
11 much into the timeline, if you can share a bit about what  
12 you were doing in January, February, I don't know what level  
13 of detail you have readily available in your mind.

14 MR. LYNNE: Well, I can't give you a detailed  
15 timeline, but let me answer the question by saying that one  
16 of the key differences in our legislation and yours is that  
17 we had no reference point in terms of beginning the process.  
18 In other words, existing districts did not exist for us by  
19 law; that is to say, our first task was to draw something  
20 called a "grid-like map" that had only one criterion in it,  
21 and that was equal population. And so, in order to be  
22 random about the way we did that, so as not to suggest that  
23 we were biased in any way, we chose to begin our gridding,  
24 not our mapping, but our grid development, at the geographic  
25 center of the State of Arizona. And that geographic center

1 happens to be a point on the map that everybody agrees to.  
2 There is a street in Phoenix called "Baseline Road," and  
3 it's called Baseline Road because it is the baseline  
4 meridian for the state. And baseline and 103<sup>rd</sup> Avenue in  
5 Phoenix, that is the geographic center of the state, and so  
6 that was the point on the map at which we began the process.  
7 Now, from that point, we could go in four compass directions  
8 -- more if you split the compass -- in terms of drawing the  
9 first district, or grid that had equal population, so out of  
10 a hat, we drew north, east, south, or west, and went in that  
11 direction. And then the question was, once you draw the  
12 first district with equal population, do you move clockwise  
13 or counterclockwise. We flipped a coin and went in one of  
14 those two directions, and continued grabbing population in  
15 chunks to make grid-like districts of equal population -  
16 ugliest map you've ever seen. It had people in Phoenix  
17 voting with people in Tucson, and if you know the history  
18 between Phoenix and Tucson, Tucson is hardly a part of the  
19 state, we think we're more part Mexico, but it was a very  
20 ugly map. The problem was, then we had to have public  
21 hearings on that ugly map. And it simply brought out every  
22 visceral reaction that you would expect. Now, you don't  
23 have that requirement, to draw those kinds of ugly  
24 districts, to begin with. So, a lot of the things you could  
25 do, and one of the suggestions this morning, was that you

1 start, for example, with the Senatorial maps from 10 years  
2 ago, adjust them for population, and see what that looks  
3 like. And if you don't like the way that looks, change it,  
4 but it's a place to start. There are several places to  
5 start. The point about the timeline is that, we went out to  
6 get information before we drew any maps, so we had a round  
7 of public hearings, roughly 26 of them across the state,  
8 before we even drew the grid. Then, we went out and had  
9 hearings on the grid, not as many because it was an ugly map  
10 and we knew what we were going to get, and then we had a  
11 third round of hearings and, when we had tweaked that map to  
12 come up with a real draft for each of the Congressional and  
13 Legislative maps, we met the timeline and, like you, you  
14 will have to reserve time for review by the Department of  
15 Justice at the end of the process. And be assured that the  
16 Department of Justice will take every day that they're  
17 allowed, and then some. We actually had a Federal Court  
18 ordering them into court to produce either their pre-  
19 clearance, or their objections, because the time had gotten  
20 close. And, remember, when your work is done, the work of  
21 the County begins, every county in the state will then need  
22 to re-precinct based on your maps, so you must allow enough  
23 time for the counties to do their work after you've  
24 completed yours. I can't be more specific about timeline  
25 than that, in part, because it was a long time ago, and I

1 didn't bring it with me, and truthfully, it was one of these  
2 things where we knew that we had a hard deadline in terms of  
3 election, and we were working back from that deadline to  
4 make sure that, because these were brand new districts, we  
5 knew that a number of incumbents were going to be running  
6 against one another, just by happenstance, and in fact, they  
7 did. We knew that a number of people who were considering  
8 running for public office weren't going to make that  
9 decision until they knew which district it was, and what it  
10 looked like, and what the chances were. And so, there was a  
11 considerable amount of pressure. I would only suggest to  
12 you that you frontload the front end of the process because  
13 you will never have enough time at the back end. So,  
14 frontload the front end, get as much done early as you can,  
15 and then, as the process plays out, you'll have time to  
16 adjust as necessary. Not a very good answer, sorry.

17           CHAIRMAN YAO: Any further questions? Let me close  
18 by asking you just one final question associated with the  
19 timeline. What would you consider a milestone that is  
20 closest to the midpoint of the process?

21           MR. LYNNE: Well, when you have a draft map that you  
22 are comfortable with, or draft maps in your case, that you  
23 are ready to let the public see, that you are ready to have  
24 comment on, and assuming that you've taken all that public  
25 comment upfront about communities of interest and other

1 issues, and so on, and you've gotten to the place where you  
2 have a draft map that you are ready to let the public react  
3 to, I would say it may not be the midpoint, but it's a  
4 significant milestone in the process. From that point  
5 forward, the assumption would be that you would make  
6 changes, but only minor changes, to that map based on input  
7 and reaction from the public. So, do your work and get that  
8 map to look as good as you think it can, and then take that  
9 public input, make the adjustments that you need to, and  
10 then your final map will be available for review.

11 CHAIRMAN YAO: On behalf of the Commission, we want  
12 to thank you for spending time with us. We certainly  
13 learned a lot.

14 MR. LYNNE: Thank you, Mr. Chairman. And let me  
15 make this offer while I'm here. I'm not far away, when the  
16 other six of you are chosen, if you're ever in a mood to  
17 have me back to help you with any of this, just ask, I am  
18 committed to Citizen Redistricting, wherever it occurs. I'm  
19 rooting for you, I'll be watching, and if you need me to  
20 come back and either do a pep talk, or pump you up, or  
21 resuscitate you in any way, I'm happy to do it.

22 CHAIRMAN YAO: So what are you doing tomorrow?

23 MR. LYNNE: Well, I do have a regular job since they  
24 didn't pay me for this one.

25 CHAIRMAN YAO: Thank you. Thank you again.



1 MR. LYNNE: Thank you, Mr. Chairman.

2 CHAIRMAN YAO: All right, there being a  
3 presentation, I suspect that we probably still need to  
4 receive public comment on this agenda item. Anybody in the  
5 public who would like to address the Commission on this  
6 Arizona briefing? Seeing nobody approaching the podium,  
7 I'll close the Agenda Item 8 and proceed with Item 9, a  
8 briefing on California Demographics, Mr. Hans Johnson.

9 MR. JOHNSON: Thanks, Commission members and staff  
10 of the Auditor's Office for inviting me today. My name is  
11 Hans Johnson, I'm a Demographer with the Public Policy  
12 Institute of California. For those of you who don't know,  
13 PPIC is a private, not-for-profit, non-partisan research  
14 institute, we are based in San Francisco, and we study  
15 policy issues that affect the lives of Californians. When  
16 that is your mission, immediately one of the things that  
17 comes to the top of the task list is an understanding of the  
18 state, and the people of the state. And so, what I'm going  
19 to do here briefly is provide you with an overview of  
20 California's demography, and a little bit about how we  
21 understand those numbers, or what the source of those  
22 numbers is. And please interrupt as we go along, this is a  
23 very kind of numbers heavy and chart heavy presentation,  
24 there's a lot of information here. I think it's a  
25 fascinating set of information, there is no other developed

1 region of the world that has sustained the kind of  
2 population growth that California has, nor that has the  
3 complexity and diversity of California's population. So,  
4 truly, for a Demographer, there's probably no more  
5 fascinating place in the world to work.

6           One feature of California that stands out,  
7 certainly, is the state's population growth. This chart  
8 shows you the state's population from 1900 through 2009, the  
9 latest estimate that we have available. And you will see  
10 that, for example, as recently as 1970, the state was home  
11 to about 20 million people, today we're starting to approach  
12 40 million people, and this is a really phenomenal growth  
13 rate. What I'm going to do on this next slide, and a couple  
14 that follow it, is give you a sense of perspective about  
15 this growth. So, let me explain what this is. This shows  
16 the United States population indexed to 100 in 1950, and  
17 then going through to about 2008, and you'll see that, for  
18 every 100 people that lived in the United States in 1950,  
19 there are almost 200 people in the United States today, so  
20 that is a doubling of the nation's population over this 50  
21 plus year timeframe. Now, you should keep in mind that this  
22 is actually fairly rapid growth for a developed nation. If  
23 we look at Japan, or Germany, or many European countries on  
24 here, we would see a flat or, in some cases -- Russia -- a  
25 natural declining line, meaning that they're losing

1 population. So, the United States has had a fairly robust  
2 population growth for a developed country. Here, I'm  
3 showing you Mexico, which is more typical of a less  
4 developed country, its population has grown almost four-fold  
5 over this same timeframe, and now I'm going to show you  
6 California. And you see that California over this timeframe  
7 has had population growth that is much more similar to that  
8 of a less developed country, but certainly taking place in  
9 the context of the developed world. So, this is one reason  
10 I say that no other developed region of the world has had  
11 the kind of dynamic population change that California has.  
12 With a state of 40 million people, if we were our own  
13 country, we would be one of the leading countries in terms  
14 of population, more people than Canada, for example, and  
15 just tremendous population growth has been a fact of  
16 California's demography for many many decades.

17 Now, it is not only the rapidity of our population  
18 growth that is notable for California, but it also is the  
19 complexity and diversity of that population. There are many  
20 ways that you can measure diversity, one that is easily  
21 understood, one that is well collected by the Census Bureau  
22 and other agencies is race or ethnicity, and I am going to,  
23 in the second part of this talk, explain a little bit about  
24 what we mean, or what the people who collect the data mean,  
25 by these terms, "race" or "ethnicity." But what I'm showing

1 you here for California is the racial and ethnic composition  
2 of the state's population for 1970 to 2009 for five major  
3 racial or ethnic groups in the state, and you'll see that in  
4 1970, almost 80 percent of the state's residents were non-  
5 Hispanic Whites; by 2000, no race or ethnic group composed a  
6 majority of the state's population, this made headlines in  
7 papers throughout the state, and elsewhere in the country;  
8 and that, today, you'll see that Latinos are starting to  
9 approach 40 percent of the state's population. Certainly,  
10 over time they have been the fastest growing component of  
11 the state's population, along with Asians and Pacific  
12 Islanders, who have reached about 13 percent of the state's  
13 population; African Americans have remained fairly steady at  
14 around six to seven percent; and then we have this fairly  
15 new category of multi-racial, and I'll talk about that in a  
16 little bit, too, which in California, according to the 2009  
17 American Community Survey, was about two percent of the  
18 population, but in the 2000 Census, was almost five percent  
19 of the population.

20 We can also understand the diversity -- and I'm  
21 sorry this is a little hard to see -- but we can also  
22 understand the diversity of the state's population  
23 geographically. And what I'm showing you here is, for every  
24 census tract in California, from the 2000 Census, the  
25 majority group in that census tract. So, do I have a laser

1 pointer on here? Is it on the back? Anyway, I could just  
2 point it out. So, you'll see that the enlarged geographic  
3 areas of the state where there is not a lot of population,  
4 so you look at the Sierra Nevada along the Nevada border in  
5 the far northern part of the state, White non-Hispanics are  
6 a majority of the population, as is shown in the brown  
7 shades there. And then you'll see throughout much of the  
8 Central Valley, especially San Joaquin Valley, to a lesser  
9 extent in the Southern California urban areas of Los  
10 Angeles, which is shown in an insert in the top right there,  
11 you'll see the pink or purplish shades, which are majority  
12 Latino populations, again, this is by census tract. And  
13 then you'll see a really interesting phenomenon, I think,  
14 which makes, again, California unique in comparison with  
15 many other places in the country, and certainly in our urban  
16 areas, you'll see a lot of zones, census tracts, that are  
17 White. And I apologize that the Ocean and the non-  
18 California areas are White, too, but if you look at the Bay  
19 Area, you can see where the outline of the Bay is, and then  
20 you can see just broad swaths of not just urban areas, but  
21 even some of the suburban areas, in places like Fremont and  
22 San Jose and Vallejo, up towards the Northern part of the  
23 Bay, and then if you look over to Los Angeles, you'll see a  
24 similar kind of pattern with a lot of these areas that are  
25 white, those are census tracts where no racial or ethnic

1 group composes a majority of the state's population.  
2 California, unlike many states, has seen this kind of  
3 transition, and those census tracts have remained fairly  
4 diverse, even across time, which is different than a lot of  
5 northeastern states where there's a kind of tipping point  
6 that is reached when Whites leave a neighborhood, or a  
7 census tract, and large numbers of non-Whites move in. In  
8 California, at least through 2000, that will be an  
9 interesting thing to look for in the 2010 Census, we have  
10 seen that those diverse census tracts, those diverse  
11 neighborhoods, have remained fairly diverse, so many of them  
12 are kind of new communities. Here in the Sacramento area,  
13 for example, Elk Grove is one of the most diverse  
14 communities in the state. And then you'll finally see,  
15 there is only one census, well, before I get to that, in  
16 some census tracts where Asians are the largest group, it's  
17 hard to see, but you'll see that in San Francisco and parts  
18 of Los Angeles, and then there's only one census tract where  
19 American Indians are the largest group, and you'll see that  
20 way in the far northwestern part of the state, the yellow  
21 square, and that is the Hoopa Indian Reservation.

22           Okay, so California's diverse population has  
23 occurred partly through international migration. It has  
24 also occurred through domestic migration, differential birth  
25 rates between groups, and differential death rates, but

1 certainly immigration has been one of the leading stories  
2 for California over the last couple decades, and prior to  
3 that, as the state was in its earlier years, also was a  
4 primary source of population growth. This chart shows the  
5 percentage of the state's population that is foreign born,  
6 from 1880 to 2006, and there are several things I'd like you  
7 to notice about this. First of all, California  
8 consistently, those are the green bars, has had a higher  
9 share of foreign born than the rest of the country, which  
10 are the gold bars; secondly, there was this period from 1940  
11 or '50, or so, through 1970 when the proportion of foreign  
12 born was quite low, both in the United States and in the  
13 nation. What happened was, after World War II, many  
14 European immigrants who had moved to the United States  
15 actually returned as those economies started to grow, and it  
16 was also a period of very low flows of new immigrants into  
17 the United States and California. Since then, the third  
18 thing I'd like you to notice is that the immigration numbers  
19 have picked up quite a bit, so that today a little over one  
20 out of every four residents of California is foreign born,  
21 again, far higher than in the rest of the country, higher  
22 even than at the turn of the Century from the 19<sup>th</sup> to the 20<sup>th</sup>  
23 Century, but lower than when the state was first formed in  
24 the late 1800's.

25 The leading regions of origin of immigrants to

1 California are Latin America and Asia, accounting for almost  
2 90 percent of the immigrants in the state. But, still, it's  
3 worth noting that hundreds of thousands of immigrants come  
4 to California from other regions, as well. And this chart  
5 is not meant for you to memorize, or to read all the  
6 countries on it, it is just meant to be illustrative of the  
7 diversity of California's population. And what I'm showing  
8 you here, this is actually from the 2005 American  
9 Communities Survey, is a list of countries from the leading  
10 countries of origin of immigrants in California, Mexico is  
11 number one, Philippines second, China third, and so on, each  
12 of these countries has contributed at least 10,000 residents  
13 to California as of the 2005 American Communities Survey.  
14 There are over 60 different countries on this list and the  
15 racial and ethnic classifications that I showed you earlier  
16 certainly do point out the diversity of California's  
17 population, but they mask a lot of the diversity, and this  
18 gets at some of that. And even this, this is some of that  
19 diversity. For example, Tonga just barely didn't make that  
20 list, much to my chagrin. Tonga is a country in the South  
21 Pacific, there is a very large Tongan community on the  
22 Peninsula in the Bay Area, and it points out some of the  
23 kind of very interesting features of California, why that  
24 Tongan community exists there, and that is because the King  
25 of Tonga has a house in Hillsborough, and that residence has



1 served as a kind of focal point for other Tongans as they've  
2 come and left Tonga, which doesn't have a lot of economic  
3 opportunities, and they've settled in the Peninsula region  
4 near where the King has a house. So, those kinds of  
5 stories, which are throughout the state, there are Azorean  
6 rodeos, a Portuguese island off the coast of Portugal, in  
7 the San Joaquin Valley, that were not too long ago featured  
8 in the Triple A (AAA) car magazine. So, there are all kinds  
9 of measures of California's diversity and I think it's  
10 important to keep that in mind, especially when these kind  
11 of broad racial and ethnic groups are the ones that are most  
12 commonly reported.

13 COMMISSIONER GALAMBOS MALLOY: Hans, quick question?

14 MR. JOHNSON: Yes, please.

15 COMMISSIONER GALAMBOS MALLOY: Were the countries --  
16 are they listed in order of magnitude?

17 MR. JOHNSON: They are, so Mexico is the leading  
18 country of origin, Philippines second, China third, Viet Nam  
19 fourth, El Salvador fifth, and then you go all the way down  
20 there to Jordan, which just barely contributed 10,000  
21 immigrants to California.

22 COMMISSIONER FORBES: And do these numbers include  
23 undocumented, as well as citizens?

24 MR. JOHNSON: The Census Bureau, which conducts the  
25 American Communities Survey and, of course, the Census,

1 attempts to include everyone. And, in fact, there is no  
2 question on the Census or the American Communities Survey,  
3 they ask people their documentation status. There is a  
4 question about whether you've been naturalized or not, but  
5 certainly large numbers of people who are not naturalized  
6 are still here legally, as legal permanent residents, and  
7 then unauthorized immigrants are included, as well. The  
8 best estimates from the 2000 Census were probably anywhere  
9 from five to 15 percent or more of unauthorized or  
10 undocumented immigrants were missed in the Census.

11           And then, finally, the population projections for  
12 California, which you won't really get into, but I think  
13 it's an important point of reference, show a lot of  
14 uncertainty. These are projections produced by a number of  
15 different agencies, I won't go into this at length, but just  
16 realize that California really is a kind of demographic  
17 watershed right now. We have been sending residents to  
18 other states more than we have been receiving from those  
19 states for well over 10 years now, and there is a real  
20 question about whether California's population has kind of  
21 matured and that we're going to be on a very different  
22 trajectory than the one I showed you historically in terms  
23 of overall population growth.

24           COMMISSIONER RAYA: May I ask a question?

25           MR. JOHNSON: Uh huh. Please do interrupt because I

1 realize it can be kind of dry and --

2 COMMISSIONER RAYA: When you're talking about  
3 movement to other states, who we're losing to other states,  
4 do you happen to know how that works out by age?

5 MR. JOHNSON: So, most people who move to and from  
6 California are moving here for jobs, and that means they  
7 tend to be fairly mobile, which tends to be young adults.  
8 However, California also has an outflow of people who are  
9 near pre-retirement or retirement age as they leave for  
10 other states, so it's concentrated both at kind of the young  
11 adult age, and then at the much older adult ages.

12 COMMISSIONER RAYA: Thank you.

13 MR. JOHNSON: And then, on this one, what I wanted  
14 to point out was just that all of the projections, even  
15 though they might not agree on the magnitude of the state's  
16 future population, agree that Latinos will become the single  
17 largest ethnic group. That should occur sometime in this  
18 decade, the 2010's and, in fact, the California Department  
19 of Finance projections that I'm showing you here suggest  
20 that, by 2050, Latinos will become the new majority  
21 population in California. And, again, this is a  
22 continuation of a longstanding trend. Now, realize that  
23 these racial and ethnic categories that we're showing going  
24 out 50 years could be very differently understood, and data  
25 could be collected very differently 50 years from now than

1 how it is now. We have only had two Census in a row that  
2 have collected racial and ethnic data in the same way, so  
3 it's doubtful that we would have exactly the same categories  
4 at that point in time.

5           And then, finally, when we look at the ethnic  
6 composition by age, this is from the 2000 Census, you will  
7 see that one very easy way to understand why the Latino  
8 population, in particular, has been growing rapidly, and the  
9 White population has not been growing very much at all, if  
10 at all, is this age structure, so that young adults start  
11 families, have children, Latinos are concentrated in young  
12 adult ages, you will see that in 2000, almost half of  
13 children in California were Latino. It is already the case  
14 that, in fact, this was just in the news, I think, a couple  
15 of weeks ago, that public schools in California are now a  
16 majority Latino population. And then you'll see at the  
17 other end of the age spectrum for the very older  
18 Californians, they are overwhelmingly non-Hispanic White,  
19 and that is, of course, the population from which most  
20 deaths occur, which subtract from the population, so it's a  
21 fairly mechanical and easy demographic accounting exercise  
22 to understand how and why our population is changing in  
23 terms of the ethnic dimensions that I've shown you based on  
24 these age structures here.

25           And then, finally, I just wanted to show you total

1 population by age, and California's population is diverse  
2 ethnically, by nativity, and certainly geographically, which  
3 I'll show you in a minute, but also by age, so the gold bars  
4 here are the baby boomers, which of course are large  
5 cohorts, but what's remarkable about California and somewhat  
6 different than the rest of the nation is that the baby  
7 boomers are not the largest cohorts in California and, in  
8 fact, you'll see pretty consistent representation of each  
9 age group from newborns all the way up to people in their  
10 late 40's, each one of those groups has about 2.5 million  
11 people. This actually makes California a fairly youthful  
12 state, and certainly, again, by developed world standards, a  
13 state that has a lot of young people compared to most other  
14 places.

15           Okay, and then finally, California's population is  
16 geographically diverse. This also is from the 2000 Census.  
17 This is, again, by census tract, it shows population  
18 density. The green area that dominates the state are the  
19 lowest population densities of less than 50 people per  
20 square mile. You'll see that, while certainly people think  
21 of California as a very urban place, and most Californians  
22 live in urban settings, there are large areas of the state  
23 that are very lightly populated. And, in fact, if you go  
24 north of Sacramento here, and just take kind of the line of  
25 counties from Mendocino over to Sierra County, which would

1 be Marysville and north, that part of the state has only  
2 about a million people in an area that is the size of  
3 Pennsylvania. Pennsylvania has about 10 million people.  
4 So, California does have very large swaths of our state that  
5 are relatively lightly populated. And, of course, then you  
6 see the major metropolitan areas well represented there.  
7 You know, for demography fun, it's really fascinating to  
8 show this map over time, and you'll see these urban  
9 agglomerations just growing together, so San Francisco and  
10 Sacramento, and again, in the 2010 Census, I think we'll see  
11 even more connection between Sacramento and the Bay Area  
12 than we do here, even.

13           CHAIRMAN YAO: Going north-south, what would be the  
14 population center of the state?

15           MR. JOHNSON: Yeah, so if we went north-south, and  
16 you drew a line, so you see the Los Angeles agglomeration  
17 there, so if you went from that south, that accounts - that  
18 South Coast region, actually, accounts for about half the  
19 state's population. So if you just drew kind of a semi-  
20 circle around the South Coast, you would get about half the  
21 state's population just in that relatively small region of  
22 the state.

23           And then I'm going to show you right now another way  
24 to think about the state is inland vs. coastal, and again,  
25 historically, traditionally, when people from other places

1 think about California, they think about the coast, most  
2 commonly. And this chart shows you, the blue are coastal  
3 regions, and the yellow and orange tones are inland regions,  
4 and you'll see from 1900 to about 1970, the blue areas were  
5 getting a larger and larger share of the state's population,  
6 growing a little bit faster so that, around 1970, they made  
7 up about 80 percent of the state's population. Today, in  
8 2010, that's fallen to a little under 70 percent with the  
9 inland areas growing faster now for three decades, and the  
10 projections are that the inland areas will continue to grow  
11 faster than the coastal areas of the state, and certainly  
12 the most notable growth rates have occurred in the Inland  
13 Empire, that's San Bernardino and Riverside Counties, here  
14 and in the Sacramento area, and then in the San Joaquin  
15 Valley.

16 Okay, so now let me just briefly turn to sources of  
17 data. Are there any questions about some of the trends?

18 Okay, yeah?

19 COMMISSIONER BARABBA: Have there been any studies  
20 done on the acculturation of the different ethnic groups  
21 into the general populations?

22 MR. JOHNSON: Yes, so at PPIC where I work, we've  
23 actually done a number of studies and certainly a lot of  
24 scholars and researchers have done a lot of studies looking  
25 at adaptation, assimilation, acculturation, whatever you

1 want to call it, in each of those terms, some of them are  
2 regarded as very value laden. What we have focused on in  
3 our work is looking at language acquisition across  
4 generations, and across the life of an immigrant, him or  
5 herself, and then we have looked at economic outcomes and  
6 educational outcomes. And, broadly speaking, what we have  
7 found is that immigrant groups in California have a very  
8 strong record of achievement and success from one generation  
9 to the next. Asians tend to -- not all Asian groups, but  
10 many Asian groups -- on average tend to have fairly high  
11 educational attainment levels when they arrive in  
12 California, their children graduate from college at even  
13 higher rates than their parents do, and are the best  
14 educated group in California. For Latinos, in particular  
15 the very large Mexican origin population, educational  
16 attainment levels of parents tend to be, on average, quite  
17 low, with a majority not having graduated from high school,  
18 but their children, born here in California, do quite well  
19 compared to their parents, and it is kind of a glass half  
20 empty, glass half full story. If you look at the children  
21 of Mexican immigrants, they graduate from high school at far  
22 far higher rates, rates almost as high as those of other  
23 U.S. natives, and at far higher rates than their parents, so  
24 this is very typical of the longstanding kind of immigrant  
25 success story of the United States and California with



1 immigrant groups, even those who had low skills in the  
2 previous wave of immigration, that was Southern and Eastern  
3 Europeans, and now it's mostly people from Latin America,  
4 especially Mexico. And so they've done very well, but  
5 college going and college graduation rates tend to still  
6 remain quite low, so that's why it's a glass half full,  
7 glass half empty story. But the big picture is there has  
8 been quite a bit of progress. When we look at language  
9 acquisition, we see that the first generation, that is, the  
10 immigrants themselves, are often monolingual if they come  
11 from a country that doesn't speak English, monolingual in a  
12 language other than English; for the Latin America and  
13 Mexican population, of course, that means Spanish, although  
14 there are large indigenous populations coming from those  
15 countries, as well, where Spanish is not even their first  
16 language, it's the second language, and so you think of the  
17 Mixtecs in the Central Valley, for example. And then, the  
18 generation born here tends to be bilingual, and the English  
19 language fluency is almost universal among the generation  
20 born here, so the children born here. And then the third  
21 generation ends up being monolingual again, and this time in  
22 English, and that kind of trajectory, which again we've seen  
23 historically for immigrant groups from Europe, we see being  
24 repeated for immigrant groups from Latin America. A lot of  
25 people seem kind of surprised by that because they think of

1 places like East Los Angeles, where Spanish is predominantly  
2 spoken, and has been predominantly spoken for decades, so  
3 they think, "Oh, well, there isn't any progress with respect  
4 to English language acquisition," and it's false because  
5 what happens in East Los Angeles is a receiving center, and  
6 when new immigrants arrive, their children, they might go to  
7 school in East L.A., but they often move out of East L.A.  
8 and they live elsewhere in the state, or the country, for  
9 that matter, so that we have these immigrant communities  
10 that remain immigrant communities, but they're different  
11 people across time.

12 COMMISSIONER BARABBA: I think it might be valuable  
13 if we can get some of those reports sent to the Commission,  
14 as well. When we get into the second phase, after our 14  
15 members are here.

16 MR. JOHNSON: Yeah, I'd be happy to send them on.  
17 Okay, so I also want you to realize, you know, where these  
18 numbers come from. They're obviously not drawn out of a  
19 magic hat, and you are going to obviously be very involved  
20 in kind of going through the numbers and all of that in your  
21 deliberations and in your processes. There are a lot of  
22 different sources of demographic data. The Decennial Census  
23 are kind of regarded as the gold standard, although there  
24 are lawsuits filed after every Census about the accuracy of  
25 the count. Then, we have what we call population estimates

1 and projects, these are numbers that are produced for years  
2 when censuses aren't taken, the projections of course are  
3 for the future, and then there are these annual surveys that  
4 are done of the U.S. population, including California, and  
5 then, finally, there is administrative data and other  
6 sources. So I'm not going to spend a lot of time on this,  
7 but let me spend a bit of time on the Decennial Census  
8 because this is the most important source of information  
9 that you will have for your redistricting. I don't need to  
10 tell you why we take a Census, certainly there are  
11 Constitutional reasons, and you are one very clear example  
12 of why we take the Census. The 2010 Census was unique and  
13 it is the shortest questionnaire in the history of Decennial  
14 Censuses, and its goal is to count everyone once, only once,  
15 and in the right place. So, no double-counting, and no  
16 under-counting, and it's a monumental task of course, as you  
17 can imagine.

18 Now, I'm going to show you the content coverage.  
19 Again, this is not necessarily meant for you to read, but I  
20 want you to understand fully how different the 2010 Census,  
21 which is in red on this table, is from the 2000 Census. So,  
22 here is the 2000 Census, and all the information that we got  
23 from the 2000 Census, and it includes everything from kind  
24 of basic information about people, age, ethnicity,  
25 employment, and then more detailed economic information,

1 language, all kinds of things, a lot of information about  
2 the housing unit and the household, and here is what we get  
3 from the 2010 Census, in comparison. That's it. So, from  
4 the 2010 Census, you will have gender, you will have age,  
5 you will have what is called Hispanic origin, which I will  
6 explain in a minute, you will have race, and you will have  
7 this relationship to the household, whether you are married  
8 to the person who filled out the form, or whether you are a  
9 roommate, and so on. For housing units, you have the number  
10 of residents, and you have whether the home is owned or  
11 occupied. You have no information about income, you have no  
12 information about poverty, you have no information about  
13 educational attainment, none of that is in the 2010 Census.

14           Let me spend a little bit of time, then, about some  
15 of the things you do get from the 2010 Census, that you will  
16 be using. One are the set of questions on Hispanic origin  
17 and race, and let me explain that, you know, not all  
18 countries even collect racial and ethnic information and, in  
19 fact, in Germany it is forbidden to be collected on their  
20 Decennial Censuses, partly because of the history of Germany  
21 and World War II, and the Nazis and the persecution of the  
22 Jews and other groups. In California, in the United States,  
23 we do collect racial and ethnic information, and the long  
24 history of that is that, early on in the United States, it  
25 was used kind of to exclude groups, so some people didn't

1 count as a full person if you were a slave, for example, you  
2 didn't count as a full person. More recently, it's been  
3 used to be a way of judging whether we are meeting standards  
4 and objectives with respect to equal representation. And  
5 so, now, over the last few Censuses, at least, if not more,  
6 groups want to be counted and want to be included in the  
7 Census. And so there is a political dialogue that goes on  
8 before every Census about who is going to be counted, and  
9 how they're going to be counted. Before the 2000 Census,  
10 for example, there was a movement among multi-racial  
11 Americans who felt that the Census did not allow them to  
12 express their identity. In the 1990 Census, if I had  
13 checked that I was White and I also checked that I was  
14 Black, the Census would have recoded me, either to White or  
15 to Black, based on an algorithm looking at other people in  
16 the household, and other people that had other  
17 characteristics similar to me. They wouldn't allow for  
18 someone to check both White and Black. So there was a  
19 movement to get this to change. There were 50,000 people  
20 who protested on the Mall in Washington, D.C., advocating  
21 for a multi-racial check-off box for the 2010 Census. So,  
22 again, this is just phenomenal from a Demographer's  
23 standpoint that there would be this kind of political  
24 movement, and it shows how important the Census is to  
25 communities of interest and different groups.

1           What the Census Bureau ended up doing under the  
2 direction of the OMB, so it's the Office of Management and  
3 Budget that actually sets these categories, and what they  
4 ended up doing was deciding that they were not going to have  
5 a check-off box, so you'll see there in Question 9, there is  
6 no multi-racial check-off box, if you can read that, but  
7 instead you'll see in the first line, it says, "What is  
8 Person 1's race? Mark one or more boxes." So that was the  
9 first time someone could check more than one or more boxes.  
10 There was also kind of a cynical -- I don't know if  
11 "cynical" is the right word -- but there was another group  
12 that was advocating for multi-racial check-off boxes that  
13 want race not to be used at all in the United States, and so  
14 they were thinking that if you allowed multi-racial check-  
15 off box, it would become so ubiquitous that there would be  
16 no racial measures that were meaningful, and that it would  
17 undermine the collection of racial and ethnic data, and in  
18 fact, California has even had initiatives about the  
19 collection of racial and ethnic data, one that did not pass,  
20 so that this is, you know, quite a political process.  
21 Another group that advocated for change and kind of lost was  
22 Native Hawaiians, so Native Hawaiians you'll see there,  
23 again, under Question 9 there is a check-off box for Native  
24 Hawaiian on the right there below that big long line.  
25 Native Hawaiians in the 1990 Census were included with a

1 check-off box that included Hawaiians and Pacific Islanders.  
2 Native Hawaiians wanted to be included with American Indians  
3 as indigenous Americans in the 2000 Census, partly because  
4 there are special Federal programs available to American  
5 Indians that are not available to Indigenous Hawaiians, and  
6 partly because it, I think, gave them more of a ground for  
7 arguing that they are an original population that should be  
8 regarded as such, and there is, in fact, even kind of an  
9 autonomous movement in Hawaii. You'll see that the final  
10 decision, which is reflected here in these check-off boxes  
11 for the 2010 -- this is actually from the 2010 Census, but  
12 it is similar to the 2000 Census -- that Native Hawaiians  
13 were not included with American Indians and, in fact, the  
14 group that argued against having them included with American  
15 Indians were? American Indians, right, who didn't want the  
16 pie split more ways. So, Native Hawaiians got separated  
17 from Pacific Islanders, but not included with indigenous  
18 Americans. And finally, one other story from these kinds of  
19 discussions, again, part of the 2000 Census, was Arab  
20 Americans, who wanted their own check-off box. OMB  
21 determined -- I'm not exactly clear, well, I know the  
22 process, but it's not clear to me that the numbers were  
23 actually right -- but, in any event, they concluded that  
24 there were not sufficient numbers of Arab Americans to  
25 warrant a check-off box. Now, realize, you know, we have a

1 check-off box for Samoans, we have a check-off box for  
2 Guamanians, so this seems a kind of odd decision, but it was  
3 the decision of OMB, so there is no Arab American check-off  
4 box from the 2000 Census. Prior to the 2010 Census, at  
5 least to my knowledge, there was no much of a movement to  
6 have Arab Americans have their own check-off box, either,  
7 and I think that probably has to do with some of the events  
8 that have happened between 2000 and 2010. In any event, the  
9 collection of racial and ethnic data, what I want you to  
10 understand, is partly a political process, it changes, it  
11 changes across time, it reflects some communities and it  
12 doesn't reflect all communities, and certainly when you go  
13 out and talk to people in California, you will probably hear  
14 from people who say, "Well, if you're using Census data, I  
15 don't like it because it doesn't include or count my group  
16 the way it should."

17           Now, what the Census Bureau has been left with is  
18 these two sets of questions, what I would call really ethnic  
19 identity, the first one is the Hispanic Latino or Spanish  
20 origin question, which you see there, and then the next one  
21 is the racial question. There was a proposal to combine  
22 these into one question and, again, there was a response to  
23 that. In this case, Latinos did not want to be included in  
24 one single ethnic question, partly because there was a fear  
25 that that would decrease their numbers, so people had to



1 choose, or ended up choosing between, say, Latino and White,  
2 they might choose White and not Latino, and that would  
3 result in smaller numbers of people responding that they  
4 were Latino. So, it was left in the 2000 and the 2010  
5 Censuses as two separate questions.

6           And I'm sorry, I'm going probably too much, but, you  
7 know, even the kind of instructions here, so you'll see  
8 where they say, if you're some other group, go ahead and  
9 write what that group is, so you'll see that in the Hispanic  
10 Latino question, you'll see that in 2010, they included  
11 Argentinean, Columbian, simply by naming a group there, you  
12 will end up having more people respond, and write that group  
13 in. So, in the 2010 Census, they left off Salvadoran,  
14 compared to the 1990 Census, there was a huge drop in the  
15 Salvadoran population. Now, Salvadoran is back on again.  
16 And, in fact, there are other oddities, too. When they  
17 first started testing the collection of data on Latino  
18 origin, they had a question, I think it was the 1970 Census,  
19 that was, "Are you Central or South American?" And all of  
20 these people in the Midwest and the South said, "Yes, they  
21 were Central American or South American," because they were  
22 thinking of regional identities within the U.S., not  
23 thinking of other parts of the Continent. Okay, and so I've  
24 already kind of belabored this point, but these terms are  
25 not - they are not scientific, they're partly politically

1 defined, but certainly they are used and they have merit,  
2 and they are meaningful. The Census Bureau really doesn't  
3 have a good way of defining them, so you will see their  
4 definition of race is "race is a self-identification data  
5 item..." how is that for bureaucratese, "...in which Respondents  
6 choose the race or races with which they most closely  
7 indentify." Well, that is completely circular. Race is  
8 race, and it is what people identify. And basically the  
9 message here is, it is self-identification. People choose  
10 what they are going to report in the Census.

11           Okay, finally, there are certainly other sources of  
12 population information, I'm going to skip over the estimates  
13 and projections, you won't really be using them. You should  
14 be aware that those numbers exist, and you should realize  
15 that they're not something that you need to work with.  
16 There is a big issue, though, that I do want you to be aware  
17 of with respect to these estimates. So, both the Department  
18 of Finance and the Census Bureau produce annual population  
19 estimates of the state's population. They differ right now  
20 in 2009 by 1.5 million people. The Department of Finance  
21 says California is home to 38.5 million people, the Census  
22 Bureau says the state is home to 37 million people. This  
23 difference is the largest difference ever between the two  
24 agencies. There has been some attempt to reconcile them,  
25 they haven't been able to reconcile the differences.

1 Depending on who is right, we'll have a big say in  
2 apportionment for at least the House of Representatives; if  
3 the Census Bureau is right, California will not gain another  
4 seat in the House, which would be the first time since 1920  
5 that that has happened, and the reason it didn't happen in  
6 1920 wasn't because the state didn't grow rapidly, it was  
7 because there was no reapportionment done after the 1920  
8 Census at all because rural states fought to prevent  
9 reapportionment from happening because urban areas were  
10 growing fast, and they didn't want to lose political power,  
11 and they successfully fought off reapportionment for 10  
12 years until there was a new Census, the 1930 Census, which  
13 was used for reapportionment. In any event, if the Census  
14 Bureau is right, California won't gain another member of the  
15 House; if the Department of Finance is right, we'll probably  
16 gain two additional members of the House. So, many of us  
17 will be very eagerly anticipating the first number that  
18 comes up from the Census, which will be at the end of this  
19 year, so within a month. The total population of the state,  
20 which will be used to apportion the House of  
21 Representatives, and you can imagine if it turns out to be a  
22 low figure, according to our official sources' estimates,  
23 there could well be a lawsuit about that number. And that  
24 could have implications for what the state says should be  
25 used for redistricting, as well, and whether some sort of

1 adjusted database that includes adjustments for the under-  
2 count, if we think there was really a bad under-count, will  
3 certainly be part of the dialogue in California.

4 CHAIRMAN YAO: Could you just take 30 seconds to  
5 explain what the process the Department of Finance uses in  
6 coming up with their estimate?

7 MR. JOHNSON: Right, so both of them use  
8 administrative data on births and deaths to look at those  
9 gains and losses, and those are very well recorded, so they  
10 are not in controversy, they agree completely there. They  
11 both use information from Department of Homeland Security,  
12 on International Migration. They make roughly the same  
13 estimates about unauthorized immigrants coming into the  
14 state, and so the difference is domestic migration, that is  
15 migration between California and other states, with the  
16 Census Bureau saying the numbers are far higher, leaving  
17 California, the Department of Finance saying the numbers are  
18 not so high. The reason for that difference is they use  
19 different underlying data sources. The Census Bureau uses  
20 really primarily just one, and that is matching of IRS tax  
21 returns from one year to the next to see if people's  
22 addresses have changed, and if they have, then they measure  
23 that as a migration either in or out of the state. The  
24 Department of Finance does use that information, but they  
25 also use driver license address changes, and driver license

1 address changes show a different pattern than the IRS data  
2 does, and that accounts for all of this difference, it is  
3 absolutely phenomenal that those data sets would disagree  
4 this much, but in fact they do.

5           Okay, now, finally let me turn to survey data.  
6 There are two large surveys of the nation's population that  
7 are conducted, one is called the current population survey,  
8 that is where the unemployment data come from, another is  
9 called the American Communities Survey, and it is this  
10 American Communities Survey that is replacing all those  
11 additional items from the 2000 Census that are not on the  
12 2010 Census they are now asked on this American Communities  
13 Survey. So let me just briefly explain what the American  
14 Communities Survey is, it is this monthly survey, the sample  
15 is huge, but it is not a Census, so it is just a sample of  
16 the population, it includes all the long form questionnaire  
17 items from the 2000 Decennial Census, as I said, and it  
18 replaces the 2010 long form, so it is great in some ways.  
19 We get timely information, we get a lot of information on a  
20 lot of characteristics, but -- and this last bullet is key  
21 here -- we do not get reliable single year information for  
22 small geographic areas, so if you wanted to - and I don't  
23 know if it's in your charge or not, but if you wanted to  
24 consider patterns of educational attainment and how they  
25 vary from one potential district to another, you cannot use

1 a single year of the American Communities Survey for that  
2 because the sample size is too small to give you reliable  
3 numbers. The Census Bureau has argued that, instead, what  
4 they will do is -- and you'll see that in this last bullet  
5 here again -- provide five-year periods in which you can get  
6 census tract level and block groups, so a census tract is  
7 about 5,000 or 6,000 people, a block group is smaller than  
8 that, so you could think of a census tract as kind of a  
9 neighborhood. So, the Census Bureau will give you five  
10 years of American Community Survey data at the census tract  
11 or block group level, which will have all the richness of  
12 these detailed set of information that I talked about before  
13 -- education, income, poverty, all those kinds of things.  
14 But it is kind of an odd thing, what is a poverty rate for a  
15 census tract from 2005 to 2010? Well, that's a five-year  
16 period in which we had an incredible boom, from 2005 to 2007  
17 or '08, and then an incredible bust. So, it's certainly not  
18 the same kind of precision that we used to get with the  
19 Censuses, but it does allow for at least some relative  
20 comparison of local small areas when you combine the  
21 American Communities Survey over many years. I think I'll  
22 end it there, so if there are any questions, I'd be happy to  
23 answer them. The Public Policy Institute of California is  
24 very happy to come back and talk to you about any part of  
25 the process, the data, redistricting, we have people who

1 study governance issues and all kinds of other topics, and  
2 again, we're non-partisan, we don't have -- what's it called  
3 -- a stake in the fire, or a foot in the flame, or whatever  
4 it might be, so we're happy to provide any advice or counsel  
5 that you might want.

6 CHAIRMAN YAO: Questions?

7 MR. JOHNSON: Thank you.

8 CHAIRMAN YAO: Thank you very much. We'll open up  
9 the microphone to anybody in the audience. Any comments or  
10 questions for the Commission? Seeing none, we are finished  
11 with the item. Thank you. Would the Commission like a  
12 five-minute break? So ordered.

13 (Off the record at 2:39 p.m.)

14 (Back on the record at 2:50 p.m.)

15 CHAIRMAN YAO: All right, we'll reconvene the  
16 meeting with Item 10.

17 MR. RUSSO: Good afternoon. The purpose of this  
18 discussion is to talk a little bit about the process and  
19 procedures that you will be following when you select the  
20 final six members of the Commission. This is intended just  
21 to be kind of a preliminary overview of that process.  
22 Obviously, we'll get into it in more detail when you  
23 actually are engaged in the process, but this is a way for  
24 you to get an idea of where we're going and can think about  
25 some things that you're going to have to consider at the

1 time you get to that stage.

2 All right, the Voters First Act provides very  
3 specifically as to how you are to select the six people to  
4 fill out the 14-member Commission. Essentially, it gives  
5 you three different considerations that you are supposed to  
6 look at, the first of those considerations is to ensure that  
7 the Commission reflects the state's diversity; however, as  
8 it says in the Act, it is not intended that formulas or  
9 specific ratios be applied. So, because if you start  
10 looking at formulas and specific ratios, then there is the  
11 issue of racial quotas, and so forth, which create definite  
12 legal problems, what you're trying to do here is create a  
13 diverse Commission, and generally speaking, a Commission  
14 that reflects the state's diversity, but is not a situation  
15 where you are saying, "Well, I'm sorry, Candidate X is a  
16 wonderful Applicant, but he's the wrong race, I'm sorry,  
17 he's out." I mean, that is clearly not something you want  
18 to do. You are looking at creating a Commission that is  
19 reflective of the state's diversity, but in a way that  
20 considers diversity without making your decisions based on  
21 very specific ratios, formulas, percentages, and that sort  
22 of thing. It's very similar in the sense that you can look  
23 at what the Applicant Review Panel did in trying to create  
24 the group of 60 finalists, in the sense that they looked at  
25 the overall diversity of that group of 60, but they were not



1 using specific ratios or quotas to get to any particular  
2 number.

3           Diversity is defined by our Regulations very  
4 specifically, and we are looking at diversity in terms of  
5 the racial, ethnic, geographic, economic, and gender  
6 characteristics of the population of California. Now,  
7 diversity can be measured in a whole lot of different ways  
8 and you can certainly -- you are not limited to this in the  
9 sense that you certainly can look at the other measures of  
10 diversity in trying to decide what six people you want to  
11 fill out the Commission, however, you are required under the  
12 Regulations specifically to look at these things so that, if  
13 you feel that there is a disparity with regard to the racial  
14 make-up, the ethnic make-up, the geographic make-up, the  
15 economic make-up, the gender make-up, then you would want to  
16 address that. That's one of the considerations.

17           Meanwhile, the second consideration is Relevant  
18 Analytical Skills. And we have defined by Regulation what  
19 Relevant Analytical Skills are. What I've given you here in  
20 this PowerPoint is how we have defined it in the Regulation,  
21 which you have a copy of in your materials. We go on in the  
22 regulation to talk about certain indicators, of what  
23 indicates whether a person possesses these relevant  
24 analytical skills, and those are provided by illustration  
25 because we were concerned that maybe without this kind of

1 language, we were not really being specific enough, or clear  
2 enough. I don't know that I need to read it for you, this  
3 isn't story time, what all of these criteria are, but those  
4 are the things that you need to look at in figuring out:  
5 "Well, what do you mean by Relevant Analytical Skills?"  
6 Those are the things that you're looking at. Essentially,  
7 when we crafted these regulations, we were trying to come up  
8 with, based on what we knew about redistricting and the  
9 experience of other people who had performed redistricting,  
10 that these are the kinds of things, that in terms of  
11 relevant analytical skills, would be important, and as an  
12 example, the ability to apply appropriate legal standards,  
13 very important because if you are drafting -- you are  
14 creating maps, you want to have maps that will stand up in  
15 court. So someone who says, "Well, I don't care what the  
16 law says, I want to do it my way because I know the right  
17 way," is probably not a good person to be on the Commission.  
18 Now, fortunately for you, you have had the Applicant Review  
19 Panel essentially go through and do an extensive screen. I  
20 mean, they have identified the people that they believe are  
21 the 60 most qualified applicants. So, when looking at  
22 relevant analytical skills, you are looking at probably not  
23 so much whether the applicants possess these skills in some  
24 fashion, but whether the skills that a particular person  
25 has, whether that is a good complement to who you already

1 are as members of the Commission, and who the other six  
2 would be when you come up with a final group of 14.

3           The third consideration is ability to be impartial,  
4 which remains constant throughout. Again, the Applicants  
5 have been screened for that, but when you are looking at who  
6 to have on the Commission, you are also once again looking  
7 at these considerations to determine whether or not the  
8 folks that you are selecting are people who, based on your  
9 assessment, are folks who can put aside their personal  
10 interests, put aside their biases, put aside their  
11 partisanship or their support for a particular cause, to  
12 make these decisions in a fair and impartial manner. Now,  
13 so what you are in is a situation where you really are  
14 trying - you've got these various pieces that you're trying  
15 to balance in this puzzle of certainly coming up with a  
16 diverse Commission, which, as many of the people who have  
17 spoken already have talked about, that is certainly very  
18 very important. But, you are also at the end of the day  
19 trying to make sure that you have a group of people who can  
20 get the job done because diversity is a wonderful thing, but  
21 it doesn't mean a whole lot if, at the end of the day, you  
22 don't have four maps that are accomplished here, that you  
23 can move forward because then redistricting ends up in the  
24 courts.

25           In order to try and help you make the selection,

1 based on public comment that we received as we were going  
2 through the rulemaking process of crafting the Regulations,  
3 we have put into the process the notion of selection by  
4 slates, and what is a slate? A slate is six people that you  
5 think will fill those six spots, so instead of looking just  
6 at, "Well, I think this particular Applicant is just a  
7 wonderful person, this person is my woman, I want her on the  
8 Commission and then we'll figure out who the other five are  
9 later," the way this is set up is, no, you really are  
10 looking at what six people, when taken into consideration  
11 with the eight of you, will create a diverse Commission with  
12 the diverse skill sets that you feel are necessary in order  
13 to get the job done.

14 Now, we've set up rules for how the slates are  
15 proposed. Any member of the Commission can propose a slate  
16 of six Applicants, that a particular Commissioner can only  
17 have one slate pending at any given time, but there can be  
18 more than one slate under consideration at a time. And the  
19 purpose for this is so that you can actually compare slates.  
20 So, if Commissioner Forbes decides, "Well, this is my slate  
21 here and I think this is a wonderful slate, and this is who  
22 the six should be," and then Commissioner Kuo comes up with  
23 an alternative and says, "Well, actually, this is good, but  
24 I like this a little better." And then you can look at the  
25 two slates and make a decision as to whether you like one

1 better than the other one, or that maybe the two of them  
2 ought to be merged together to come up with yet a third  
3 slate, which another Commissioner can propose, and say, "How  
4 about this one as an alternative, because I think this takes  
5 the best of both worlds here?" Now, in creating the slate,  
6 a slate may only be altered by the person who proposes it,  
7 so that if Commissioner Dai wants to put forward a slate and  
8 someone says, "Well, you know, I like your slate, but I  
9 think Applicant Smith needs to be replaced by Applicant  
10 Jones," it would be up to Commissioner Dai to make that  
11 decision, if she doesn't want to do it because she thinks,  
12 "No, I like my slate, someone else can make the proposal as  
13 another slate," and you can look at that as yet a different  
14 slate on the agenda to decide what you want to do.

15           The first slate to win approval under the voting  
16 method that is set forth in the Act will be the slate that  
17 is approved and you're done. At that point, you have  
18 appointed six Commissioners to serve on the Commission.

19           So, we've talked about what this is, it is a  
20 balancing process that, to be able to do this balancing --  
21 to be able to create a slate that you can all agree on --  
22 you are of course going to have to do a lot of consensus  
23 building. To adopt a slate, you need to adopt a slate in  
24 the same manner that you elected a Chair and a Vice Chair,  
25 you have to have the affirmative votes of five of the eight

1 of you, at least two votes from a Democrat, at least two  
2 votes from a Republican, at least one vote from a Decline to  
3 State Commissioner. In doing that, as I said, you have to  
4 build consensus so that, what we've found from when we were  
5 kind of practicing a little bit as staff to try to figure  
6 out what the best way is to try to make this work and,  
7 again, it is your decision, so we can only make  
8 recommendations, you have to make the decision of how you  
9 want to proceed, one thing that probably doesn't work real  
10 well is to have eight different people come in with eight  
11 different slates because that's a lot to look at, and it's  
12 very difficult to make any kind of meaningful comparisons,  
13 at least that is what we found. So, what may be most  
14 helpful is to do what we essentially were referring to as  
15 kind of constructing a slate altogether, which is to say not  
16 that a particular Commissioner can't put forward a slate,  
17 but that before you get involved in actually promoting  
18 slates of a particular group of applicants, that you maybe  
19 talk about what kind of qualities you think should be  
20 involved with these six people. In other words, if, say,  
21 for example, you as a group have a discussion about and  
22 think that maybe a particular ethnicity is under-represented  
23 on the Commission, or if you feel that a particular  
24 geographic area is under-represented, or you feel that a  
25 particular skill set is missing, that maybe you really want

1 somebody with redistricting experience, or maybe you really  
2 want somebody who has particular skills at doing public  
3 outreach to underrepresented communities, or whatever it is,  
4 I mean, these are just off the top of my head examples, that  
5 you might want to propose that to your fellow Commissioners,  
6 to be able to say, "Well, don't you think maybe we need  
7 someone with this kind of skill set? Then we should be  
8 looking at that." But if you can find that you have certain  
9 things that you agree about when you have these discussions  
10 at a public meeting, then that would then guide you in how  
11 you construct your slates because, while, as an individual  
12 Commissioner you may believe that you have the absolute best  
13 slate in mind, the fact is, you've got to get agreement on  
14 it, and you may be right, you may have concocted the best  
15 slate, but if you can't get agreement on it, it isn't worth  
16 anything. So, building consensus becomes really the  
17 hallmark of your process of making good decisions -- by  
18 finding a way to get agreement on those decisions.

19           One of the issues that you will have to grapple  
20 with, and it's something that we as staff are going to ask  
21 you to make some decisions about tomorrow afternoon, is the  
22 issue of what additional information, if any, you may want  
23 regarding the applicants in making your decisions about who  
24 to select. At this point you have all of the information  
25 that was available to the members of the Applicant Review

1 Panel, including their interviews and so forth, all of the  
2 public comments, and all the rest of it, however, we wrote  
3 into the Regulations a process by which you can obtain  
4 additional information simply because, while the Applicant  
5 Review Panel had the ability to ask staff to get certain  
6 information, they certainly had the ability to ask  
7 Applicants questions during the interview phase, as you're  
8 all quite familiar with. You, however, may also want some  
9 kind of ability like that, or you may feel that the  
10 Applicant Review Panel has done a perfectly wonderful job of  
11 gathering information, and that you're quite comfortable  
12 making a decision based on the record that they have  
13 established. Now, written into the Regulation is the  
14 ability to make written requests for information from the  
15 Applicants, there is also the ability to conduct further  
16 interviews with the Applicants. The caveat, of course, is  
17 that engaging in further fact-finding, engaging in further  
18 interviews, will take a lot of time. There are 28  
19 Applicants that remain in the applicant pool, if you conduct  
20 an interview - a one-hour interview with each of those  
21 Applicants, that's 28 hours. And with 28 hours, you also  
22 have to build in the time of just shuttling people in and  
23 out, of taking breaks, of all the rest of it, so you're  
24 talking about a considerable amount of time. And when we  
25 talk about this again, when we're asking you to make



1 decisions, we will propose - we can show you some calendars  
2 of what it would look like for your workload based on  
3 certain assumptions. And obviously we can work with you and  
4 work on scheduling, but this is something that you probably  
5 ought to be thinking about now, as to how you want to  
6 proceed, and how comfortable you are. After you were  
7 selected as the first eight members of the Commission, we  
8 provided to you all of the application materials regarding  
9 the Applicants that remain in the pool, as well as regarding  
10 each of you. I don't know whether you've had an opportunity  
11 to get through that, I assume not, at least I hope you had a  
12 nice Thanksgiving and at least had some time off with your  
13 family and so forth.

14           So, you may not have a full handle on whether or not  
15 every question has been answered, every piece of information  
16 you need has been obtained, but hopefully you at least will  
17 have a general sense of whether you think the record that  
18 you have before you is sufficient to make decisions, and of  
19 course we can always, within the schedule we have, within  
20 the time allotted, try to obtain additional information for  
21 you later if you find that, you know, you have particular  
22 questions that you want to see if we can try to get  
23 answered, but, you know, we'll just have to work with each  
24 other to try to make that happen.

25           So, in essence, that's what we're doing at this

1 point. The key to all of this is that you have to come up  
2 with what you're comfortable with as far as how you're going  
3 to make the selection, based on what rules we've given to  
4 you. We tried to give you as much of a structure as we  
5 could in making this selection, but, on the other hand, you  
6 know, we have to understand that you're all going to operate  
7 different ways, and ultimately it's your comfort level that  
8 matters. And that's what I have for you at this point. Do  
9 you have any questions about any of this?

10 CHAIRMAN YAO: I have a couple questions, but I'll  
11 let my fellow Commissioners ask your question first.

12 MR. RUSSO: Okay.

13 CHAIRMAN YAO: In the definition of diversity, you  
14 list a number of considerations, a number of parameters, if  
15 we were to discuss the priority of these items, would that  
16 violate the spirit or the letter of this formula method of  
17 consideration? For example, let's say, based on the  
18 existing pool, and this is strictly an example, say we're  
19 not well positioned in geographic, and I would say that  
20 probably should be a high priority, just by discussing that,  
21 would that violate the spirit of the law that you previously  
22 mentioned?

23 MR. RUSSO: Semantics is important for these things.  
24 If you were to create a priority system where you're saying  
25 that geography is more important than race or ethnicity, I

1 think that would be a problem because both the Act and the  
2 Regulations that we crafted have been designed so that these  
3 are all things that you have to consider and to try to  
4 balance. Having said that, as an individual Commissioner,  
5 if you feel very strongly that a particular area is under-  
6 represented, and that's something that you individually in  
7 your voting feel that is something that may influence you,  
8 that is certainly a choice you have to make, but for the  
9 Commissioners themselves to, say, make a decision that a  
10 particular criterion is more important than the others, then  
11 I think that would be a problem because the law doesn't make  
12 one criterion more important than the other, It makes all  
13 of these criteria things that the Commission must consider  
14 in coming up with what they feel is a diverse Commission,  
15 with the necessary skills.

16 CHAIRMAN YAO: Vincent, you had a question?

17 COMMISSIONER BARABBA: Question of geography. I  
18 read the reviews of our panel, and it seemed like a lot of  
19 us have lived in different places in the state and that we  
20 might be able to reflect those places where we lived, and it  
21 might be of some value if we could get a list of areas in  
22 which, not only where we currently live, but where we have  
23 lived, so again, an appreciation for if there really is an  
24 empty spot out there that we haven't covered already.

25 CHAIRMAN YAO: Okay, I think Patti has taken that as

1 an action item.

2 COMMISSIONER RAYA: I have a question also. Would  
3 your response to Peter -- would that also apply to  
4 consideration regarding the sort of three -- the diversity,  
5 the skills, the impartiality, that neither -- that not any  
6 one of those takes precedence over the others? Do you have  
7 to sort of balance them?

8 MR. RUSSO: The way the Act is crafted, yes, all of  
9 those things are to be considered. Now, some folks, no  
10 doubt, have views that certain things are more important  
11 than others, and I think that we've seen that reflected in  
12 public comments, not just at this meeting, but at others  
13 that some folks feel that certain considerations are more  
14 important. All I can tell you is that the law doesn't  
15 establish a prioritization, it does not say that your job is  
16 to make sure that you have a racially and ethnically diverse  
17 Commission, and if that affects whether or not you have the  
18 people with the relevant analytical skills, well, too bad.  
19 It's saying you need to come up with a group, to the best of  
20 your ability, a group of 14 Commissioners who are diverse,  
21 and who have the relevant analytical skills and the ability  
22 to be impartial that you feel is necessary to achieve the  
23 goal of drafting the four maps.

24 COMMISSIONER GALAMBOS MALLOY: Steven, I have a  
25 question regarding the definition of diversity. Were we to

1 take into account other aspects of diversity, for example,  
2 age, would that be over-stretching the boundaries of our  
3 role?

4 MR. RUSSO: It is certainly something that you can  
5 consider, so long as you're not considering that at the  
6 expense of another characteristic of diversity. If you were  
7 to do that, then you would have a problem because there are  
8 very specific areas of diversity that you have to consider  
9 in measuring whether you have a good group. So, you know,  
10 the example, if ethnic diversity suffers because you're  
11 interested in achieving some sort of age diversity, then I  
12 think that would be a problem.

13 CHAIRMAN YAO: From your presentation, this is a  
14 question on the slates selection, I walk away with the  
15 impression that the preferred method is to, let's say,  
16 discuss one slate, perhaps compare with perhaps one other  
17 slate, and try to make the decision including altering the  
18 composition of the slate by a proponent. Is it acceptable  
19 to consider, let's say, three slates simultaneously and  
20 discuss the amount of three? And also, when it comes time  
21 to taking a vote on any of the slate, what is the proper  
22 order of voting on the slate? In other words, the first one  
23 that was identified? Or by Roberts Rule of Order, you  
24 finish one before you start another one? I need some  
25 clarification in that area.

1           MR. RUSSO: Sure. The way the regulations are  
2 drafted, you could consider up to eight different slates  
3 because each Commissioner can put forth a slate. And that's  
4 fine, that's your choice. All I can tell you from our kind  
5 of practice experience is that that did not seem conducive  
6 to try to build consensus because, then, we had eight  
7 different staff members who were fighting for their own  
8 slate, and we weren't building consensus. And so, it was  
9 also just very difficult to follow eight different slates,  
10 and what is yours, what is mine? It was -- there was  
11 nothing about our experience that would cause me to  
12 recommend that to you. In terms of whether it would be good  
13 to look at two or three or four slates, it depends on what  
14 works. I mean, the more slates you have, the more  
15 information you have to track. On the other hand, if you're  
16 looking at two and you think, "Well, gee, a third one that  
17 kind of mixes those two, that would be something I'd want to  
18 look at," that's fine. I guess what it comes down to is,  
19 when you're in the process of doing it, I'm saying be  
20 careful about the number of slates that you're considering  
21 at a time, but if adding another slate seems like that adds  
22 value, or it makes it easier to make a determination about  
23 where you can agree, then you should go for it if that's  
24 kind of what works.

25           CHAIRMAN YAO: Just a follow-up?

1 MR. RUSSO: Sure.

2 CHAIRMAN YAO: Just a follow-up to that same  
3 question. Let's say we have been discussing -- pick a  
4 number -- three slates. How do we pick out which slate to  
5 vote on first?

6 MR. RUSSO: The regulation is not specific as to how  
7 you make that determination. So, that's something as a  
8 matter of how you conduct your business, you may want to  
9 decide how you want to do it, whether you want to do them  
10 first in order, and so forth, or not. We deliberately left  
11 that open because we thought that maybe in the course of  
12 your discussions, that there's one slate that one  
13 Commissioner thought was just a great idea, and nobody else  
14 likes it, and so it's like, "Okay, let's call it to a vote  
15 and then let's get it off the table because nobody supports  
16 it, because maybe the Commissioner wouldn't withdraw it. So  
17 it gives you the ability to control how many pieces you have  
18 in action at any given time, but what you want to call a  
19 vote on, and how you want to do that, that's up to you.

20 CHAIRMAN YAO: Thank you.

21 COMMISSIONER FORBES: Steven, may I ask a follow-up  
22 question on that, then? On the process of slate developing,  
23 I know we can't vote on Commissioners individually, we have  
24 to offer them as a slate --

25 MR. RUSSO: Correct.

1           COMMISSIONER FORBES: Is it possible, or is it  
2 legitimate to build a slate one name at a time, we'll call  
3 it the Chairman's slate, and we build it one name at a time,  
4 we don't vote on it, we talk about what we need to have,  
5 then we have a discussion of whether this - you know, who  
6 might meet this criteria, and so maybe we agree among  
7 ourselves that this seems like these two meet this  
8 particular criteria, so we start building with those names,  
9 and then we talk about the others until we get to a slate of  
10 six, again, we'll call it Chairman's slate, and only once we  
11 have it completed, then we vote. Is that a legitimate  
12 process?

13           MR. RUSSO: That is a legitimate process that you  
14 can follow if you can work together well enough in that kind  
15 of cooperative manner, that's a wonderful way to do it, and  
16 in our practice, that was something that we talked about,  
17 "Gee, wouldn't it be nice if we could all just kind of build  
18 the slate together?" So, yes, that would be a way of  
19 working it and you might want to try it.

20           COMMISSIONER FORBES: Thank you.

21           COMMISSIONER FILKINS WEBBER: I have one other  
22 question. I'm not certain if this is something we will ask  
23 of staff. I'm looking at the website and the last  
24 demographic breakdown we had was in regard to the remaining  
25 36 in the pool. Is there any way that we could ask staff to



1 give us the demographics for the remaining 28, or maybe  
2 separating the demographics between the two groups, in other  
3 words, maybe the Commission now, I think some people have  
4 performed some analysis of that, and then give us some  
5 breakdown of demographics that exist on the website now, and  
6 whether that would be provided to us, or whether it's  
7 something that would be put online?

8 MR. RUSSO: We could certainly provide whatever data  
9 works for you and we can provide it as to the 28, yes.

10 COMMISSIONER FILKINS WEBBER: Okay, and the process,  
11 by doing that, is that something that I would propose as -  
12 I'm just doing it in an open forum now, but asking that  
13 staff conduct that if the Commission agrees? Or bring a  
14 motion? I don't know.

15 CHAIRMAN YAO: I think direction has been provided  
16 to staff.

17 COMMISSIONER FILKINS WEBBER: Thank you.

18 MR. RUSSO: Thank you. That's fine.

19 CHAIRMAN YAO: Any further questions? Thank you,  
20 thank you very much. So, let me open it up to the public  
21 for any comments or questions, or any considerations you  
22 want us to address on this particular item.

23 MR. WRIGHT: Thank you, Mr. Chairman. Jim Wright,  
24 I'm a voter from San Jose. The one thing that has not been  
25 mentioned in this presentation was that the slate needs to

1 be composed of two Democrats, two Republicans, and two who  
2 were neither. And that's a very key element along with your  
3 voting, which is also two, two, and one.

4 CHAIRMAN YAO: Thank you. All right, seeing no one  
5 else approaching the podium, I would consider Item 10 to be  
6 completed. We are going to convene again tomorrow at 9:30.  
7 Let's move for continuation of the - so any last minute  
8 items that need to be considered before we adjourn for the  
9 night, or for the afternoon? All right, so the meeting is  
10 adjourned for today. Thank you.

11 [Recessed at 3:22 P.M.]

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