

ARIZONA INDEPENDENT REDISTRICTING COMMISSION

Thursday, May 12, 2011
9:30 a.m.

Location

Arizona Industrial Commission Auditorium
800 West Washington
Phoenix, Arizona 85007

Attending

Colleen C. Mathis, Chair
Jose M. Herrera, Vice Chair
Scott Day Freeman, Vice Chair
Linda C. McNulty, Commissioner
Richard P. Stertz, Commissioner

Raymond F. Bladine, Executive Director
Kristina Gomez, Deputy Executive Director
Buck Forst, Information Technology Specialist
James E. Barton II, Assistant Attorney General

REPORTED BY:

Marty Herder, CCR
Certified Court Reporter
CCR No. 50162

Phoenix, Arizona
May 12, 2011
9:30 a.m.

P R O C E E D I N G S

CHAIRPERSON MATHIS: The meeting of the Arizona Independent Redistricting Commission will now come to order.

Today is Thursday, May 12th, and the time is 9:35 in the morning.

Let's rise for the pledge of allegiance.

(Whereupon, the Pledge of Allegiance commenced.)

CHAIRPERSON MATHIS: I'd like to inform everyone that we're going to have a public comment section as we always do. If anybody would like to speak to us during that time, fill out a request to speak form and give it to the executive director Ray Bladine.

We're actually also going to also have a public comment section today at the end of the day for those hardy souls who are still with us. After, we just thought it would be a good opportunity for the public to provide comments at that time, since these interviews will be in public session.

I'd also like to note that we have a court

09:36:24 1 reporter this morning transcribing the proceedings, and so I
2 remind the commissioners to all speak one at a time so that
3 we get an accurate record.

4 I'd also like to acknowledge Assistant Attorney
09:36:35 5 James Barton, who's providing counsel for us today.

6 And if I could begin with roll call.

7 Vice Chair Freeman?

8 VICE CHAIR FREEMAN: Here.

9 CHAIRPERSON MATHIS: Vice Chair Herrera?

09:36:46 10 VICE CHAIR HERRERA: Here.

11 CHAIRPERSON MATHIS: Commissioner McNulty?

12 COMMISSIONER McNULTY: Here.

13 CHAIRPERSON MATHIS: Commissioner Stertz?

14 COMMISSIONER STERTZ: Here.

09:36:50 15 CHAIRPERSON MATHIS: We have a quorum.

16 VICE CHAIR FREEMAN: Madam Chair?

17 CHAIRPERSON MATHIS: Yes.

18 VICE CHAIR FREEMAN: Do we have a minute taker?

19 CHAIRPERSON MATHIS: I do not know. Do we have a

09:36:58 20 minute taker?

21 RAY BLADINE: The court reporter will also provide
22 the minutes for us, and we'll provide him an outline to
23 follow, so yes.

24 VICE CHAIR FREEMAN: Thank you.

09:37:07 25 CHAIRPERSON MATHIS: Good question.

09:37:07 1 Thank you for playing the dual role today.
2 So that takes us to item two on the agenda, call
3 for public comment.
4 And at this time I don't have any request to speak
09:37:22 5 forms for this first public comment. I do for the later
6 one.
7 Does anybody now like to address us?
8 (No oral response.)
9 CHAIRPERSON MATHIS: Okay.
09:37:30 10 Hearing none, we'll move on to the -- I'm going to
11 actually -- the next item is the executive director report,
12 but I would like to take the agenda a little bit out of
13 order.
14 We have with us today some people from state
09:37:47 15 procurement, and I'd like to move agenda item seven up.
16 And we may go into executive session -- the
17 Commission may go into executive session for the purpose of
18 discussing contract matters relating to the hiring of legal
19 counsel and for reviewing confidential documents.
09:38:07 20 And since they are here now, and we're going to be
21 proceeding today with interviews with legal counsel, I'd
22 like to take that agenda item out of order, and, without
23 objection, go into executive session in order to discuss
24 these contract matters with our state procurement
09:38:29 25 administrator, who is Jean Clark. And Don Ellwanger is the

09:38:34 1 state procurement officer. And they're both here.

2 VICE CHAIR FREEMAN: No objection.

3 COMMISSIONER McNULTY: No objection.

4 JAMES BARTON: Madam Chair, I would have a motion
09:38:46 5 to go into executive session.

6 CHAIRPERSON MATHIS: Okay. I do need to have a
7 motion.

8 Do I hear a motion to go into executive session
9 for the purpose of discussing contract matters relating to
09:38:56 10 hiring legal counsel and reviewing confidential documents
11 with our state procurement administrator Jean Clark and Don
12 Ellwanger for state procurement office?

13 VICE CHAIR FREEMAN: So moved.

14 VICE CHAIR HERRERA: Second that.

09:39:10 15 CHAIRPERSON MATHIS: Any discussion?

16 (No oral response.)

17 CHAIRPERSON MATHIS: All in favor?

18 (Unanimous "Aye.")

19 CHAIRPERSON MATHIS: Any opposed?

09:39:16 20 (No oral response.)

21 CHAIRPERSON MATHIS: Okay. So we will go into
22 executive session now. The time is 9:39.

23 And I hate to tell the public this, but
24 unfortunately with our court reporter here we're going to
09:39:27 25 have to ask the public to go out.

10:22:59 1 (Whereupon, the public session recessed and
2 executive session ensued.)

3
4 * * * * *

10:22:59 5 (Whereupon, the public session resumes.)

6
7 CHAIRPERSON MATHIS: Okay. We'll go back into
8 public session now.

9 The time is 10:23 in the morning.

10:23:25 10 And since we are a little bit off schedule now in
11 terms of our planned interviews, I'd like to go ahead and
12 take another agenda item out of order, and that's agenda
13 item number six, which is interview of law firms that have
14 submitted a proposal to be the Commission's legal counsel.

10:23:44 15 And I thank Mr. Bladine for getting a legal
16 counsel interview schedule together on very short notice.

17 And the schedule I believe is in alphabetical
18 order.

19 I'm checking that now.

10:23:59 20 Yes, it is.

21 And so our first interview, that was to begin at
22 10:00 a.m., is Mr. A. David Braun.

23 And if he is here.

24 And I believe if there were any other law firms,
10:24:15 25 we wanted to have them leave the room, just to allow for a

10:24:22 1 fairer process, so that they don't hear the questions ahead
2 of time.

3 But I don't see any others.

4 VICE CHAIR HERRERA: These are law firms that are
10:24:31 5 being -- that we're interviewing; correct?

6 CHAIRPERSON MATHIS: Correct.

7 Mr. Braun, thanks for being here. Sorry we're
8 running late.

9 DAVID BRAUN: Thank you for inviting me.

10:24:44 10 CHAIRPERSON MATHIS: You're welcome. Good to see
11 you.

12 So what we'll do is ask the questions in kind of a
13 round-robin format, but we would be happy to entertain an
14 opening statement or comments from you if you have any.

10:25:00 15 Otherwise we can begin questioning.

16 Or whatever your question.

17 DAVID BRAUN: I'm ready for your questions.

18 CHAIRPERSON MATHIS: Okay. Great.

19 And, commissioners, if we could just go in a
10:25:11 20 round-robin format, that would be wonderful.

21 VICE CHAIR FREEMAN: Madam Chair.

22 CHAIRPERSON MATHIS: Mr. Freeman. Yes.

23 VICE CHAIR FREEMAN: Thank you, Mr. Braun, for
24 coming today.

10:25:23 25 Your background includes working as a lawyer

10:25:26 1 representing clients who have brought lawsuits against past
2 IRC; correct?

3 DAVID BRAUN: Correct.

4 VICE CHAIR FREEMAN: And that could be regarded as
10:25:38 5 a partisan representation or at least representing clients
6 with partisan objectives.

7 The goal and mandate of this Commission is to be
8 fair, to be independent, to be politically balanced.

9 Could you please take a moment just to allay the
10:25:55 10 concerns that any member of the Commission or public might
11 have as to your ability to provide this Commission with fair
12 and independent legal advice, being as specific as you can,
13 citing examples either from citizens where you worked with
14 co-counsel or counsel or firm that you worked on these.

10:26:16 15 DAVID BRAUN: Thank you.

16 I know that this is an issue of concern to the
17 Commission, as it rightly should be.

18 As the application asks for, as far as
19 identification of past political functions, I am the
10:26:36 20 Democrat, and the plaintiffs that I represented were
21 primarily Democrats, though not all of them, in reference to
22 the lawsuit that I filed against the Commission.

23 That was in reference to the Congressional
24 redistricting.

10:26:55 25 And my clients believed that the first Commission

10:27:01 1 failed to comply with all the six conditions that are
2 imposed upon the Commission in the constitutional amendment
3 that was passed by the voters.

4 So that was the factual basis of my complaint.

10:27:18 5 And the argument, of course, to the courts had
6 nothing to do with necessarily a partisan perspective, but
7 rather the compliance with the statute and with the
8 constitutional amendment in question.

9 As I've discussed before the Commission
10:27:38 10 previously, I believe that this Commission, just like the
11 prior Commission, should have two attorneys representing the
12 Commission. One a Democrat and one a Republican.

13 The reason for that, that the Commission gave
14 again ten years ago, was that, first of all, there's
10:28:00 15 certainly plenty of work for two attorneys, even two law
16 firms, that is going to be created by the Commission.

17 But, secondly, to make sure both internally in
18 your operation and from the public's perspective, each side,
19 each party is fairly a participant in the process, and that
10:28:25 20 basically that nobody's pulling a fast one.

21 After all, you are a partisan body, if you will.
22 You're two Democrats and two Republicans and one
23 Independent, to make the most political decision that
24 previously the Legislature made, but now that you're making,
10:28:44 25 and you were chosen partially because of your partisan

10:28:52 1 identification.

2 When it comes down to actually representing the
3 Commission, that is, in my advice to the Commission, to my
4 legal work for the Commission, I will tell you now, very
10:29:10 5 specifically, it will be to the decisions of the Commission
6 itself as an institution, the agency, your specific
7 constitutional creation is an entity that is a party.

8 And last time, in fact, was sued as a specific
9 state agency.

10:29:34 10 And that will be my representation, and I will be
11 representing you based on your decision. And I'm going to
12 be an honest broker, both in my advice and, if you so desire
13 it, during these -- the months that we would have to work
14 together, and certainly an honest broker in my dealings of
10:29:59 15 the drafting of the submission, in further representation if
16 there is a lawsuit, and I'm sure that there will be, one or
17 more lawsuits.

18 That's something that I've done as a lawyer for
19 more than 35 years, and I expect to continue doing if I
10:30:21 20 represent the Commission.

21 Let me take just a second and in reference to my
22 prior representation in political cases.

23 I've represented Democrats. I've represented
24 Republicans. I've dealt with clients who I didn't know
10:30:43 25 whether they were Democrats or Republicans. Didn't know,

10:30:47 1 didn't care, didn't ask, because it wasn't relevant to their
2 case.

3 I've -- as you know, I was on the bench for
4 12 years.

10:31:03 5 Never in the litigation or litigants before me
6 would I ever ask, did ever ask, want to know whether they
7 were Democrats or Republicans.

8 Occasionally when somebody was in front of me, and
9 they would say, well, I voted for you, Judge Braun, I would
10:31:25 10 say, well, that's not going to make a difference to me,
11 you're going to jail anyway.

12 So, these -- I suspect all the attorneys that
13 answer this sort of question will be honest brokers and very
14 straight with the Commission as far as their dealings with
10:31:48 15 you.

16 Thank you.

17 VICE CHAIR FREEMAN: Thank you.

18 CHAIRPERSON MATHIS: Other questions for
19 Mr. Braun?

10:32:06 20 COMMISSIONER McNULTY: Mr. Braun, thank you for
21 coming today.

22 Would you talk a little bit about the factors that
23 you think will be most important to consider in submitting
24 our preclearance package?

10:32:19 25 DAVID BRAUN: Well, it's pretty clear both from

10:32:21 1 the Arizona constitutional amendment that the voters passed
2 to create the Commission, and also from the DOJ rules and
3 regulations that interpret the Voting Rights Act, and from
4 the Voting Rights Act and from additional federal law, that
10:32:40 5 those six requirements that the constitutional amendment
6 create are the factors that have to be considered and have
7 to be complied with as strictly as possible.

8 Now, the problem is this. And, again, I mentioned
9 it in my submission.

10:33:02 10 This is a six-sided Rubik's Cube that can't be
11 solved to make a perfect solution.

12 There's the push and pull of if you're going to
13 make something more competitive, maybe the district won't be
14 as continuous as you would like.

10:33:24 15 You've got limitations on numbers that have been
16 imposed by the courts in reference to the congressional
17 district, as you know. Basically it has to be within one or
18 two or maybe three voters. That's the most restrictive
19 condition so far that the Supreme Court has seemed to
10:33:44 20 indicate.

21 It's a less numerical restriction in reference to
22 the legislative districts where there you can get away with
23 basically equal population plus or minus three or
24 four percent.

10:34:03 25 And last time the variation was somewhere in the

10:34:06 1 four percent range and was ultimately approved by the
2 Department of Justice after all the litigation, after
3 litigation and the re-submission.

4 So that's the first condition.

10:34:21 5 And then the other five conditions have a push and
6 pull.

7 Competition, I think, is very important.

8 That's what the voters wanted, certainly out of
9 the initiative that they passed.

10:34:39 10 But they also established the other condition, and
11 of course of rule, quite rightly, they all matter.

12 You have, however, great discretion in how you do
13 it.

14 You know, you can make those -- you as a body can
10:34:55 15 make those decisions. And that's the whole process that
16 you're going to be going through.

17 It's not an easy decision.

18 As I said, there is no perfect solution.

19 So you'll make your best judgment to figure out
10:35:15 20 what you believe is fair, what you believe will satisfy DOJ
21 and the U.S. Constitution and the Arizona Constitution and
22 that what you believe is appropriate.

23 So there's a lot of tough decisions that you'll
24 have to make.

10:35:39 25 COMMISSIONER STERTZ: Madam Chair.

10:35:40 1 CHAIRPERSON MATHIS: Yes, Mr. Stertz.

2 COMMISSIONER STERTZ: Mr. Braun, thank you very
3 much. Thank you for continuing to attend and be
4 participating with us during this process.

10:35:48 5 In your application, you had made a statement the
6 appellate court ultimately decided that the competitive
7 districts were equal to the other goals as set forth as
8 evaluated by the Commission.

9 The definition of community of interest is of
10 great interest to me, and as you would be of counsel to us,
11 of that definition, could you describe to me in detail how
12 you would advise us of what the definition of community of
13 interest would be?

14 DAVID BRAUN: I'm sure you've all noticed of
10:36:05 15 course that in the initiative they did not define exactly
16 what community of interest is.

17 They left that up to your broad discretion, but
18 they also imposed the Voting Rights Act.

19 And they are -- there are certain communities that
10:36:22 20 have been protected by the Voting Rights Act that you're
21 going to have to consider as part of that broader definition
22 of community of interest.

23 So, because of Arizona history, prior voting
24 behavior, and such, you're going to have to probably
10:36:46 25 consider the Indian tribes, American Indian tribes as a
10:37:07

10:37:12 1 community of interest.

2 However, last time they weren't in complete
3 agreement among themselves.

4 We have a history of the Hopis and the Navajos
10:37:21 5 having some political conflicts.

6 And part of that strange configuration of
7 District One, if you look at it now for the Congressional
8 district, was designed ultimately to take into consideration
9 the Hopis' concern about the Navajo tribe dominating them.

10:37:45 10 There will be a lot of pressure upon you in
11 reference to the Hispanic community.

12 They will certainly lobby correctly -- it's
13 correct to lobby the situation in reference to their
14 interests.

10:38:00 15 But community of interest is basically thereafter
16 almost anything that you think is important.

17 For instance, are people who live in the areas of
18 the state that don't get very much rainfall a different
19 community of interest than people in Flagstaff and other
10:38:23 20 areas that get a lot of rainfall?

21 You'll have people speaking to you, lobbying you
22 in reference to their own definition of community of
23 interest.

24 And ultimately the commissioners as a group will
10:38:42 25 have to decide what they think is significant.

10:38:48 1 I can give you advice and recommendations and
2 counsel as an attorney to comply with the Voting Rights Act,
3 but ultimately the definition of community of interest is
4 your decision and your evaluation of all the groups that are
10:39:08 5 going to be coming in front of you and that you define in
6 your own mind as something, you know, if that's a valuable
7 category to describe as a community of interest.

8 So it's up to you, gentleman and ladies.

9 COMMISSIONER STERTZ: May I follow up with that,
10:39:26 10 Madam Chair?

11 CHAIRPERSON MATHIS: Please.

12 COMMISSIONER STERTZ: The reason I ask the
13 question is because you have given it equal balance to
14 competition. You made a statement in your application that
10:39:37 15 communities of interest have equal balance of competition --
16 of competitive districts.

17 And competitiveness is based on numerical and
18 factual information, and you've just given a definition that
19 by its own definition has no definition.

10:39:55 20 I'm trying to ascertain how you can have something
21 that has no definition equal balance against something that
22 is by organization statistical.

23 DAVID BRAUN: The reference to the equal concerns
24 or the equal balance or the equal weight of the
10:40:14 25 six conditions was specifically to the 2009 Arizona Supreme

10:40:20 1 Court, that last finally handled all the issues concerning
2 the first redistricting.

3 And the court said very specifically, because it
4 happened a legal issue with -- in parts of the litigation,
10:40:43 5 that each one of the six conditions was of equal value or
6 equal importance in your evaluation of the law.

7 It came up because very consciously the first
8 Commission first balanced or handled the five conditions,
9 the five conditions that did not include the competition
10:41:14 10 clause. And then, thereafter, after the first map was
11 actually prepared, they then, when the second map came up,
12 the written map, a first draft map of proposals, they're
13 taking testimony, and the ultimate map, when they prepared
14 the ultimate map, the submitted map to DOJ was the first
10:41:41 15 time that the Commission formally said now we're going to
16 evaluate all the lines, all the statistics in reference to
17 competition.

18 And that caused part of the litigation last time.

19 And ultimately the court said, no, that was a
10:41:58 20 mistake by the Commission, the first time. They were
21 evaluating the initiative for the first time.

22 And the courts were evaluating it also for the
23 first time. And they said, no, you've got to take into all
24 six conditions.

10:42:14 25 They're not necessarily equal. They're of equal

10:42:18 1 value as far as goals and standards.

2 But then when you impose them, when you decide how
3 this particular line is going to be drawn, it's up to you to
4 use those six conditions to actually determine what the
10:42:35 5 decision will be.

6 And you're given pretty broad discretion, because
7 the court also said, you're basically a mini Legislature,
8 and you have as much discretion as the Legislature that used
9 to do these lines.

10:42:56 10 So it's up to you, folks, and that's why you're
11 going to be in a lot of hearings and get a lot of e-mails
12 and have a lot of phone calls.

13 And it's a tough job. I don't envy you at all.

14 COMMISSIONER STERTZ: Thank you.

10:43:15 15 CHAIRPERSON MATHIS: Okay.

16 Any other questions?

17 VICE CHAIR HERRERA: Madam Chair.

18 CHAIRPERSON MATHIS: Mr. Herrera.

19 VICE CHAIR HERRERA: Thank you for being here.

10:43:22 20 I think you've attended all the meetings since we
21 started.

22 DAVID BRAUN: Most of them.

23 VICE CHAIR HERRERA: Correct.

24 And can you explain for me your interest in
10:43:29 25 redistricting if -- let's just say you weren't applying.

10:43:33 1 Would you still be attending and if -- would you just tell
2 me your interest in why you're here, other than applying and
3 redistricting in general.

4 DAVID BRAUN: Well, this has been an interest of
10:43:46 5 mine for years. I was a political science and history major
6 back in college.

7 I interned for a congressman in the Washington,
8 D.C., law office during one of the years that I was going to
9 college.

10:44:12 10 The political process basically has been something
11 of always just a personal interest.

12 As I said, when I was on the bench for 12 years,
13 as you know, JPs are partisan elected positions. So things
14 like the numbers and the configuration districts was of a
10:44:34 15 very personal importance to me.

16 Though JP districts, of course, don't have to be
17 equal population. They're not actually subject to the
18 Voting Rights Act, because a judge is not considered a
19 representative. He's not considered, you know, subject to
10:44:51 20 those sort of same political concerns.

21 But still the lines that were drawn by basically
22 the Board of Supervisors was of concern.

23 This is something that I've just always been
24 interested in.

10:45:06 25 Personally I've represented political candidates.

10:45:11 1 I've given advice to PACs and political organizations.

2 This is an area of law that is of a particular
3 interest of mine.

4 And I would think there would be no better
10:45:26 5 opportunity for me to act as a lawyer.

6 This is the name of the game. This is something
7 that is a rare opportunity for any practicing attorney,
8 especially one who's so interested in the intersection
9 between politics and law.

10:45:47 10 VICE CHAIR HERRERA: Thank you.

11 CHAIRPERSON MATHIS: Okay. I have a question.

12 As the lone independent, I want to ask a partisan
13 question.

14 If you were selected, do you anticipate a time
10:45:58 15 when you may need to provide partisan counsel to the
16 commissioners? And, if so, how would that work, and who
17 would be privy to that information? Would it only be those
18 who share your political affiliation, or how would -- do you
19 see that happening?

10:46:15 20 DAVID BRAUN: That's a pretty good question.

21 And my inclination is to say, no, I'm representing
22 the Commission as an institution, as an entity, and that it
23 would be perhaps inappropriate for me to give advice to
24 two members of the Commission outside of the presence of the
10:46:37 25 other three.

10:46:39 1 I don't think that's how my role would be in a
2 situation like that.

3 If issues of partisanship came up, and the
4 Commission or a commissioner wanted advice in reference to
10:46:58 5 how is this going to affect this partisan situation,
6 certainly in the presence of the other commissioners and
7 with co-counsel, if you decide to appoint one D and one R as
8 counsel, I think that's something that that would be
9 appropriate, it would be responding to the commissioners'
10:47:23 10 concern.

11 And that sort of advice, I think you would want to
12 be able to have supplied by an attorney.

13 It really goes to how attorneys act for their
14 clients.

10:47:38 15 I've always thought attorneys -- you don't just go
16 in and take orders from your client. You're there to
17 counsel and advise and explain and assist your client in
18 what he or she is trying to do.

19 You're hiring basically hopefully two lawyers with
10:48:00 20 some expertise in the Voting Rights Act and some expertise
21 in the submission process and in all the things that you're
22 going to be doing.

23 I have that expertise and experience.

24 There's a couple of the other attorneys that
10:48:16 25 you're interviewing that have that experience and a couple

10:48:19 1 of others who don't.

2 And I think that experience is certainly valuable.

3 It isn't to denigrate the ability of the other
4 attorneys to prepare and represent the Commission. But,
10:48:30 5 issues will come up, factual issues, legal issues will come
6 up that my experience, I believe, will be helpful.

7 You're a pretty sophisticated bunch.

8 I know you've got two lawyers on there and, you
9 know, people around lawyers and know what they're doing.

10:48:54 10 And so I think being a sophisticated client you're
11 going to pretty much be able to advise me as to what
12 things -- what are the things that you want to accomplish.

13 My expertise is in the Voting Rights Act, the
14 submission process, in the litigation that will probably
10:49:19 15 result, and I can tell you and advise you about those sort
16 of issues throughout this whole process to help you do your
17 job to the best possible result.

18 VICE CHAIR HERRERA: Madam Chair.

19 CHAIRPERSON MATHIS: Thank you.

10:49:39 20 Yes, Mr. Herrera.

21 VICE CHAIR HERRERA: Mr. Braun, can you -- let's
22 just say put your personal feelings aside. I see you want
23 to be chosen.

24 If you were to opine but you had a voice or a
10:49:51 25 vote, who would you recommend that we appoint as the

10:49:54 1 Republican counsel and also -- for now just the Republican
2 counsel, as your co-counsel, out of the people that we're
3 interviewing?

4 DAVID BRAUN: I know most of them, though there's
10:50:07 5 a couple that I don't know quite as well as the other
6 attorneys.

7 I dealt with Lisa Hauser ten years ago. She's a
8 fine, able attorney. And she'll be a very effective
9 attorney for the Commission.

10:50:29 10 Let me get that list.

11 VICE CHAIR HERRERA: If you can make it easy on me
12 and just pick one.

13 DAVID BRAUN: I know Mike Mandell, though I think
14 he is a Democrat in this situation. He was a participant in
10:50:52 15 a process ten years ago.

16 I've met and spoken to Tim LaSota during the
17 various meetings of the Commission that he and I both
18 attended. I don't know him as well.

19 And I don't know Mary O'Grady. Basically I know
10:51:15 20 her by reputation.

21 Again, I believe all these attorneys seem to be
22 fine and able and qualified at the minimum for
23 representation of the Commission.

24 VICE CHAIR HERRERA: So can I have a follow-up
10:51:33 25 question?

10:51:35 1 CHAIRPERSON MATHIS: Yes.

2 VICE CHAIR HERRERA: Would you be able to work
3 with Gammage and Burnham and Lisa Hauser?

4 DAVID BRAUN: Absolutely.

10:51:43 5 All these attorneys are professional. They have
6 professional courtesy, professional dealing.

7 And, again, as co-counsel, we would be
8 representing the Commission's ultimate decisions.

9 I have, you know, very cordial relationships with
10:52:04 10 the attorneys who were involved in these proceedings last
11 time, both on my side, on the plaintiff's side, and on the
12 defense side.

13 So I have no concerns about that working
14 relationship.

10:52:23 15 VICE CHAIR HERRERA: Thank you.

16 CHAIRPERSON MATHIS: Other questions?

17 COMMISSIONER McNULTY: Madam Chair.

18 CHAIRPERSON MATHIS: Yes, Commissioner McNulty.

19 COMMISSIONER McNULTY: A follow-up to the question
10:52:34 20 that you asked.

21 Mr. Braun, you mentioned that we are a
22 mini Legislature, and that it makes sense for us to have
23 both Democratic and Republican counsel.

24 It seems to me that we are different from a
10:52:48 25 Legislature, however, in that there are only five of us, and

10:52:52 1 one of us is a non-party affiliate.

2 Given that, do you think that we should as a
3 Commission have some sort of ex parte rule if we hire two
4 lawyers we're almost having a bench trial without any of the
10:53:11 5 rules that apply to a bench trial?

6 What do you think we should consider as a group to
7 make sure that we have protections in place that create
8 rules for communications among the counsel and the members
9 of the Commission?

10:53:41 10 DAVID BRAUN: I think generally the advice that a
11 commissioner gets from the attorney, and the issues, as a
12 general rule should be probably in open meeting where all
13 five commissioners are present.

14 That would be the best and most ideal situation.

10:54:12 15 I can conceive of times where one commissioner in
16 responding to an inquiry to the public, or if you're on a
17 road show where only one or two of you is at a meeting, you
18 know, taking testimony from the public, where if the
19 attorney is present, you may want legal advice.

10:54:44 20 I think if the legal advice is in open public
21 forum, again, that's probably permissible under the
22 circumstances, and there isn't anything improper in that
23 situation.

24 I would be always a little concerned if there was
10:55:04 25 a private communication between one commissioner, one

10:55:08 1 attorney, outside of the presence of either a public meeting
2 situation or the other commissioners.

3 Again, that may come up.

4 And the remedy for that is a prompt reporting of
10:55:25 5 the discussion to the rest of the commissioners.

6 I don't want to make it too -- I wouldn't
7 recommend to the Commission that it gets too rule bound,
8 where the normal flow of communication between an attorney
9 and a client is hindered.

10:55:48 10 But, you are a public agency, a public entity, and
11 these things have certain requirements that they be done
12 openly and in public.

13 And that's what the law says, and that's what the
14 constitutional amendment says, and that's the way that you
10:56:07 15 folks have done it so far, and I'm sure you'll continue to
16 do so.

17 So I think that would be perhaps, you know, the
18 most practical remedy to some sort of communication.

19 I suspect most of that sort of communication would
10:56:24 20 be almost an administrative nature, rather than, you know,
21 anything substantive.

22 There's going to be just a lot of paperwork.

23 I mean, as I said, I went through this ten years
24 ago. The submission consisted of just boxes and boxes of
10:56:47 25 substantive electoral data, and things of that sort, that

10:56:54 1 had to be presented basically in a legal brief to DOJ, had
2 to be presented pretty quickly.

3 That's why I've indicated there's plenty of work
4 for two lawyers. This is a -- you know, so far this has
10:57:07 5 been certainly a, you know, slow part of taking testimony.
6 But once it gets into the drafting stage, there's going to
7 be a lot of legal work involved in actually doing it.

8 CHAIRPERSON MATHIS: Thank you.

9 Any other questions?

10:57:31 10 VICE CHAIR HERRERA: Madam Chair, one more
11 question.

12 CHAIRPERSON MATHIS: Mr. Herrera.

13 VICE CHAIR HERRERA: Thank you.

14 We're interviewing six attorneys or six law firms.
10:57:38 15 Two of them happen to be sole practitioners, you and
16 Mr. Mandell.

17 What issue do you see in the sole practitioner,
18 advantages, disadvantages that you would have if we were to
19 appoint you as one of the co-counsel?

10:57:55 20 DAVID BRAUN: As you'll see in the substantive
21 portion of my application, I did indicate that in all
22 likelihood I probably would attempt to join a larger firm.

23 I think all the attorneys last time were sort of
24 overwhelmed with the amount of work.

10:58:20 25 It seemed like a less intensive job from the

10:58:25 1 outside.

2 But last time, in fact, this situation arose with
3 Lisa Hauser. She was in a relatively small firm. She
4 represented the Commission for a couple of months.

10:58:38 5 In my discussions with her, she's indicated, and I
6 think she'll probably indicate to you today, she went to a
7 larger firm just because of the legal resources, the
8 paralegals, the support network that you need in order to
9 adequately represent you as a client.

10:58:57 10 If I don't join a firm, if that doesn't come to
11 pass, I probably then would expand my own firm to more than
12 adequately handle the legal issue, the legal work, that has
13 to be done.

14 And I would -- that expansion would not be at the
10:59:20 15 expense of or charged to the commissioner or the Commission,
16 or re-commissioned. I would incur that sort of capital
17 costs.

18 But I would hire perhaps one additional attorney,
19 I think one or two paralegals, sufficient secretarial
10:59:42 20 support to handle the matter.

21 My inclination is, and the probability is, that I
22 will be able to join a larger firm with that support network
23 already in place. Because there's going to be a fair amount
24 of legal work involved in this representation.

10:59:59 25 But you're hiring me.

11:00:00 1 You're hiring the lead attorney who has some
2 experience in this area of law. You're not just hiring, you
3 know, a firm.

4 I think you will quickly realize you're going to
11:00:14 5 have to have one attorney who's always present at those
6 meetings and doing all the work that needs to be done for
7 representation of the Commission.

8 VICE CHAIR HERRERA: Thank you.

9 COMMISSIONER STERTZ: Madam Chair.

11:00:32 10 CHAIRPERSON MATHIS: Yes, Mr. Stertz.

11 COMMISSIONER STERTZ: Just a very brief follow-up.

12 In the last litigation that you brought against
13 the Commission, you actually co-counseled with an
14 out-of-state firm.

11:00:41 15 How did you make that choice?

16 DAVID BRAUN: You want the long version or --

17 COMMISSIONER STERTZ: No, just the real quick
18 capsulated.

19 DAVID BRAUN: The short version was that Mr. Still
11:00:53 20 was recommended to me by a number of people.

21 The litigation last time occurred -- there were so
22 many people that were suing the Commission in the initial
23 lawsuit, there were the period between December and
24 February, December of 2001 and February of 2002, there were
11:01:27 25 some 15 or 20 lawsuits that were filed, some 30 different

11:01:34 1 lawyers who, in fact, showed up at the very first hearing
2 concerning the litigation. And most of the attorneys who
3 had real expertise in voting rights were already hired by
4 in-state firms or already had commitments to clients that
11:02:00 5 prevented them from joining my litigation.

6 So I did some research, found Mr. Still as outside
7 counsel, and he appeared with me.

8 COMMISSIONER STERTZ: Thank you.

9 CHAIRPERSON MATHIS: Any other questions?

11:02:19 10 (No oral response.)

11 CHAIRPERSON MATHIS: I see the time is 11:02. And
12 I have no further questions either.

13 It sounds like all the other commissioners are
14 satisfied.

11:02:31 15 I really appreciate you being here today and thank
16 you for coming and speaking with us.

17 DAVID BRAUN: Thank you very much. I appreciate
18 it.

19 CHAIRPERSON MATHIS: Thank you.

11:02:38 20 VICE CHAIR HERRERA: Madam Chair?

21 CHAIRPERSON MATHIS: Commissioner Herrera.

22 VICE CHAIR HERRERA: As I mentioned to you,
23 Mr. Braun, you've been attending most the meetings, and I
24 really want to thank you for that. Regardless of what
11:02:46 25 happens, whether we choose you or not, I really appreciate

11:02:48 1 your interest. I wish more people showed an interest in the
2 process. I really do appreciate getting to know you, and
3 thank you for being here.

4 DAVID BRAUN: Well, thank you very much. I
11:02:58 5 appreciate that.

6 CHAIRPERSON MATHIS: Thank you.

7 DAVID BRAUN: Thank you.

8 CHAIRPERSON MATHIS: So, our next interview is
9 going to be a videoconference.

11:03:10 10 And I really appreciate Buck rising to the
11 occasion. He's our chief technology officer for the
12 Commission. And has had to move mountains, I think, to get
13 us ready for this videoconference, and I appreciate doing
14 that.

11:03:27 15 The next firm will be Ballard Spahr. And
16 unfortunately they were not able to be here in person today
17 due to an annual meeting of their firm back east. And they
18 were very apologetic and wanted to participate today, and we
19 wanted them to participate, so this was our next best
11:03:50 20 option.

21 VICE CHAIR FREEMAN: Can we have a couple minutes?

22 CHAIRPERSON MATHIS: Yeah, you need a break?

23 Maybe we can take a quick break for the court
24 reporter too.

11:04:08 25 Does that work?

11:04:09 1 It's 11:04 a.m. We will take a quick recess.

2 (A brief recess was taken during which a
3 videoconference connection was established.)

4 CHAIRPERSON MATHIS: Can everyone hear okay in
11:12:03 5 Philadelphia and Washington, D.C.?

6 JOSEPH KANEFIELD(Via videoconference): Yes.

7 CHAIRPERSON MATHIS: Wonderful. I'm very
8 impressed.

9 Buck, thank you very much.

11:12:12 10 He's our chief technology officer, as I mentioned
11 earlier.

12 Our recess has ended. It's 11:12 in the morning
13 Tucson time -- Phoenix time, sorry.

14 I really appreciate Ballard Spahr being able to
11:12:27 15 join us today. They had, as I mentioned, an annual meeting
16 that prevented them from being here in person.

17 But they were able to accommodate us and get us
18 into the mix.

19 So we apologize, Ballard Spahr, for being a little
11:12:42 20 late in our schedule today, but we'll go ahead without
21 further ado and offer you the opportunity to make any kind
22 of opening remarks, if you'd like. Otherwise we can just
23 begin questioning you in a round-robin format.

24 JOSEPH KANEFIELD: Thank you, Madam Chair. Can
11:13:03 25 you hear me okay?

11:13:04 1 CHAIRPERSON MATHIS: Yes, we can.

2 JOSEPH KANEFIELD: Thank you so much for
3 accommodating us here in Philadelphia. We are sorry we
4 couldn't be there in person.

11:13:09 5 My name is Joe Kanefield. I am -- will soon be
6 joining Ballard Spahr as a partner, actually on Saturday.

7 With me today is Steve Savage, who is the managing
8 partner of the Phoenix office of Ballard Spahr, and Jaclyn
9 Foutz, who is an associate in the Phoenix office, who would
10 be helping with the work if we are awarded the contract.

11:13:27 11 Joining us in Washington, D.C., is Bruce Adelson
12 with Federal Compliance Consulting. He also would be
13 helping on voting rights issues if we were awarded the
14 contract.

11:13:43 15 So we are absolutely thrilled to be a finalist.
16 We believe we would be able to offer the Commission great
17 representation, both in terms of your meetings and Voting
18 Rights Act issues and everything else.

19 Without saying too much more, I'll be happy to
11:14:01 20 answer your questions.

21 CHAIRPERSON MATHIS: Wonderful. Thank you. We'll
22 go ahead and start.

23 Any commissioners that would like to begin?

24 VICE CHAIR FREEMAN: Madam Chair.

11:14:11 25 CHAIRPERSON MATHIS: Okay, Mr. Freeman.

11:14:12 1 VICE CHAIR FREEMAN: Mr. Kanefield, Mr. Savage,
2 this is Scott Freeman. Thank you for appearing today.

3 Mr. Kanefield, your background includes most
4 recently being counsel for the Governor's Office and for
11:14:25 5 Secretary of State Brewer before that. And that position
6 could be regarded as a partisan person position with perhaps
7 partisan objectives.

8 The goal, if not the mandate, of this Commission
9 is to be fair, to be independent, and to be balanced
11:14:44 10 politically.

11 If you could just take a moment and address or
12 allay any concerns that any commissioner might have or the
13 public might have about your ability to provide this
14 Commission with fair and independent legal advice. And be
11:14:58 15 as specific as you can, and citing examples from working
16 with other lawyers or opposing counsel, if you have any.

17 JOSEPH KANEFIELD: Commissioner Freeman,
18 Madam Chair, members of the Commission, I understand the
19 concerns or why the question would be asked. Let me start
11:15:19 20 by saying I've been working doing election work for over
21 ten years now.

22 The great portion of that time was as an election
23 attorney for the State and the Secretary of State, where,
24 although elections are partisan by nature, it was important
11:15:36 25 that I operate in a non-partisan way and give advice in a

11:15:40 1 non-partisan manner. So I think I successfully accomplished
2 that.

3 I'm sure if you talk to folks in both all of the
4 recognized parties in Arizona as well as candidates and
11:15:54 5 political committees, I pride myself on fairness, on being a
6 straight shooter with folks, and not operating, at least as
7 a lawyer, in any kind of partisan way.

8 I stay true to our rules of professional conduct.
9 The representation, the scope of legal advice is
11:16:10 10 number one.

11 And although when we moved to the Governor's
12 Office things most definitely became more partisan just by
13 nature of the governor being the governor. That's true of
14 any governor. I still believe I have managed to maintain my
11:16:26 15 ability to be fair, objective, and to give legal advice
16 based on the law, and to, of course, not let partisan
17 considerations factor in any way into the advice that I give
18 my client.

19 VICE CHAIR FREEMAN: If I could just follow up on
11:16:43 20 that.

21 CHAIRPERSON MATHIS: Of course.

22 VICE CHAIR FREEMAN: Lawyers, of course, our work
23 is grounded in the law. And sometimes we're called upon to
24 advocate positions or provide advice where personally we
11:16:57 25 might disagree with those positions, although there is

11:17:01 1 certainly nothing requiring a lawyer to undertake such
2 representations.

3 Then, again, I can see circumstances where it's
4 conceivable that the political affiliation of a lawyer might
11:17:12 5 be important to the client, perhaps believing that that
6 political affiliation would make them a more effective
7 advocate for that client.

8 And I guess likewise, or perhaps conversely, I'm
9 not sure, it's conceivable that a lawyer might hold certain
11:17:27 10 partisan political beliefs and might seek out clients who
11 share those beliefs.

12 Would you consider yourself falling into either
13 one of those camps, or do you reject the construct entirely
14 and, if so, why?

11:17:46 15 JOSEPH KANEFIELD: Well, I -- that's a tough
16 question.

17 Obviously I consider myself a lawyer, number one,
18 president elect of the State Bar, and so I believe very
19 firmly in the rules of professional conduct.

11:18:04 20 And while certainly in election law, political
21 law, there are attorneys who are better known representing
22 candidates, individuals, political committees associated
23 with one party or another, I would hope that I would be
24 sought out as counsel in my new role as a private
11:18:25 25 practitioner who plans to begin a -- shortly begin an

11:18:30 1 election practice based on my integrity, reputation, and
2 then if that -- you know, if that means that I end up
3 getting work with folks that fall on the Republican side,
4 then that's fine. If Democrats seek me out too, that's
11:18:48 5 fine.

6 Obviously I would -- my number one priority would
7 be to my client, making sure I give them the very best
8 representation possible.

9 So in my mind, if I understand,
11:18:59 10 Commissioner Freeman, what I think you're talking about, our
11 rules tell us that we're not necessarily to be tagged with
12 the political views of our clients, but in my experience
13 that doesn't always -- that's not always true, at least with
14 the public.

11:19:17 15 So that's a long answer that I believe that I can
16 be fair, objective.

17 And it's hard for me to say who will seek me out,
18 given that I spent many years doing non-partisan election
19 work before going to work for a Republican governor, where
11:19:39 20 some folks may perceive me as more partisan because of that
21 affiliation.

22 VICE CHAIR FREEMAN: Thank you.

23 CHAIRPERSON MATHIS: Great.

24 Any questions from other commissioners?

11:19:50 25 COMMISSIONER McNULTY: Madam Chair.

11:19:53 1 CHAIRPERSON MATHIS: Ms. McNulty.

2 COMMISSIONER McNULTY: Madam Chair, Mr. Kanefield,
3 thank you for taking the time to be with us today. We
4 really appreciate it.

11:20:01 5 One of the issues that will be important to us is
6 the preclearance process and our preclearance submittal, and
7 I see that you've had a fair bit of experience in that area.

8 Would you please talk about what will be critical
9 for us to look at, a little bit about the type of experience
11:20:17 10 you had, a little bit about how Mr. Adelson would fit into
11 that.

12 JOSEPH KANEFIELD: Sure. Thank you,
13 Commissioner McNulty, Madam Chair, members of the
14 Commission.

11:20:29 15 I obviously have a substantial amount of
16 experience doing preclearance work both as an assistant
17 attorney general doing election work for the State of
18 Arizona, the Secretary of State, the Clean Elections
19 Commission. I did a stint working for this Commission
11:20:43 20 ten years ago.

21 And I have both drafted preclearance submissions,
22 I've reviewed preclearance submissions. And then when I
23 became state election director at the Secretary of State's
24 Office under then Secretary Brewer, preclearance was the
11:20:57 25 name of the game. So I oversaw all statewide preclearance

11:21:01 1 matters.

2 The Attorney General's Office actually did the
3 submissions, but, of course, we were part of that process
4 because we had to be.

11:21:10 5 We have consulted Bruce Adelson, who is with us
6 and I introduced him earlier, brought him on because I
7 believe that the Commission -- one of the big challenges the
8 Commission is going to have to face is going to be in
9 compliance with the Voting Rights Act. And that of course
11:21:28 10 would include Section Five preclearance requirements.

11 Bruce is an expert in that area.

12 I have a fair amount of expertise myself
13 obviously.

14 But what Bruce brings to the table is his
11:21:40 15 experience working for the Department of Justice for many
16 years. Bruce actually was part of the team that reviewed
17 Arizona's preclearance submission in which we received an
18 objection.

19 And he's been -- he's in touch with the Department
11:21:56 20 of Justice. He knows the current players there. He knows
21 the efforts that they're undertaking to scrutinize the
22 redistricting plans, not just in Arizona but all over the
23 country.

24 So I think he will be an invaluable member of our
11:22:13 25 team to make sure that the Commission at every step of the

11:22:18 1 way is in full compliance with the Voting Rights Act and
2 that we are appropriately advising the Commission with
3 respect to your responsibility to create a record, to stay
4 within the parameters that Section Five of the Voting Rights
11:22:32 5 Act requires, and to ultimately make sure that when the
6 Commission makes its submission that it is all the T's are
7 crossed and I's are dotted, and it is pre-cleared upon the
8 first submission.

9 That is our goal first and foremost.

11:22:53 10 CHAIRPERSON MATHIS: Any other questions?

11 COMMISSIONER STERTZ: Madam Chair.

12 CHAIRPERSON MATHIS: Ms. McNulty, did that satisfy
13 your question?

14 COMMISSIONER McNULTY: Yes, thank you.

11:23:03 15 CHAIRPERSON MATHIS: Mr. Stertz.

16 COMMISSIONER STERTZ: Madam Chair.

17 Thank you, Mr. Kanefield, Mr. Adelson, who looks
18 wonderful there sitting there by himself in Washington, D.C.

19 The question that I've got pertains to your
11:23:14 20 understanding of the competitive districting versus
21 communities of interest and their priority or equality.

22 And, if you could, give me a definition as you
23 best would understand it to be, what a community of interest
24 is.

11:23:38 25 JOSEPH KANEFIELD: Well, let me start by,

11:23:40 1 Mr. Stertz, Madam Chair, members of the commission, that
2 issue obviously is an issue of substantial amount of debate
3 this last round.

4 One of the challenges brought to the last plan
11:23:55 5 submitted by your predecessors was based on the fact that
6 there was no definition followed by the Commission as to
7 what competitiveness -- what criteria was considered when
8 competitive districts were being drawn and what criteria
9 were considered for communities of interest.

11:24:11 10 So I don't -- I can't sit here today and tell
11 you -- give you a black letter definition of what that
12 means.

13 We have some guidance from court decisions as to
14 what the courts are looking for. People who share
11:24:24 15 communities that share a common economic interest, common
16 political interest, common social interest.

17 Obviously sometimes that may square directly with
18 geographic or municipalities. Other times not. It might
19 just be neighborhoods.

11:24:47 20 But these are considerations that the Commission
21 is going to be tasked with making.

22 So it won't really be for your lawyers to tell you
23 whether you've appropriately identified a community of
24 interest.

11:25:03 25 It will be you five commissioners making that

11:25:05 1 determination, of course with advice from counsel, making
2 sure to stay within what we know are some of the legal
3 parameters.

4 And what we also learned during this last
11:25:12 5 Redistricting Commission is that the Arizona Supreme Court
6 and courts below are going to give you a great deference in
7 making those determinations.

8 So that's why you've been assembled.

9 If you will choose us as counsel, I assure you
11:25:26 10 that we will stay out of your way in making those kind of
11 determinations, because that's what you're appointed to do.

12 Our job is simply to make sure that you stay
13 within the scope of the law, and that we give you as much
14 guidance about what communities of interest mean, at least
11:25:39 15 in terms of the limited court decision and discussion on
16 that topic.

17 COMMISSIONER STERTZ: Thank you.

18 As a follow up to that, the question of
19 competitive districts and it bearing equal weight to
11:25:59 20 competitive districts by definition are definable by
21 statistical calculation, whereas communities of interest by
22 definition has no definition.

23 How would you as counsel give us recommendations
24 on how to bear equality or deference to those two obviously
11:26:28 25 unequal judgment calls?

11:26:36 1 JOSEPH KANEFIELD: Madam Chair,
2 Commissioner Stertz, are you asking specifically about
3 competitiveness or communities of interest? I'm sorry.

4 COMMISSIONER STERTZ: Competitive districts, as,
11:26:47 5 as -- then discussed as having equal weight to communities
6 of interest.

7 JOSEPH KANEFIELD: Right.

8 Well, one thing, I just recently taught a seminar
9 on Arizona redistricting going forward. And one of the
11:27:02 10 things we talked about was lessons learned from the past
11 decade.

12 And one of those lessons, of course, would be for
13 you to, as a Commission, as suggested by the Arizona Supreme
14 Court in its opinion, although not in -- probably more
11:27:13 15 in dicta, was that you take -- you view the competitiveness
16 component along with the other five factors when you publish
17 that first map out.

18 That's one piece of advice I would offer early on,
19 that before you publish that map, that you make that
11:27:33 20 determination as to competitiveness, that you establish a
21 very good record as to why you are making -- why you're
22 settling on the number of competitive districts that you
23 settle on, why you're unable to make more competitive
24 districts, probably because they're competing with the other
11:27:53 25 goals, and then, you know, you'll obviously have a map

11:27:59 1 drawing consultant who can help you with the statistics and
2 the numbers more so than counsel will be able to.

3 But, you know, we'll be there, I'll be there, and
4 my team will be there to help you best we could in terms of,
11:28:12 5 you know, again, like communities of interest,
6 competitiveness is going to be -- a lot of deference is
7 going to be given to you all by the courts as to determining
8 what competitive districts are.

9 So I will -- we'll make sure that you're operating
11:28:28 10 as a reasonable Commission would do as the court has set
11 forth that standard.

12 I hope that answers your question.

13 COMMISSIONER STERTZ: It does. Thank you.

14 CHAIRPERSON MATHIS: Questions from other
11:28:40 15 commissioners?

16 VICE CHAIR HERRERA: Madam Chair.

17 CHAIRPERSON MATHIS: Mr. Herrera.

18 VICE CHAIR HERRERA: Hello, gentlemen. Actually
19 thank you, guys, for participating via videoconference. I
11:28:51 20 think it's a cool technology that we probably should be
21 using at my work. It's a great idea.

22 But what I wanted to ask, Mr. Kanefield, are you
23 familiar with the two court cases, one being a Supreme Court
24 case, the other one being a Court of Appeals case,
11:29:05 25 pertaining to the previous redistricting?

11:29:11 1 JOSEPH KANEFIELD: I'm sorry. Madam Chair,
2 Commission Herrera, I missed -- are you asking me if I'm
3 familiar with a Court of Appeals decision?

4 VICE CHAIR HERRERA: Correct. And also the
11:29:22 5 Supreme Court case pertaining to the previous redistricting.

6 JOSEPH KANEFIELD: Yes -- relating to --

7 VICE CHAIR HERRERA: The previous redistricting.
8 Are you familiar --

9 JOSEPH KANEFIELD: I am.

11:29:32 10 VICE CHAIR HERRERA: Can you explain to me --
11 thank you -- can you explain to me how they're important to
12 us in going forward and what that means for the Commission
13 now?

14 JOSEPH KANEFIELD: Sure.

11:29:42 15 Madam Chair, Commissioner Herrera, I'm familiar
16 with the court decisions from the last round.

17 Obviously the Arizona Supreme Court decision is
18 very important to the Commission. And I sort of hit on some
19 of the importance of that decision in response to previous
11:29:59 20 questions.

21 But what we learned from that decision is that the
22 Commission's going to be given great deference, not just
23 with respect to competitive -- drawing competitive lines,
24 but also with respect to determining communities of interest
11:30:13 25 and the other factors that the Commission's going to have to

11:30:16 1 consider.

2 The Court of Appeals decision is important because
3 it established that the commissioners are, in fact,
4 operating within the -- as lawmakers, more or less, so that
11:30:29 5 you all will enjoy legislative privilege in your
6 deliberations. And what that means is that you can't be
7 subpoenaed to court to testify as to why you did or didn't
8 do something with respect to the line drawing.

9 The Court of Appeals decision has also taught us
11:30:50 10 about the scope of expert witnesses and how you should and
11 shouldn't use your consultants when you settle on who your
12 consultant is going to be.

13 The one of the issues that the Commission had to
14 deal with last round was they listed the consultant as an
11:31:07 15 expert witness, and the Court of Appeals said that you can
16 certainly -- the consultant will enjoy the same legislative
17 privilege that the commissioners enjoy, except if you use
18 that person as a witness, then the privilege will have to be
19 deemed waived and they will, of course, be subjected to
11:31:28 20 possibly being called as a witness in a legal proceeding.

21 So those are sort of the high points of those
22 cases.

23 But I am familiar with them, and of course would
24 re-familiarize myself with them again and again and again if
11:31:45 25 you do hire us as your team.

11:31:49 1 VICE CHAIR HERRERA: Thank you.

2 I do have a follow-up question that's not really
3 not related, but I would like to ask you.

4 CHAIRPERSON MATHIS: Go ahead.

11:31:55 5 VICE CHAIR HERRERA: Mr. Kanefield, are you
6 familiar with the other individuals that we're interviewing?

7 JOSEPH KANEFIELD: Yes, I am.

8 VICE CHAIR HERRERA: If you had to vote, who would
9 you choose as your co-counsel?

11:32:08 10 JOSEPH KANEFIELD: If I had to pick?

11 VICE CHAIR HERRERA: Yes, please.

12 JOSEPH KANEFIELD: Oh, my goodness.

13 Well, you're really going to put me on the spot.

14 Well, you are interviewing a fine group of

11:32:26 15 attorneys today. I know them all in some capacity, some
16 obviously better than others.

17 I hate to pick one or the other.

18 I will say that of course Lisa Hauser is a person
19 who I have known a very long time. I have nothing but

11:32:45 20 respect for her. She has my former job as general counsel
21 to Governor Symington, so she's been a source of support and
22 advice on occasion. And she also, of course, works as an
23 election and redistricting expert as the Commission's prior
24 counsel.

11:33:01 25 So I think very highly of her.

11:33:03 1 And, Mary O'Grady, I also think the world of her.
2 Mary O'Grady and I were colleagues when we were in
3 the Solicitor General's Office under Attorney General Janet
4 Napolitano.

11:33:16 5 We both did election work together, and I very
6 much enjoyed working with her.
7 She is absolutely brilliant. I consider her an
8 election law scholar.

9 And I think you would be well served by either one
11:33:31 10 of those. And I hope I, bashfully, include myself in that
11 same class.

12 But I think -- Tim LaSota, I'm also very fond of.
13 I think very highly of him.

14 I don't know David Braun as well. He was involved
11:33:49 15 in the process many years ago.

16 And, and of course Mike Mandell, who I know also
17 because we've worked together -- not together, usually been
18 on the opposite side of issues over the years, but I have a
19 lot of respect for him and his legal expertise. He also is
11:34:10 20 very knowledgeable about election matters, redistricting
21 matters, having served as counsel for the one of the
22 challenges of the previous plan, the Arizona Minority
23 Coalition, and then as in-house counsel for the minority in
24 the Arizona Senate.

11:34:27 25 It was a long answer, but I think you obviously

11:34:29 1 have done your job in selecting a very talented group of
2 lawyers.

3 I don't think you can go wrong with whatever team
4 you choose to hire out of that list.

11:34:41 5 VICE CHAIR HERRERA: Thank you so much.

6 I know it was a difficult question to ask, but I
7 think you've done a great job answering it. Thank you.

8 CHAIRPERSON MATHIS: Okay. I'm going to go ahead
9 and take the floor now.

11:34:50 10 This is Colleen Mathis. And as the lone
11 Independent on the Commission, I thought I'd ask a partisan
12 question of you, Mr. Kanefield.

13 If selected to do this work, do you anticipate a
14 time when you may need to provide partisan counsel to only
11:35:10 15 those members of the Commission who share your political
16 affiliation?

17 JOSEPH KANEFIELD: Madam Chair, I don't see the
18 role as your counsel in that manner.

19 I believe that we can provide -- whatever team you
11:35:28 20 choose should be able to provide you with non-partisan legal
21 advice.

22 And, you know, I struggle to think of scenarios by
23 which counsel would be in a position to be giving you all
24 political advice or anyone in the Commission.

11:35:49 25 But you sit together as a Commission more than you

11:35:52 1 do as individual Commission members. So I would hope that
2 you can do the job that you are tasked with doing, which is
3 to draw fair districts in an impartial way.

4 And partisanship should not be a primary
11:36:07 5 consideration.

6 So I would not take this job intending to be a
7 partisan advocate. I would take this job as a counsel who
8 intends to provide you with the very best legal advice
9 within the scope and parameters of the case law and statutes
11:36:24 10 that govern this process.

11 And if there is legal room for partisan
12 maneuvering and Commission members feel that that's
13 necessary, well, that's something the Commission members can
14 do so long as it's within the scope of the law.

11:36:38 15 And that's what I see as the role of counsel, is
16 to provide you with the very best legal advice so that you
17 can make those decisions on your own, without relying on
18 counsel to try to steer you in any particular direction.

19 CHAIRPERSON MATHIS: Thank you.

11:36:54 20 VICE CHAIR FREEMAN: Madam Chair.

21 CHAIRPERSON MATHIS: Yes, Mr. Freeman.

22 VICE CHAIR FREEMAN: Mr. Kanefield, this is Scott
23 Freeman.

24 Conflicts of interest, either direct or potential,
11:37:02 25 or even the appearance of conflicts of interest, sort of go

11:37:05 1 with the territory with attorneys and law firms.

2 Going forward, if your firm is retained, do you
3 have any concerns about potential conflicts, whether real,
4 potential, or perceived?

11:37:22 5 JOSEPH KANEFIELD: Madam Chair, is that
6 Commissioner Freeman?

7 CHAIRPERSON MATHIS: Yes.

8 VICE CHAIR FREEMAN: Yes.

9 JOSEPH KANEFIELD: I don't see that as an issue,
11:37:29 10 Commissioner.

11 Because for one, I don't start with Ballard Spahr
12 until Saturday.

13 So obviously if I'm so fortunate as to get this
14 representation, you, the Commission, would be one of my
11:37:45 15 first, if not my first client. That would then dictate what
16 future clients I could or could not retain.

17 We don't have any conflicts within the firm that
18 we've identified that would be any issue for myself or the
19 firm or the Commission.

11:38:04 20 So we come -- we would come to you with a clean
21 slate.

22 And we would represent you in a way that going
23 forward that would not present future conflicts or
24 considerations that could somehow hinder the work of the
11:38:20 25 Commission. So I would be devastated if that was the case,

11:38:25 1 and do not intend to take -- would not intend to take this
2 representation on if I could not give it my all until the
3 very end, and would not -- I would do everything I could to
4 allow -- to make sure that there are no future conflicts
11:38:39 5 that could cause this representation any kinds of issues.

6 VICE CHAIR FREEMAN: Thank you.

7 CHAIRPERSON MATHIS: Other questions from
8 commissioners?

9 VICE CHAIR HERRERA: Madam Chair.

11:38:54 10 CHAIRPERSON MATHIS: Mr. Herrera.

11 VICE CHAIR HERRERA: Mr. Kanefield, I know you
12 touched a little bit on this, but I want you to elaborate.

13 Both Ms. McNulty and I were appointed by
14 Democratic leaders in the House and the Senate.

11:39:08 15 If we were to choose you as the Republican
16 co-counsel, how could you put us at ease that we would be
17 able to work with you? And give us any examples of how you
18 worked with people that you may not have agreed with
19 politically. So any -- put me at ease.

11:39:29 20 JOSEPH KANEFIELD: Madam Chair, I had a little
21 trouble hearing that. Was that Commissioner Herrera?

22 CHAIRPERSON MATHIS: It was.

23 VICE CHAIR HERRERA: Let me repeat that. Can you
24 hear me now?

11:39:39 25 JOSEPH KANEFIELD: Yeah. I think were you asking,

11:39:42 1 if I were hired on to be Republican counsel, how would I
2 work with the Democrats in the community, the Democrat
3 community? Is that what you're --

4 VICE CHAIR HERRERA: Particularly the Democrats on
11:39:57 5 the Commission.

6 Give me examples of where you've worked with
7 people that you may not have agreed with politically but you
8 were able to come with a consensus or work with them despite
9 these differences.

11:40:13 10 JOSEPH KANEFIELD: Absolutely, Madam Chair,
11 Commissioner Herrera, I don't believe that would be a
12 problem.

13 My entire -- I'm very proud of my many years in
14 practice in government where I've worked for elected
11:40:29 15 officials, both elected Democrats and elected Republicans.

16 And obviously sometimes in some very partisan
17 issues.

18 I think that if you talk with those folks,
19 including the elected officials I've represented on both
11:40:45 20 sides of the aisle, I think they would tell you that I'm
21 someone of high integrity.

22 I pride myself on my professionalism and my
23 communication, my ability to communicate with people and
24 keep my clients and other interested stakeholders and
11:41:00 25 parties informed, again, in a very fair manner.

11:41:02 1 By the very nature of our profession, it's a
2 contention profession, and we're often on competing sides.

3 And I have been on competing sides of both
4 partisan issues, but I think that I have managed to navigate
11:41:19 5 that process without being labeled as a partisan operative,
6 but more as a professional who elected officials and others
7 have looked to for help in any way, in any way they have
8 needed it.

9 And not so much as a partisan player.

11:41:38 10 You know, there's a whole different profession of
11 political consultants that do this kind of work that are
12 employed.

13 I've always felt that they're much better at the
14 political stuff than I am.

11:41:49 15 My role is to be a lawyer, to give advice within
16 the scope of the law.

17 I prided myself as state election director on my
18 neutrality and ability to work with everyone from the
19 Libertarian Party to the Democrat and Republican parties, to
11:42:07 20 even the folks who weren't in recognized parties.

21 And, again, I'm not asking you to do this, but if
22 you talk to the chairs of those parties that were there when
23 I was elected director, I think they would all say the same
24 thing, I hope they would say the same thing, because I
11:42:22 25 certainly worked very hard to maintain balance and

11:42:26 1 neutrality to make sure everybody knew I did my job in a
2 very fair manner.

3 Obviously I had to take sides sometimes and make
4 hard decisions, but I always made sure it was done in a very
11:42:38 5 fair manner.

6 VICE CHAIR HERRERA: Thank you, Mr. Kanefield.

7 CHAIRPERSON MATHIS: Questions from other
8 commissioners?

9 COMMISSIONER McNULTY: Mr. Kanefield, I have two
11:42:50 10 completely different questions.

11 One is, which I think you've already answered, but
12 I'm going to ask it a different way.

13 We're going to be drawing some maps, the five of
14 us. What do you see your role in that process?

11:43:04 15 And the other unrelated question is: How would
16 Ms. Foutz, I'm not sure I'm saying her name correctly, be
17 involved in our project?

18 JOSEPH KANEFIELD: Madam Chair, Commissioners, I
19 heard the first -- I think the first part of your question
11:43:19 20 was what role do I see in the map drawing process for
21 counsel, and I think I missed the second part.

22 COMMISSIONER McNULTY: The second question is how
23 Jaclyn Foutz will be involved in our project. And to
24 correct my pronunciation of her name if required.

11:43:40 25 JOSEPH KANEFIELD: Oh, Jaclyn. Okay.

11:43:45 1 Madam Chair, Commissioner, on the map drawing
2 process, again, I think I answered this earlier where I see
3 the role as counsel to keep the Commission abreast of the
4 relevant legal authority, of course the Voting Rights Act,
11:44:02 5 to make sure that you're in compliance with Section Five,
6 section 203, the language, minor language provisions of the
7 Voting Rights Act, when you start to do your outreach
8 communication with the citizens of Arizona.

9 What I don't see the role, again, is to inject
11:44:23 10 myself into that process, to offer my thoughts on how you
11 might move one neighborhood into a district or out of a
12 district.

13 That is your role as commissioners, and my job is
14 not to inject myself into your process, but to make sure
11:44:40 15 that you have advice -- the best advice possible.

16 Jaclyn is an associate with Ballard Spahr. She
17 has a great background. She clerked for Justice Hurwitz.
18 So she has a great background in case law research, and
19 would be a tremendous help to me and to the Commission when
11:45:11 20 going through the process, when doing research, keeping up
21 on the other states and other issues that they're facing.

22 And she would, of course, be a help to me on
23 staffing you and making sure the Commission is in compliance
24 with the open meetings law, the public records law, the
11:45:30 25 public finance laws, and everything else that you're going

11:45:32 1 to have to do on a day-to-day basis as you take on your
2 substantive responsibilities.

3 So I'm thrilled to be working with Jaclyn.

4 I hope that her and I get to be a team working
11:45:42 5 with you all, but I'm absolutely thrilled that I'm here at
6 the firm and working on other matters too.

7 COMMISSIONER McNULTY: Thank you.

8 CHAIRPERSON MATHIS: Questions from other
9 commissioners?

11:45:56 10 COMMISSIONER STERTZ: Madam Chair.

11 CHAIRPERSON MATHIS: Mr. Stertz.

12 COMMISSIONER STERTZ: The time frame for this
13 Commission is compressed.

14 And from the previous Commission, we are looking
11:46:06 15 at we'll be selecting legal counsel in the near future.

16 Our requests for proposal are currently out for
17 our mapping consultants, which we anticipate back in the
18 next two weeks.

19 And then the ground is going be to hit running.

11:46:23 20 You're starting with a new firm, separating the
21 relationship that you've had with the Governor's Office.

22 How do you see the next 30 days running for you
23 and this team that you've assembled?

24 JOSEPH KANEFIELD: Madam Chair,

11:46:37 25 Commissioner Stertz, I am ready to go.

11:46:42 1 My last day with the governor is Friday and my
2 first day with the firm is Saturday.

3 I'm going to take a few hours off in between to
4 relax, but in all seriousness, I am not really a down time
11:46:57 5 kind of guy. I'm ready to get going. I'm very excited
6 about joining the firm.

7 Having come from government practice, I come into
8 the firm a little bit differently than others without, you
9 know, a client base.

11:47:10 10 And so, in some respects, with respect to the
11 Commission, again, if I'm fortunate enough to get the
12 contract, I would be ready to hit the ground running with
13 Jaclyn and Bruce. So we would be available right out of the
14 chute without much conflict.

11:47:29 15 The other, you know, the next 30 days is really
16 more about getting situated, established with the firm, try
17 to reach out to existing clients of the firm and potential
18 future clients, that kind of, you know, client development
19 kind of work.

11:47:44 20 In terms of having representations and clients and
21 obligations, there are very few at this time. So I'm
22 perfectly positioned to come in and hit the ground running
23 with you all.

24 COMMISSIONER STERTZ: Thank you.

11:47:57 25 CHAIRPERSON MATHIS: Mr. Kanefield, just a

11:47:58 1 follow-up question to Mr. Stertz' question.

2 Beyond 30 days, I'm curious to know, if you're
3 selected, do you have any conflicts the rest of the year
4 that would make you unavailable to the Commission?

11:48:09 5 JOSEPH KANEFIELD: Madam Chair, my biggest
6 conflict, which I don't think is really an issue, is that I
7 will assume the presidency of the State Bar of Arizona
8 following the June convention.

9 What that brings is a monthly meeting, Friday
11:48:28 10 morning meeting, with the Board of Governors for the
11 State Bar.

12 Another obligation in between those meetings, but
13 as every prior president before me carried on a full law
14 practice, I anticipate being able to do the same.

11:48:47 15 The Bar is very accommodating, recognizing that
16 we're volunteers, we're not full-time employees of the
17 State Bar, and that although there will be some obligations,
18 they would never -- the client comes first.

19 And that's certainly how I have managed -- I've
11:49:02 20 been on the State Bar board for many years now, four years
21 as an officer, and doing that work as president elect, while
22 serving as counsel to the governor, and have managed to make
23 it work just fine.

24 I don't anticipate it being a conflict with my
11:49:19 25 work for the Commission.

11:49:22 1 But it is out there. It is something I'm
2 committed to doing from June to June.

3 But, again, I can't emphasize enough that I hope
4 you won't take that into consideration as a factor with
11:49:34 5 respect to my time, because the Commission and clients come
6 first, the Bar stuff comes second, and that has always been
7 understood by the State Bar and the rest of my fellow bar
8 members.

9 CHAIRPERSON MATHIS: Thank you very much.

11:49:49 10 VICE CHAIR FREEMAN: Madam Chair.

11 CHAIRPERSON MATHIS: Mr. Freeman.

12 VICE CHAIR FREEMAN: Building from the last
13 two questions, Mr. Kanefield, can you share with us your
14 knowledge of the calendar of events for the IRC, and what we
11:50:04 15 need to accomplish, and by what time frame? And in
16 particular share with us your view of where this IRC stands
17 in terms of meeting its goals.

18 JOSEPH KANEFIELD: Commissioner, you asked me what
19 is the time line for the Commission over the next several
11:50:25 20 weeks?

21 VICE CHAIR FREEMAN: Yes, the time line for this
22 Commission, and where we stand vis-a-vis meeting our target,
23 which is having the maps prepared and approved in a timely
24 fashion.

11:50:39 25 JOSEPH KANEFIELD: Well, obviously the --

11:50:40 1 your work -- you've begun your work. You've hit the ground
2 running. You're off to a good start.

3 The map drawing process needs to begin very
4 shortly, and you will need to work through that process in
11:50:57 5 open session over the next several weeks.

6 And I would think about the time line, you would
7 want to have that map submitted to the Secretary of State's
8 Office hopefully by late -- sometime this summer, as soon as
9 you possibly can, although you don't want to short change
11:51:20 10 the voters and the citizens through having enough time for
11 outreach and public input on the process.

12 So that would be -- you know, you'll have a lot of
13 work ahead of you over the next weeks as you undertake that
14 process.

11:51:37 15 And then, of course, following that process will
16 be preclearance, so we will have to be ready to submit that
17 map to the Department of Justice for Section Five
18 preclearance.

19 That's where Bruce will come in and help.

11:51:54 20 Bruce will also be available through the process
21 to be looking and reviewing the work of the Commission to
22 make sure that we're staying within the parameters of
23 Section Five, and frankly to make sure that the Commission
24 puts together the best map that is most definitely going to
11:52:10 25 get preclearance submission. Because if that doesn't

11:52:13 1 happen, as we learned ten years ago, that really sets the
2 process back and creates a lot of problems for candidates
3 going into the 2012 elections.

4 That's as they're circulating their nominating
11:52:26 5 petitions and everything else.

6 So the goal would be to have those maps done and
7 submitted to the Department of Justice by late summer, if
8 possible, and early or mid to late summer, and then see,
9 and hopefully the Commission escapes any major legal
11:52:45 10 challenges.

11 But looking at the history since the '60s and the
12 apportionment decisions from the U.S. Supreme Court, we have
13 not had a round of redistricting in the state that didn't
14 have legal challenges to it. So you can expect that some
11:53:04 15 group or someone will take issue with the manner in which
16 the districts are drawn, and that hopefully we'll be able to
17 get into court and get your maps judicially secured next
18 year well before those elections.

19 So I see a lot of work over the next few weeks and
11:53:23 20 months, especially going into the spring and as we get into
21 election season next year.

22 VICE CHAIR FREEMAN: Thank you.

23 VICE CHAIR HERRERA: Madam Chair.

24 CHAIRPERSON MATHIS: Mr. Herrera.

11:53:33 25 VICE CHAIR HERRERA: This will be my last

11:53:35 1 question, Mr. Kanefield.

2 JOSEPH KANEFIELD: Because I think I'm getting
3 hungry. I should eat.

4 VICE CHAIR HERRERA: You were very complimentary
11:53:41 5 about the attorneys that you knew that we're planning on
6 interviewing, and you said some nice things about at least
7 four of them that you knew.

8 But what I want to know is what sets you apart
9 from the other individuals.

11:53:54 10 You know, as you mentioned, this is going to be a
11 tough decision for us, and I'd like for your help in letting
12 me know a couple things of what sets you apart from the
13 other individuals and why should we hire you over the other
14 individuals.

11:54:09 15 JOSEPH KANEFIELD: Madam Chair, Mr. Herrera,
16 well, again, I can't say anything disparaging about my
17 opposition.

18 Like I said before, I won't repeat it all, but
19 they're all fine attorneys and would do an excellent job.

11:54:29 20 I think what I bring to the table is my election
21 law background and expertise.

22 I've lived and breathed election law for the last
23 ten years, both as an attorney, as an election official, as
24 an adjunct professor of election law at the University of
11:54:48 25 Arizona.

11:54:50 1 And then what I bring -- I guess I bring
2 two things additionally to the substantive knowledge and
3 expertise in the area that you all will be handling.

4 The first is, in addition to your substantive
11:55:04 5 responsibility, you are a state agency, a commission that
6 has a lot of responsibilities administratively to run, to
7 run your operation. And you are going to need legal advice
8 navigating your way through the different issues that you're
9 going to face on a day-to-day basis from everything from
11:55:23 10 personnel issues, to open meeting law, to public record
11 issues that will no doubt be coming your way, to public
12 finance issues and everything else. And there I also bring
13 an expertise to the table, a lot of experience. I've
14 represented boards and commissions before.

11:55:39 15 I've continued to do that even as counsel for the
16 governor.

17 She has several commissions that work directly
18 under her. And as her counsel, I've had to staff and advise
19 those entities.

11:55:50 20 And then finally what I also bring frankly is
21 Bruce. I think Bruce is -- Bruce hasn't spoken yet. He's
22 sat there patiently smiling, but Bruce is just a fabulous
23 individual, an attorney, great guy, but more importantly,
24 truly an expert who is dialed directly into the
11:56:15 25 Department of Justice voting rights section, both as a past

11:56:18 1 attorney there and someone who's very closely connected to
2 the department and the current administration and others
3 that are there.

4 And I've enjoyed working with Bruce on both the
11:56:29 5 issues where we've been on opposite sides and issues where
6 we've been on the same side.

7 I think he brings a lot to the table in terms of
8 making sure, again, that the Commission stays within the
9 scope of the Voting Rights Act, which I think is the
11:56:44 10 number one -- is going to be the number one obstacle that
11 the Commission is going to have to overcome when drawing
12 these maps.

13 I think that's what separates me apart from my
14 counsel -- my colleagues who are also applying for this
11:56:58 15 position.

16 VICE CHAIR HERRERA: Thank you.

17 CHAIRPERSON MATHIS: Questions from other
18 commissioners?

19 COMMISSIONER McNULTY: Madam Chair.

11:57:09 20 CHAIRPERSON MATHIS: Ms. McNulty.

21 COMMISSIONER McNULTY: Mr. Kanefield has suggested
22 that Mr. Ellison might speak, so I'll ask him to.

23 Tell us a little bit about the current situation
24 at the Department of Justice and what your relationship is
11:57:25 25 there, whether you know the team that's being assembled for

11:57:27 1 our region.

2 BRUCE ADELSON: (Via videoconference) Thank you
3 for the question, members of the Commission and Madam Chair.

4 I very much appreciate the opportunity to speak
11:57:39 5 with you today, and I very much appreciate the opportunity
6 to work with Joe Kanefield.

7 As Joe said, he and I have known each other for a
8 long time and have dealt with many, many different election
9 matters, both in my capacity as the enforcement attorney for
11:57:54 10 Arizona and now in private practice.

11 In response to your question, coincidentally I met
12 with the Justice Department today to discuss some federal
13 compliance matters and matters that relate to voting and
14 redistricting.

11:58:09 15 Having been with the department in the previous
16 round of redistricting and know the training that was given
17 to us nine or ten years ago, and how many people were hired
18 nine or ten years ago to deal with redistricting, the
19 current department has hired even more people than during
11:58:25 20 the previous round.

21 The department from an enforcement perspective
22 takes redistricting probably more seriously than anything
23 from a voting perspective.

24 So the department is ready. They're reviewing
11:58:40 25 redistricting right now.

11:58:42 1 And I will tell you that just to add on a little
2 bit to what Joe was saying, I think that what I bring to the
3 table as far as this team is that unlike anyone else that
4 you're considering, we know what the Justice Department will
11:58:56 5 do as far as what they must see, what the red flags are.

6 We don't have to guess about that. We know.

7 And I deal with the department on a regular basis
8 in discussing various issues with them on behalf of clients.

9 So I am very familiar with the people who are
11:59:17 10 there now.

11 The current voting section chief is a
12 redistricting expert. This is his third round of
13 redistricting.

14 His name is Chris Herron. Chris and I know each
11:59:30 15 other quite well. We speak pretty frequently on various
16 matters.

17 Chris is an expert on redistricting.

18 So I think the learning curve for the department
19 this time is much lower than previously.

11:59:43 20 The expertise, at least from a management
21 standpoint, is even higher than it was during my justice
22 career during the last round of redistricting.

23 So just to end, I appreciate the opportunity to
24 talk with you.

11:59:57 25 And as I said, I think affording the Commission an

12:00:00 1 opportunity to kind of see inside of the department, know
2 what the department is looking at, what they will be looking
3 at, what we looked at nine years ago, what problems we found
4 nine years ago which led to our objections, I think is a
12:00:16 5 tremendous asset to the Commission, because, as I said, we
6 don't have to speculate about that. We know what the
7 answers are.

8 Thank you.

9 CHAIRPERSON MATHIS: Thank you.

12:00:29 10 Any other questions from commissioners?

11 COMMISSIONER McNULTY: Madam Chair, I do have one
12 question. I don't know whether I should ask this now or
13 later, but I'll go ahead and ask it now.

14 If we hired two counsel, we aren't going to want
12:00:44 15 to pay them different things I don't think.

16 And so my question is can we have a discussion
17 about your rate?

18 JOSEPH KANEFIELD: Madam Chair, Commissioner, are
19 you asking what our rate would be?

12:01:02 20 COMMISSIONER McNULTY: I'm asking if we can have a
21 discussion about the rate you submitted, given that if we
22 hire two counsel, I think we've already agreed that we're
23 going to want to achieve symmetry with regard to the rate
24 for each counsel.

12:01:19 25 JOSEPH KANEFIELD: Madam Chair, commissioners,

12:01:20 1 absolutely we can talk about that.

2 And we understand that that's the direction that
3 the Commission is moving. And like I told you before, I
4 think very highly of all the attorneys on that list, and
12:01:34 5 certainly could work with any of them and would never do
6 anything to duplicate efforts, understanding the Commission
7 is going to be a tighter budget than it was ten years ago,
8 so we would certainly be mindful of those considerations,
9 and we certainly would be open to discussing the
12:01:53 10 compensation arrangement. If you are interested in hiring
11 us, we would be willing to sit down and talk with you about
12 that.

13 COMMISSIONER McNULTY: Thank you.

14 CHAIRPERSON MATHIS: Questions from other
12:02:06 15 commissioners?

16 (No oral response.)

17 CHAIRPERSON MATHIS: Well, it doesn't look like we
18 have any more questions for any of you.

19 As you start this new chapter, Mr. Kanefield, I
12:02:18 20 just want to thank you for your public service and wish you
21 well on your new -- in your new role at Ballard Spahr.

22 JOSEPH KANEFIELD: Thank you, Madam Chair. Thank
23 you, members of the Commission. We very much appreciate
24 this opportunity.

12:02:32 25 CHAIRPERSON MATHIS: Thank you for taking time

12:02:34 1 meet with us today.

2 COMMISSIONER McNULTY: Enjoy the rest of your
3 meeting.

4 JOSEPH KANEFIELD: Thanks.

12:02:38 5 COMMISSIONER STERTZ: Thank you.

6 VICE CHAIR FREEMAN: Thank you.

7 CHAIRPERSON MATHIS: Please bring in the next one,
8 Lisa Hauser from Ballard Spahr.

9 Hi, Ms. Hauser.

12:04:49 10 LISA HAUSER: Hi.

11 CHAIRPERSON MATHIS: I'm sorry we're running late.

12 LISA HAUSER: That's okay.

13 CHAIRPERSON MATHIS: We're about a half hour
14 behind schedule. I appreciate your patience. So thank you
15 for being here today.

16 We have given each of the firms an opportunity to
17 make an opening statement, if they wish. But if not, we can
18 just begin with the round-robin format of questions.

19 LISA HAUSER: Okay. Well, I would like to open
12:05:16 20 with a couple of statements. And I do appreciate the
21 opportunity to be here today.

22 I've gotten to know you a little bit in watching
23 you through your prior meetings. But it feels as if we're
24 really getting to the point where you're about to embark on
12:05:39 25 the real work of the Commission, and I'm happy to be here

12:05:43 1 and to answer your questions.

2 I think your selection of counsel is absolutely
3 critical to the Commission's success.

4 I stand before you today as the only candidate who
12:06:00 5 has actually represented the Arizona Independent
6 Redistricting Commission.

7 I'm the only candidate who has the experience in
8 every step of the Commission's mapping process, of the
9 legislative and Congressional districts.

12:06:17 10 I'm the only candidate to have actively
11 participated in each one of the cases filed against the
12 Commission and who successfully litigated each one to
13 conclusion in favor of the Commission.

14 Those cases made the law that you are going to
12:06:32 15 follow.

16 And I'm the only candidate who worked with the
17 Commission's experts to analyze competitiveness and to
18 analyze the strength of voting rights districts, and who
19 worked to secure preclearance of Arizona's Congressional and
12:06:51 20 legislative districts for the last decade.

21 I didn't do this alone.

22 I worked shoulder to shoulder with Jose Rivera, a
23 former U.S. attorney for Arizona in the Clinton
24 administration.

12:07:05 25 He, a Democrat, and I, a Republican, were in

12:07:09 1 different firms, and were selected to ensure that the
2 Commission received non-partisan advice.

3 It was important for the commissioners to know
4 that the legal advice they received had been vetted by two
12:07:23 5 experienced attorneys of different political stripes.

6 The Republicans initially, I think, looked to me
7 for assurance that the advice was not slanted or tainted.
8 And the Democrats did the same with Jose.

9 But it didn't take long, I think, for the
12:07:39 10 Commission to realize that together we represented the
11 Commission as a whole.

12 Almost as important as that relationship is the
13 fact that selecting a bipartisan team of counsel gave the
14 political parties and the members of the public some
12:07:57 15 assurance that the Commission would not be getting legal
16 advice colored by one political point of view.

17 And that perception is extremely important.

18 You're going to find during this process that how
19 the public perceives your work is going to be almost as
12:08:15 20 important as the work itself.

21 So it is -- and the only recommendation I'm going
22 to make today is it's my strong recommendation that whatever
23 you do in selecting counsel, that you do select the best
24 Republican and the best Democrat you can find from different
12:08:33 25 firms to serve as your counsel.

12:08:35 1 The reason I say from different firms is this.
2 Within the same firm, those of you who are in private
3 practice probably experience this, there's always some level
4 of inequality.

12:08:46 5 There's a little bit of a pecking order that goes
6 on within firms.

7 And not all partners are created equal.

8 You want your counsel to be equal to each other.
9 And when they come from different firms, they come in as
12:09:00 10 equals.

11 You're not going to have one partner overruling
12 the other.

13 I know, and I will give this by way of example,
14 but to give you something about the perception issue, I
12:09:14 15 understand that Ballard Spahr was interviewed just before
16 me.

17 And Joe Kanefield is a Republican. Now he is
18 there, or about to go there.

19 I understand Bruce Adelson is a recent addition to
12:09:29 20 Ballard Spahr. And he is a Democrat.

21 I know both of them well.

22 But more senior than either of them within that
23 firm is Ed Rendell. And Ed Rendell is in the Philadelphia
24 office. He is the former Democratic Governor of
12:09:48 25 Pennsylvania and former chairman of the National Democratic

12:09:52 1 Party.

2 And I think that is the kind of perception issue
3 that you have to be cognizant of.

4 Is it my hope that this Commission will be spared
12:10:04 5 litigation. But, it's maybe a little naive to think that
6 that will be the case.

7 Litigation seems to follow redistricting,
8 particularly in Arizona. So it is important to keep in mind
9 that the best trial preparation is the record that you will
12:10:23 10 be building as you make your decisions.

11 Counsel should be working with you every step of
12 the way to make certain that your record is developed and
13 your decisions are protected.

14 I have successfully done that, and require no
12:10:40 15 on-the-job training.

16 I know the time commitment. I know the hard work
17 involved. I know the pressure that goes with this job.

18 I've been yelled at by all kinds of people,
19 including Republicans -- actually mostly the Republicans
12:10:58 20 yelled at me and the Democrats yelled at Jose.

21 But you get used to that.

22 And, I'm ready for the job.

23 I have done my best to try to keep my work
24 situated in such a way that I would be able to jump into
12:11:12 25 this task whenever the Commission was ready to hire counsel.

12:11:16 1 Finally, before we get to your questions, I want
2 to address something that comes up for me all too often.

3 I want to address what I view as inevitable
4 concerns that I am somehow too political.

12:11:32 5 I don't know why that happens, because there are
6 lots of other folks in this process that you're interviewing
7 that have a political background and have been involved in
8 the political process. It's the nature of people who work
9 in election law and who've been involved in redistricting.

12:11:45 10 Just last year I was a candidate for a vacancy on
11 the Arizona Supreme Court.

12 I was the only private attorney interviewed by the
13 Arizona Commission on Appellate Court Appointments.

14 And I faced this exact criticism. That's why I
15 figure it's probably out there.

16 The Democrat member of the Appellate Court
17 Commission who performed my due diligence, sort of a
18 background investigation, reported back that the concern
19 didn't hold up to scrutiny.

12:12:15 20 An extreme partisan would not have my history of
21 representing candidates and issues on both sides of the
22 aisle.

23 In addition to having served on the staff of
24 Republican Governor Fife Symington, I represented, while I
12:12:31 25 was at the Attorney General's Office and in the Solicitor

12:12:33 1 General's Division, I represented Secretary of State
2 Mofford, Karen Osborne, Jim Shumway, and Dick Mahoney. All
3 Democrats.

4 In private practice I work closely with Kyrstin
12:12:45 5 Sinema to oppose an initiative that would not only ban gay
6 marriage but domestic partner benefits.

7 And, for example, I represented Sandra Kennedy, a
8 Democrat, that now sits on the Arizona Corporation
9 Commission.

12:13:01 10 Read through my list of former and current
11 clients, and you will find it difficult to stereotype me
12 politically.

13 I have been a registered Republican since the age
14 of 18.

12:13:14 15 I'm not a newcomer to the Republican party.

16 Redistricting is the most important and the most
17 political really of all exercises.

18 Subject to partisan pressure from both sides, the
19 Commission's attorneys last time advised our clients
12:13:32 20 according to the law.

21 We did not -- we did so independently of our
22 respective political parties.

23 If I were too partisan, I can assure you that I
24 would not now have the support of former commissioner and
12:13:50 25 Democratic leader Andi Minkoff, whose letter I have included

12:13:53 1 with my proposal.

2 And, I would not have the support of a true lion
3 of the Arizona Democratic Party, and my friend, Paul
4 Eckstein.

12:14:02 5 During the Supreme Court nomination process, Paul
6 wrote a really lovely letter to the Appellate Court
7 Commission in support of my candidacy.

8 And given the kinds of cases that Paul and I have
9 litigated against each other over the years, including the
12:14:15 10 redistricting litigation, Paul was the lead counsel on the
11 other side, I don't think he would have wanted a truly
12 partisan, extreme Republican on the State's highest court.

13 This morning Paul gave me his permission to share
14 that letter with you in support of my candidacy to serve as
12:14:35 15 your counsel.

16 And I will give that letter to Mr. Bladine, and he
17 can distribute it to you.

18 He specifically in that letter addresses the work
19 that I did for the last Commission.

12:14:56 20 Again, if he thought that I engaged in overly
21 partisan behavior during that process, he would not have
22 supported me to sit on the Supreme Court and would not have
23 stood by those words in this context by allowing me to share
24 that letter with you today.

12:15:11 25 I thank you very much for giving me the

12:15:14 1 opportunity to make those statements and look forward to
2 answering your questions.

3 Thank you.

4 CHAIRPERSON MATHIS: Great. Thank you.

12:15:25 5 VICE CHAIR FREEMAN: Madam Chair.

6 CHAIRPERSON MATHIS: Mr. Freeman.

7 VICE CHAIR FREEMAN: Thank you for coming today,
8 Ms. Hauser, and thank you for that statement.

9 You've made my job a little tougher, because you
10 addressed many questions.

12:15:34 10
11 LISA HAUSER: Maybe it will help you move things
12 along and get back on schedule.

13 VICE CHAIR FREEMAN: Lawyers, we practice law.
14 That's our business. Sometimes we're called upon to

12:15:50 15 advocate for positions that personally we may not share the
16 same beliefs, although we're not required to take such
17 representation.

18 LISA HAUSER: Right.

19 VICE CHAIR FREEMAN: Then, again, it's certainly

12:16:02 20 conceivable that in terms of a political background, a
21 client may seek out lawyers who share their political
22 beliefs thinking they would be more effective in advocating
23 a case, and perhaps conversely there may be lawyers who seek
24 out clients who share their political views thinking that
12:16:23 25 they'll mesh better.

12:16:24 1 Do you think that yourself, an identified
2 Republican, do you think you fit into either one of those
3 camps, or do you reject the construct entirely? And, if so,
4 why?

12:16:34 5 LISA HAUSER: No, Commissioner Freeman, I think
6 that is somewhat true. And I certainly think that when I
7 first went into private practice, the Republican clientele
8 seemed to come my direction.

9 I eventually found that, you know, as you're
12:16:54 10 working on those kinds of matters and those kind of cases,
11 you do come in contact with folks from the other side.

12 And eventually found that there were members of
13 the Democratic party, or Independents, or Libertarians, that
14 would come to me. And especially with the Democrats, I just
12:17:11 15 considered that to be a huge compliment, because, you know,
16 I might not have agreed with them on all of their party
17 platform, but I was really always honored that they were
18 willing to come to me as a Republican and trust that I would
19 do the best job that I could for them.

12:17:37 20 Especially in this line of work, I mean, if you're
21 an election law attorney, avoiding those conflicts of
22 interest is important.

23 But, you know, it has been a very long time since
24 I represented the state party, so it's given me some
12:17:52 25 flexibility in that regard.

12:17:53 1 But I really feel privileged to have worked
2 closely with people on both sides of the aisle and to enjoy
3 their respect. And it's really something that I treasure.

4 VICE CHAIR FREEMAN: Thank you.

12:18:09 5 CHAIRPERSON MATHIS: Questions from other
6 commissioners?

7 COMMISSIONER McNULTY: Madam Chair.

8 CHAIRPERSON MATHIS: Commissioner McNulty.

9 COMMISSIONER McNULTY: Thank you for coming,
12:18:23 10 Ms. Hauser.

11 LISA HAUSER: Thank you.

12 COMMISSIONER McNULTY: You have such a
13 distinguished resume that it doesn't make sense to ask you a
14 lot of the questions that are on my list.

12:18:34 15 So let me ask you one that is towards the end of
16 my list.

17 Talk about the pros and cons of a group of five,
18 two Democrats, two Republicans, and one Independent, having
19 counsel from each party, the way in which, in my mind, there
12:18:59 20 are -- we are different from a Legislature. This is a
21 different situation from a legislative situation in
22 important ways.

23 What ground rules should we put in place, would
24 you follow, to address things like the ex parte
12:19:17 25 communications between counsel and the commissioners?

12:19:27 1 LISA HAUSER: I think that one of the things that
2 Jose and I did early on last time was to sit down and figure
3 out how we were going to work together to represent the
4 Commission.

12:19:36 5 And one of the things that we did, and one of the
6 things that we made certain that our clients collectively
7 understood, is that, you know, I didn't represent just the
8 Republicans and Jose didn't represent only the Democrats,
9 and that we represented the group as a whole.

12:19:54 10 Now, that said, sometimes, as I said initially,
11 the Republicans might have felt a little bit more
12 comfortable coming to me saying, is that really, that
13 opinion that you and Jose gave, is that really, did you get
14 pushed into that, or, you know, they wanted to test those
12:20:07 15 boundaries a little bit to see.

16 And those conversations, again, because Jose
17 represented the entire Commission, just as I did, each of
18 the members has to understand that you don't have
19 necessarily a separate privilege of your own with respect to
12:20:27 20 counsel.

21 We don't represent you individually.

22 So one of the things with the Commission's
23 certainly permission that we agreed to early on was to
24 disclose to each other if we had commissioners who came to
12:20:47 25 us seeking particular advice.

12:20:51 1 And that did happen from time to time, and it
2 wasn't always because, you know, there was something
3 nefarious going on, but just because it was maybe a little
4 easier one day to get a hold of me than it was Jose or vice
12:21:04 5 versa.

6 But we made sure that we stayed in contact with
7 each other regularly, and that we worked together, and we
8 didn't allow commissioners, that was our concern up front,
9 that we didn't allow commissioners to try to co-opt one of
12:21:22 10 us, to peel us off from the herd or anything like that.

11 So I think that that is an important ground rule.

12 And it is a relationship that takes, you know,
13 maybe a little bit of time to get used to and to build, but
14 it was certainly one that worked very well for us.

12:21:42 15 And I think in most instances, and certainly if we
16 were asked to give an opinion, we definitely consulted. We
17 would sometimes divide up the work obviously.

18 I would answer one particular -- draft one
19 opinion, and he might do another, and then we would review
12:21:58 20 and make sure that we were in concurrence.

21 And those rare times when we were not, we gave
22 both opinions to the Commission, and it was up to the client
23 to decide which way to go.

24 I think that that system seemed to work very well.
12:22:14 25 And I would talk to co-counsel about going that route again.

12:22:22 1 COMMISSIONER STERTZ: Madam Chair.

2 CHAIRPERSON MATHIS: Mr. Stertz.

3 COMMISSIONER STERTZ: Thank you for coming,
4 Ms. Hauser. We appreciate the time and the previous time
12:22:29 5 with the Commission.

6 It's obvious by your resume and by the attachments
7 that you come highly recommended by both sides of the
8 previous Commission. And that's very interesting to see as
9 part of your application.

12:22:45 10 My question deals with litigation that you were
11 involved with, which was the communities of interest or more
12 specifically the competitive districts, and how you -- give
13 me your understanding of what your -- how would you define
14 or your understanding of communities of interest and how
12:23:08 15 they balance in the perception of equality with competitive
16 districts.

17 LISA HAUSER: Communities of interest are --
18 they're very difficult to describe.

19 This was an initial frustration I recall in the
12:23:31 20 last Commission who wanted the definition.

21 And they are essentially something that is
22 self-described.

23 So what you will find is you will have interest
24 groups, citizens, from various parts of the state who will
12:23:45 25 come in and describe to you a community of interest.

12:23:49 1 There are certain things that you can look at in
2 figuring out what makes sense for you to use to get a handle
3 on what is a community of interest and what isn't.

4 Some of the concerns were maybe there's some
12:24:03 5 little parochial concerns in the neighborhood, and don't
6 really constitute a community of interest, but basically
7 what you're looking at is something that pulls that group
8 together and makes them vote in a similar fashion.

9 So it could be economic. It could be
12:24:20 10 language-based concerns, racial. It could be any number of
11 things.

12 And you'll get a sense of it eventually.

13 At first there will just be a barrage of
14 information.

12:24:34 15 And trying to sort of weed out what is a community
16 of interest and what isn't is up to you.

17 And you will make some decisions and recognize
18 some communities of interest and not others.

19 Now, once you have, you know, you'll have some
12:24:46 20 communities of interest that you're recognizing. Then in
21 terms of the competitive districts, you will, if faced with
22 the opportunity to create a competitive district versus
23 having some impact on a community of interest, again, that
24 is your decision to make as to whether, in that particular
12:25:08 25 instance, any impact on that community of interest is of

12:25:12 1 significant detriment.

2 That's what the Constitution says, is that you
3 don't create a competitive district if it causes significant
4 detriment to one of the other, what I call, neutral
12:25:25 5 criteria.

6 But, again, what the Arizona Supreme Court
7 ultimately determined, affirming prior Court of Appeals
8 decisions, is that that's your decision.

9 It's not going to work for somebody later to come
12:25:41 10 in and second guess that, well, really that wasn't a
11 significant detriment. You five may have all unanimously
12 thought it was, but you were wrong. Someone's going to come
13 in and substitute their judgment for yours, that's not how
14 it works.

12:25:56 15 You get to make those decisions.

16 But the thing that you will do that is so
17 important in this process is to make sure that you have
18 properly documented that decision so that you don't step
19 into a situation where you don't know why the district is
12:26:12 20 the way it is and someone can make the allegation that you
21 abused your discretion.

22 Your discretion isn't unfettered. You have
23 limitations on it. The limitation is that you can't abuse
24 your discretion.

12:26:26 25 So it's a balancing act all the way through the

12:26:28 1 map.

2 And sometimes the competitive interest is going
3 to -- a competitive district is going to trump every other
4 criteria, you'll make that decision, and sometimes it won't.

12:26:39 5 But those are your decisions.

6 And you've got to make your record, and that is
7 what your attorneys are there to help you do.

8 COMMISSIONER STERTZ: As a follow-up to that, the
9 Department of Justice's review of this package that we'll be
10 submitting is what you're talking about. They're speaking
11 about this is the package, this is the document that's going
12 to be submitted that they're going to review.

13 As you would be giving counsel as a co-counsel to
14 this Commission, how would you best guide us and help to --
12:27:17 15 and what is your perception of the compilation of that
16 document so that the Department of Justice would see it as
17 being something that would not -- that would stand the test
18 of scrutiny.

19 LISA HAUSER: Well, to clarify, this balancing act
12:27:35 20 that you're going to go through in dealing with all these
21 criteria, that is really more a matter of satisfying the
22 Arizona Constitutional requirements.

23 In terms of Department of Justice, there is one
24 criteria that they really care about, and that is compliance
12:27:52 25 with the Voting Rights Act.

12:27:54 1 Whether you have created a competitive district or
2 a community of interest is really not something that they
3 care about greatly one way or the other.

4 You may have to explain why you configured a
12:28:07 5 Voting Rights Act district in this way instead of maybe
6 pushing it that way because of these other concerns. You
7 put it in context what you did.

8 But their goal is really quite limited to make
9 sure that you have created maps that at least meet the
12:28:24 10 benchmark of the number of effective minority districts from
11 the last time.

12 So, again, it's a matter of testing those
13 districts during the process to try to establish where they
14 are at their effectiveness level without going too far
12:28:51 15 beyond that, and documenting that for the Department of
16 Justice.

17 Does that answer your question?

18 COMMISSIONER STERTZ: It does. Thank you.

19 CHAIRPERSON MATHIS: I have a question.

12:29:04 20 I'd like to first acknowledge that you've provided
21 us with some very useful documentation from the last
22 Commission, and I really appreciate that, and I'm sure the
23 other commissioners do as well. Thank you.

24 There's been a length to that.

12:29:19 25 Given your role with the past Commission, I'm

12:29:23 1 curious to know your thoughts on the DOJ today as compared
2 with ten years ago, and what's the same, what's different,
3 and how you perceive maybe us approaching them, if anything
4 has changed.

12:29:43 5 LISA HAUSER: Well, there are a number of people
6 there. It's a very -- it's very interesting actually.

7 There are a number of sort of the line attorneys
8 who have turned over. There was a quite a bit of turnover
9 during the last decade.

12:30:03 10 But there are some senior folks who have been
11 around a long time, people that I've worked with who are
12 still there, who were helpful. For example, I think I
13 referenced in the proposal that I submitted having worked
14 with the Community College District in Pinal County that
15 faced a rather monumental problem in that they had submitted
16 their districts to the County Elections Department, the
17 Board of Supervisors signs off of them, and they send them
18 to the County Elections Department. And they've been doing
19 this for 30 years, and assumed that the County was
20 submitting them to DOJ. And they found out lo and behold
21 they had never been submitted.

22 So trying to unwind 30 years of preclearance
23 was -- Jim is smiling down there -- I'll tell you it turned
24 out to be a much bigger task than I thought when I signed on
12:30:58 25 to get their lines pre-cleared.

12:31:01 1 But in working with the various senior folks at
2 DOJ, because we had some particularly steep challenges with
3 respect to missing records and those kind of things, they
4 were as helpful as they could be.

12:31:16 5 That said, DOJ is a very -- they are very close to
6 the vest.

7 If you were to call up DOJ and say, hey, what
8 percentage is going to work, they're not going to tell you
9 that.

12:31:29 10 They tell you very nicely, well, submit your plan
11 and we'll take a look at it.

12 That, I think, is a constant.

13 But it will be interesting to see how DOJ performs
14 in this particular cycle given that, I'm sure you've heard
15 this, this is the very first redistricting cycle since the
16 Voting Rights Act was adopted where there's a Democrat in
17 the White House. And so some folks are saying maybe that --
18 you know, is that going to make a difference or not.

19 My guess is not too much.

12:32:01 20 Because, again, it's a career department. And I
21 think they take their responsibilities toward enforcement of
22 the Voting Rights Act very seriously, and they're not likely
23 to vary too much from what has gone on before.

24 But unfortunately you're not going to know a lot
12:32:22 25 about how they're going to act until you actually send them

12:32:25 1 plans.

2 CHAIRPERSON MATHIS: Great. Thank you.

3 Questions from other commissioners?

4 VICE CHAIR HERRERA: I have a question to ask.

12:32:32 5 CHAIRPERSON MATHIS: Mr. Herrera.

6 VICE CHAIR HERRERA: Thank you for being here.

7 And I think, like Mr. Braun had mentioned, he has attended

8 most of the meetings, you have as well. So thank you for

9 your dedication and for being here and for supplying us with

12:32:47 10 the information that we were missing as commissioners.

11 What I wanted to ask you, when we -- you know, you
12 obviously represented the previous Commission.

13 What pros and cons do you think we would face by
14 hiring someone like yourself that has that expertise, and
15 also I would say baggage as well?

12:33:06 16 Because depending on who you talk to, they would
17 say that as well. So how would you answer that? What are
18 the pros and the cons of hiring someone like you,
19 Ms. Hauser?

12:33:19 20 LISA HAUSER: Well, certainly the cons -- let me
21 take the cons first.

22 The cons would be, well, you're new, you're
23 different. You don't want to have any of the connection to
24 the past Commission.

12:33:37 25 Certainly the criticism, I would say the criticism

12:33:39 1 that the last Commission faced was its emphasis on other
2 criteria versus creating competitive districts.

3 I know that they believed that they created the
4 very best map that they could given their collective points
12:34:01 5 of view on how the criteria should be respected.

6 And that's important.

7 Because you will feel the same way about your
8 maps.

9 There's always something for somebody to
12:34:14 10 criticize.

11 I'll tell you this for sure, and I'm sure you know
12 this, that you cannot make everyone happy when you draw
13 Congressional and legislative districts.

14 I would say it's near impossible. So there's
12:34:28 15 always going to be some criticism.

16 But I think that the criticism, for example, what
17 I addressed in my opening statement, this notion that I'm
18 too political or you would be making a mistake if you were
19 to hire me as part of your counsel team, it's just misguided
12:34:49 20 in the sense, as I said, the lawyer that I litigated against
21 for the better part of the decade doesn't believe it's a
22 problem for me to return.

23 And I think that speaks volumes to that concern.

24 The plus, of course, is I know that record from
12:35:11 25 the last Commission like the back of my hand.

12:35:15 1 We had over 6,000 trial exhibits.

2 And, you know, I understand what happened last
3 time. I understand why the Commission made some of the
4 decisions it's made -- it made.

12:35:29 5 And those don't have to be your decisions. You
6 are your own Commission.

7 This will be your work product.

8 But should you have questions about what happened
9 last time, or didn't do X, get the last Commission into
10 trouble, I can put that into context for you, and at least
11 sound that warning bell or give you the assurance that it
12 isn't maybe quite the problem that someone has led you to
13 believe.

14 So I think that rich sort of treasure trove of
12:36:03 15 history that I possess would be of great benefit to you, and
16 would certainly outweigh any of the potential negatives that
17 somebody might raise.

18 I think all the negatives are false negatives
19 anyway, but I think that you would be well served by having
12:36:20 20 me on the team.

21 VICE CHAIR FREEMAN: Madam Chair.

22 CHAIRPERSON MATHIS: Mr. Freeman.

23 VICE CHAIR FREEMAN: Ms. Hauser, you're aware of
24 the identities of the other law firms, the three or so other
12:36:32 25 law firms that would serve as a complement to you if you

12:36:34 1 were retained as counsel.

2 Can you share with us your views on those lawyers
3 and their experience level and whether you think you would
4 work effectively with those lawyers or could effectively
12:36:46 5 with those lawyers.

6 LISA HAUSER: On the -- if I miss somebody on the
7 Democrat side, let me know.

8 But as far as I can tell, it would seem to me that
9 Ballard Spahr is coming in like the mix of Republican and
12:37:02 10 Democrat, so I'm not necessarily going to address them,
11 because I know that Bruce is there and Bruce is a Democrat
12 and Joe's a Republican.

13 On the Democrat side, I would be talking about
14 Mary O'Grady from Osborn Maledon, David Braun, and Mike
12:37:21 15 Mandell.

16 I've worked with each one of them in different
17 contexts.

18 I've known Mary since probably the late '80s.

19 Mary was -- when I first met her, she was minority
12:37:37 20 counsel -- she was the Democratic counsel for the House of
21 Representatives.

22 She worked for Art Hamilton, if any of you
23 remember Art.

24 And we worked a lot on various pieces of election
12:37:54 25 legislation.

12:37:55 1 I was dispatched from the Attorney General's
2 Office to go down to the Legislature and work on those
3 matters, and I worked with her extensively during the 1990s
4 redistricting, which was kind of a bear.

12:38:07 5 The Republican -- the House and Senate were
6 controlled by different parties. Symington was governor. I
7 was over at the AG's office and doing all the State's
8 preclearance work. And the Republicans and Democrats
9 couldn't really agree with respect to the legislative
12:38:25 10 redistricting how to handle clearance. So I took charge of
11 the preclearance process and worked with all four caucuses
12 in getting that presented.

13 So I worked with Mary in that context.

14 Mary is a lovely person. I have always enjoyed
12:38:43 15 working with her.

16 I've seen her work while she was Solicitor
17 General. I think she's -- she would bring a lot of quality
18 to the process and would be a very pleasant person to work
19 with.

12:38:58 20 We were both strong advocates, but I don't see any
21 problem working with Mary.

22 David Braun, I worked -- I've had cases against
23 him where we've represented candidates, one candidate
24 challenging another's right to be on the ballot and that
12:39:18 25 kind of thing. And David represented one of the groups of

12:39:21 1 plaintiffs, Congressional plaintiffs in the last round of
2 litigation.

3 David is also a very pleasant person to work with,
4 and I know I could work with David.

12:39:34 5 I wouldn't say he has maybe the same level of
6 experience as Mary, but, again, I think that those are
7 decisions for -- you know, obviously decisions for you to
8 make.

9 But I can at least assure you that I could work
12:39:52 10 with David.

11 Mike Mandell worked for Paul Eckstein. He was at
12 Perkins Coie during the last round of litigation.

13 I don't remember him being around the mapping
14 process until after the litigation started.

12:40:09 15 We did have some mapping that went on
16 post-commencement of the litigation, and Michael was around
17 and observed that.

18 And I know that he has been, I think, the Senate
19 Democrat or the point person for redistricting, so far
12:40:29 20 during this process, and I think he probably has a good
21 grasp and understanding of the redistricting process, even
22 if he hasn't yet actually done that himself.

23 So, you know, from having been around Michael
24 during years of litigation, I think I could work well with
12:40:51 25 him also.

12:40:53 1 VICE CHAIR FREEMAN: Thank you.

2 CHAIRPERSON MATHIS: Other questions?

3 COMMISSIONER McNULTY: Madam Chair.

4 CHAIRPERSON MATHIS: Ms. McNulty.

12:41:07 5 COMMISSIONER McNULTY: Ms. Hauser, how do you see
6 your role, the role of counsel in the mapping process?

7 LISA HAUSER: Well, paying close attention is
8 really, really important.

9 Counsel should be working closely with not just
12:41:24 10 the commissioners, but with the mapping consultants, and,
11 again, making sure that the record is protected, developed
12 and protected.

13 I don't see the role of counsel as telling you
14 what -- telling you specifically how to exercise your
12:41:48 15 discretion.

16 To tell you that, gosh, you know, I really think
17 that that constitutes significant detriment to criteria, I
18 think that's inappropriate for counsel to do. Those are
19 your decisions.

12:42:02 20 But what I can tell you is, for example, things
21 like you may have respected the Voting Rights Act, for
22 example, in a particular district, to the point that perhaps
23 you've gone so far as to create what we call a Shaw
24 violation. Shaw versus Reno is the case that indicated
12:42:28 25 that, you know, you -- it is possible to basically have a

12:42:35 1 racial gerrymander and to maybe go too far in using race as
2 a redistricting criteria.

3 So those are the kinds of things to watch out for,
4 during the mapping process, to let you know as you're trying
12:42:50 5 to strike those important balances when you might have gone
6 too far into an area that might get you in trouble.

7 And, as I said, I think those kinds of instances
8 of maybe sticking your head up and saying, hey, you need to
9 take a look at this, or maybe we need to chat for a minute,
12:43:13 10 because there's a concern we see developing in a particular
11 area like that.

12 Those are the very, very important roles that
13 counsel play during the mapping process, which is why you
14 pretty much have to have those attorneys around throughout
12:43:28 15 the process, instead of maybe thinking, well, we'll have
16 attorneys here to deal with open meeting law issues and
17 whatnot and keep those mapping attorneys off in the
18 background.

19 It all comes together, and they really need to be
12:43:44 20 with you there right at the elbow, watching carefully, to
21 make sure that they can sound the alarm if there's any
22 possible issue or trouble that might pop up.

23 But not interfering with the exercise of your
24 discretion.

12:44:00 25 I feel very strongly about that.

12:44:08 1 CHAIRPERSON MATHIS: Other questions?

2 VICE CHAIR HERRERA: Madam Chair.

3 CHAIRPERSON MATHIS: Mr. Herrera?

4 VICE CHAIR HERRERA: We have three Republicans to
12:44:14 5 choose from and three Democrats. I think they're all
6 well qualified, and I could go with flip a coin and pick
7 either one and I wouldn't be disappointed.

8 But what I'd like you to do is make it easier for
9 me and tell me -- I know you've said it throughout your
12:44:30 10 presentation, but if you could summarize and tell me why we
11 should pick you and why you stand out above the rest.

12 LISA HAUSER: Well, I think certainly in terms of
13 the work that this Commission has before us, as I said in my
14 opening statement, I am the only attorney that you're going
12:44:50 15 to talk to today that has actually done that.

16 And I've lived this process for -- from March of
17 2001 through whenever it was in 2009 that the Supreme Court
18 finally ruled.

19 I think, again, that, as you said, you have lots
12:45:10 20 of good choices out there.

21 But whether it's on the Republican or the Democrat
22 side, that's the thing that I bring to the table that is so
23 different than everyone else.

24 I did it successfully. I did it working with
12:45:29 25 co-counsel. I have a proven track record and ability to

12:45:35 1 work closely with Democratic co-counsel to produce a product
2 that will stand up.

3 And I think that that is something that would
4 serve you well in this next process. And when you pick your
12:45:50 5 Democrat counsel, at least that is somebody that I can sit
6 down and speak with and talk about how to make sure that
7 you're working well together drawing on my experience from
8 the last decade.

9 So I think the Republican counsel pick, I hope, is
12:46:09 10 an easy one for you to make.

11 VICE CHAIR HERRERA: Thank you.

12 CHAIRPERSON MATHIS: I have a question. As the
13 lone Independent, I thought I'd ask a partisan question.

14 LISA HAUSER: Okay.

12:46:21 15 CHAIRPERSON MATHIS: So with the last Commission,
16 were there times when you were asked to provide partisan
17 counsel to the commissioners who shared your political
18 affiliation?

19 And, if so, how did you handle that?

12:46:35 20 LISA HAUSER: You know, I didn't see it come from
21 the commissioners as much as it would come from the outside.
22 I won't say who, but --

23 VICE CHAIR HERRERA: Please do.

24 LISA HAUSER: But, you know, there were at
12:46:48 25 least -- there was at least one time when a Republican party

12:46:51 1 official was giving me the business on the telephone,
2 because of something that the Commission was doing, and
3 frankly I had to remind that individual that I didn't work
4 for them, I worked for the Commission.

12:47:05 5 You know, I'm not here to do the bidding of the
6 Republican party.

7 Why they had that idea in the first place, I have
8 no idea.

9 And I know that Jose had similar experiences.

12:47:18 10 The commissioners themselves, however, they might
11 have a particular interest in looking at an issue that might
12 have a political motivation behind it, but, again, in
13 providing the answer to that question, I worked with my
14 Democrat co-counsel in terms of providing that advice, so
12:47:48 15 that getting that bipartisan advice would then mitigate
16 whatever partisan intent might have been behind the
17 particular question.

18 CHAIRPERSON MATHIS: Thank you.

19 LISA HAUSER: You're welcome.

12:48:04 20 VICE CHAIR HERRERA: I do actually have one more
21 question.

22 CHAIRPERSON MATHIS: Mr. Herrera.

23 VICE CHAIR HERRERA: Is there anything that you
24 would tell us that if you would do things differently, if
12:48:14 25 you were to -- if we were to select you, anything that you

12:48:17 1 would do different going forward that you did last time or
2 that you maybe regret doing that you wouldn't do it this
3 time?

4 LISA HAUSER: Something I personally did?

12:48:30 5 VICE CHAIR HERRERA: Correct.

6 LISA HAUSER: Well, part of that is in connection
7 with the case law that developed. And so the thing that I
8 know very clearly that would be, I think, done differently
9 this time was that Jose and I both, based on the
10 Commission's determination, protected them from voter
11 registration and voting history data while they were making
12 their first adjustments to the grid.

13 And until they had sent out a draft map, we didn't
14 get into those -- the use of that particular data, because
15 of some concerns about how the Constitution would be read.

16 It was a close question.

17 And we had plenty of input from high powered
18 Republicans and Democrats alike, and basically nobody, you
19 know, was going to be happy.

12:49:32 20 So when the Commission made their decision about
21 how to proceed, we protected them from receiving that data
22 and potentially violating the Constitution.

23 Now we know the court has clarified the language
24 and indicated that that data can be considered earlier in
12:49:55 25 the process.

12:49:56 1 So, as I answered a question of the Supreme Court
2 during oral argument, I said, yes, I would say to the next
3 Commission, consider that data as soon as you create the
4 equal population grid.

12:50:14 5 Frankly considering the data earlier makes the
6 work a little easier in the sense that you've got maybe more
7 time to pull that data together and analyze it, rather than
8 holding it in abeyance and, you know, trying to ramp up very
9 quickly.

12:50:32 10 So that is the one thing that I know for certain I
11 would do differently.

12 But, again, it's driven by the case law.

13 But overall, notwithstanding the fact that we were
14 like a science experiment last time, it was all so new, by
12:50:50 15 and large I think the way Jose and I worked together, and
16 the way we worked with the Commission, that was spot on. We
17 hit it right.

18 And that I would hope to see replicated.

19 VICE CHAIR HERRERA: Thank you so much.

12:51:07 20 COMMISSIONER STERTZ: Madam Chair.

21 CHAIRPERSON MATHIS: Mr. Stertz.

22 COMMISSIONER STERTZ: Ten years ago when you first
23 started this process, you said this is a sort of a
24 experiment of the petri dish styling, you had the tenor and
12:51:26 25 nature of partisanship existed on a particular level.

12:51:32 1 How do you feel it is -- it exists today, and how
2 do you feel that the partisanship in the groups that will be
3 lobbying for position will market themselves to the
4 commissioners and to the selected mapping consultants and
12:51:53 5 the selected attorneys?

6 And, lastly, are you a believer in the dual
7 counsel representation, and can the dual counsel
8 representation, if you are a believer in it as you've
9 participated in it fairly as I've read most of the record
12:52:18 10 that's available, why?

11 LISA HAUSER: Let me take that last one first,
12 because I can hit it the quickest.

13 I think as I said in the opening statement, I'm a
14 huge believer in the dual counsel role.

12:52:34 15 I pointed out, I think, where trying to pick one
16 firm where you have Republicans and Democrats involved, even
17 though you might have both the Republican and Democrat
18 attorney assigned to you, there's an inequality that may be
19 afoot that would make -- would create an imbalance that
12:52:54 20 might make that unworkable.

21 So I think two different firms are important.

22 And having two different firms is good, not just
23 for you all, because you know we're watching each other. If
24 you pick smart lawyers, we're going to watch each other all
12:53:11 25 the time and make sure that everything is being done

12:53:13 1 appropriately, no shenanigans anywhere.

2 But it's also, I think, extremely important for
3 the public perception.

4 People don't trust this process.

12:53:27 5 They got it out of the basement of the capital,
6 and entrusted it to the five of you.

7 But they're still worried about it. And they
8 worry who's pulling your strings and how you're being
9 manipulated perhaps in reaching your decisions.

12:53:46 10 And that's an awful burden to place on one
11 attorney.

12 Because that attorney, whether it's a Republican
13 or a Democrat, no matter how non-partisan or fair they are,
14 it's going to be a truly difficult task for them and a

12:54:03 15 difficult -- it creates a difficult perception for you all
16 to deal with.

17 Again, perception is going to be -- a lot of the
18 things you're going to do are not just good ideas for
19 purposes of getting through the mapping process, but they're
12:54:19 20 good ideas for purposes of the perception it creates and the
21 trust that it creates in your work product.

22 So I think it's hugely important.

23 How people market themselves, or, if I understand
24 the question correctly, how they will maybe try to influence
12:54:37 25 the Commission?

12:54:41 1 COMMISSIONER STERTZ: Before you alluded to the
2 allusion or the perception of co-opting.

3 LISA HAUSER: Right.

4 Well, you will get, if you haven't already, you
12:54:53 5 will get a lot of pressure, and so will the consultants that
6 you hire.

7 And I think that in terms of the political
8 environment, I don't think it's ever been a politically
9 neutral redistricting process.

12:55:14 10 This is mighty important to a lot of people and
11 their political careers, and you'll get a lot of interest,
12 whether the political rhetoric out there in the community is
13 at an all-time low and everybody is being nice to everybody
14 else, or it's a time when people are really, you know,
12:55:32 15 bashing each other's heads in.

16 This is about the most political kind of process
17 there is.

18 And so people will try to come up with ways to get
19 you to do what they want.

12:55:47 20 And I think Commissioner McNulty and
21 Commissioner Freeman were at the Morrison Institute
22 presentation and heard one of the professors comment on how
23 people go about doing that, and that pretty much everybody
24 who comes in front of you has something that they want.

12:56:07 25 They may tell you very directly what it is, and

12:56:12 1 that may be exactly why they are asking for whatever it is,
2 but a lot of times there's a subliminal message. There's
3 something else going on.

4 And, you know, you're not allowed to consider the
12:56:25 5 residences of incumbents, for example. But everybody else
6 is thinking about it.

7 And so sometimes you'll see some little change
8 come before you and some little inexplicable jog in a
9 district line.

12:56:43 10 Ask questions. Find out why that line needs to be
11 there to develop your record of why you created that
12 particular, that particular line.

13 And so in terms of guarding against manipulation,
14 it's a lot about asking those questions and making sure that
12:57:10 15 you know why you're developing the lines that you're
16 developing.

17 COMMISSIONER STERTZ: I want to go back,
18 Madam Chair, if you'll indulge me for a second to the petri
19 dish comment.

12:57:23 20 You were successful in crafting a defensible
21 record over the term of this.

22 And in concert you were working with many
23 different litigators, including Mary O'Grady at one point.

24 LISA HAUSER: A little bit.

12:57:42 25 COMMISSIONER STERTZ: A little bit.

12:57:47 1 That experience base, explain to me how that's --
2 how you're going to be able to parlay that, because you're
3 no longer looking at that petri dish now. We're looking at
4 an experience where the ground is already -- we're already
12:58:01 5 running, and we also have a very compressed time frame.

6 How do you see the next 30, 60, 90 days playing
7 out?

8 We're going to be hiring counsel here in the
9 next -- short period of time. Our mapping RFPs are out.
12:58:17 10 We'll be hiring mapping consultants in the next two to
11 three weeks.

12 So we're looking at mid-June assembling or looking
13 at grid mapping being done, and we're looking at a back end
14 date.

12:58:31 15 Explain to us how you're looking at the schedule
16 of deliverables and who you are going to help us to -- and
17 guide us through the experiences of the petri dish through
18 success to have this be a successful summer and fall.

19 LISA HAUSER: You know, in terms of -- and I know
12:58:52 20 it feels to you like it's been a long time since you got
21 appointed and you really haven't started making maps yet.
22 The last Commission issued the grid on June 7th, I believe,
23 early June, of 2001. And then proceeded with six weeks of
24 roaming around the state and collecting information and
12:59:23 25 coming up with a draft map.

12:59:25 1 I think in terms of, you know, initially, because
2 the mapping consultants aren't there yet, I think that
3 counsel, amongst the very first things that we should be
4 doing, is, first of all, talking with you about the process,
12:59:37 5 and what is it about the last time line that you like and
6 what you would want to change.

7 Secondly, and maybe more importantly, is to get a
8 handle on the data and make sure that everything is in place
9 to begin the work when, you know, we reach that point of
12:59:59 10 actually working with the data.

11 The beginning -- the first set of data that you're
12 going to be working with is exclusively the census data,
13 because the equal population grid is the only thing you take
14 into account when you create the legislative and
13:00:16 15 Congressional districts and the equal population grid. You
16 don't look at anything else.

17 And how you want to go about doing that equal
18 population grid.

19 And certainly I can explain to you how the last
13:00:29 20 one was created. It was kind of a novel and unique concept,
21 and the last Commission spent a lot of time talking about
22 different things and different ways to come about the grid.

23 You can probably compress that a lot, because the
24 grid doesn't last long. It's a starting point. It's, you
13:00:46 25 know, it's gone.

13:00:49 1 The next -- I think the other thing I would
2 mention to you is that, you know, I think the last
3 Commission felt that it didn't get the big pat on the back
4 for tromping all over the state and listening to everybody.

13:01:02 5 First of all, it's sort of a thankless job you
6 have anyway, but I think what they may have overlooked is
7 that it was really important to those people that got to see
8 them and come to -- you know, step up to the microphone and
9 speak to them in person about their concerns.

13:01:21 10 And it also gave the commissioners a chance to get
11 a little bit of a sense of that community to actually be
12 there.

13 But you may not have the luxury of time depending
14 on when you want to conclude the process to do that.

13:01:36 15 So the technology of allowing those remote hookups
16 for meetings and doing things online is better than it was
17 ten years ago. And it may afford you some opportunities to
18 compress that schedule a bit and allow you to pick up some
19 speed.

13:02:00 20 The mapping process itself, it just takes a little
21 bit of time. And you just have to allow for that. And
22 that's where I would suggest that you really spend some time
23 trying to block out schedules to allow you to spend the time
24 you need to make those critically important discretionary
13:02:23 25 decisions.

13:02:25 1 COMMISSIONER STERTZ: Thank you.

2 VICE CHAIR FREEMAN: Madam Chair.

3 CHAIRPERSON MATHIS: Yes, Mr. Freeman.

4 VICE CHAIR FREEMAN: How are we on time? Do we

13:02:34 5 have time for one more?

6 CHAIRPERSON MATHIS: Yes.

7 VICE CHAIR FREEMAN: Ms. Hauser, you've had a law

8 career, election law lawyer in these kind of issues.

9 It's been ten years since the last IRC. What is

13:02:46 10 motivating you to want to go through the process again?

11 LISA HAUSER: That is an excellent question.

12 Jose tells me I'm nuts.

13 But, I said that may be true.

14 I think I'll share with you that when the

13:03:07 15 Redistricting Commission -- the redistricting proposition

16 was on the ballot, I voted against it.

17 And so I came to the Commission having not

18 supported the concept of taking this away from the

19 Legislature.

13:03:22 20 But I became a real convert of this process,

21 because I think it can be done so well and so great and give

22 so many opportunities to the citizens of the state of

23 Arizona to participate in the redistricting process that

24 they had never previously experienced.

13:03:43 25 That, you know, done right, it's a wonderful, it's

13:03:46 1 a wonderful thing.

2 And having spent eight years -- no, litigation
3 started in 2002, so seven years.

4 Litigating the -- and I outlined in the proposal,
13:04:03 5 it was a bunch of different lawsuits, the one that took the
6 longest was the legislative competitiveness case. And
7 having gone through that and developed all that case law,
8 it's not just one Supreme Court decision, it's a lot of case
9 law out there. Not having the opportunity to apply it, I
13:04:22 10 told somebody it would feel a little bit like helping to
11 create the cure for some disease and never be able to use it
12 on a patient.

13 And I think that I've had a long career, even
14 though I've been in private practice since '97, a long
13:04:41 15 career in the public sector, and I guess I sort of think of
16 myself as a public sector lawyer who just happens to have a
17 lot of private clients lately, but I think that having that
18 opportunity to sort of come full circle on this process and
19 to help you all do the job you're capable of doing is the
13:05:03 20 reason that I remain interested.

21 I can't promise that I will be back ten years from
22 now, because I don't know if I have any more redistricting
23 left in me.

24 But I'm here today.

13:05:19 25 VICE CHAIR FREEMAN: Thank you.

13:05:21 1 CHAIRPERSON MATHIS: Any other questions?
2 COMMISSIONER STERTZ: No, ma'am.
3 CHAIRPERSON MATHIS: No more questions. Thank you
4 very much.

13:05:29 5 LISA HAUSER: Thank you.
6 COMMISSIONER McNULTY: Thank you.
7 CHAIRPERSON MATHIS: Our apologies for our
8 lateness.
9 LISA HAUSER: I hope you have a chance to have
13:05:39 10 lunch.
11 CHAIRPERSON MATHIS: Thank you.
12 VICE CHAIR HERRERA: Thank you.
13 RAY BLADINE: Madam Chair, do you want to
14 establish a break time for lunch and then come back? And I
13:05:50 15 think you will also probably want to meet with the
16 purchasing staff in E session.
17 CHAIRPERSON MATHIS: Right. So it's 1:06 p.m.
18 We'll take a recess.
19 I'm sure the court report is excited about that.
13:06:05 20 We'll come back -- can we do this sort of quickly?
21 The next interview is scheduled currently for
22 1:15.
23 (Lunch recess taken.)
24 CHAIRPERSON MATHIS: I'm going to call the meeting
13:53:20 25 back to order.

13:53:21 1 It's 1:53 in the afternoon.
2 And wondered if I could get a motion to go into
3 executive session for the purpose of discussing contract
4 matters relating to hiring legal counsel.

13:53:35 5 COMMISSIONER STERTZ: So moved.
6 CHAIRPERSON MATHIS: And confidential documents.
7 COMMISSIONER STERTZ: So moved.
8 COMMISSIONER McNULTY: Second.
9 VICE CHAIR HERRERA: Can I --

13:53:42 10 CHAIRPERSON MATHIS: Discussion?
11 VICE CHAIR HERRERA: Thank you. We have one of
12 the interviewees here.
13 CHAIRPERSON MATHIS: I know. We do.
14 And I apologize to Mr. Mandell, who's due up. And
13:53:51 15 actually we have gone over more than a half an hour from his
16 originally scheduled time.
17 But we have state procurement office here, who
18 needs to speak with us about some matters, so we'll just
19 have a brief executive session and then start again.

13:54:08 20 I'm sorry about that.
21 VICE CHAIR HERRERA: Why can't we wait until after
22 we interview Mr. Mandell?
23 CHAIRPERSON MATHIS: I believe that there are
24 issues that they need to speak with us about before we
13:54:22 25 continue the second half. Okay? So I apologize.

13:54:28 1 We'll be brief.

2 VICE CHAIR HERRERA: Okay.

3 COMMISSIONER STERTZ: We'll be brief.

4 CHAIRPERSON MATHIS: Apologies to the public.

13:54:37 5 All in favor?

6 (Unanimous "Aye.")

7 CHAIRPERSON MATHIS: Any opposed?

8 (No oral response.)

9 (Whereupon, the public session recessed and

09:39:29 10 executive session ensued.)

11

12 * * * * *

13

14 (Whereupon, the public session resumes.)

14:12:12 15 CHAIRPERSON MATHIS: We'll go back into public

16 session.

17 The time is 2:12 p.m.

18 Thank you everyone for your patience, going in and

19 out of the doors. And for Mr. Mandell, who we're starting

14:12:21 20 an hour late for. And I appreciate that, you being so

21 flexible.

22 We've given all the other candidates an

23 opportunity to make some opening remarks, if they have any.

24 And you don't have to feel compelled to do so, but

14:12:38 25 if you have any and would like to, please go ahead.

14:12:43 1 MICHAEL MANDELL: Thank you very much,
2 Madam Chair, for the opportunity to meet you all today.

3 I certainly am familiar with the timing issues.
4 At the Legislature nothing really starts on time. As a
14:12:54 5 legislative body, it's appropriate for you to do the same.

6 A little bit about myself. I am a native Arizona.
7 I grew up in Florence, Arizona. Lived there until I went to
8 undergraduate at ASU.

9 I passed out my resume. I'll go back on that.

14:13:11 10 I apologize for not having that be part of the
11 packet that I submitted. It should have been, so I wanted
12 to make sure that you have that now.

13 I attended ASU undergrad where I received a
14 B.S. in psychology. I went on to law school, also at ASU.

14:13:27 15 And, in fact, that was only school that I applied to as my
16 family was here and everything for me was in Tempe.

17 Once I graduated from law school, I clerked on the
18 Arizona Court of Appeals for a year with a judge named Noel
19 Fidel, who is now retired.

14:13:45 20 Then went and actually worked at the Arizona House
21 of Representatives for a couple years. In fact, the
22 attorney who is going to be speaking to you after me held a
23 position that -- or I came into the position that she had
24 before my time.

14:14:03 25 So we actually are friends and go back quite a

14:14:07 1 ways.

2 After serving at the Legislature for a couple
3 years, I went and finally actually went to Brown and Bain.
4 I had been recruited as a summer associate and kept
14:14:16 5 deferring my time, but did end up going there and
6 practicing.

7 Was there for about three and a half years, and
8 did a lot of election law, commercial litigation. Really
9 kind of came in actually at the time redistricting was going
14:14:30 10 on.

11 And that was really the first case that I started
12 on, once I got there.

13 We had a number of people who had come in seeking
14 representation to challenge some of the things that the
14:14:43 15 previous Commission had done, and so we immediately began to
16 work on that.

17 And that consumed actually a large chunk of my
18 time while I was at Brown and Bain, which eventually became
19 Perkins Coie.

14:14:57 20 I had a family at that point, and was spending way
21 too much time at the law firm and not nearly enough time
22 with them, and so I decided to go back to the Legislature,
23 and have been in the Senate since that time.

24 Because it did allow me to spend more time with my
14:15:13 25 kids and watching them grow up and doing those kinds of

14:15:16 1 things that I think as a parent you need to do.

2 And so I guess with that, one of other things that
3 I wanted to mention too. Being one of the few solo
4 practitioners that are coming before you, I wanted to
14:15:29 5 address being a solo practitioner.

6 As part of that, when I -- as I worked at the
7 Legislature, I've also maintained a side legal practice as
8 my predecessor did when he was there.

9 In that role I've taken mostly small matters,
14:15:45 10 mostly transaction, small litigation matter, that don't take
11 up a great deal of time, because obviously my number one
12 focus was on matters of Legislature.

13 But during the interim times when things are
14 certainly a little slower, time was allotted for those types
14:16:00 15 of things.

16 And so as part of that, I think actually a solo
17 practitioner could provide benefits to the Commission.

18 One in the sense of cost, as an example.
19 Certainly one of the things that, having come from a large
14:16:16 20 firm, and having come from sort of the nature of the law
21 firm, a lot of times what happens is some of those cases get
22 overstaffed.

23 And as the initial part of the redistricting
24 occurs, there really isn't the need for multiple lawyers to
14:16:31 25 be -- and multiple lawyers for the same firm to be at a

14:16:35 1 Commission meeting, for example.

2 And A lot of times that might happen.

3 So from a cost standpoint, it's certainly a lot
4 cheaper, and I think I can provide very good representation
14:16:45 5 for that.

6 The other thing it would be the focus of my time.

7 So, from the standpoint of how -- of other lawyers
8 having additional cases and things that they would need to
9 work on, this would be the main focus of my time, and I
14:16:57 10 would certainly devote whatever time was necessary to make
11 sure that quality representation of the Commission was
12 provided.

13 And then finally I think one of the things that --
14 just about me in general is the experience that I bring from
14:17:14 15 a well-rounded standpoint as a public lawyer.

16 I have experience in public records and open
17 meetings law, in providing public service orientations,
18 which you all are going to have to at some point in time
19 undertake if you haven't done it to date.

14:17:29 20 So as part of that, I think that I bring up a
21 well-rounded legal perspective to the Commission and can
22 provide a very quality representation.

23 The last thing I want to address was partisanship.
24 I know I come from a partisan position. I'm a registered
14:17:49 25 Independent. I'm a registered Independent, not as a ruse so

14:17:51 1 that people don't know where my leanings are, but actually
2 because I don't follow the principals of either party, and
3 my views are, in fact, independent, and I follow a lot of
4 the views of both parties.

14:18:03 5 And so I want to keep that option open when I want
6 to decide which primary I want to vote in, and just didn't
7 want to be labeled one thing versus the other, even though I
8 am in a partisan position.

9 On the social side, lean to the Democratic side.
14:18:20 10 That's probably why I am where I am.

11 I certainly have no problem working with anyone
12 from Republican or Democrat, but, in fact, two of the
13 Republican lawyers who I often work with are here.

14 But a lot of the members, whether they be
14:18:35 15 Republican or Democrat, I have no problem working with any
16 of them.

17 CHAIRPERSON MATHIS: Thank you, Mr. Mandell.

18 MICHAEL MANDELL: Sorry that if was long winded.

19 CHAIRPERSON MATHIS: Not at all. No, that was
14:18:51 20 great.

21 So we'll proceed in round-robin format. Any
22 questions from the Commission?

23 VICE CHAIR FREEMAN: Madam Chair.

24 CHAIRPERSON MATHIS: Mr. Freeman.

14:18:57 25 VICE CHAIR FREEMAN: Mr. Mandell, thank you for

14:18:58 1 coming. Sorry we're running behind schedule. Thanks for
2 sticking with us.

3 Conflicts of interest, whether they be direct or
4 potential or even the appearance of a conflict of interest
14:19:09 5 is the nature of the beast for lawyers and law firms. It's
6 what we have to deal with all the time.

7 You're currently representing the Democratic
8 Caucus in the Legislature. And I guess I can't -- I'm not
9 allowed to ask what you advise them on. I suppose it could
14:19:26 10 be redistricting issues.

11 I believe you're also chief of staff, are you not,
12 for the Democrats in the Legislature?

13 MICHAEL MANDELL: I am.

14 VICE CHAIR FREEMAN: And you've also taken
14:19:41 15 litigation adverse to the interests of the IRC.

16 Given that, do you feel that there are any
17 concerns that you have about potential conflicts of interest
18 with respect to your representation of this Commission?

19 MICHAEL MANDELL: Commissioner Freeman, I
14:19:55 20 appreciate the question. It's certainly one of the things
21 that I thought of when I decided to place a bid.

22 I certainly do advise members of the Democratic
23 Caucus on a host of legal issues while at the Legislature.
24 It is my role. Most of them are actually constitutional
14:20:12 25 issues and typically refer to legislation that's before

14:20:15 1 them.

2 And I did represent the Arizona Minority Coalition
3 for Redistricting, although that was a different Commission
4 and a different time.

14:20:26 5 And so given those things, I certainly have no
6 problem in the sense of not associating with members the
7 Legislature who would have an interest in a particular
8 district being drawn one direction or another during my time
9 of representation with the Commission.

14:20:43 10 I also don't think that my former
11 representation would -- I actually think that it would
12 provide useful information to the Commission, and certainly
13 some of the different principles that we learned along the
14 way would certainly be useful to the Commission.

14:21:00 15 I do not think that it would create a conflict of
16 interest in any way.

17 VICE CHAIR FREEMAN: Would your intent be to
18 resign as counsel for the Democrat Caucus if retained?

19 MICHAEL MANDELL: My intent is to take a leave of
14:21:15 20 absence for a period of time and then see how long the
21 process lasts. And if the process lasts beyond the period
22 of time that they would allot me for a leave of absence, I
23 would certainly resign if that was needed for continued
24 representation of the Commission.

14:21:37 25 VICE CHAIR FREEMAN: Thank you.

14:21:37 1 CHAIRPERSON MATHIS: Other questions?

2 Commissioner McNulty.

3 COMMISSIONER McNULTY: Would you talk about what
4 you think the most important issues that we will face
14:21:47 5 regarding our preclearance as a Commission.

6 MICHAEL MANDELL: Voting rights are certainly, I
7 think, going to be the chief issue that you'll have to deal
8 with as a Commission.

9 A big part of it will be -- and certainly being
14:22:00 10 brought up to speed on the requirements of the Voting
11 Rights Act, understanding what the benchmarks are, and what
12 needs to be done as far as percentages in a particular
13 district.

14 The biggest hurdle that I think you're going to
14:22:15 15 have is making sure that you meet with the minority
16 communities, that you hear input from the minority
17 communities, that you focus on trying to draw competitive
18 districts in addition to Voting Rights Act districts, which
19 there certainly is an inherent conflict as part of that
14:22:35 20 process.

21 But not to say that it absolutely can't be done.

22 But those are certainly -- from that standpoint, I
23 think it's going to be the cornerstone, especially given the
24 court cases that came out during the last redistricting and
14:22:50 25 what you're likely to face potential litigation on.

14:22:54 1 Given the Supreme Court case last time and the
2 fact that the Commission has been given extreme discretion
3 and the drawing of the lines, it really remains that the
4 Voting Rights Act is one of the only remaining areas that
14:23:06 5 the Commission could be vulnerable to adverse litigation.

6 And so from that standpoint I think the Commission
7 wants to pay particular attention to the -- to what it does,
8 make sure that it understands the procedures that DOJ has in
9 place, and the factors that they look at during the
14:23:25 10 procurements which are listed in the CFRs.

11 And so as you're going through and drawing the
12 lines, making sure that you're adhering to those factors,
13 that you're addressing them, and those includes things like
14 meeting with minority representatives, taking in their
14:23:40 15 input, if they provide alternative maps make making sure
16 that you review those, and doing those like kind of things.

17 But you're going to have a benchmark, and you're
18 going to have to adhere to the benchmark.

19 CHAIRPERSON MATHIS: Other questions?

14:23:58 20 COMMISSIONER STERTZ: Madam Chair.

21 CHAIRPERSON MATHIS: Mr. Stertz.

22 COMMISSIONER STERTZ: This is a two-part question
23 regarding competitive districts and communities of interest.

24 In your case where you were representing the
14:24:08 25 Arizona Minority Coalition, your argument prevailed;

14:24:12 1 correct?

2 MICHAEL MANDELL: It did at the trial court.

3 COMMISSIONER STERTZ: At the trial court level.

4 In discussing the concept of competitive

14:24:21 5 districts, which is something that is inherently numeric,
6 versus communities of interest, which is by definition
7 without definition, how do you use those two on a
8 side-by-side when you will be giving us counsel and advice
9 about how to manage the natural push and pull between those
10 two?

11 MICHAEL MANDELL: Commissioner Stertz, and other
12 members, really the reality is you can certainly have
13 communities of interests and competitive districts.

14 It really depends partly on what you as the
15 Commission decide your communities of interest are going to
16 be. Whether or not -- like the last Commission made it a
17 little more difficult, because they decided that whole
18 counties were communities of interest, or perhaps the city
19 of Phoenix was adopted as a community of interest.

14:25:15 20 When you've adopted 1.3 million people as a
21 community of interest, there are obviously vast diversities
22 within that community.

23 But then they also adopted things like the Isaacs
24 School District, which is a very small community of
14:25:29 25 interest.

14:25:30 1 And the way I view the constitutional requirement,
2 community of interest is identification of the communities,
3 deciding what those boundaries of that community is, and
4 then making sure that you attempt not to split that
14:25:42 5 community into various districts.

6 If, for example, though, you have multiple
7 communities that can be placed within the same district, but
8 the entirety of that community is kept intact, then you've
9 adhered to the constitutional criteria and what needs to be
14:25:57 10 done.

11 So, for example, Arcadia was also considered to be
12 a community of interest last time.

13 Well, Arcadia could be looked at in moving towards
14 central Phoenix as well, as you could potentially have a
14:26:09 15 district that has Arcadia and central Phoenix for the most
16 part, and you would very likely -- I don't know that for
17 certain, but you would very likely have a potentially
18 competitive district, but you kept the Arcadia community
19 intact.

14:26:22 20 COMMISSIONER STERTZ: Are they inherently in
21 conflict with one another or --

22 MICHAEL MANDELL: I don't think so.

23 Like I said, it just depends on -- they could be.

24 If you create very large communities of interest,
14:26:36 25 then I think it's going to be very difficult not to split

14:26:40 1 them into multiple districts. And trying to adhere to those
2 boundaries, I think it becomes more difficult in trying to
3 make districts more competitive if you've got very large
4 communities and you're trying to keep the entire community
14:26:51 5 into a single district.

6 COMMISSIONER STERTZ: As a final follow-up. If I
7 understand it, communities of interest for you would take a
8 higher level of priority over competitive districts.

9 MICHAEL MANDELL: Well, I think what you do is you
14:27:04 10 look at the wording of the Constitution, and you look at
11 what the court cases say.

12 And from those, the court cases basically say that
13 competitiveness is a mandatory criteria, much like the other
14 five. But if creating a competitive district causes, in the
14:27:22 15 minds of the commissioners, a significant detriment to a
16 particular community of interest, then the competitive
17 district needs to yield to the community of interest.

18 COMMISSIONER STERTZ: Thank you.

19 CHAIRPERSON MATHIS: Other questions?

14:27:37 20 VICE CHAIR HERRERA: Madam Chair, I'd like to ask
21 a question.

22 Mr. Mandell, thank you for your patience with us
23 and for waiting.

24 You mentioned that you registered Independent and
14:27:48 25 you talked about why you're a registered Independent.

14:27:51 1 But can you go into detail of why you're
2 registered Independent in terms of the views that you say
3 fall on both sides of the political aisle?

4 MICHAEL MANDELL: Sure.

14:28:04 5 From a political perspective, I'm probably more on
6 the Democratic side for a lot of the social issues.

7 But having grown up in rural Arizona, certainly a
8 gun advocate. Having grown up in a prison community, I've
9 seen a lot of issues with prisoners and those kind of
14:28:26 10 issues, and so I certainly probably when it comes to the
11 death penalty I fall on the Republican side.

12 To me, it's just issue by issue, and just deciding
13 on those issues where I end up.

14 It's why, for example, in my -- if you look at my
14:28:44 15 political contribution history, I've donated money to both
16 Democrats and Republicans.

17 VICE CHAIR HERRERA: Can you elaborate?

18 MICHAEL MANDELL: On that in particular?

19 VICE CHAIR HERRERA: Can he do that?

14:29:02 20 VICE CHAIR FREEMAN: That's public.

21 MICHAEL MANDELL: I put it in my submittal, so
22 you're certainly free to ask whatever question you want. I
23 certainly have nothing to hide.

24 Who it is that I contributed to?

14:29:19 25 VICE CHAIR HERRERA: Recently, recently for both

14:29:20 1 sides.

2 MICHAEL MANDELL: Well, recently as being -- I
3 haven't made contributions since, I believe, 2005, so they
4 were all prior to that.

14:29:26 5 But they included -- Gabrielle Giffords was one.
6 Barbara Leff was one. Bob Robson was one.

7 And there may have been one or two others, but
8 that's all I can recall off the top of my head.

9 VICE CHAIR HERRERA: Just for the record,
14:29:43 10 Gabrielle Giffords is a Democrat; right?

11 MICHAEL MANDELL: And Barbara Leff and Bob Robson
12 are Republican.

13 VICE CHAIR HERRERA: Thank you.

14 CHAIRPERSON MATHIS: I have a question. As a
14:29:57 15 fellow Independent, I sympathize with your views, but I have
16 kind of a little bit of a partisan question for you.

17 Do you anticipate a time -- go ahead.

18 Take your time.

19 If selected to be counsel for the Commission, did
14:30:40 20 you anticipate a time where you could be asked by any of
21 commissioners, particularly those that share your political
22 views, partisan counsel, to speak to just them, and, if so,
23 how would you handle that, and who would be privy to that
24 information?

14:30:56 25 MICHAEL MANDELL: I think it would be important

14:30:57 1 for the Commission itself -- I apologize, the water went
2 down the wrong way -- for the Commission to determine when
3 it hires counsel how it wants them to proceed.

4 Whether or not you have a Democratic counsel or
14:31:11 5 you have a Republican counsel or if there are two counsels
6 for the Commission themselves.

7 And certainly, I think, having counsel for the
8 Commission is far better than having a Republican and
9 Democratic only counsel, because I think the legal advice
14:31:27 10 that's provided by the attorneys should actually be legal
11 advice based on the law. And based on the law, it shouldn't
12 matter whether or not it's a Republican or Democratic
13 question. The law is the law, and the interpretation should
14 be the same for both.

14:31:40 15 And so from that standpoint, I would certainly
16 hope that if there is a Republican counsel as well, that
17 those consultations would occur between the two, and that
18 they would come up with a cohesive answer that can be
19 provided to everyone.

14:31:56 20 CHAIRPERSON MATHIS: Thank you.

21 Other questions?

22 VICE CHAIR FREEMAN: Madam Chair.

23 CHAIRPERSON MATHIS: Mr. Freeman.

24 VICE CHAIR FREEMAN: Build upon that. You
14:32:04 25 mentioned that you met two of the Republican candidates

14:32:08 1 today, I believe, did you not?

2 MICHAEL MANDELL: I was actually referring to two
3 of the attorneys that I work with at the Legislature.

4 VICE CHAIR FREEMAN: All right.

14:32:14 5 MICHAEL MANDELL: I do know all the other
6 candidates.

7 VICE CHAIR FREEMAN: Potentially if you're the
8 complementary attorney for one of the Republican counsel, do
9 you have opinions about the other Republican --

14:32:26 10 proposed-Republican counsel, and can you share with us how
11 you think you would be able to work with each one of them?

12 MICHAEL MANDELL: Certainly Lisa Hauser and Joe
13 Kanefield I've worked with much more so than Tim LaSota. I
14 worked with Tim and worked with him a little bit, but not to
15 the extent of the other two.

14:32:46 16 Doing -- the legal community is small enough as it
17 is, but when you do election law, it's even smaller. So you
18 often see the same list of people, on the same cases, over
19 and over again.

14:32:58 20 And so Lisa, actually when I was looking at some
21 of the cases I submitted, and there was a common theme to
22 the cases that I submitted in that Lisa was the attorney on
23 the side of all of them.

24 And so we've developed a professional rapport.

14:33:18 25 They are all quality attorneys. The nice thing

14:33:21 1 about, I think, the list that you have is that there's --
2 there aren't poor attorneys on the list at all. And so
3 whoever it is that the Commission seeks to have, they're
4 going to have quality representation.

14:33:36 5 But working with either Joe or Lisa or Tim, I
6 certainly would have no problem working with them at all.

7 CHAIRPERSON MATHIS: Any other questions?

8 VICE CHAIR HERRERA: We had -- you kind of touched
9 on this, but if you can elaborate, the suit that you were
14:34:00 10 involved in with the previous Commission, how does that hurt
11 or help you if we decide to pick you as a Democratic
12 representative?

13 MICHAEL MANDELL: I think it would definitely
14 provide a perspective from a -- any time you have a
14:34:15 15 plaintiff's side who then become defense counsel, much like
16 a county attorney who becomes defense attorney, you have
17 some insight to how it is that the lawsuit -- or the
18 potential vulnerabilities that may be forthcoming to the
19 Commission as time progresses and what the Commission could
14:34:37 20 potentially be sued on.

21 So from that perspective, I think the other thing
22 is that, that I possess -- having been one of the few people
23 who have litigated issues in redistricting matters, having
24 that particular area of expertise, that isn't found in most
14:34:54 25 other lawyers.

14:34:54 1 And understanding what actually needs to be done,
2 what the legal requirements are associated with the
3 Commission, and what its work entails, I think that would be
4 beneficial to the Commission as well.

14:35:08 5 VICE CHAIR HERRERA: Thank you.

6 CHAIRPERSON MATHIS: Other questions?

7 COMMISSIONER McNULTY: Madam Chair.

8 CHAIRPERSON MATHIS: Commissioner McNulty.

9 COMMISSIONER McNULTY: Mr. Mandell, could you talk
14:35:19 10 a little bit about how you would view your role in the
11 mapping process?

12 It seems to me that having worked for the
13 Legislature, that you might have some insights into that
14 process that might be helpful.

14:35:37 15 MICHAEL MANDELL: Sure. I certainly have insights
16 to it. One of the things I was tasked with doing the last
17 time around was actually understanding -- knowing the
18 software and understanding how to use it.

19 I do not see that as anywhere close to my role as
14:35:52 20 being legal counsel for the Commission.

21 It's certainly not the legal counsel's role to
22 draw any maps.

23 It is, I think, the legal counsel's role to opine
24 on the legalities of the districts in those maps. It
14:36:07 25 certainly from a voting rights perspective, as well as the

14:36:09 1 other perspectives that are associated -- the other
2 principles that are listed in the Constitution.

3 But from that standpoint, I think that I would
4 certainly hold off on providing any kind of opinion. I
14:36:26 5 would never advise the Commission that they should draw a
6 district in a particular location or for a particular member
7 in any way.

8 I think counsel's role in the map drawing process
9 is simply providing legal advice to the Commission, as you
14:36:43 10 all move forward in actually drawing the districts, and just
11 giving you -- you may want to look at, for example, if the
12 benchmark is for a particular district is at 55 and your
13 proposed district is at 51, would be advising you what the
14 benchmark would be, and that you're creating potential
14:37:04 15 vulnerability by not meeting the benchmark.

16 And giving the -- letting the Commission go and
17 figure out how -- you know, whether they wanted to meet that
18 benchmark and how they would go about doing that.

19 COMMISSIONER McNULTY: Thank you.

14:37:18 20 COMMISSIONER STERTZ: Madam Chair.

21 CHAIRPERSON MATHIS: Mr. Stertz.

22 COMMISSIONER STERTZ: This is inherently -- the
23 concept of the Independent Redistricting Commission is
24 terrific, but it is inherently partisan.

14:37:30 25 With the position that you currently hold and your

14:37:35 1 decision, if so selected, to take a leave of absence, how
2 can you see that the public would view your role, knowing
3 that you would still have a -- as a leave of absence that
4 you've not severed your relationship with the Democratic
14:37:54 5 party, the Democratic Caucus, and representing and that you
6 would be coming at this from a place of giving neutrality
7 to -- or neutral position to recommendations to our
8 Commission?

9 MICHAEL MANDELL: I think part of that is the fact
14:38:10 10 that Democrat and Republican attorneys are being interviewed
11 and potentially selected.

12 If, in fact, there is a Democrat and if, in fact,
13 there is a Republican selected to provide advice, I think
14 that inherent partisanship label is already there,
14:38:24 15 regardless of whether or not one is still attached or not
16 attached.

17 For example, if, for example, there was an issue
18 that came up with one of the other attorneys where they were
19 brought a case by a particular member for a different
14:38:39 20 election issue that didn't relate to redistricting, but was
21 still an issue that would be brought forward, I would
22 imagine that that attorney would very likely still take that
23 case.

24 Even though they're working on the redistricting.

14:38:52 25 But I don't think there would be an inherent

14:38:54 1 public perception problem from that perspective, because as
2 lawyer we represent our client regardless of who our clients
3 are.

4 But given the labels associated with them already,
14:39:07 5 having a Republican and Democrat, I just don't think that
6 would be a problem.

7 COMMISSIONER STERTZ: I'm not sure if that was the
8 question.

9 The question was more that you would still have a
14:39:14 10 foot in the door with a group of individuals that the public
11 might perceive you to be co-opt -- that that may co-opt your
12 position or your recommendations to us.

13 MICHAEL MANDELL: I think I would certainly, if
14 that became an issue, then I would do what was necessary to
14:39:31 15 make sure that it was no longer an issue.

16 COMMISSIONER STERTZ: Okay. Thank you.

17 CHAIRPERSON MATHIS: Other questions?

18 VICE CHAIR FREEMAN: Madam Chair.

19 CHAIRPERSON MATHIS: Mr. Freeman.

14:39:43 20 VICE CHAIR FREEMAN: In terms of resources, right
21 now you've got your own shop, and I think you mentioned
22 earlier that at least it was your view that at least
23 initially the load might not be so great, and potentially
24 you have co-counsel to share the load with, is that a
14:39:58 25 concern going forward once we go through the mapping process

14:40:00 1 and potentially litigation, do you see yourself needing to
2 associate other counsel, joining a larger firm, something
3 like that?

4 MICHAEL MANDELL: I think if, in fact, litigation
14:40:11 5 were to ensue, I would certainly talk with the other
6 co-counsel, see what resources that counsel had available to
7 them.

8 And if, for example, I felt that if my action, the
9 additional counsel were necessary, I would certainly come to
14:40:28 10 the Commission and have that discussion with all of you to
11 say -- to let you know that additional resources would be
12 necessary, that I would want to associate with another firm,
13 or figure out how it was that we could -- how to achieve the
14 appropriate manpower necessary to provide the quality
14:40:46 15 representation.

16 But I certainly think that's an issue that can
17 easily be addressed if that were to occur.

18 VICE CHAIR FREEMAN: Thank you.

19 CHAIRPERSON MATHIS: Any other questions?

14:41:02 20 COMMISSIONER STERTZ: I'm good.

21 CHAIRPERSON MATHIS: Mr. Herrera?

22 VICE CHAIR HERRERA: I do have a question. I know
23 you had an opening statement, and throughout some of your
24 answers, can you summarize what sets you apart from -- a
14:41:17 25 little disparaging a candidate, not that you would, but what

14:41:22 1 sets you apart from the other candidates that we're
2 reviewing, both Republican and Democrat, what qualities to
3 tell us that this is the right person that you would pick?

4 MICHAEL MANDELL: I would certainly never
14:41:37 5 disparage any of the other counsel. As I said, they are all
6 quality counsel. And whomever you choose, you will be well
7 represented.

8 Partially what sets me apart is the fact that
9 redistricting is a very specialized area. Very few people
14:41:50 10 have been through a redistricting process.

11 I've certainly read Article 4, Part 2, a number of
12 times, and so I think I'm extremely familiar with it.

13 It's also the fact that I do understand what's
14 necessary to comply with conflicts of interest statutes,
14:42:07 15 with nepotism statutes, with all the other associated
16 governmental statutes that you as public officials are
17 likely to have to deal with as time goes on, whether it be
18 open meetings or public records or those types of issues.

19 Certainly one of the other areas is the fact that,
14:42:22 20 you know, when we look at some of the cases that were
21 created last time, one of them being, for instance, in the
22 Independent Redistricting Commission versus Fields case,
23 that went to the Court of Appeals case, it was all about
24 what records are or are not privileged or will need to be
14:42:42 25 shown to the public or other counsel, if litigation is

14:42:46 1 required.

2 And so a lot -- having a lot of that knowledge,
3 having been through that litigation, and understanding
4 what's required, I think would be very beneficial to the
14:42:56 5 Commission.

6 VICE CHAIR HERRERA: Can you repeat the last part,
7 the last comment about --

8 MICHAEL MANDELL: About the specialization? Of
9 the records?

14:43:15 10 VICE CHAIR HERRERA: Yes.

11 MICHAEL MANDELL: Sure. In the case of IRC versus
12 Fields -- actually what had happened was the attorneys for
13 the Commission had designated their mapping consultants to
14 be testifying experts.

14:43:26 15 And so there were a lot of e-mail communications
16 that had occurred between those testifying experts about
17 their areas of expertise and different things that they were
18 going to talk about.

19 So we tried to obtain all the e-mail
14:43:40 20 communications that had occurred through -- within the
21 mapping consulting community, not wanting to get into work
22 product or attorney-client privileges, but certainly trying
23 to find out from a discovery standpoint of what existed and
24 what communications were made amongst the consultants
14:43:57 25 themselves. The Commission attempted to shield those.

14:44:02 1 The court ruled that once they designated them as
2 testifying experts, that all the communications or materials
3 that they had reviewed about which they were going to
4 testify, all those communications had to be turned over to
14:44:12 5 the other side.

6 VICE CHAIR HERRERA: Thank you.

7 One quick last question.

8 CHAIRPERSON MATHIS: Go ahead.

9 VICE CHAIR HERRERA: A last question.

14:44:23 10 I think I felt very comfortable with the three
11 Democrats that we chose to interview.

12 And if we decide to go either one of them, I will
13 feel comfortable working with any of the three. But what I
14 want is for the Independent and for the Republicans to feel
14:44:38 15 comfortable working with the Democrat that we choose.

16 So what would you do to make sure that you develop
17 a relationship with the two Republicans on the Commission
18 and also the Independent.

19 MICHAEL MANDELL: I think I would follow the same
14:44:51 20 manner that I conduct myself in the Legislature.

21 I've certainly tried to make myself available and
22 have been available to a number of different Republican
23 members. I think I am friends with a number of Republican
24 members. I have given legal advice to a number of
14:45:05 25 Republican members.

14:45:07 1 Sorry, Greg.

2 You know, but I think I just would follow that
3 same thing.

4 I don't see myself as an overtly partisan person.

14:45:17 5 When somebody comes to me for legal advice, the
6 legal advice is the legal advice regardless of their party
7 label.

8 VICE CHAIR HERRERA: Thank you.

9 CHAIRPERSON MATHIS: I have a quick question.

14:45:27 10 So if selected to be counsel for the Commission,
11 do you have any conflicts the rest of the year?

12 We know we're on a tight time line. I'm wondering
13 what kind of conflicts or scheduling issues that would
14 prevent you from being available.

14:45:44 15 MICHAEL MANDELL: There are certainly the hopes of
16 my kids that they have a summer vacation to go somewhere.
17 We don't have anything currently planned, so I can be as
18 flexible as possible.

19 There certainly -- there are school issues and
14:45:59 20 baseball and other types of things that I try to do as a
21 parent as well, but I don't see them as being inherently
22 conflictual with my role as attorney.

23 CHAIRPERSON MATHIS: Thank you.

24 Any other questions from the commissioners?

14:46:15 25 (No oral response.)

14:46:16 1 CHAIRPERSON MATHIS: Thank you.

2 VICE CHAIR FREEMAN: Thank you.

3 VICE CHAIR HERRERA: Thank you.

4 COMMISSIONER STERTZ: Thank you.

14:46:43 5 CHAIRPERSON MATHIS: The next interview -- thank
6 you, Commissioner Herrera -- is Osborn Maledon, Mary
7 O'Grady.

8 Ms. O'Grady, thank you for being here.

9 We're sorry we're running late. Thank you for
14:47:25 10 your patience.

11 MARY O'GRADY: It happens.

12 CHAIRPERSON MATHIS: So we've given everyone an
13 opportunity to make an opening statement, if they have one.
14 You don't have to feel compelled to do one, but if you have
14:47:37 15 one, you're welcome to do so now.

16 MARY O'GRADY: Well, I didn't prepare an opening
17 statement.

18 But I guess in terms of why I want to do this
19 work, I think I would be good at it. And I think I'd enjoy
14:47:50 20 it. Those are the two things that sort of motivate my
21 career choices in large part.

22 Why I think I would be good at it. I think I have
23 the experience, in terms of election law, constitutional
24 litigation, advising public officials, advising legislative
14:48:07 25 bodies, to do the job.

14:48:10 1 I think I have the skill. I am good at those
2 things.

3 I think over the course of my career I've shown
4 that.

14:48:19 5 And I think I have the temperament -- I do have
6 the temperament to do this kind of work.

7 I'm used to dealing with public officials, dealing
8 with constitutional officers, dealing with significant
9 constitutional issues, public policy issues, things
14:48:34 10 that stress people out. And I can keep my eye on the
11 ball in terms of my responsibilities as an attorney to
12 make sure that whoever I'm working with, whoever the client
13 is, has the information that they need to do their job well
14 and to help them make decisions that they feel comfortable
14:48:54 15 with.

16 And so those are the kinds of things that I think
17 I bring to the table in terms of why I would be good at
18 this.

19 I like it. I like those kinds of things.

14:49:05 20 I have been sort of following the Commission's
21 work, to the extent that time permitted.

22 I think I could work with this group, and so
23 that's why I'm interested in this work.

24 CHAIRPERSON MATHIS: Great. Thank you.

14:49:19 25 So, we'll just be asking questions in a

14:49:22 1 round-robin format, no particular order.
2 If anyone would like to kick it off.
3 VICE CHAIR FREEMAN: Madam Chair.
4 We'll stay on the ground. Don't worry.

14:49:31 5 CHAIRPERSON MATHIS: Lift off.
6 Mr. Freeman.
7 VICE CHAIR FREEMAN: Thank you.
8 Your background includes being counsel for the
9 Democratic Caucus and the Legislature, and I believe your
14:49:43 10 response noted that you were an advocate for the Democratic
11 Caucus on redistricting issues in the 1990 census go-around.
12 If I've got that wrong, correct me when I'm
13 finished.
14 But the goal of this Commission, which you know,
14:50:00 15 is, if not the mandate, is for us to be fair, to be
16 independent, to be politically balanced.
17 And the perception for counsel, both from the
18 commissioners themselves and the public, is going to be
19 important.

14:50:18 20 Could you please take a moment and address or
21 allay concerns that we may have or the public may have about
22 your ability to provide this Commission with fair and
23 independent legal advice, and being as specific as you can
24 to cite examples of working with opposing views or opposing
14:50:36 25 counsel with opposing views, feel free to do so.

14:50:40 1 MARY O'GRADY: Okay. Sure. Happy to do so.
2 Drawing from the experience of the '90s, working
3 at the Legislature, I do believe, in response to your
4 question, I can be absolutely fair, impartial. You know, my
14:50:51 5 job is to be a good lawyer, whatever the context, whoever
6 the client, and that's what I do.
7 I try to give good, solid legal advice.
8 My role in the '90s was as one of the four caucus
9 attorneys, and since the decision making then, the policy
14:51:06 10 makers were the legislators, I was advising them on the law
11 as your lawyer will advise you on the law.
12 Although the law was different in terms of the
13 state law and additional developments at the federal level
14 as well.
14:51:21 15 So that was my basic job. Advise them on the law.
16 And then looking at plans and critiquing those plans in
17 terms of how they measured up to the legal standards. And
18 as they make the decisions again, the decision-making
19 process and the legislative body is the 90 numbers, all get
14:51:38 20 together and kind of figure out what they are going to do.
21 In terms of advocate, I didn't make court
22 appearances in that role.
23 It was internal adviser.
24 We did get involved with preclearance process as
14:51:50 25 legislative lawyers, because ultimately the Legislature did

14:51:53 1 agree on a legislative plan that was submitted for
2 preclearance. And it didn't make it through the first time,
3 the Legislature came back and made some modifications, which
4 the Department of Justice again rejected, and then we went
14:52:10 5 on from there.

6 But after the first rejection from the Department
7 of Justice, and once we had a plan, the lawyers at the
8 Legislature were working together, four caucus attorneys, in
9 terms of for the request for reconsideration and the
14:52:24 10 subsequent preclearance submissions. It was a bipartisan
11 effort and a bipartisan plan.

12 And so we all argued together, worked together,
13 and tried to persuade the Department of Justice to approve
14 the plan that had been adopted.

14:52:39 15 In terms of politically balanced advice, my
16 experience with that frankly, I remember at the Legislature
17 laughing that sometimes, you know, a big decision would come
18 down. Roosevelt v. Bishop, a big school finance case when I
19 was at the Legislature, that the Democrats were really happy
14:52:56 20 about and the Republicans were not.

21 I think the lawyers were saying the same thing.
22 It's just that the people's reaction was different. In one
23 caucus it was viewed as good news and in the other caucus it
24 was viewed as not so good news.

14:53:12 25 But the legal device, we all read the case, and we

14:53:16 1 didn't really read back that differently.

2 Although do some lawyers do.

3 Those don't always fall on party lines. Those are
4 just -- lawyers often view things differently.

14:53:25 5 So in terms of bias, I try to give -- I try to
6 read the cases, do the analysis, and give the best legal
7 advice I can.

8 I'm also willing to listen to others, and I think
9 that's healthy.

14:53:37 10 In the legislative type sphere, there are lots of
11 people. In any kind of public policy issue there's lots of
12 people with legal opinions or views on what the body is
13 doing. And I think those are important to be heard, and I
14 will listen to them too.

14:53:55 15 And sometimes that fine tunes your advice and
16 helps you give better advice.

17 Another example at the Attorney General's Office,
18 we worked on AG opinions. And sometimes we got opinions
19 that we knew there were others in the community that may
20 know more about than we did.

14:54:10 21 And so we would let folks know that we're working
22 on this, and if they had input, give it to us. We'll still
23 make our independent judgment, but it's not a bad thing to
24 listen to what others have to say while you formulate your
14:54:25 25 guidance.

14:54:27 1 VICE CHAIR FREEMAN: Thank you. Just sort of
2 building on that.

3 There are some clients who perhaps seek out
4 lawyers who share their political views because they think
14:54:38 5 that might be a more effective advocate or more sympathetic.
6 And I suppose there are some lawyers who may seek out
7 clients who have their own views and seek out clients who
8 have those views because they're pursuing their interest.

9 And you've also worked under a couple of attorneys
14:54:56 10 generals, Janet Napolitano and Goddard and briefly under
11 Mr. Horne.

12 Did you fall under either one of those camps, do
13 you think, or do you reject the construct I've set up
14 altogether?

14:55:10 15 MARY O'GRADY: Two levels of analysis. One at the
16 AG's that I work for and the clients I represented.

17 I've represented Janet Napolitano. I've
18 represented Jan Brewer. A whole bunch of folks across
19 the -- and ultimately -- and often that's more in -- again,
14:55:25 20 my job is to be a good lawyer, and try and give, you know,
21 good legal advice.

22 And in terms of this body, I really do believe
23 that this by Constitution is supposed to be an impartial
24 body here to make good decisions consistent with the
14:55:45 25 constitutional framework.

14:55:47 1 And I am committed to giving -- you know, playing
2 that role in terms of a legal adviser whose responsibility
3 it is to do just that.

4 If that's answer the question.

14:55:57 5 VICE CHAIR FREEMAN: Yeah. Thank you.

6 CHAIRPERSON MATHIS: Other questions?

7 COMMISSIONER McNULTY: Mrs. O'Grady, thank you for
8 coming.

9 MARY O'GRADY: Sure.

14:56:06 10 COMMISSIONER McNULTY: You've had a lot of
11 experience in the preclearance area. Could you talk about
12 what you see as the key issues that we'll be facing putting
13 together our Commission and satisfying the Voting Rights
14 Act?

14:56:19 15 MARY O'GRADY: Well, the basic is keeping your eye
16 on the legal standard of not having a retrogressive effect.

17 In terms of how to get there, and I have read, in
18 preparation for this application, I've brushed up on -- you
19 know, read through all the case law and that sort of things,
14:56:34 20 but I have not started to look at the facts, look at the
21 census numbers, look at what the numbers say.

22 Because as the lawyer I am really focused on the
23 legal preparation piece.

24 And so I view it as one -- in terms of how to help
14:56:51 25 us comply with that, making sure that you're all well

14:56:54 1 briefed on the requirements of Section Five.

2 And both on the law and then understand, since it
3 is a retrogression standard, what's the baseline that's
4 going to be used and understanding that.

14:57:09 5 And so you can know what you need to do to
6 accomplish that.

7 There's also an issue, I think, in terms of
8 preclearance piece, looking at the time line, knowing that
9 you want to make good decisions, you want to make good
14:57:24 10 decisions, but also want to get this done so that we can --
11 so that the State can have its 2002 elections in an orderly
12 way.

13 And I think it will be helpful to, while you're
14 working on the project, to really be starting on the
14:57:39 15 preclearance package.

16 Because a lot of it can be done in advance.

17 The history of preclearance, and there's a lot of
18 boilerplate that you know what it's going to say.

19 So start working on that so that between when a
14:57:55 20 final adoption and submission, you can maybe have that done
21 as quickly as possible, again, with a good work product.

22 So kind of thinking in terms of two layers,
23 understanding the law, the facts, working with the
24 consultants, but also working on the submission so that that
14:58:10 25 can be done as timely as possible.

14:58:17 1 CHAIRPERSON MATHIS: Other questions?

2 COMMISSIONER STERTZ: Madam Chair?

3 CHAIRPERSON MATHIS: Mr. Stertz.

4 COMMISSIONER STERTZ: Ms. O'Grady, thank you for

14:58:21 5 coming. You have a fantastic resume. And thank you for all

6 the hard work you've done for the State.

7 MARY O'GRADY: Thank you.

8 COMMISSIONER STERTZ: Our mandate of looking at

9 criteria includes two really important things, which are

14:58:34 10 communities of interest and competitive districts.

11 Communities of interest by definition has no

12 definition.

13 Competitive districts by definition have brackets.

14 They're bracketed. They're created.

14:58:52 15 How do you look at those two as complementary or

16 conflicting, and how would you advise us from your

17 experience on how to marry those two together?

18 And do you see how the creation of community of

19 interest can be -- as a definition of a community of

14:59:15 20 interest can be crafted?

21 MARY O'GRADY: Interesting.

22 Well, in terms of crafting a definition of

23 community of interest, I think there are definitions that

24 are on the website from last go-round that are at least

14:59:26 25 worth taking a look at for guidance.

14:59:29 1 But I do think that all six factors, well, you
2 have the constitutional requirement, equal population and
3 voting rights, that have to be complied with in relatively
4 absolute, in an absolute sense.

14:59:41 5 Although even there there's some play in terms of
6 community of interests. For example, we saw in the Texas
7 litigation last decade where there was a Section Two
8 violation, because although they had strung together enough
9 Hispanics to come up with a majority minority district, they
14:59:58 10 had in the process destroyed some communities of interest
11 and that sort of thing.

12 So I don't come today to offer a definition of
13 community of interest.

14 But I do think those factors are as the Supreme --
15:00:11 15 as our Supreme Court said, it's really up to you all to
16 weigh those and figure out on a fact specific basis when
17 looking at the plan how you think they ought to best be
18 married or whatever the term would be to come up with a plan
19 that makes sense.

15:00:26 20 I don't think there's an absolute right or wrong.
21 And that's really what we learned from a legal
22 perspective from the Supreme Court.

23 You have to consider them, but how you weigh them
24 is up to the Commission.

15:00:37 25 COMMISSIONER STERTZ: How you weigh that, which is

15:00:39 1 a very movable target, very creative, with lots of different
2 influences coming from lots of different directions, about
3 how to create communities of interest, how do you weigh that
4 against competitive districting?

15:00:53 5 MARY O'GRADY: Well, again, I don't know that I
6 would use the word weighing against, but in terms of the
7 balancing --

8 COMMISSIONER STERTZ: Balance, yes.

9 MARY O'GRADY: -- that will be the ultimate chore
15:01:03 10 of the policy makers, to figure out when they look at the
11 map, what -- how they want to best achieve the
12 constitutional objectives in terms of competitiveness,
13 communities of interest, physical boundaries, and all the
14 things that the Constitution will allow.

15:01:22 15 That may not be the definite answer you'd like,
16 but, again, I think what the State Supreme Court says that
17 those are the kind of policy calls that are up to the policy
18 makers es to make in terms of weighing those.

19 I do think in terms of legal guidance it's clear
15:01:36 20 that -- and the representations of the prior Commission made
21 to the Supreme Court, competitiveness is part of the mix.
22 It's not a secondary goal. It's part of the mix with the
23 other goals.

24 And it should be part of the up front evaluation
15:01:50 25 of the districts, not something that's delayed until, you

15:01:52 1 know, a later phase.

2 I think that's clear from the cases in terms of
3 the approach.

4 COMMISSIONER STERTZ: Thank you.

15:02:02 5 VICE CHAIR HERRERA: Madam Chair.

6 CHAIRPERSON MATHIS: Mr. Herrera.

7 VICE CHAIR HERRERA: Ms. O'Grady, thank you for
8 being here. Your resume is really impressive.

9 I believe that all of them are partisan.

15:02:16 10 There's not -- I think, just my opinion, that
11 we've been focusing on the Democrats, but I think all of the
12 Republicans have issues that I would see as being partisan
13 as well as the Democrats.

14 So how would you, considering two Republicans and
15 an Independent and two Democrats, how would you win over or
16 make sure the Republicans and also the Independent feel
17 comfortable working with you if you were indeed the one
18 chosen?

19 MARY O'GRADY: Well, assuming I won over them to
15:02:47 20 get the contract, in terms of winning them over in practice
21 it would be by performance.

22 The same way in those controversial cases that we
23 represented, say in Prop 200, for example, where I worked
24 for an attorney general who had gone -- come out against
15:03:02 25 Proposition 200, and I am defending it in court, and the

15:03:05 1 question from the supporters was can't you do your job.

2 The way we answered that question was by doing our
3 job.

4 And so ultimately the court, you know, is what are
15:03:14 5 you talking about, they're doing their job.

6 That's really the way you demonstrate it and you
7 win people over, by doing what a good lawyer is supposed to
8 do.

9 And certainly the Commission as a whole, give them
15:03:27 10 the best legal advice that you can.

11 VICE CHAIR HERRERA: Thank you.

12 CHAIRPERSON MATHIS: I have a question.

13 So as the sole Independent on this Commission, I
14 have sort of a partisan question.

15:03:40 15 If selected to represent the Commission, do you
16 anticipate a time when you may need to provide partisan
17 counsel to anyone on the Commission who shares your
18 political affiliations? And, if so, how would that work and
19 who would be privy to that?

15:04:03 20 MARY O'GRADY: I don't know what would classify as
21 partisan counsel.

22 You know, you're here to help the people make
23 decisions.

24 I know in the Legislature, going back to my
15:04:11 25 experience there -- and some of it would be I want to follow

15:04:16 1 the standards that you all are comfortable with. Truly in
2 the Legislature redistricting process, they all should have
3 had their own lawyer, because there were so many conflicts,
4 because it's sort of a every person for himself or herself
15:04:29 5 sort of situation in terms of coming up with lines for their
6 district.

7 And so there was a lot of situations where
8 legislator A would come and ask you questions, and you knew,
9 because you know enough of the facts, that legislator A
15:04:45 10 was -- the intention was to really hurt legislator B.

11 And that's where that was headed.

12 But I would answer the question, give my legal
13 advice to legislator A, and how that played out between the
14 two of them is how it played out between the two of them as
15:05:04 15 a policy and negotiation matter. But I would try to, you
16 know, answer the questions.

17 In the legislative arena, too, see how people --
18 how it works with this Commission, sort of have some
19 confidentiality. If someone talks to you about their idea
15:05:19 20 or proposal, you don't go and tell, you know, the other
21 person their idea.

22 You're helping -- you're giving them the advice to
23 help them, and then they could do with it what they do with
24 the information is their business.

15:05:36 25 From the lawyer's perspective, you do need to be

15:05:40 1 somewhat careful. I think that's why it helps to work with
2 the Commission and know what the standards are. Well, I
3 talked to Mary, and she said X.

4 Well, not exactly. Or whatever.

15:05:50 5 So I think you need to work on it, so that there
6 everybody works together and they know that they can feel
7 comfortable consulting the lawyers.

8 Even if, even if the Commission sticks with the
9 one Democrat, one Republican structure, I would hope that
15:06:04 10 it's not -- it doesn't seem like, you know, everyone should
11 be lawyers for the Commission, and it shouldn't be broke
12 down to some sort of partisan basis.

13 CHAIRPERSON MATHIS: Thank you.

14 VICE CHAIR FREEMAN: Can I follow up on that?

15:06:17 15 CHAIRPERSON MATHIS: Sure.

16 VICE CHAIR FREEMAN: I want to make sure I
17 understood you.

18 Are you saying that if retained by the Commission
19 you would give individualized advice to the commissioners?

15:06:26 20 MARY O'GRADY: I would want to understand what the
21 ground rules are that the Commission sets. Whether just
22 advice at the meeting or if someone talks to us between
23 meetings, I would want to understand what the ground rules
24 are that the Commission sets.

15:06:34 25 So that, you know, so that Commission members

15:06:37 1 understand and the lawyers understand how we are supposed to
2 function.

3 VICE CHAIR HERRERA: Madam Chair.

4 CHAIRPERSON MATHIS: Yes, Mr. Herrera.

15:06:49 5 VICE CHAIR HERRERA: You've answered questions
6 very well. And what I want you to do for me and the
7 Commission is summarize why we should hire you over the
8 other individuals.

9 MARY O'GRADY: Well, I've talked a lot about me.
15:07:01 10 And I do think I have -- I'm really here to sell myself and
11 not talk about everybody else.

12 But I do think I have a mix of skills as an
13 adviser and as a litigant who's seen things all the way
14 through the Supreme Court that I can help the Commission.

15:07:24 15 One of my things I think I'm good at is strategic
16 thinking, where you're advising here and looking long term,
17 and you're seeing how this plays out at the DOJ level, and
18 if it goes to litigation, you know, how it plays out over
19 the long haul.

15:07:40 20 I think I'm good at thinking that way.

21 And I think my experience both at the Legislature
22 and significant constitutional legislation at the Attorney
23 General's Office helps with that sort of thinking.

24 And I think those are some of the things that make
15:07:56 25 me well suited for this work.

15:08:01 1 I had some additional thoughts on Mr. Freeman's
2 earlier question on this ideological differences.

3 I do think that sometimes when clients prefer a
4 lawyer who's ideologically blind, they're there to get the
15:08:14 5 true belief. Some have their own blind spots, the same
6 blind spots for the lawyer and the client.

7 And one of the things that I think is helpful is
8 having people who may not agree with you, you know, vet so
9 at the end of the day you really do have analysis possible.

15:08:36 10 And, you're not likely -- you're often likely to get judges
11 who aren't of the same view.

12 And so you want someone who can talk to the judges
13 who may think this is a horrible idea.

14 So I think, again, keeping your eye on good
15:08:53 15 lawyering really serves everybody well, even though it's not
16 necessarily what everybody wants up front.

17 VICE CHAIR FREEMAN: Madam Chair.

18 CHAIRPERSON MATHIS: Yes, Mr. Freeman.

19 VICE CHAIR FREEMAN: Perhaps building upon that is
15:09:05 20 to -- perhaps one of the blind spots, if there are any, you
21 might be working with a complementary Republican counsel.

22 And you know the other applicants that we are
23 interviewing.

24 Can you share with us some of your thoughts about
15:09:25 25 their skills and ability, and tell us if you have any issue

15:09:28 1 about working with them as co-counsel.

2 MARY O'GRADY: Well, let me see.

3 I guess I'd -- I'm not necessarily comfortable
4 critiquing my fellow applicants. But in terms of -- I will
15:09:45 5 work with whoever, and I can work with whoever the
6 Commission chooses to retain.

7 VICE CHAIR FREEMAN: Fair.

8 VICE CHAIR HERRERA: Quick follow-up question.

9 CHAIRPERSON MATHIS: Commission Herrera.

15:09:56 10 VICE CHAIR HERRERA: Make life a little easier.
11 If you had to vote, which Republican would you select to
12 work with you, if you were the attorney?

13 MARY O'GRADY: I'm going to be evasive.

14 A lawyer for policy-making body, part of their
15:10:11 15 role is not to have the Commission shift decisions to them,
16 but really are theirs to make.

17 So I respect that task is up to you. And I can
18 work with whomever, if chosen, I can work with whomever you
19 might choose.

15:10:26 20 VICE CHAIR HERRERA: I'll call you later and ask
21 you.

22 COMMISSIONER STERTZ: Madam Chair?

23 CHAIRPERSON MATHIS: Yes.

24 COMMISSIONER STERTZ: As looking over our schedule
15:10:35 25 over the next couple -- could be next couple hours, that we

15:10:38 1 would be selecting our counsel for the next few weeks and
2 selecting our mapping counsel.

3 You touched briefly on the preclearance sort of
4 boilerplate stuff being crafted that takes a bit of time out
15:10:53 5 of the schedule.

6 How do you see the next 30, 60, 90, 120 days
7 mapping out?

8 MARY O'GRADY: Working off the schedule from
9 before, the first substantive task after you get past the
15:11:07 10 hiring the mapping folks is the grid.

11 And last time that seemed to take about 30 days.

12 And I'm wondering if that can be moved along any
13 faster this time around in terms of being able to trim some
14 time off there.

15:11:21 15 But moving fairly quickly to the grid issue and
16 getting that done, as I think it's going to take the mapping
17 people to input in term of a realistic time frame.

18 And to the extent there are policy choices to
19 make, my hope is they can be made relatively quickly in
15:11:41 20 terms of giving them the direction that they can get that
21 done.

22 So, getting that kind of off the table, and then
23 moving to the more substantive work, and the Commission then
24 decides, I think, in its discretion, what kind of public
15:11:57 25 hearing schedule it wants and when it wants to do them, you

15:12:01 1 know, and how many.

2 So that's -- in terms of my thoughts on public
3 hearings, just keeping your eye on the ball and why you're
4 having them, I think one for the Voting Rights Act, it's
15:12:16 5 important to get that input from the minority communities in
6 terms of the impact on their communities.

7 I think apart from that it's helpful to you all to
8 make good decisions, so that you understand the state and
9 feel like you understand the state. And it's helpful in
15:12:35 10 terms of transparency and the confidence of the public in
11 the process to have, I think, that sort of exposure, that
12 is, comments on how the people in Tucson appreciated the
13 meetings that were held in Tucson, and I would think that
14 the outlying community would appreciate that as well when
15:12:51 15 the time comes.

16 So when you schedule it, keep your eye on why are
17 we doing this, how much do we even need to do them.

18 So at some point we have some public here, I would
19 assume do that after the grid.

15:13:02 20 There's also important educational time there, I
21 think, for the Commission and Commission staff, and the
22 public, on the legal requirements, federal and state, and
23 then the numbers.

24 Getting that threshold for Section Five
15:13:19 25 established, so you know what needs to be accomplished and

15:13:23 1 really have a good grasp of the mission ahead when it comes
2 to modifying the lines.

3 And certainly once the lines are modified more and
4 the Commission has a plan that it's comfortable with
15:13:35 5 adopting and going to that 30-day notice period.

6 And, again, you're looking at all the
7 constitutional factors when coming up with that map that
8 goes out in the notice period for additional comment.

9 And how many, where, and when, I think it's just
15:13:56 10 voting rights, you doing your job, and public confidence are
11 the types of things I think matter.

12 And cost. Hopefully as cost in association with
13 those other matters.

14 COMMISSIONER STERTZ: So as a follow-up to that,
15:14:08 15 as legal counsel for the Commission, or as co-legal counsel
16 for the Commission, working together in concert with the
17 five of us and the co-legal counsel and the mapping
18 consultant, the documentation and creating the legacy
19 documents for what we're talking about are extremely
15:14:29 20 important, how do you see your role in that participation
21 and creation of those documents, and, for my Canadian
22 friends, how do you help us keep our stick on the ice, or in
23 Wisconsin, because to say how do you help us keep between
24 the ditches in moving down that path.

15:14:53 25 MARY O'GRADY: When you say legacy document, are

15:14:54 1 you talking about like draft maps, or --

2 COMMISSIONER STERTZ: Everything that is going to
3 support our, our, our packet going to DOJ and that is going
4 to allow us to prevail in the anticipated litigation.

15:15:09 5 MARY O'GRADY: I see in terms of that upfront work
6 on the preclearance, in addition to filling in your
7 boilerplate, is working with staff to collect and organize
8 the accompanying documentation. So starting that sort of up
9 front.

15:15:24 10 And there's two layers, as the work being that
11 throughout, so it would be, you know, the minutes, any
12 handouts, whatever written materials there are, you know,
13 meeting notices, who gets notices of the meetings, what
14 staff has, we can go over that so we're collecting the kind
15 of things that DOJ is going to be interested in.

16 As a second layer of the legacy issue is the
17 immediate legal means, but in the long term means of the
18 next Commission, and thinking on both tracks of doing what
19 you need to do now and leaving a good trail so that it helps
15:16:03 20 the next Commission, you know, do its job as efficiently as
21 possible.

22 COMMISSIONER STERTZ: Thank you.

23 CHAIRPERSON MATHIS: Ms. McNulty.

24 COMMISSIONER McNULTY: Thank you.

15:16:18 25 You mentioned other staff in your proposal. Can

15:16:21 1 you tell us what the role of your associates would be and
2 whether you could be available to us all the time for the
3 next six months?

15:16:32 4 MARY O'GRADY: Well, I have to take my son to
5 college in August, and I, you know, have things I do in
6 life, but other than that, I -- and I have some other work
7 to do, but I understand that this is important and time
8 sensitive, and I will make sure that happens.

15:16:51 9 In terms of the associates at -- and when I wanted
10 to decide I wanted to do this work and I was going to my new
11 law firm, and I -- as a footnote, the other thing aside for
12 me as to why I think I am a good candidate is I work for a
13 great law firm and I have that behind me and its support in
14 doing this work.

15:17:07 15 I think that helps a lot.

15:17:27 16 I was figuring availability to the Commission kind
17 of needs to be my personal priority, and I was hoping to
18 train and on that preclearance start-up work was figure that
19 that would be helpful for the associate to work subject to
20 any coordination with the other law firm, you know, so that
21 we're making the most efficient use of our time.

22 But I figure that my priority needed to be
23 availability.

15:17:43 24 There may be also more detailed research products
25 that would be probably for the associate, but I wanted to

15:17:46 1 make her priority getting off to the right start with the
2 preclearance issues.

3 COMMISSIONER McNULTY: Thank you.

4 CHAIRPERSON MATHIS: I have one question.

15:18:01 5 With regard to DOJ, do you have any current
6 relationships, either currently at this administration's DOJ
7 or past, who would be helpful to you in this role if you
8 were selected as representative counsel?

9 MARY O'GRADY: It's hard.

15:18:25 10 I do -- have dealt with people who are still at
11 DOJ and had meetings with people who are, you know, lawyers
12 in the administration somewhere.

13 Actually who would be helpful and wouldn't be
14 helpful, I'm not sure.

15:18:37 15 The name Audrey Payne was mentioned at one of
16 these meetings as an analyst in Arizona. She's often
17 calling our office for information on our preclearance
18 submissions.

19 But that's -- you know, it's not a real close
15:18:49 20 personal relationship. And I don't know if they -- if
21 they're tracking the preclearance work to a separate
22 specialized group of folks.

23 But I think it makes sense to make those
24 connections too.

15:19:05 25 And the other things in terms of DOJ, one of the

15:19:08 1 benefits of not being the first one out of the blocks is you
2 can see what's going on with some of the other states and
3 following -- looking at the responses to their Section Five
4 submissions that are going on.

15:19:19 5 There's at least one state with both Section Five
6 preclearance plus going to D.C. District Court at the same
7 time, and we'll see how that shakes out.

8 And whether that, you know, is viewed as a good
9 strategy.

15:19:33 10 But I think it's helpful to keep an eye on what's
11 going on there. And to the extent we can reach out, I would
12 certainly do so.

13 And to make sure everything is formatted, you
14 know, in a way that's most useful for them.

15:19:48 15 CHAIRPERSON MATHIS: As a follow-up to that, do
16 you think this DOJ is different with the administration
17 change than the last DOJ? Any comments on that?

18 MARY O'GRADY: I haven't seen enough -- well,
19 honestly the last DOJ was in some ways different than
15:20:12 20 previous DOJ's.

21 I've been working with the DOJ's since the early
22 '90s.

23 We got expedited preclearance for Proposition 200,
24 without question. I thought there would at least be a
15:20:22 25 question phase, so that was a surprise.

15:20:30 1 And so that was -- so I don't have a good sense of
2 whether this really is different.

3 I know there's been talk that maybe this is
4 different, and maybe that's why you need to go to the
15:20:40 5 D.C. District Court, but I don't have a sense of that
6 really.

7 CHAIRPERSON MATHIS: Thank you.

8 Any other questions?

9 (No oral response.)

15:20:54 10 CHAIRPERSON MATHIS: Hearing none, thank you very
11 much. Thank you. Appreciate your time.

12 Let's take a recess for five minutes. The time is
13 3:21.

14 (Brief recess taken.)

15:28:09 15 CHAIRPERSON MATHIS: I think the recess is over.
16 It's 3:28 p.m., and we have one more interview, the Rose Law
17 Group.

18 Mr. LaSota is here.

19 And we apologize, first of all, for running late
15:28:24 20 today, and thank you for your patience and flexibility with
21 us on this.

22 TIM LASOTA: Thank you, Madam Chair. Mr. Bladine
23 was kind enough to call me, so I haven't been sitting out
24 there since 2:45.

15:28:40 25 CHAIRPERSON MATHIS: Good. I'm so glad to hear

15:28:40 1 that.

2 We've allowed the other candidates to give any
3 kind of introductory remarks they wanted to, if they have
4 any. You don't have to do so. Otherwise we'll ask you
15:28:52 5 questions.

6 TIM LASOTA: Okay. First of all, I'd like to
7 thank you for giving me the interview today. And I know
8 it's been a very long day for all of you. I can assure you
9 it's been a long day for me in anticipation of this
15:29:04 10 interview.

11 So I'm very glad to be here, very excited about
12 the possibility of doing work for the Redistricting
13 Commission.

14 All of you have been chosen -- you know, this is
15:29:14 15 something that only comes around once every ten years, so
16 the next time I might be standing before the Commission
17 asking to be their lawyer would be another ten years from
18 now.

19 I'm very happy to be here, very excited about the
15:29:29 20 possibility.

21 And over the last -- well, my entire professional
22 career, I've really lived and breathed election law.

23 My position now I've got a bipartisan group of
24 clients that I serve and enjoy serving them very much.

15:29:42 25 Phoenix Councilman Sal DiCiccio, a subject in a

15:29:46 1 recall campaign, and he's retained me to help the committee
2 fighting that.

3 Senator Robert Meza, who's a Democrat obviously
4 has just retained The Rose Law Group, and I am happy to be
15:29:57 5 serving him.

6 I have private sector clients. An interest
7 obviously in this process, redistricting.

8 They want to know about Section Five, Section Two,
9 Voting Rights Act things, and just kind of walk through the
15:30:07 10 process.

11 And there's even a referendum I'm working on
12 keeping a Quik Trip out of a Phoenix neighborhood as we
13 speak. So that's a citizen referendum.

14 Previously worked at the City of Scottsdale. I
15:30:23 15 was the mayor's chief of staff there.

16 I'll be perfectly blunt. The mayor and some of
17 the council members didn't have a tremendous amount of
18 confidence in the city attorney at that time. It's a new
19 city attorney now, so I came up with this today. Shadow
15:30:37 20 city attorney. Not really, but, I mean, they relied on me
21 to provide some advice on them, conflict of interest laws,
22 public records, open meetings, even redistricting.

23 In Scottsdale there was an effort a few years ago
24 to have a -- to put districts in Scottsdale. It failed, but
15:30:54 25 ever since that's been a topic of conversation.

15:30:56 1 The mayor didn't like it, so it was my job to arm
2 him with what he needed to essentially beat back efforts to
3 redistrict.

4 They didn't really go very far this time.

15:31:07 5 You know, a lot of it involved having to do things
6 you're going to have to do. Section Five submission for
7 preclearance.

8 Also had to work to get a diverse group of people
9 together. You know, the mayor -- mayors in Arizona don't
15:31:23 10 have a lot of power. By law. They're mainly -- you know,
11 they have a vote, and getting things done requires a
12 governing majority, which is I think there's a good
13 corollary for this position here.

14 There's five members here. And to get things
15:31:38 15 done, you got to bring people together and move forward.

16 You can't really just serve one person. You got
17 to serve the group and the individuals who comprise that
18 group.

19 Before that I worked for the Maricopa County
15:31:49 20 Attorney's Office.

21 I got to know Helen Purcell and Karen Osborne very
22 well. Advise the count attorney on election matters as they
23 come up.

24 Before that I was in the private sector and also
15:32:01 25 did election law there in various forms.

15:32:05 1 Rose Law Group, we've got an extremely strong
2 litigation department. The firm is very excited about the
3 possibility of getting the work for the Redistricting
4 Commission.

15:32:16 5 You know, I think in terms of the job is obviously
6 to produce a good set of maps and to make sure those maps
7 survive legal scrutiny that will inevitably follow.

8 And I think our job would be to help you in that
9 process.

15:32:33 10 And we obviously have the experience of last time.
11 You will operate under different rules this time than they
12 operated under before.

13 The law always changes. And I think we have the
14 benefit of experience, and the goal probably ought to be try
15 and do it better, try to hit all of those six goals that the
16 citizens of the state of Arizona have set out for you to try
17 to achieve in redistricting.

18 So with that, I'd be happy to answer any
19 questions.

15:33:00 20 CHAIRPERSON MATHIS: Thank you.

21 Any questions, commissioners? Who'd like to start
22 off?

23 VICE CHAIR FREEMAN: Do I go in my traditional
24 pole position?

15:33:14 25 CHAIRPERSON MATHIS: Mr. Freeman.

15:33:15 1 VICE CHAIR FREEMAN: Thank you, Mr. LaSota, for
2 coming down and meeting with us today. And sorry about the
3 delay.

4 Your background and your firm's background
15:33:27 5 includes representing parties and groups that some may
6 regard as being partisan one way or another.

7 It's the goal and mandate of this Commission to be
8 fair, to be independent, to be balanced politically.

9 Could you take a moment to discuss with the
15:33:50 10 commissioners, and for the public's benefit, and allay any
11 concern anyone might have about your ability to provide this
12 Commission with fair and independent legal advice, your
13 firm's ability as well, and using as many specific examples
14 as you might be able to marshal.

15:34:11 15 TIM LASOTA: Thank you, Commissioner Freeman. And
16 I think that's certainly a good question.

17 It's true that any -- that most law firms, most
18 individuals who apply for a position like this are going to
19 have some kind of identity in terms of, you know, they're
15:34:23 20 labeled a Republican or a Democrat.

21 I certainly have no doubts about our ability to
22 serve the Commission.

23 I think during my legal career I've served both
24 Democrats and Republicans. Certainly there has been more
15:34:36 25 Republicans on my resume.

15:34:38 1 But, you know, the reason Democrats have been
2 willing to hire my firm and me is the fact that they
3 have confidence in our ability to provide them with legal
4 advice.

15:34:50 5 They're the client.

6 And if you can't accept a client -- if you can't
7 do what the client wants you to do, you ought not to take on
8 the client.

9 I believe that firmly.

15:35:02 10 Here the people set this Commission up for a
11 reason. They wanted to take the politics out of
12 redistricting to the extent possible.

13 They wanted an independent Commission.

14 They wanted that six criteria enacted, to be taken
15:35:19 15 into account when drawing maps.

16 And if I didn't think I could serve those -- put
17 aside any personal interest or personal politics I had, and
18 instead serve the Commission and the goals of the
19 Commission, I certainly wouldn't have been here.

15:35:36 20 VICE CHAIR FREEMAN: Thank you.

21 CHAIRPERSON MATHIS: Other questions?

22 COMMISSIONER McNULTY: Could you talk about your
23 experience in the preclearance and voting rights area and
24 what you think the most important issues are that we're
15:35:52 25 going to face?

15:35:53 1 TIM LASOTA: Yes. And thank you,
2 Commissioner McNulty, for that question.

3 In terms of preclearance, my experience has
4 essentially been -- and I'll admit freely that I haven't
15:36:04 5 submitted a preclearance to the Department of Justice, but
6 my experience has been in describing the process to others.
7 First of all, to Mayor Lane in Scottsdale to basically --
8 that was one of his big arguments for why we shouldn't have
9 districts in Scottsdale, because if you don't have districts
15:36:21 10 then you don't have to go through the whole redistricting
11 every ten years.

12 So I am -- I have good familiarity with the
13 process.

14 And clients now want to know about, you know,
15:36:31 15 preclearance Section Five, what's going to happen this time,
16 is it going to be like last time where it takes a long time.
17 And the Justice Department ultimately says no.

18 I think this time around I think the -- I'm going
19 to go ahead and make a prediction.

15:36:46 20 Obviously you got to give them all the information
21 they need. You have to be completely on top of that. But,
22 I think the rumors that there's some nervousness among some
23 that the Supreme Court will take a hard look at the Voting
24 Rights Act, I think that there's some truth to that, and
15:37:04 25 that may cause -- you know, we might have a little bit less

15:37:09 1 push back from the Justice Department based on that fact.

2 We also have a different administration, and
3 frankly the rules have changed.

4 You know, we've got Georgia v. Ashcroft out there.

15:37:20 5 For example, I don't think you get the letter that
6 you got from the Department of Justice today. I don't how
7 they could write that based on what they said in Georgia v.
8 Ashcroft that, you know, there are multiple ways of ensuring
9 that there's no retrogression and minority rights are
10 protected.

11 It's not just, you know, what the court said.

12 It's not just lumping every single minority you can find
13 into a district. Because at some point, what does that
14 become? That becomes packing, which is an evil that the

15:37:49 15 Voting Rights Act obviously thought to -- sought to get rid
16 of.

17 So those are my thoughts.

18 It's obviously a critical step in the process.

19 And, you know, last time it went right up until
15:38:02 20 the end, and they had to go to the court obviously to get
21 the preclearance they needed.

22 But I hope that answers your question.

23 COMMISSIONER McNULTY: It does. Thank you.

24 COMMISSIONER STERTZ: Madam Chair.

15:38:14 25 CHAIRPERSON MATHIS: Mr. Stertz.

15:38:16 1 COMMISSIONER STERTZ: That feeds into my question
2 regarding when you were talking about packing, two of the
3 six criteria are communities of interest and competitive
4 districts.

15:38:24 5 Now, communities of interest by nature of
6 definition has no real true definition.

7 Competitive districts by nature of definition is
8 truly numerical.

9 How do you look at those two as they compare
15:38:37 10 against each other, and how do you see those in ranking of
11 comparison and burden of one on top of the other or in
12 complement with one another time?

13 TIM LASOTA: Thank you, Commissioner Stertz.

14 Yes, obviously are two of the criteria, and the
15:38:57 15 Supreme Court said that one's not more important than the
16 other, you have to consider them all.

17 And, that's obviously -- that's where the rubber
18 hits the road with this Commission, because you will have
19 times when, you know, some of those, whether they're at odds
15:39:09 20 or whether people tell you they're at odds, is -- you know,
21 that will come up.

22 I think it's your job to harmonize those things
23 and to make sure they don't interfere with each other.

24 I mean, the last Commission, it's funny you say
15:39:26 25 the definition of competitive district, that's numerical,

15:39:28 1 but I would say there's no set definition of that.

2 A lot of people consider five points to be sort
3 of, you know, that's pretty competitive.

4 But, you know, we now have, I think, either four
15:39:40 5 or five competitive districts. It depends on how you ask.
6 That's fewer than we had in 2000.

7 I think that your job is to try to, try to fulfill
8 the will of the voters in setting six criteria.

9 They want compact districts. They want to respect
15:39:59 10 communities of interest. You have the Voting Rights Act,
11 and all of those things.

12 But at the end of the day, they want you to do
13 all that stuff and they want to have some competitive
14 districts.

15:40:06 15 So I think that's -- and probably I would hazard a
16 guess, they probably in a 4 out of 30 is -- I was never much
17 of a math, well, I shouldn't have just said that -- but, I
18 mean, well, that's 1 -- 5 out of 30 is one sixth, what's
19 that, less than 20 percent.

15:40:25 20 So I do think they -- the public when they pass
21 that they had more in mind than that.

22 Obviously it's -- you know, there are some things
23 that kind of you have to do that prevent, you know, from
24 having total competitiveness of districts.

15:40:40 25 COMMISSIONER STERTZ: As a follow-up to that

15:40:41 1 question, do you think that the goal of competitive
2 districts overcomes the nature of communities of interest?

3 TIM LASOTA: I would say, no, I don't think either
4 of them overcome the other.

15:40:58 5 I think that's the job of the Commission is to try
6 to get, try to get all those things into the basket and try
7 to give the people of Arizona all six of the criteria that
8 they set forth when they passed this initiative in 2000.

9 So I wouldn't say that one's superior or inferior.

15:41:15 10 And I know what the court said, that they're all
11 important.

12 I would say, you know, the one thing, we do have
13 the Voting Rights Act, and you can't get around the fact
14 that that's, you know, under our system, that's superior
15:41:26 15 law, because it's federal.

16 But, you know, that's -- I don't think it's your
17 job to sort of -- to weigh or to assign importance to the
18 other.

19 I think it's your job to assign importance to them
15:41:40 20 all and to try to give the public all six of those things in
21 one basket to the extent possible.

22 COMMISSIONER STERTZ: Thank you.

23 CHAIRPERSON MATHIS: Other questions?

24 VICE CHAIR HERRERA: Madam Chair.

15:41:53 25 CHAIRPERSON MATHIS: Mr. Herrera.

15:41:55 1 VICE CHAIR HERRERA: Thank you for being here.
2 You have been getting some phone calls on our behalf, so I
3 appreciate you doing that work.

4 TIM LASOTA: My pleasure.

15:42:00 5 VICE CHAIR HERRERA: I do appreciate hearing from
6 both sides of the aisle. Obviously you're a Republican, but
7 you work for a Democrat. Thank you for having called me.

8 On your current clients listing, a couple of them
9 have interest in the redistricting. How does that affect
10 your job if you were indeed hired as our Republican legal
11 counsel?

12 TIM LASOTA: Thank you, Commissioner Herrera.

13 Let me just say at the outset, I probably should
14 have put this up. You reminded me of something that maybe
15 should have gone on the RFP, and that is that I do have a
16 lot of Democrat friends. My wife is a Democrat, and her
17 uncle is Congressman Pastor.

18 When I filled out the conflict of interest part, I
19 was thinking really legal conflicts of interest. I don't
15:42:47 20 think it's a legal conflict of interest. I don't think it
21 compromises me at all, but I did want to mention that
22 because frankly I forgot to put it on my application.

23 Just wasn't thinking along those lines at all,
24 because it isn't really a legal conflict of interest.

15:43:03 25 We do have some clients, their interest has

15:43:06 1 largely been sort of at the outset of the process. In other
2 words, if they don't -- if they see the districts come out
3 and they don't like the districts, they're not going to be
4 the ones calling me up and say, sue the Redistricting
15:43:17 5 Commission to, in other words, to invalidate the districts.

6 We have provided advice on the process that you
7 will go through, the preclearance, Section Five, things like
8 that.

9 I don't see them at all as a conflict because I
10 think the role is a small one.

11 If we were to get this work, we probably wouldn't
12 continue to serve any private clients on these exact
13 questions, I wouldn't think, because I would want to keep
14 them completely separate.

15:43:51 15 In other words, if they wanted to know more
16 information about the redistricting process at the state
17 level, you know, we advise them on county redistricting
18 also, which is a completely different animal, I don't think
19 there is any conflict there, but I would commit to
15:44:05 20 abstaining from providing legal advice to any other clients
21 on redistricting if we were to get this contract.

22 VICE CHAIR HERRERA: Quick follow-up.

23 These individuals that you have currently as
24 clients that have an interest in redistricting, you would
15:44:19 25 still keep them on, you don't see that as a conflict;

15:44:21 1 correct? These are minor?

2 TIM LASOTA: Yes. Well, they're pretty minor.
3 And, you know, those are clients that we serve, at least
4 most of them, we serve in other roles also. We do provide
15:44:32 5 election advice, and, you know, so we would keep them for
6 those purposes.

7 If they want to know about Pinal County going from
8 three supervisors to five, which because of their population
9 they're doing that, you know, I don't think that's a
15:44:45 10 problem. But if they want to know, you know, well, look,
11 you know, we really need this district to look this way and,
12 you know, can you help us provide some testimony to provide
13 to the Commission, I think that's definitely out of bounds,
14 and that's not something that we would advise them on going
15:45:00 15 forward.

16 VICE CHAIR HERRERA: Thank you.

17 CHAIRPERSON MATHIS: I'll ask a question now.

18 As the lone Independent on the Commission, I have
19 a partisan question, kind of continuing in this vein.

15:45:14 20 If selected to be counsel for us, do you
21 anticipate a time when you may need to provide counsel to
22 only those members of the Commission who share your
23 political affiliation?

24 TIM LASOTA: Thank you, Madam Chair. That's an
15:45:28 25 excellent question.

15:45:29 1 I think the role of the lawyer for the Commission
2 is to be the lawyer for the Commission, but to also serve
3 people who are members of the Commission with their specific
4 questions.

15:45:42 5 I don't think that it's proper for the attorney
6 to -- I mean, I know you've talked about maybe just hiring
7 one counsel. I don't know what you will do ultimately.

8 But, you know, you do -- it's sort of a balancing,
9 if you do decide to do what you did last time and hire a
15:45:59 10 Republican and a Democrat, I still don't think it's proper
11 for the lawyer to identify himself as just the lawyer for
12 the Republicans.

13 For one thing, it would leave you without counsel,
14 which is maybe why you asked the question and maybe why it's
15:46:13 15 especially appropriate.

16 CHAIRPERSON MATHIS: That's right. I want to know
17 what's in it for me.

18 TIM LASOTA: You know, these questions aren't at
19 all uncommon in these types of bodies, because even though,
15:46:24 20 you know, there's a partisan breakdown here, you know,
21 whether it's a city council, you know, there's going to be
22 the same at city council.

23 So I think the best thing is the Commission comes
24 first. And, you know, people have individual questions,
15:46:37 25 whether it's Commissioner Herrera or you or

15:46:40 1 Commissioner Freeman, you try and help them as best you can
2 and maintain your credibility among the whole body.

3 CHAIRPERSON MATHIS: Thank you.

4 VICE CHAIR HERRERA: Follow-up question, with
15:46:52 5 regards to partisanship.

6 I looked at your resume, and you mainly deal
7 with -- you've dealt with Republican either lawmakers or
8 clients, and you've have some experience dealing with
9 Democrats.

15:47:07 10 Can you elaborate on your experience working with
11 the other side of the aisle?

12 I want to be comfortable working with you as a
13 Democrat. So put me at ease.

14 TIM LASOTA: I'll do my best.

15:47:20 15 And there's no question. I'm a Republican, I have
16 a Republican resume, and I certainly don't run from that
17 fact.

18 But, you know, I'm not such that people who are
19 Democrats lack confidence in me to do the job they hire me
15:47:31 20 to do.

21 For one thing, I mean, I've done a fair amount of
22 work at the Legislature, and oftentimes you will need -- I
23 know now it's kind of gotten -- this is the most partisan
24 I've ever seen. And I don't mean that necessarily in a
15:47:45 25 negative sense. But, I mean, if you have a Republican

15:47:47 1 proposition, it really is hard a lot of times to even find
2 one Democrat vote and vice versa.

3 But, you know, back a few years ago, you would
4 sometimes need Democratic votes for some of your initiatives
15:48:00 5 or bills. And I learned early on it was never a good idea
6 to burn a bridge among Democrats even if I were a
7 Republican.

8 Now, it's been a while, but Jessica Florez, she
9 was a Phoenix city councilwoman, you know, she had no
15:48:16 10 problem hiring me as her election attorney, because I think
11 she had confidence that when it comes to an attorney-client
12 relationship I put that relationship and the ethical duties
13 that go with that and I give my all to the client.

14 There are some people I would not take on as a
15:48:35 15 client. I won't name them.

16 But I think that's where you draw the line as an
17 attorney. If you can't serve the client, you have no
18 business taking them on.

19 And I think I've been able to instill that
15:48:45 20 confidence.

21 Obviously Senator Meza has signed up also.

22 You know, there are a number of Democrats that
23 I've helped.

24 And I don't know if I should mention names, but I
15:48:55 25 will say that there are a number of Democrats who put, you

15:48:59 1 know, sort of their utmost confidence in me because they
2 know I'm a person of character who, you know, if they tell
3 me something, whether it's in a professional capacity or a
4 personal capacity, that if it's something they don't want me
15:49:10 5 talking about, they know they can talk -- they can come to
6 me in confidence.

7 And I wouldn't have that if I were just a partisan
8 Republican.

9 VICE CHAIR HERRERA: A quick follow-up question,
15:49:21 10 if I may.

11 Other than having money to pay you, how do you
12 determine if you're going to be working with a particular
13 Democrat? Like, for example, Robert Meza or Jessica Florez,
14 how do you decide to take on this client even if they're
15:49:38 15 Democrat?

16 TIM LASOTA: And that's certainly a good question.

17 I have to take a look at the role I would be
18 serving and whether I could really put my all into that
19 role, given, A, what they want me to do, and, B, their
15:49:52 20 political posture.

21 And after evaluating that -- I've never, I've
22 never turned down a client because the client was a
23 Democrat. But I would say that, you know, there's probably
24 some people who are so diametrically opposed or they're
15:50:07 25 trying to do something that is so diametrically opposed to

15:50:11 1 what I stand for, that I just -- I would feel maybe I can't,
2 maybe I ought not to take that client on.

3 I'd like to clarify something I said previously.

4 I think I could do a good job in any circumstance,
15:50:24 5 but I think, you know, there are some circumstances that
6 even though I think I could do a good job it would be best
7 to not take those on.

8 But I haven't had one yet. I'm just saying that
9 there conceivably could be one, or there could be -- not
15:50:36 10 necessarily candidates, but there could be causes associated
11 with -- you know, causes aren't necessarily partisan, but a
12 lot of causes are associated with Republicans or Democrats,
13 and there are some that, you know, I would not be willing to
14 take on.

15:50:50 15 I would say it's more in that realm than
16 individuals.

17 VICE CHAIR HERRERA: Thank you.

18 VICE CHAIR FREEMAN: Madam Chairman.

19 CHAIRPERSON MATHIS: Mr. Freeman.

15:51:02 20 VICE CHAIR FREEMAN: You're aware of the other
21 candidates that we're interviewing today. And your role, if
22 we hire two counsel, would be a complementary counsel to the
23 Democrat counsel.

24 Of the other interviewees, are there any that you
15:51:19 25 feel you could work well with or perhaps not so well with?

15:51:23 1 Are you willing to share any thoughts about the abilities of
2 those attorneys?

3 TIM LASOTA: Sure, Commissioner Freeman.

4 I can say I've worked -- I've already worked well
15:51:35 5 with a number of the other candidates.

6 I'll just go to the Democratic side first.

7 Certainly Mary O'Grady, I've worked extensively
8 with her when she was at the Attorney General's Office. I
9 get along very well with her.

15:51:52 10 I put it in -- I was -- not one of the things up
11 front, but I was on Attorney General Horne's transition
12 team, and I was of the opinion that Mary O'Grady would be a
13 person who could stay on and do a good job under a
14 Republican administration.

15:52:09 15 So I know her well, and I've enjoyed my
16 experiences with her tremendously.

17 Michael Mandell, I know some from the Legislature,
18 and I know I can work with him too.

19 I've only gotten to meet Mr. Braun through this
15:52:24 20 process, so I can't really speak to that.

21 But, yeah, I mean, I think that that's one thing I
22 do offer is I've already worked with them -- well, on the
23 Republican side, I mean, I think that, you know, there
24 are -- I've worked with them over the years too. Sometimes
15:52:41 25 on the same side. Sometimes on the other side.

15:52:43 1 So I don't have any doubt that we can -- if I'm
2 on board, I can work cooperatively with any of the other
3 five.

4 CHAIRPERSON MATHIS: Any other questions?

15:53:00 5 VICE CHAIR HERRERA: Just one last one.

6 CHAIRPERSON MATHIS: Sure, Mr. Herrera.

7 VICE CHAIR HERRERA: If you could summarize your
8 qualifications for us, why we should pick you over the other
9 candidates.

15:53:11 10 TIM LASOTA: Okay. And thank you for that
11 question. It's good to summarize.

12 I think that in terms of what I offer, I know this
13 area of the law well.

14 This area of the law is fascinating to me, whether
15 it's redistricting or campaign finance is also tremendously
16 interesting, because that law is changing also. We have the
17 Citizen United case, which has turned the campaign finance
18 world on its head after being turned on its head by the
19 McCain Feingold Act, which is now in question, but certainly
15:53:23 20 there's going to be another shoe to drop, I think, to the
21 Citizens United case.

22 I think that's fascinating.

23 I mean, I couldn't sleep last night. I'm
24 extremely excited about the possibility of working for the
15:53:54 25 Commission.

15:53:55 1 I think I have the experience.

2 I will say I think I am younger than some of the
3 other applicants, but I think I do bring some energy, maybe
4 some fresh ideas on how we might accomplish all six of those
15:54:10 5 goals that the people of Arizona have asked to be
6 accomplished, and I think I've got a record of working,
7 working with divergent interests rather.

8 I've been in jobs where I only -- you know, there
9 are billions of people here, and I've been in jobs where
15:54:27 10 every single person in the world can be annoyed with me, but
11 as long as I kept one person happy I was golden.

12 And I've been in jobs where I had to keep more
13 than one person happy because you just -- you know, you're
14 in the Mayor's Office, you know, you got to -- you don't --
15:54:41 15 if you don't have a governing majority, you're somewhat
16 irrelevant.

17 And the second, so I think I have experience in
18 that capacity too, and I think that's, as between the two, I
19 think the second one, serving multiple people, multiple
15:54:56 20 masters, as opposed to one, is much harder.

21 And I think I bring that.

22 And I think I bring a wealth of election law
23 experience that I can draw on and try to get this Commission
24 where it needs to be, which is to fulfill the six mandates
15:55:11 25 that the people of Arizona have given you, and to try to

15:55:16 1 fulfill all of them to the best extent possible and not
2 really -- you know, try to be picking and choosing to the
3 extent it's possible that we can do all of them.

4 VICE CHAIR HERRERA: Thank you.

15:55:28 5 COMMISSIONER STERTZ: I have one, Madam Chair.

6 CHAIRPERSON MATHIS: Sure, Mr. Stertz.

7 COMMISSIONER STERTZ: The next 30, 60, 90 days,
8 we're going to be selecting legal counsel. Shortly we're
9 going to be, over the next two to three weeks, we're going
10 to be picking our mapping consultant.

11 Using the phrase the rubber hits the road, the
12 rubber is going to hit the road.

13 How do you see your role -- you are, by resume, by
14 explanation, you are a very busy man.

15:55:54 15 Right now you're representing a lot of different
16 people.

17 Our expectations of this is a high level of
18 commitment of not only the firm but of the individual
19 representing the firm, which would be you.

15:56:06 20 You'd be working side by side with co-counsel.

21 How do you see us staying between the ditches as
22 we move down this path? What is your 30-, 60-, 90-, 120-day
23 plan to get us to the finish line?

24 TIM LASOTA: Thank you, Commissioner Stertz.

15:56:23 25 To go to the first part of your question, I'm

15:56:25 1 raring to go on this thing.

2 I will devote whatever time is necessary. I've
3 really never had anyone say that I spread myself too thin
4 with them. I always devote the time necessary.

15:56:37 5 I mean, this would -- parts -- for parts of the
6 time it would largely be a full-time position, and I
7 recognize that, and I've made, you know, I've made or can
8 make the necessary arrangements for that.

9 In terms of the next 60, 90, 120 days, I mean,
15:56:53 10 it's just going to be a lot of work.

11 There's going to be a lot of meetings, and it's
12 just going to be, it's going to be somewhat of a grind. But
13 it's a tremendously important job.

14 And I see the next -- that period of time as being
15:57:09 15 a tremendous amount of work. Things are going to start
16 moving, I think, a lot faster. And I think it will be the
17 job of the attorneys, with the job of the executive director
18 and the staff, just to keep everything going and to provide
19 the best support to allow you to keep the momentum going and
15:57:27 20 produce a result in a timely fashion.

21 COMMISSIONER STERTZ: Thank you very much.

22 VICE CHAIR HERRERA: Thank you.

23 CHAIRPERSON MATHIS: Any other questions?

24 (No oral response.)

15:57:41 25 CHAIRPERSON MATHIS: I don't think so.

15:57:43 1 TIM LASOTA: Thank you for the interview. I
2 appreciate it.

3 CHAIRPERSON MATHIS: Thank you for being here.

4 COMMISSIONER McNULTY: Thank you.

15:57:48 5 VICE CHAIR HERRERA: Thank you.

6 CHAIRPERSON MATHIS: Okay. So that concludes the
7 interviews that we had scheduled.

8 I really appreciate, again, Mr. Bladine getting
9 all these firms lined up and scheduled today and for all the
10 responders for coming on short notice.

11 Most appreciated.

12 I wanted to take an opportunity -- I thought we
13 could do public comment maybe next, because we had talked
14 about it at the beginning of the morning having second
15 public comment. Given that --

16 COMMISSIONER McNULTY: That the member of the
17 public is here.

18 CHAIRPERSON MATHIS: We do have a request to speak
19 form, but if anyone else would like to fill out one and give
20 that to Mr. Bladine, they're welcome to do so.

21 But I do have one form already filled out. And
22 that would be Mr. Steve Muratore, publisher of the Arizona
23 Eagletarian, and the subject is the interviews.

24 STEVE MURATORE: Thank you, Madam Chairman,
15:59:01 25 Commissioners.

15:59:02 1 Very interesting interviews, obviously. And I'm
2 not going to comment on all six of them, but I did want to
3 mention that I found Ms. Hauser to be an intriguing
4 individual with many contradictions.

15:59:22 5 Obviously she's highly qualified to be able to
6 handle the complex issues, but in her self-awareness that
7 there is a partisanship perception issue, she emphasized
8 perception, and then framed her answers regarding one of the
9 other firms, Republican firms, in terms of, oh, by the way,
15:59:50 10 perceive that they're not necessarily Republican.

11 So I was a little concerned with that.

12 There were a couple of red flags there, but
13 clearly she mentioned the -- that there's subliminal
14 messages when people testify or make public comment.

16:00:12 15 And I think that there was that very same
16 subliminal message with what she presented to you.

17 She wanted to tell you that she wasn't as partisan
18 as everybody thought -- thinks. She said there's false
19 perceptions.

16:00:33 20 But two or three things she specifically said made
21 it clear that she views things, and this is not a matter of
22 my perception, just what she said, indicated that how she
23 frames things is in terms of extreme partisanship.

24 And it was her own words that perception is
16:00:56 25 important.

16:00:57 1 So in spite of the fact that she's obviously
2 capable of handling the complex issues that you guys have to
3 handle, I have to say I have deep concerns on that, and it's
4 because of her words that I have that.

16:01:17 5 In terms of -- well, I was impressed with the
6 Ballard Spahr presentation, but you guys know more about all
7 that stuff than I do.

8 And I also thought that Ms. O'Grady was pretty
9 good too.

16:01:36 10 So, that's what I wanted to say.

11 CHAIRPERSON MATHIS: All right. Thank you,
12 Mr. Muratore.

13 Anyone else from the public that would like to
14 speak?

16:01:47 15 (No oral response.)

16 CHAIRPERSON MATHIS: All right.

17 That means that we -- looking at our agenda,
18 trying to salvage what we have of the meeting, there are a
19 number of items that we skipped earlier.

16:02:02 20 But I think since we have to leave this room by
21 4:30, it would make some sense probably to discuss what we
22 heard in these interviews pertaining to legal counsel while
23 it's very fresh. And so I'm wondering if I could entertain
24 a motion to go into executive session to discuss. Is there
16:02:25 25 another alternative?

16:02:29 1 COMMISSIONER McNULTY: So moved.

2 CHAIRPERSON MATHIS: All right.

3 I'm sorry, Mr. Freeman.

4 VICE CHAIR FREEMAN: I was going to suggest that

16:02:36 5 perhaps right now we table some of the agenda items and --

6 VICE CHAIR HERRERA: I agree.

7 VICE CHAIR FREEMAN: I would also move that we

8 table the executive director's report, item number three,

9 number four, number five, leaving us only with agenda item

16:02:59 10 seven, and our adjournment afterwards.

11 CHAIRPERSON MATHIS: Sounds like a good plan to

12 me.

13 COMMISSIONER McNULTY: I amend my motion

14 accordingly.

16:03:09 15 COMMISSIONER STERTZ: I'll second it.

16 CHAIRPERSON MATHIS: Okay. All in favor?

17 (Unanimous "Aye.")

18 CHAIRPERSON MATHIS: Any opposed?

19 (No oral response.)

20 CHAIRPERSON MATHIS: Okay. We'll go into

21 executive session.

22 JAMES BARTON: Do you think that you're going to

23 have to leave this location before the end of your executive

24 session?

16:03:28 25 CHAIRPERSON MATHIS: I don't know. It's 4:03, and

16:03:29 1 we have to leave this room at 4:30.

2 VICE CHAIR HERRERA: Let them kick us out.

3 RAY BLADINE: Madam Chair, what time does

4 Mr. Herrera -- do you have to leave at 5:00?

16:03:41 5 VICE CHAIR HERRERA: I have to leave at 5:00.

6 RAY BLADINE: I think we can stay here until 5:00,

7 and some of us will take the whipping if needed.

8 CHAIRPERSON MATHIS: Thank you, Ray.

9 COMMISSIONER STERTZ: If we can get everybody --

16:03:55 10 let's clear the room so we can go to executive session
11 quickly.

12 (Whereupon, the public session recessed and
13 executive session ensued.)

14

09:39:29 15 * * * * *

16

17 (Whereupon, the public session resumes.)

18 CHAIRPERSON MATHIS: Okay. Go back into public
19 session now. It's 5:11 p.m. And I apologize for the late
17:10:59 20 hour.

21 We are still in the midst of discussing item --
22 agenda item seven. And have decided to continue our
23 discussions tomorrow. We're working on a time of when we
24 might be able to meet, so it's all fresh in our heads about
17:11:20 25 what we heard today.

17:11:23 1 And so I would open it to other commissioners'
2 comments as to what might work for them in terms of meeting
3 soon.

4 I think we've been advised that we could recess
17:11:39 5 this now, and reconvene tomorrow in executive session, and
6 continue discussions, if that would be people's pleasures.

7 COMMISSIONER McNULTY: Madam Chair, I can meet
8 anytime tomorrow, although I do have an 11:45 meeting that I
9 would like to avoid canceling. If we could meet at 9:00
17:12:03 10 a.m., if we're thinking of doing it telephonically, those of
11 us in Tucson calling those of us here in Phoenix.

12 CHAIRPERSON MATHIS: Mr. Freeman, will 9:00 a.m.
13 work?

14 VICE CHAIR FREEMAN: Yes.

17:12:20 15 COMMISSIONER STERTZ: Works for me.

16 COMMISSIONER McNULTY: Mr. Freeman, do you have
17 videoconferencing at your office?

18 VICE CHAIR FREEMAN: Yes, but at this hour I don't
19 know if I could get something set up for us at 9:00 a.m.
17:12:32 20 tomorrow.

21 COMMISSIONER McNULTY: I don't know if I could
22 either, but. . .

23 CHAIRPERSON MATHIS: That's a great idea.

24 VICE CHAIR FREEMAN: If we were doing it later in
17:12:44 25 the afternoon, that might give me a chance to get the IT

17:12:47 1 people working on it.

2 COMMISSIONER McNULTY: Would you rather do it at
3 1:30 in the afternoon, we'll get our -- get or IT people to
4 do it or ask to see if it's possible.

17:13:05 5 COMMISSIONER STERTZ: Noon to 4:00 tomorrow. I'm
6 out of possibilities.

7 We can also do --

8 COMMISSIONER McNULTY: Never mind.

9 CHAIRPERSON MATHIS: What if we started at
17:13:13 10 10:00 a.m.? Is that getting too close to when you start
11 your next --

12 COMMISSIONER McNULTY: No, it's not essential that
13 I go to that.

14 CHAIRPERSON MATHIS: Because I was thinking if you
17:13:22 15 went into your offices and were able to arrange
16 videoconferencing.

17 VICE CHAIR FREEMAN: What if we started at 4:00,
18 Mr. Stertz? Would that work?

19 COMMISSIONER STERTZ: Works for me.

17:13:41 20 VICE CHAIR FREEMAN: Given that it's after 5:00
21 now.

22 COMMISSIONER McNULTY: That works for me.

23 VICE CHAIR FREEMAN: This would have to
24 accommodate the public as well; correct?

17:13:51 25 RAY BLADINE: Correct.

17:13:51 1 VICE CHAIR FREEMAN: So we have to make sure --
2 RAY BLADINE: We have to give the location now.
3 We don't have to know about videoconferencing, but
4 we have to say where we're going to reconvene and at what
17:14:02 5 time.
6 COMMISSIONER STERTZ: Well, teleconferencing at
7 9:00 in the morning --
8 RAY BLADINE: If Mr. Freeman knew we could have
9 someplace where the public could meet in his offices, we can
17:14:18 10 post it, and then if we do the video, we do
11 videoconferencing, if we can't, we do telephonic. But there
12 has to be a location at which we can say we will reconvene
13 that allows the public to come to the meeting to that part
14 that isn't executive session.
17:14:32 15 And I am looking at -- I believe that's what I'm
16 looking at.
17 VICE CHAIR FREEMAN: I don't know whether I can
18 secure sufficient space right now in my office.
19 CHAIRPERSON MATHIS: And we have to name the venue
17:14:43 20 right now; is that the rule?
21 JAMES BARTON: Madam Chair, yes, that's correct.
22 CHAIRPERSON MATHIS: That makes it hard.
23 COMMISSIONER McNULTY: Mr. Forst?
24 BUCK FORST: What if we use the Evans House as the
17:15:00 25 Phoenix location, and we could set up some chairs inside the

17:15:02 1 Evans House. And Tucson could be the Tucson location, and
2 we could use the Skype option, with two laptops. We could
3 send that laptop tonight home with you which has a camera in
4 it.

17:15:11 5 VICE CHAIR FREEMAN: Okay.

6 BUCK FORST: I'll pick up another laptop tomorrow.
7 I could even put a television set or something and that
8 would allow the public to see the camera as well.

9 COMMISSIONER McNULTY: Okay.

17:15:22 10 CHAIRPERSON MATHIS: I like it. That's why you're
11 chief technology officer.

12 Thank you. Does that sound like a workable
13 solution?

14 VICE CHAIR FREEMAN: Is that 4:00 o'clock or --

17:15:33 15 COMMISSIONER STERTZ: Or 9:00 o'clock.

16 CHAIRPERSON MATHIS: 4:00 p.m.

17 RAY BLADINE: I've got a camera. I think we can
18 use what we have.

19 CHAIRPERSON MATHIS: So the plan is to recess and
17:15:49 20 reconvene tomorrow at 4:00 p.m.

21 And Mr. Forst and Mr. Bladine will work -- the
22 Phoenix location will be at the Evans House on Washington,
23 and the Tucson people --

24 COMMISSIONER McNULTY: We won't have a Tucson
17:16:08 25 public location. You are welcome to come to my office.

17:16:14 1 CHAIRPERSON MATHIS: Okay. We can meet at the
2 Lewis & Roca office downtown in Tucson.

3 Is there anything else regards to that?

4 JAMES BARTON: Madam Chair, I just want to point
17:16:26 5 out that the requirement is that you reconvene within
6 24 hours.

7 So 4:00 o'clock is within 24 hours, but you have
8 to make sure that we start -- that we get started at 4:00.

9 CHAIRPERSON MATHIS: But we don't have to end
10 within a certain amount of time.

11 JAMES BARTON: No.

12 CHAIRPERSON MATHIS: Okay. Great.

13 That takes us to the end of the addenda --

14 JAMES BARTON: Madam Chair, we're not going to
17:16:51 15 adjourn. We're just going to recess; correct?

16 CHAIRPERSON MATHIS: Yes, we are. And so we will
17 go into recess now. The time is 5:17 p.m., and we'll
18 reconvene tomorrow at 4:00 p.m. in the two locations, and
19 hopefully have a videoconference option for everybody.

17:17:10 20 Thank you.
21
22
23

24 * * * * *
25

1 STATE OF ARIZONA)
) ss.
2 COUNTY OF MARICOPA)

3 BE IT KNOWN that the foregoing meeting was held
4 before me, Marty Herder, a Certified Court Reporter, CCR
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6 constitute a true and accurate transcript of all proceedings
7 had upon the public session of said meeting, all done to the
8 best of my skill and ability.

9 I FURTHER CERTIFY that I am in no way related to
10 any of the parties hereto, nor am I in any way interested in
11 the outcome hereof.

12 DATED at Chandler, Arizona, this 22nd day of May,
13 2011.

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