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STATE OF ARIZONA
ARIZONA INDEPENDENT REDISTRICTING COMMISSION

P U B L I C

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PUBLIC SESSION

Tempe, Arizona
February 7, 2004
10:00 a.m.

CERTIFIED	LISA A. NANCE, RPR, CCR
TRANSCRIPT	Certified Court Reporter
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1 The State of Arizona Independent
2 Redistricting Commission convened in Open Public Session
3 on February 7, 2004, at 10:00 o'clock a.m., at the
4 Sheraton Airport, Tempe, 1600 South 52nd Street, Tempe,
5 Arizona, 85281, in the presence of:

6

7 APPEARANCES:

8

CHAIRMAN STEVEN W. LYNN

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COMMISSIONER JAMES R. HUNTWORK

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COMMISSIONER JOSHUA M. HALL

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COMMISSIONER DANIEL R. ELDER

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ADDITIONAL APPEARANCES:

- LISA T. HAUSER, Commission Counsel
- JOSE de JESUS RIVERA, Commission Counsel
- LOU JONES, IRC Staff
- KRISTINA GOMEZ, IRC Staff
- DOUG JOHNSON, NDC, Consultant
- MARGUERITE LEONI, NDC Counsel
- LISA A. NANCE, RPR, CCR, Court Reporter

I N D E X

	PAGE
1	
2	
3	SPEAKERS FROM THE PUBLIC:
4	
5	Michael Mandell, Attorney, 9 Arizona Minority Coalition
6	Pete Rios and Mary Rose Wilcox, Minority Coalition 33 For Fair Redistricting, via 2-5-04 letter submitted
7	this date to the Arizona Independent Redistricting
8	Commission, 1400 West Washington, Suite B-10, Phoenix, Arizona, 85007.
9	Merle Pete, Staff Assistant, 36 The Navajo Nation
10	
11	Matt Ryan, Chairman, 45 Coconino County Board of Supervisors
12	Joseph Donaldson, Mayor, 46 City of Flagstaff
13	
14	Dennis Miller, Director of Government Relations, 51 Santa Cruz County
15	Ed Casper, 53 Self
16	
17	Tony Sissons, Consultant to City of Flagstaff, 55 President of Research Advisory Services
18	Judith Dworkin, Navajo Nation 246
19	
20	PRESENTATION BY NDC:
21	Doug Johnson 71
22	Marguerite Leoni
23	
24	
25	

1
2
3
4
5
6
7
8
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10
11
12
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I N D E X

MOTIONS BY THE COMMISSION: 100, 141, 149, 151, 164,
189, 192, 205, 227, 236

REPORT OF EXECUTIVE DIRECTOR:

Adolfo Echeveste --

E X H I B I T S

- | NO. | DESCRIPTION |
|-----|--|
| 1 | Speaker Slip For: Michael Mandell, Attorney,
Arizona Minority Coalition |
| 2 | Speaker Slip For: Merle Pete, Staff Assistant,
The Navajo Nation |
| 3 | Speaker Slip For: Matt Ryan, Chairman,
Coconino County Board of Supervisors |
| 4 | Speaker Slip For: Joseph Donaldson, Mayor,
City of Flagstaff |
| 5 | Speaker Slip For: Dennis Miller, Director of
Government Relations, Santa Cruz County |
| 6 | Speaker Slip For: Ed Casper,
Self |
| 7 | Speaker Slip For: Tony Sissons,
Consultant to City of Flagstaff,
President of Research Advisory Services |
| 8 | Facts About Flagstaff Preferred Plan C9 and Map. |

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E X H I B I T S C O N T ' D

- NO. DESCRIPTION
- 9 2-6-04 Letter from David J. Cantelme, Jennings Strouss, to The Honorable Steven W. Lynn, Chairman, Arizona Independent Redistrict Commission, 1400 West Washington, Suite 10, Phoenix, Arizona, 85007, with Attachment.
- 10 2-7-04 Testimony of Joseph C. Donaldson, Mayor of City of Flagstaff.
- 11 2-5-04 Letter from Pete Rios and Mary Rose Wilcox, Minority Coalition for Fair Redistricting, to Arizona Independent Redistricting Commission, 1400 West Washington, Suite B-10, Phoenix, Arizona, 85007.
- 12 12 NDC Powerpoint, 4-to-page.
- 13 13 Definitions.
- 14 14 NDC Powerpoint, 4-to-page re Communities of Interest.
- 15 15 2-6-04 2-5-04 Financial Report from Adolfo Echeveste to AIRC Commissioners.
- 16 16 2-6-04 Memorandum from Judy Dworkin to Leonard Gorman and Merle Pete re Statement by Navajo Nation re Legislative Districts.
- 17 17 Definitions: Compactness; Significant Detriment To Compactness; Contiguous; Significant Detriment To Contiguity.
- 18 18 Finalized Definitation Powerpoint Slide Printout.

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Public Session
Tempe, Arizona
February 7, 2004
10:00 o'clock a.m.

P R O C E E D I N G S

CHAIRMAN LYNN: Call the Commission to
order.

For the record, roll call.

Mr. Huntwork?

COMMISSIONER HUNTWORK: Present.

CHAIRMAN LYNN: Mr. Elder?

COMMISSIONER ELDER: Here.

CHAIRMAN LYNN: Mr. Hall?

COMMISSIONER HALL: Present.

CHAIRMAN LYNN: Chairman is present.

For the record, Ms. Minkoff is excused.

Ms. Minkoff will not be able to join us until after the
first of March. She's out of the country. That was
announced at the last meeting. For those not present, I
want those to be aware of it.

For the record, counsel, consultants, and
IRC staff are present.

Item III, public comment. This is the time
for consideration and discussion of comments and
complaints from the public. Those wishing to address the

1 Commission shall request permission in advance by filling
2 out a speaker slip. Yellow slips are available outside
3 the door to the meeting room.

4 Action taken as a result of public comment
5 will be limited to directing staff to study the matter or
6 rescheduling the matter for consideration at a later
7 date, unless the subject of an item is already on the
8 agenda.

9 I have six or seven slips from the public,
10 and we'll move through them this morning. I would ask
11 those of you who are addressing the Commission, if you do
12 have written comments that mirror what you are going to
13 tell us, please submit those to Lisa Nance, our public
14 stenographer, just to make sure we get those in the
15 record as they are submitted.

16 I would also ask that without objection --
17 in your packets, there are some correspondence from
18 members of the public. And I would ask that without
19 objection those be included in the record as well.

20 I will make sure you have copies of those,
21 Lisa, before.

22 The first speaker this morning is Michael
23 Mandell.

24 Mr. Mandell representing the Arizona
25 Minority Coalition.

1 Mr. Mandell, good morning.

2 MR. MANDELL: Good morning, Mr. Chairman,
3 Members of the Commission.

4 I am Michael Mandell. I represent the
5 Arizona Minority Coalition.

6 I will be brief this morning, as
7 Mr. Eckstein hit a lot of the points we wanted to make at
8 the last meeting.

9 I start off by going over some of the
10 definitions, or at least clarifying the definitions that
11 were adopted at the last meeting, actually, and those
12 that weren't; specifically with significant detriment is
13 where I wanted to start.

14 With significant detriment, as looking at
15 trying to define significant detriment, it seemed as
16 though at the last meeting you were moving down the road
17 of adopting a definition that would allow for any
18 impairment that was deemed substantial by the Commission.

19 We would advise the Commission that they
20 may want to tie that definition as we had handed out in
21 the definitions section of our last paper to the ability
22 of citizens in a particular district to achieve
23 representation in the Legislature or Congress. That's
24 clearly what the detriment is about, is whether or not
25 they have an effective representation.

1 So we'd like the Commission to consider
2 focusing its definition of significant detriment on that
3 type of point.

4 In addition, Senator Rios was asked at the
5 last meeting to prepare a letter on behalf of the
6 Coalition for the Commission with regard to the position
7 on Georgia vs. Ashcroft. We've done that. So I have a
8 letter for the Commission, which I'll give the original,
9 if you would like, to Lisa Nance.

10 CHAIRMAN LYNN: That's fine.

11 MR. MANDELL: I have copies for each one of
12 the Commissioners as well. I can give a stack -- have
13 staff hand them out, or I'll do that as well. Rather
14 than -- however you want me to do -- if you want me to
15 read the letter into the record, I'll be more than happy
16 to do that. You can take the letter and read it on your
17 own.

18 CHAIRMAN LYNN: The letter that we directed
19 Mr. Rios to try to achieve, I think we can just make that
20 a part of the record. We can read that on our own.
21 We'll be happy to hear your comments beyond that.

22 MR. MANDELL: To generally summarize what
23 is contained in the letter, we were asked last time, or
24 Senator Rios was asked last time, to talk about specific
25 percentages in some of the minority districts,

1 specifically the Hispanic districts.

2 While we can't give specific percentages,
3 because a lot of what was done in the Coalition map we
4 looked at voting precincts and which precincts were high
5 efficacy precincts to determine what districts went in to
6 allow for reduction in voting age percentage of some of
7 those Hispanic districts in the Coalition 2 map. So it's
8 hard to give you in a vacuum a specific percentage one
9 way or another, whether 49 percent voting age or 53
10 percent voting age in a specific district is a viable
11 district, given the fact that we can't analyze it in a
12 vacuum.

13 So as part of that, we did go over and look
14 at some of the districts and wanted to mention that
15 Districts 23, 24, 25, 27, and 29 from the 2002 final
16 adopted map should retain the configurations that those
17 districts had in those maps because those were in fact
18 viable Hispanic districts that allow them to elect the
19 candidates of their choice.

20 So with that, Mr. Chairman, that generally
21 summarizing the letter. I'll be happy to answer any
22 questions you have.

23 CHAIRMAN LYNN: Mr. Mandell, do you read
24 the judge's order to suggest those districts be retained
25 in any form?

1 MR. MANDELL: Mr. Chairman, the judge's
2 order doesn't specifically cite any district that should
3 or should not be retained. But, in fact, he's talking
4 about districts that still protect the interest of
5 minority voting rights. Most of those districts are
6 still majority-minority districts. I don't believe that
7 any of them are actually voting age Hispanic
8 majority-minority districts. I think 25 is probably the
9 closest to that. But of the ones I mentioned, I didn't
10 specifically check to see whether those were voting age,
11 minority-majority voting age districts or not.

12 CHAIRMAN LYNN: I think you are aware we
13 are trying to comply with the judge's order. The process
14 that we've adopted essentially has us going back to the
15 grid and producing competitive districts and then go
16 looking at minority voting rights, other criteria from
17 Proposition 106.

18 Using that methodology, it's quite likely,
19 if not a certainty, that all of the districts, all 30
20 districts that were once drawn, will look different in
21 this mapping.

22 So I just want to be clear about the
23 reference to specific districts as it related to the
24 adopted map.

25 MR. MANDELL: Understanding that,

1 Mr. Chairman, Commissioners, the core of the districts
2 could be retained. So that's what we suggest the
3 Commission look at doing.

4 CHAIRMAN LYNN: Okay. Ms. Hauser.

5 MS. HAUSER: Mr. Mandell, just a couple
6 questions.

7 One, at the top of the page 2, the
8 paragraph that talks about Georgia versus Ashcroft, there
9 is -- there are a couple of references that I want to try
10 to make sure I understand.

11 Additional minority influence districts are
12 referenced. And you are -- when you are talking about
13 minority influence districts, are you speaking in terms
14 of districts that are likely, although not guaranteed to
15 elect minority members to the Legislature? When you
16 speak about minority influence districts, are you talking
17 about likelihood of electing minorities or likelihood of
18 electing legislators who are sympathetic?

19 MR. MANDELL: Mr. Chairman, Ms. Hauser,
20 it's a combination of the two, not one versus the other
21 idea of creating a minority influence district is the
22 idea of minority influence in districts and choice,
23 whether minority or nonminority.

24 MS. HAUSER: In terms of -- I don't want to
25 be maybe so much beating around the bush here. I think I

1 understand what Georgia was saying in this regard. In
2 terms of majority in the Legislature, what the Georgia
3 legislators were hoping to accomplish, or in that case,
4 retain, but when you say legislators who are sympathetic
5 to minority issues, what specifically are you referring
6 to?

7 MR. MANDELL: Mr. Chairman, Ms. Hauser. I
8 think Senator Rios made that very clear at the last
9 meeting, based on his experience, that Republican
10 legislators are not sympathetic to Legislative issues.
11 Most minorities are in fact Democrats. If they are
12 allowed to elect their candidate of choice, it is very
13 likely those will also be Democrats.

14 MS. HAUSER: Okay.

15 MR. MANDELL: To get their agenda heard in
16 the Legislature, there at least needs to be, if not more
17 Democrats than Republicans, at least moderate Republicans
18 sympathetic to Democratic issues.

19 MS. HAUSER: I think maybe another question
20 Mr. Lynn already touched on -- but are you going to be
21 here today so that in case any other questions come up
22 certainly -- and certainly, with respect to the
23 Coalition's position on any particular issue that we
24 might be able to call upon you again?

25 MR. MANDELL: Mr. Chairman, Ms. Hauser, I

1 will be here at least until the afternoon until I have a
2 date with my daughter tonight.

3 MS. HAUSER: Okay. Thank you.

4 CHAIRMAN LYNN: I admire your priorities.

5 Mr. Elder.

6 COMMISSIONER ELDER: Mr. Chairman,
7 Mr. Mandell, the second, third sentence you made,
8 commenting, "Going down the path in relation to
9 significant detriment," either I missed or didn't
10 understand your logic or sequence there.

11 Could you either restate that or enlighten
12 me again?

13 MR. MANDELL: Certainly,

14 Mr. Chairman, Mr. Elder.

15 The last Commission meeting I attended, the
16 Commission was looking at altering the definition of
17 significant detriment. At the time, referring to my
18 notes, the definition, something along the line of "any
19 impairment," the Commission deemed to be substantial in
20 which the Commission deemed to be not inconsequential,
21 something along those lines.

22 What our suggestion was, was that the
23 Commission tied the definition of significant detriment
24 to a person's ability to, in a particular District, to
25 achieve the representation in the Legislature or Congress

1 that that person would be interested in achieving.

2 So that is -- so what significant detriment
3 would be is it would be tied to a person, group of
4 citizens, the districts itself, believe that they have
5 somehow been detrimentally changed so that they can no
6 longer have effective representation in the Legislature
7 or Congress.

8 What we're looking at here, in general, are
9 people's ability to elect, in the districts, people to
10 the Legislature or Congress.

11 COMMISSIONER ELDER: Where you have
12 disparate potential interest, whether it be ethnicity,
13 whether it be economic, whether it be Republican,
14 Democrat, whatever you are looking for, from that
15 standpoint. How do you bring to bear the issues of what
16 is significant, what is not significant, which takes
17 priority over? And it appears as though you are going
18 back to the ability to elect in the competitiveness.
19 Your statements further on where you said, "Historically,
20 the minority groups have been predominantly Democratic."

21 We start, end up going back to that
22 definition, competitiveness being the key factor as
23 opposed to being able to look at other factors put in
24 Proposition 106 in the Constitution, if that was clear.

25 MR. MANDELL: If there is a way you can

1 clarify that into a succinct question, I'd be happy to
2 answer it.

3 COMMISSIONER ELDER: How would you envision
4 other elements of Proposition 106 being placed or
5 prioritized, if we even prioritize, in relation to
6 competition?

7 In other words, six factors were brought
8 out in Proposition 106. And it appears as though, by
9 your definition, you bring them all back into the
10 person's ability to elect somebody of their choice. And
11 then you brought in ethnicity or ethnic background, said
12 in predominantly Democrat. That then also leads me to
13 believe you are looking at competition as the almost only
14 viable factor or decision we can make.

15 MR. MANDELL: Mr. Chairman, Mr. Elder,
16 competition is an important factor you must consider,
17 certainly not the only factor that must be considered.

18 CHAIRMAN LYNN: Mr. Huntwork.

19 COMMISSIONER HUNTWORK: I have -- I read
20 that reference to effective representation that you had
21 suggested, and it seemed to me that it was applicable to
22 significant detriment to communities of interest; but not
23 compactness, not to counties, not to geographical
24 boundaries. So that what we were talking about, in my
25 view of it was, overall notion. And then if you recalled

1 at the end of the meeting, Commissioner Minkoff was
2 talking about possibly unpacking, having further
3 refinements when we talked about specific criteria,
4 because it applies to more than one.

5 My question to you is: Are you contending
6 the notion of effective representation is applicable to
7 compactness or preserving county lines? It just seems to
8 me to be a completely different concept.

9 MR. MANDELL: Mr. Chairman, Commissioner
10 Huntwork, I think what you can do is have more than one
11 definition rather than having one definition to fit the
12 entire constitutional scheme. As long as the definition
13 applies to one of the factors and it's applied
14 consistently throughout the state, I think you would be
15 complying with the judge's order.

16 You can certainly have a definition of
17 significant detriment as applies to community of interest
18 and a separate one that applied to compactness or county
19 lines as long as, again, they are applied throughout the
20 state.

21 COMMISSIONER HUNTWORK: The specific
22 question is: Do you agree that that concept of effective
23 representation applies only to communities of interest?

24 MR. MANDELL: Mr. Chairman, Commissioner
25 Huntwork, I think it's possible to apply it in a general

1 sense to some of the other criteria in a specific
2 objective sense, which other ones actually lend
3 themselves to much more so than communities of interest.
4 You can see 13 city splits, 18 city splits, those type of
5 things being numerically calculable as opposed to any
6 type of significant detriment that affects a city split.

7 I agree they are, in essence, different in
8 nature, in a general sense, and can be applied throughout
9 the criteria.

10 COMMISSIONER HUNTWORK: I want to try to
11 understand this. Would you explain to me how we should
12 take effective representation into account when we
13 defined or apply the criteria of compactness?

14 It just seems to me to be completely
15 irrelevant. I -- you are making a general statement,
16 well, you could sort of. I need to understand how,
17 exactly how do I take that into consideration on applying
18 compactness itself as a separate criteria.

19 MR. MANDELL: Well, as part of compactness,
20 you can look and determine in an unobjective way with
21 the -- using the effective representation methodology.
22 By looking at it and seeing the confines of the district
23 and how it looks, can you use that? And then you could
24 look to the objective Polsby-Popper or perimeter measures
25 to determine whether or not it is in fact compact.

1 I agree with you, it's a difficult concept
2 to apply, and it very likely may be in applicable. But I
3 think in, as I stated before, in the general ones, one
4 could look at it that way.

5 COMMISSIONER HUNTWORK: We know we have to
6 weigh communities of interest against compactness. We've
7 known that, you know, from the beginning of this process.
8 And so if effective representation is taken into
9 consideration as part of communities of interest, it gets
10 weighed against compactness.

11 But my question to you is: How do I
12 include effective representation in the compactness
13 analysis alone, all by itself, or are you simply saying
14 you -- it belongs somewhere else and you weigh these
15 factors against each other?

16 MR. MANDELL: I think I agree with your
17 latter statement.

18 COMMISSIONER HUNTWORK: Thank you.

19 CHAIRMAN LYNN: Mr. Hall.

20 COMMISSIONER HALL: Mr. Mandell, throughout
21 this process, you've heard me say before I've just been a
22 little confused by what, from my perspective, is an
23 inconsistent position.

24 In the letter here, you reference the
25 Coalition 2 Map. My recollection is, the first map this

1 Commission submitted to DOJ for clearance had higher
2 Hispanic percentages than the Coalition 2 Map. Yet, we
3 received -- contrary to promises, we received no support,
4 affirmative support, to the Department of Justice from
5 the Hispanic Coalition. And consequently, in my opinion,
6 that was a major reason that that map was not precleared.

7 So what is confusing me now is, is now I
8 heard last week, and I'm seeing in this letter, that we
9 would support Hispanic percentages pursuant to the
10 Coalition 2 Map, which are lower than the percentages of
11 the first map that we sent in, which they were unwilling
12 to support when we went for preclearance.

13 So can you help me with that, what I
14 perceived to be a very inconsistent position?

15 MR. MANDELL: Certainly.

16 Commissioner Lynn, Commissioner Hall, the
17 Minority Coalition did not have an objection to the
18 Commission's November 9th, 2001, adopted map with respect
19 to the Voting Rights Act, except in regards to District
20 23. And a letter was sent to the Commission that very
21 specifically stated that we did not support District 23
22 and that our support for the map was contingent on
23 changing of District 23.

24 That district was not changed, so the
25 Coalition was unable to support the Commission's map at

1 the Department of Justice, and in fact, contacted the
2 Department of Justice to let them know of our opposition
3 to District 23.

4 COMMISSIONER HALL: Well, as you know,
5 District 23 wasn't the only district that was the subject
6 of the Department of Justice denial. There were other
7 districts involved which, again, had higher percentages
8 than those represented in Coalition 2.

9 Coincidentally, District 23 is Mr. Rios'
10 district. So what -- what is even more concerning is --
11 is that you had District 22, at that time, which had a
12 pocket of Democrats that would have, I think, allowed a
13 moderate Democrat which was running, incidentally, at
14 that time, to have probably a competitive race. And
15 absent the support of a, quote/unquote, more competitive
16 District 22 to bump the numbers in District 23, District
17 22 became a completely dominant Republican district;
18 wherein, a Democrat didn't have a chance.

19 So the point being is, it seems to me, some
20 of the plaintiffs are in favor of more competitive
21 districts, as long as it doesn't affect their district.

22 MR. MANDELL: Mr. Chairman, Mr. Hall, I
23 disagree with that statement, especially in regard to the
24 position Coalition has taken.

25 First position the Minority Coalition has

1 taken protect minority voting rights. Minority rights is
2 the second equally important right. Where is District
3 22?

4 COMMISSIONER HALL: Let me be clear on the
5 record the neighboring district by Gilbert, out by
6 Gilbert, the pocket of Democrats to increase District 23
7 came from that district; consequently, Mr. Mandell,
8 decreasing the competitiveness of District 22 in favor of
9 higher minority percentages.

10 So I -- what I'm saying is there -- from my
11 perspective, as we wrestle with this issue, there has
12 been an inconsistent position, at best. That's my
13 struggle.

14 MR. MANDELL: Mr. Chairman, Mr. Hall,
15 looking at District 22, I do not want to get into a
16 quibble with you over whether it took in more Democrats
17 or not.

18 Configuration of District 22 extending out
19 to Gold Canyon Ranch, highly Republican area, bringing it
20 into 22. I don't think it was taking Democrats out of
21 23, actually taking Republicans out of 23 and putting
22 them into 22.

23 COMMISSIONER HALL: Both, actually.

24 MR. MANDELL: In any regard, I don't think
25 the position of the Coalition has been inconsistent.

1 It's been very consistent. We want competition and
2 protection of voting rights. District 23, as configured,
3 made it very unlikely for Hispanics to continue to be
4 elected.

5 COMMISSIONER HALL: To be summarized, not
6 to beat a dead horse, you'd submit this be continued to
7 the Department of Justice, absent numbers in District 23;
8 the Minority Coalition would be supportive of the numbers
9 in that map?

10 MR. MANDELL: Mr. Chairman, Mr. Hall, I
11 can't speak specifically for the Coalition, and we've not
12 discussed that. I don't know the specific position of my
13 client, but it would be my belief that they would likely
14 support that map at the Department of Justice if it
15 contained those types of numbers and also contained a
16 District 23 configuration that would allow Hispanics to
17 would allow Hispanics to elect candidates of choice.

18 CHAIRMAN LYNN: One more clarification
19 along the lines of Mr. Hall's questioning last week.

20 Mr. Eckstein is with us talking about
21 definitions and other suggestions as to how we might
22 proceed. He made a distinction between that map you and
23 Mr. Hall were just discussing and the Hall-Minkoff and
24 Hall Modified testing.

25 Now, he and I had a conversation about that

1 in open session about his suggestions. We start with
2 Hall-Minkoff, Hall Modified, adjust it for
3 competitiveness; but we couldn't start with the 2001 map
4 and adjust it. It's an interesting point of view. I
5 know he may have been referring to the judge's order,
6 your statement about the Coalition probably supporting
7 the earlier map.

8 Do you not agree that with the judge's
9 ruling the way it is, we can't go back to the 2001
10 submitted map, just like we can't go back to Hall-Minkoff
11 or Hall Modified, we must go back to grid -- move forward
12 from the grid to reconfigure the entire map?

13 MR. MANDELL: Mr. Chairman, I'd not seek to
14 contradict the statement of Mr. Eckstein in the record.
15 As I recall, start with any map the Commission chose to
16 start with, as long as the Commission chose to adjust
17 that map to try and create and favor competitive
18 districts as required by the Constitution.

19 CHAIRMAN LYNN: You believe that statement
20 you just paraphrased, I know it's not a quote, represents
21 the judge's order?

22 MR. MANDELL: Without checking,
23 Mr. Chairman, without checking the transcript for
24 specifically what Mr. Eckstein said, my understanding,
25 which may in fact be different than Mr. Eckstein's, I'm

1 not exactly sure. Again, not having read his testimony
2 specifically; but the Commission can choose whatever map
3 it wants to start with, as long as, in doing so, it
4 complies with the Constitution in making adjustments to
5 the map.

6 CHAIRMAN LYNN: Well, let me just probe
7 this a little more. I don't mean to belabor the point;
8 but my reading -- and I'm not a lawyer, so I'm not used
9 to reading judge's order in the same manner that
10 attorneys may be -- but I'm -- I'm trying to understand
11 it in plain English, which is the language I choose to
12 use most of the time, what the judge seemed to be saying
13 was that, as we moved forward from the grid in our
14 original mapping process, that because we didn't
15 immediately apply competition -- competitive --
16 competitive mapping, or competition, as a criterion
17 immediately after the grid, that all subsequent maps were
18 flawed because competition should have been preferred and
19 applied first.

20 And my reading then suggests that any
21 process subsequent, this one or any other, that doesn't
22 first apply competitiveness to the grid, would be simply
23 flawed, using that line of questioning.

24 By that logic, I would suppose, in my
25 nonlawyerly approach to this, that unless we went back to

1 the grid and unless we first applied competitiveness,
2 once the grid was established, that any map, 2001,
3 Hall-Minkoff, Hall Modified, test E, F, G, L and M were
4 all flawed in the same way, were all produced out of that
5 process the judge suggested should have been different.

6 Do you have a different reading of that?

7 MR. MANDELL: Mr. Chairman, I think the
8 Commission can start with any map the Commission chooses
9 to start with I. Don't necessarily agree the court
10 ordered the Commission to start with competitiveness in
11 adjusting the grid.

12 I think what the court had said is that the
13 process that was used excluded competitiveness from the
14 original adjustments at that grid. And the way the
15 Constitution reads is that it says, the grid shall be
16 adjusted according to the following criteria. And
17 competitiveness was excluded from the creation of the
18 final draft map, which occurred on August 17th, 2001.

19 And that was where it went wrong. Because
20 once you solidified -- and as Dr. Heslop testified at
21 trial -- once you've harmonized all other criteria, then
22 you apply competitiveness. By doing so, you are stuck
23 also with the deposition testimony of changing
24 competitiveness around the edges. And that I think what
25 the judge objected to is that competitiveness was simply

1 not favored as was required to be under the Constitution.

2 CHAIRMAN LYNN: So then to follow that
3 logic, if what -- if you believe that we could have -- we
4 could start now with any map we choose, take me through
5 the process that a map such 2001 or Hall Modified or
6 Hall-Minkoff would take and satisfy the judge's order, in
7 your opinion.

8 MR. MANDELL: I think it would be very
9 difficult, Mr. Chairman, to start with another map
10 because of the fact competitiveness was not favored in
11 creation before the map. However, you do have the
12 thematic overlays, so you can use the thematic overlays
13 to favor competitiveness by changing district boundaries.

14 The other problem is the Commission, when
15 you all went the first time, did not identify the
16 boundaries of communities of interest. So when you were
17 determining whether or not significant detriment was
18 going to be applied in the sense of the effect it had on
19 communities of interest or compactness or other things by
20 not defining boundaries of community of interest, you
21 couldn't see the impact of changing the district boundary
22 had on that specific community of interest or specific
23 communities of interest within the district.

24 CHAIRMAN LYNN: So I just heard you say
25 that none of those maps could be used, where before you

1 said any of those maps could be used.

2 Mr. Mandell, help me out.

3 MR. MANDELL: I didn't say none of the maps
4 could be used. I said it would be difficult for any of
5 the maps to be used.

6 CHAIRMAN LYNN: Perhaps more absolute than
7 you suggested, I take it to mean, when you say it would
8 be difficult to use any of those maps, it would be
9 difficult to start with those maps, and at the same time,
10 comply with the judge's order.

11 I don't want to put words in your mouth.
12 That's the context you find using those maps to be used;
13 not impossible, but difficult.

14 MR. MANDELL: If the Commission takes a
15 map, the 2001 map, identify communities of interest,
16 identify boundaries, and identities and favors
17 competitiveness, and then applies definitions across the
18 state in a statewide manner, looking at -- using the
19 boundaries, but not, in effect, leaving those boundaries
20 in concrete, but is willing to completely change certain
21 districts in certain areas if those districts required it
22 because of the fact that the definitions that had been
23 adopted no longer apply and take subjectivity out that
24 occurred last time, I think you start with a map,
25 although it may not look anything like the map you

1 started with.

2 CHAIRMAN LYNN: When you are finished.

3 MR. MANDELL: When you have finished.

4 MS. HAUSER: Mr. Chairman.

5 CHAIRMAN LYNN: Ms. Hauser.

6 MS. HAUSER: Mr. Mandell, if the Commission
7 starts, I mean, goes back to the grid to, in a sense,
8 cleanse the state, go back to that starting point to
9 begin this map drawing process; and if the Commission
10 then, as its first step, adjusts that grid to create
11 competitive districts first and then apply the other
12 criteria that, you know, according to definitions
13 adopted; and after having mapped out the boundaries of
14 various communities of interest, get those geographic
15 boundaries down and see if those competitive districts
16 caused significant detriment to any of those and then
17 make adjustments, is that the process that the Coalition
18 objects to?

19 MR. MANDELL: Mr. Chairman, Ms. Hauser, the
20 Commission can choose to perform its process any way it
21 wants to. Certainly, if the end result results in a map
22 that complies with the Constitution as we understand it,
23 then whatever process gets you there, we won't have a
24 problem with.

25 MS. HAUSER: Well, that's good to hear you

1 say. That's certainly different than the position the
2 Coalition has taken before because you have, in fact,
3 have been very concerned about the process. And not -- I
4 mean -- you've in the past had concerns about the end
5 result, not just because of what the end result looked
6 like, but because of the process that gets us there.

7 So I really do want to know if -- if that
8 is your opinion, that the process that I just laid out
9 that we start from the grid, create then districts from
10 that grid that are competitive, and then adjust to the
11 other criteria, if that's a process you say that we are
12 free to choose under the court's order, then I just make
13 sure we're on the same page there. You agree that that,
14 in and of itself is not an order of events that the
15 Coalition would later claim is problematic in any way?

16 MR. MANDELL: Mr. Chairman, Ms. Hauser, if
17 in fact the Commission applies all of the criteria at any
18 early time when -- in adjusting the grid, if you apply
19 all of the criteria, then I don't think the Coalition is
20 going to have a problem with it, assuming that -- and I
21 don't want to say that the -- that we don't object to the
22 process that occurred last time, because we certainly do,
23 and -- for a number of reasons, and have been filed in a
24 number of different court papers. But if the process is
25 one that complies with the Constitution, then the

1 Coalition is not going to object to it.

2 MS. HAUSER: Let me narrow it down a little
3 bit further. I understand you may have some issues later
4 with how specific definitions are applied or something of
5 that nature. But starting from the grid and adjusting
6 first for competitiveness and, you know, at least making
7 sure those districts are contiguous, and roughly equal in
8 population, taking the first step is not something the
9 Coalition objects to; is that right?

10 MR. MANDELL: Certainly not, Mr. Chairman,
11 Ms. Hauser.

12 CHAIRMAN LYNN: Mr. Mandell, thank you.

13 As you can tell, I mean, you and the staff
14 attorneys have had opportunities to speak back and forth
15 during the court proceedings. Commissioners not being a
16 party to those as individuals obviously appreciate
17 engaging you or Mr. Eckstein or anyone else in
18 conversation, Mr. Rios, Senator Rios.

19 We are trying to get a feel for what would
20 work. This is, after all, supposed to be about the art
21 of the doing, not art of objectionable. We're trying to
22 find out what would work. That's the nature of this
23 inquiry.

24 MR. MANDELL: As the Coalition stated all
25 along, we'd like not to go through the process again,

1 much like you would. And if we can be of any assistance
2 to help make that occur, we're more than happy to do so.
3 And any time if any of the Commissioners want to call any
4 of us, we're more than welcome to have your counsel on
5 the line and engage in any type of conversation and
6 engage in any answers you have.

7 CHAIRMAN LYNN: Thank you. I
8 appreciate you all have been with us a while. I
9 appreciate it.

10 (The following is dated February 4, 2004,
11 from the Minority Coalition for Fair Redistricting, to
12 the Arizona Independent Redistricting Commission, 1400
13 West Washington, Suite B-10, Phoenix, Arizona, 85007,
14 hand-submitted at the public hearing, reading as follows:

15 "Dear Commissioners:

16 "On behalf of the Arizona Minority
17 Coalition for Fair Redistricting ("Minority Coalition"),
18 we want to thank the Commission in advance for the
19 opportunity to be heard on proposed district
20 configurations as the Commission develops new legislative
21 district maps. We also want to commend the Commission
22 for beginning its compliance with the Superior Court's
23 Order.

24 "Throughout the redistricting process, the
25 Minority Coalition has steadfastly maintained that the

1 protection of minority voting rights is our top priority.
2 We have also consistently stated that the Arizona
3 Constitution requires the Commission to favor the
4 creation of politically competitive districts. These two
5 constitutional goals are not mutually exclusive -- the
6 Commission can create competitive districts and at the
7 same time, create districts that protect minority voting
8 rights in compliance with the Voting Rights Act of 1965.
9 Indeed the Coalition II map, presented to the Commission
10 in September 2001, accomplished this goal. It did so,
11 however, not by arbitrarily determining the Hispanic
12 Voting Age percentages to be included within a given
13 district (although those percentages are important), but
14 instead, by studying Hispanic voting precincts and
15 ensuring the proper placement of high efficacy Hispanic
16 precincts within majority-minority districts.

17 "Although we understand that the Commission
18 would like the Minority Coalition to provide explicit
19 Hispanic Voting Age percentages for each
20 majority-minority district, that cannot be done in a
21 vacuum. However, we can tell the Commission that the
22 Minority Coalition strongly supports and believes that
23 the Commission should retain the district configurations
24 and the Hispanic Voting Age percentages as currently
25 exist in Districts 23, 24, 25, 27 and 29 (which are

1 outside of Maricopa County except for a small part of
2 District 23) from the August 14, 2002 Final Adopted
3 Legislative Plan. Moreover, with regard to legislative
4 districts in Maricopa County, while specific Hispanic
5 Voting Age percentages cannot be provided without the
6 opportunity to study the configuration of the districts,
7 the Minority Coalition believes that the Commission
8 should apply the interpretation of Georgia v. Ashcroft,
9 123 S.Ct. 2398 (2003) consistently with the Conclusions
10 of Law (paragraphs 36 through 40) of the Superior Court's
11 January 16, 2004 Minute order. Using that
12 interpretation, the Minority Coalition supports slight
13 reductions in the Hispanic Voting Age percentages of
14 Districts 13, 14 and 16 as configured in the August 14,
15 2002, final Adopted Legislative Plan. By doing so, the
16 Commission can create additional minority influence
17 districts in Maricopa County and at the same time
18 increase the political competitiveness of the legislative
19 map. Such an action will also substantially benefit the
20 Hispanic community, as it did the African-American
21 community in Georgia v. Ashcroft, by increasing the
22 likelihood that more legislators who are sympathetic to
23 minority issues will be elected.

24 "By fully complying with the Arizona
25 Constitution as interpreted in the Superior Court's

1 Minute order, the Commission can create a legislative
2 district map that contains numerous districts that both
3 protect minority voting rights and are politically
4 competitive. The Minority Coalition remains ready to
5 assist the Commission as it redraws legislative districts
6 that comply with the Arizona Constitution and the Voting
7 Rights Act of 1965.

8 "Sincerely, Pete Rios, State Senator,
9 District 23. Mary Rose Wilcox, Maricopa County
10 Supervisor, District 5."

11 CHAIRMAN LYNN: Next speaker, Merle Pete,
12 Staff Assistant from Window Rock.

13 MR. PETE: Good morning, Mr. Chair.

14 I have prepared statements from the Navajo
15 Nation leadership. If you don't mind, I'll submit
16 written statements and go ahead and read through the
17 written comments, if that's okay with you and the
18 Commission.

19 CHAIRMAN LYNN: Without objection.

20 MR. PETE: Good morning. Merle Pete, staff
21 assistant, Navajo Nation Council here, representing the
22 Navajo Nation. Elected leadership cannot be here because
23 of conflicting schedules.

24 The Navajo Nation appreciates the chance to
25 be before this Commission. The Navajo Nation covers

1 portions of three states: Arizona, New Mexico, and Utah.

2 Within Arizona, the nation's total
3 population is 104,565, and a voting age population of
4 61,331. The Navajo Nation currently located Legislative
5 District to only Native American majority-minority
6 district of the total population, the non-Hispanic Native
7 American percentage, 68.08 percentage of voting age
8 population, non-Hispanic Native American, 62.16 percent.

9 2002 elections demonstrated Native American
10 candidates can be elected from the Legislative District
11 pursuant to the requirements of the Federal Voting Rights
12 Act. The Commission should consider electability of
13 Native American candidates in modifications to
14 Legislative District 2.

15 Community of interest. The Navajo Nation
16 is a community of interest. The Commission has
17 previously stipulated to that, and it comports with the
18 definition of community interest which was adopted by
19 this Commission on February 3rd, 2004, which states: A
20 community of interest is a group of people in a defined
21 geographic area with concerns about common issues, such
22 as religion; political ties; history; tradition;
23 geography; demography; history; social economic status;
24 trade; or other common interest benefit from common
25 representation.

1 Proposition 106, Section 14D states:
2 District boundaries shall respect communities of
3 interest.

4 Judge Fields has concluded that
5 Commission -- that Commission's discretion to protect
6 community of interest was limited by Proposition 106 to
7 include placing the entire community within boundaries of
8 the Legislative District.

9 The Navajo Nation urges this commission to
10 heed the ruling of Judge Fields and place all Navajo
11 Nation within a single Legislative District.

12 The Voting Rights Act. Federal law,
13 including the Federal Voting Rights Act, preempts state
14 law, including the Arizona Constitution. It is for this
15 reason that any redistricting plan must first meet the
16 U.S. Constitutional requirements of one person, one vote,
17 and the requirements of the Voting Rights Act.

18 The Navajo Nation urges the Commission to
19 reject any efforts to create a competitive district in
20 northeastern Arizona, as such efforts are likely to
21 result in dilution of the Native American vote. The sole
22 Native American majority-minority district is not capable
23 of adjustment to permit competitive voting without
24 violation of the Voting Rights Act.

25 Mr. Chair and the Commission, thank you for

1 the opportunity to share these views with the Commission.

2 CHAIRMAN LYNN: Thank you, Mr. Pete.

3 One question I would have. I believe you
4 are aware that another portion of the judge's order, he
5 suggests that because of the findings of Georgia V
6 Ashcroft, that minority percentages in districts that
7 would qualify as voting rights districts could be
8 significantly reduced if there was the possibility that
9 minorities in that district could still elect
10 representation of their choosing, not necessarily
11 minority representation. And I'm not stating that
12 specifically in terms of quoting it, but the concept is
13 embedded in his ruling.

14 I take your comments to be at odds with
15 that portion of the ruling. Could you clarify that for
16 me?

17 MR. PETE: As I think -- just to clarify,
18 when we -- if it was our decision to elect someone, I
19 think we'd be sensitive to electing a person who is
20 sensitive to our needs on the reservation within our
21 district.

22 CHAIRMAN LYNN: But you are suggesting that
23 the, if I understand it, that the percentages that
24 currently exist in the Legislative District 2 are
25 percentages that you would like to see maintained?

1 MR. PETE: You are referring to the 50
2 percent?

3 CHAIRMAN LYNN: I'm talking about voting
4 age population, as well as non-Hispanic Native American
5 population.

6 MR. PETE: If it applies, right?

7 MS. DWORKIN: Would it be all right if I
8 joined the conversation?

9 CHAIRMAN LYNN: Absolutely. State your
10 name for the record.

11 MS. DWORKIN: Judith Dworkin, counsel for
12 Navajo Nation in this matter. And I think I'll lower
13 this, also.

14 We believe that in this particular
15 district, unlike some of the Hispanic districts in the
16 central part of the state, that it would be difficult to
17 reduce the percentage of Native American voting, even
18 subject to Georgia V Ashcroft, without resulting in
19 issues of dilution under Section 2 of the Voting Rights
20 Act.

21 CHAIRMAN LYNN: Mr. Hall.

22 COMMISSIONER HALL: Sorry. Let me just
23 make sure I can summarize what I thought I heard you --
24 both of you say.

25 You do not feel that we should favor

1 competitiveness over the existing community of interest
2 of the Navajo Nation; is that correct?

3 MS. DWORKIN: Mr. Chair, Mr. Hall, we
4 believe that in attempting to do that, it will raise a
5 significant issue of dilution.

6 Now, obviously, there are an infinite
7 number of possibilities of drawing maps and districts.
8 We all know that. And the Navajo Nation would certainly
9 take a look at whatever final map that you came up with.
10 But we wanted to advise that we think that there would be
11 significant problems, and we will be looking very closely
12 at that issue.

13 Does that answer your question, Mr. Hall?

14 COMMISSIONER HALL: So, just -- is it your
15 opinion that the Navajo Nation, all in one combined, if
16 you will, together, does that constitute a community of
17 interest?

18 MS. DWORKIN: That is -- Mr. Chair,
19 Mr. Hall, that is a very easy question to answer.

20 The Navajo Nation, all within its
21 geographic boundaries, without any carve-outs, is a
22 single community of interest under the definition that I
23 understand was passed on February 3rd, and under almost
24 any other definition, and under the stipulation that your
25 counsel made in the court proceeding that the Navajo

1 Nation was a community of interest.

2 COMMISSIONER HALL: One final question,
3 Mr. Chairman. I think it would be safe to say that the
4 Navajo Nation would be homogeneous in many respects and,
5 of course, the judge, in his order, took exception to
6 creating districts that were, quote/unquote, homogeneous.

7 Do you have an opinion relative to that
8 portion of the order, as it relates to the portion of the
9 order?

10 MS. DWORKIN: My recollection -- my
11 recollection is a district should not be created in order
12 to put together and aggregate homogeneous communities of
13 interest. That, in fact, you might include two
14 communities of interest that are not homogeneous.

15 For example, the Navajo Nation, one
16 community of interest. And the Hopi Tribe, another
17 community of interest, within the same district,
18 including both nonhomogeneous communities of interest.

19 CHAIRMAN LYNN: Ms. Hauser.

20 MS. HAUSER: Thank you, Mr. Chairman.

21 This is not a request for Ms. Dworkin, just
22 something for you all as I'm listening to your questions
23 to the representatives of the Navajo Nation. I think I
24 can clarify something for you on the record. If you have
25 additional questions about this, then we can take them up

1 in Executive Session. But I mention them now because I
2 think it may be helpful to everyone who is present to
3 know this information.

4 Georgia versus Ashcroft deals only with
5 Section 5 of the Voting Rights Act. Section 5 being the
6 section that deals with preclearance and the duty to not
7 retrogress in connection with a minority community. And
8 in connection with that, of course, the judge has
9 indicated: Whereas, other states may choose one or the
10 other type of representation, that in order to favor
11 competitiveness, we must choose what is known as the
12 substantive representation, the one that leads to the
13 likelihood of electing those who are sympathetic with a
14 minority's interests.

15 And the thing I want to point out about
16 that is that it is important in that context and in the
17 facts of Ashcroft to have minority support for that
18 change. So I just want to point out, in connection with
19 the request that the Navajo Nation is making, it is not
20 necessarily inconsistent with Ashcroft.

21 The second point I want to make is that
22 Ms. Dworkin's comment about Section 2 dilution is a
23 complete -- when she talks about dilution, she's talking
24 about Section 2 of the Voting Rights Act, which is a
25 completely different issue as Georgia V Ashcroft, to this

1 point, has no bearing on Section 2. In some ways it
2 could come up with other cases later on as that law
3 develops. I just want to make that distinction for you.

4 CHAIRMAN LYNN: Thank you, Ms. Hauser.

5 Mr. Elder.

6 MS. HAUSER: I'm sorry, one other thing.

7 On homogeneous districts, also, the answer that
8 Ms. Dworkin gave you about the ruling, I believe, is
9 correct. We're not talking about homogeneous within a
10 particular community of interest but as it respects
11 communities of interest being combined into a district.

12 CHAIRMAN LYNN: Mr. Elder.

13 COMMISSIONER ELDER: Yes. I'd like to
14 propose a question further on down. I believe
15 Mr. Mandell said we need to look at boundaries of
16 communities of interest. When we look at that, would it
17 be your opinion that we should look at the community of
18 interest as being the Navajo ethnic group as opposed to
19 geographical boundary?

20 In other words, you have Navajo that live
21 in Flagstaff and areas off the reservation.

22 MS. DWORKIN: No, we're talking about the
23 simple approach the Navajo Nation is taking. Look at the
24 community of interest, being the reservation, the Navajo
25 Nation reservation, within the portion of that

1 reservation that is within the State of Arizona.

2 COMMISSIONER ELDER: So you are looking at
3 jurisdictional as opposed to ethnic or peoples related to
4 the Nation?

5 MS. DWORKIN: That's the position the
6 Navajo Nation is most concerned about, yes, sir.

7 CHAIRMAN LYNN: Thank you, Ms. Dworkin,
8 Mr. Pete, thank you very much. We'll ask
9 you to give a copy of your statement so that it can be
10 made a part of the record.

11 Any additional comments, Mr. Pete?

12 MR. PETE: No. Thank you.

13 CHAIRMAN LYNN: Next speaker this morning,
14 Matt Ryan, Chairman of the Coconino County Board of
15 Supervisors.

16 Mr. Ryan.

17 MR. RYAN: Mr. Chairman and Commissioners,
18 I want to, once again, acknowledge, I understand you have
19 a very difficult task. I'm here on behalf of the Board
20 of Supervisors to stay consistent with where our
21 positions have been in trying to also fit within your
22 definitions.

23 Our county, we understand, had to be split.
24 And it did make sense in terms of the last discussion
25 that was presented with our Native American populations.

1 Holding those populations together is very important.

2 An area that we did have fragmentation
3 occur associated with communities is communities of like
4 interest, the greater Flagstaff area. And are asking
5 that while we're pretty consistent with recommendations
6 that the City of Flagstaff will present, and they may
7 also help you in your task in keeping that as one issue,
8 but also assisting in finding potential mechanisms for
9 more competitive districts.

10 With that, that's what I brought down
11 today, after the City of Flagstaff presents.

12 CHAIRMAN LYNN: Next speaker for the City
13 of Flagstaff, Mayor Donaldson.

14 Mayor Donaldson, good morning.

15 MAYOR DONALDSON: Good morning.

16 Thank you, Mr. Chairman, Commissioners.
17 Joe Donaldson, City of Flagstaff.

18 Again, thank you for this opportunity to
19 speak before the Commission on behalf of the Flagstaff
20 community.

21 I understand the Commission will be
22 reviewing today data and maps prepared by NDC. I
23 respectfully request an opportunity to present for the
24 Commission's review and consideration the data and map we
25 have prepared. I recognize this may not be the

1 appropriate time in the proceedings for the presentation.
2 I am prepared to provide this information at the
3 convenience of the Commission.

4 This information was prepared based on
5 available information, including a process and
6 definitions of many of Proposition 106 criteria adopted
7 by the Commission at its February 3rd meeting. As the
8 Commission continues to develop definitions and determine
9 the application of all Proposition 106 criteria,
10 Flagstaff is prepared to amend our data and maps as may
11 be necessary.

12 I would also like to read into the record a
13 letter from our attorney, David J. Cantelme, who was
14 asked to provide some information at the February 3rd
15 meeting. And it's a letter from Jennings, Strouss, and
16 it's to the Honorable Steven W. Lynn, Chairman, Arizona
17 Independent Redistricting Commission. And it reads as
18 follows:

19 "Dear Chairman Lynn:

20 "At the conclusion of my remarks to the
21 Commission last February 3rd, the Commission asked me
22 whether all of the Flagstaff Metropolitan Planning
23 Organization fell within a school district. At the time
24 I answered I thought the bulk of the FMPO fell within the
25 Flagstaff Unified School District, but some may lay

1 within another school district. I also said I would
2 provide information to the Commission on that point.

3 "I enclose a map of Flagstaff area
4 geographic entities. The map shows that the vast
5 majority of the FMPO falls within the Flagstaff Unified
6 School District, but a sliver of at the northwest corner
7 falls within the Maine Consolidated School District. As
8 I understand it, the portion of the FMPO within the Maine
9 Consolidated School District has no residents.

10 "As I understand it, according to the 2000
11 census, the population of the City of Flagstaff, 52,894
12 persons, the population of the FMPO is 61,128 persons,
13 and the population of the Flagstaff School District is
14 76,533 persons.

15 "Hoping this information answers
16 Commissioner Huntwork's question. I remain, very truly
17 yours, David J. Cantelme."

18 CHAIRMAN LYNN: Thank you, Mr. Mayor.

19 We'll, without objection, make that letter
20 from Mr. Cantelme part of the record.

21 MAYOR DONALDSON: As we move forward in the
22 process, I urge you without objection to perhaps -- if
23 what you are saying about your map, as we progress, your
24 map is going to change as our discussion changes, there
25 may be a point at which your map could be supplied,

1 certainly, after all the definitions have been adopted
2 and perhaps applied as you see them.

3 But it may be premature to look at your map
4 at this stage of the process because those changes will
5 need to occur. So I don't want to slight your map, but I
6 do think that there probably is a better time for it to
7 come into the record.

8 MAYOR DONALDSON: Yes, I understand that.
9 We want to make a point, we don't want to be left out of
10 consideration, our map be considered in the process. We
11 don't want to be at a position where, if we had presented
12 the map 15 minutes earlier, it could have been part of
13 the discussion. This is -- this reorganization of the
14 map is very critical to us. And we want to be able to
15 have some -- offer some assistance, provide assistance to
16 the Commission in addressing issues that face and are of
17 concern to the City of Flagstaff.

18 CHAIRMAN LYNN: Mr. Huntwork.

19 COMMISSIONER HUNTWORK: Mr. Chairman, I
20 wanted to say if there is material available, I
21 personally would like to see it and look at it now and as
22 it progresses. We're going through this so quickly, that
23 any information I can have now is better than getting it
24 tomorrow sometime.

25 CHAIRMAN LYNN: I take it from your

1 comments, then, if -- I'm perfectly happy to accept into
2 the record what you have now. But understanding that it
3 may change several times as we make adjustments to the
4 definitions that are yet unsettled, we have to do that
5 fairly quickly this morning.

6 I don't know whether that will have any
7 impact on your map or not. Maybe several iterations of
8 your map may be entered into the record several times.

9 MAYOR DONALDSON: Yes. Mr. Chairman,
10 Commissioners, we're prepared to follow process and
11 adjust the maps as necessary. We're prepared to be of
12 any assistance we possibly can to the Commission in its
13 work and can present the maps.

14 CHAIRMAN LYNN: Well, then, let me figure
15 out where on the agenda that should go in terms of a
16 presentation. And what we may need to do is, we may need
17 to amend the agenda for Monday for that to occur.

18 I want to double-check with counsel to make
19 sure we're not violating an open meeting tenant. If it
20 fits under one of the things we have on the agenda, we
21 can take it; but we'll take it at the appropriate time.

22 MAYOR DONALDSON: Thank you, Mr. Chairman.
23 Again, to reiterate Flagstaff's position, I don't want to
24 be left out of the process, don't want to be somewhere in
25 the process moved too far along that it's impossible for

1 our maps to be considered.

2 CHAIRMAN LYNN: Ms. Hauser.

3 MS. HAUSER: Mr. Chairman, in connection
4 with public comment, you can receive any information.
5 Whether or not you can act upon what you get during
6 public comment depends on how it's noticed. But in
7 connection with any of the meetings that deal with
8 mapping, we'll endeavor to notice them broadly enough so
9 you may consider whatever comes before you.

10 CHAIRMAN LYNN: In that instance, without
11 objection, what I'd like to do is, I'd like to take the
12 rest of the public comment, return to the City of
13 Flagstaff during that portion of the agenda, at that time
14 ask you make the presentation on your map.

15 MAYOR DONALDSON: All right. Thank you
16 very much.

17 CHAIRMAN LYNN: Go through the rest of the
18 speaker slips and then return for your presentation at
19 the close of public comment, period.

20 MAYOR DONALDSON: Thank you.

21 CHAIRMAN LYNN: Next speaker, Mr. Dennis
22 Miller, Director Public Relations for the County of Santa
23 Cruz.

24 Mr. Miller, good morning.

25 MR. MILLER: Good morning.

1 Mr. Chairman, Members of the Commission, I
2 think this is about the fourth time I have appeared
3 before you, and want to thank you for the courteous way
4 which you've always treated me and others. And as you've
5 gone around the state, I think you made a real good
6 effort to take in everybody's point of view.

7 Santa Cruz County is 91 percent Hispanic,
8 have 38,000 people. We're very concerned with minority
9 issues. With that being said, we are so small, we really
10 are not going to have a district within Santa Cruz
11 County, we're likely to elect people from Santa Cruz
12 County to Legislature.

13 So that said, we like having multiple
14 districts. Prior to last go-around, actually, had three
15 districts when first carved up to three districts. This
16 is ridiculous. We're used to that. Said we had nine
17 people go down there and lobby at the Legislature. That
18 worked very well for us. Lines changed many times.

19 Senator Rios is here, can probably attest
20 to this, as at one time he represented Santa Cruz County.
21 Once you represent Santa Cruz County, you always
22 represent Santa Cruz County and never let us go.
23 Wherever we can get some help.

24 Basically, we're satisfied. We think in
25 our respect to Districts 25, 30 serve us well. We

1 understand you are going to have to make some changes.
2 We like having multiple districts. We'd like to have not
3 less than two. With that said, I'd be glad to answer any
4 questions.

5 CHAIRMAN LYNN: With that said, you might
6 like to send to the City of Glendale.

7 MR. MILLER: We're represented by the law
8 firm of --

9 CHAIRMAN LYNN: Next speaker, Mr. Casper.

10 MR. CASPER: Good morning, Mr. Chairman,
11 Members of the Commission.

12 I'm not a lawyer, not representing anybody,
13 just a private citizen. As a private citizen, you know,
14 I've been at a number of these just because I'm
15 interested. I want to thank you for all the work, know
16 it's tough, know you have to balance an awful lot of
17 balls. I don't envy you.

18 I just want to make a point, came to make a
19 point. I'm independent, hearing, reading all the things
20 in the media. I don't have all your documents, don't
21 have all the different test maps and all the statistical
22 data that you have. So I'm speaking possibly from a bit
23 of ignorance. So please pardon me if I'm saying
24 something ignorant. I'm more than happy to be educated.

25 I just feel that those folks who only look

1 at Democrat and Republican registration, no matter who
2 they are, are engaging in a very questionable practice.
3 It's not necessarily flawed, not anything like that, just
4 questionable. Because to base competitiveness only on
5 Democratic/Republican, a 20 percent or more electorate of
6 State Independents, Libertarians, any number of different
7 groups, does not take a look at the whole picture.

8 That's all I'm saying. I don't know how
9 you are going to do it if you don't factor independent
10 voters into your structure. It might be something to
11 look at: 7 percent disparity, 10 percent independents.
12 Is the district possibly competitive? It very well could
13 be.

14 I just -- again, I could be quite wrong in
15 my assumption because I'm only getting what I get from
16 media and listening to different sources. But this
17 argument seems to be made on a partisan level. And as
18 a nonpartisan, I just think it needs -- we need to take
19 the independent voter into account.

20 I'm not the sharpest knife in the drawer.
21 If Republicans and Democrats only represent 80 percent,
22 they can only represent 80 percent, any percent to elect
23 somebody. So the independent voter, oftentimes a swing
24 voter, may go either way.

25 To not take an independent into

1 consideration, I think at least -- at least you should
2 look at it. That's all.

3 CHAIRMAN LYNN: Thank you, Mr. Casper.

4 Are there other members of public who wish
5 to be heard at this time?

6 If not, let's go back to the City of
7 Flagstaff. And without objection, have the map entered
8 into the record. And again, to the extent, Mayor
9 Donaldson, you have the accompanying data to go with the
10 map itself, I don't think you need to go into that in a
11 lot of detail, just make it available to us so we and the
12 consultants can use both the physical form of the map and
13 the analysis of it.

14 MAYOR DONALDSON: Right. Thank you,
15 Mr. Chairman. I asked Mr. Sissons, Research Advisory
16 Services, to make a presentation on behalf of Flagstaff.

17 CHAIRMAN LYNN: Without objection,
18 Mr. Sissons. Again, as we're all becoming excruciatingly
19 familiar with how to read maps. Brevity would be
20 appreciated. Not to cut any pertinent information, but
21 just -- we'll understand your data when we see it.

22 MR. SISSONS: I do understand that,
23 Commissioner Lynn. I hadn't filled out a slip up until
24 now. I didn't know whether I would be asked to speak or
25 not.

1 CHAIRMAN LYNN: We'll just take you as a
2 part of the Flagstaff presentation.

3 MR. SISSONS: Thank you.

4 In this presentation, I do -- really not
5 much of a presentation, just to go over some points that
6 this map represents. And, if your staff could distribute
7 these handouts, that would be greatly appreciated.

8 Actually, those five are for Commission
9 members, and these are extras --

10 Oh, can I keep one?

11 MR. ECHEVESTE: Yes.

12 MR. SISSONS: I do also have a digital copy
13 of the map, which I would like to hand to Digital Doug.

14 CHAIRMAN LYNN: For the record, that would
15 be Mr. Johnson.

16 MR. MANDELL: Of course, that will be his
17 name from now on.

18 MR. SISSONS: Mr. Chairman, Members of the
19 Commission, Flagstaff asked me to look at a map that
20 basically, in essence, solves their needs; but a map that
21 is -- would also be very reflective of what appeared to
22 appeal to Judge Fields in terms of his acceptance level
23 of competitiveness.

24 And the approach that I used for that was
25 to, in essence, take two of the Commission's maps and,

1 well, for lack of a better term, graph them together.

2 The way I did that, as you'll see in the
3 first sheet of the handout, that says, "Facts About
4 Flagstaff Preferred Plan C9," 22 of the Districts on this
5 plan, are exactly as the Commission drew them.

6 Districts 1 and 2 are from the adopted
7 August 17th draft plan -- August 17th, 2001, draft plan.
8 Then Districts 5 through 10 and then 17 through 30 are
9 from the Commission's Hall-Minkoff plan. It's not the
10 Hall Modified, the Hall-Minkoff plan, which is a plan
11 that the Commission asked its consultant, NDC, to
12 evaluate and report back to you on.

13 The changes to Districts 3 and 4 are simply
14 the result of fitting together the two IRC plans, the
15 August 17th plan and the Hall-Minkoff plan. And then
16 Districts 11 through 16 in Central Phoenix, I made
17 modifications there to reunite the Isaac School District
18 within a single Legislative District.

19 Also, changes to make one additional
20 minority district -- well, one district that was already
21 a totally all age minority district, make it a voting age
22 majority district as well, and then to add competitive
23 districts.

24 The final result, and you can sort of see
25 on the spreadsheet that was the second page of the

1 handout, Flagstaff Plan C9 has 10 minority-majority
2 districts, seven of them -- seven of them being voting
3 age majorities, which is exactly the same minority
4 district profile as the -- as the current districts, the
5 court-ordered interim plan.

6 This plan has a smaller population
7 deviation than the interim plan, and its districts
8 statewide are more compact than in the interim plan.
9 Flagstaff's plan C9 does not increase the number of
10 cities or towns that are divided by Legislative
11 boundaries, and it does eliminate the division of the
12 Isaac School District.

13 Now, whereas the interim plan has four
14 competitive districts using the AQD spread of less than
15 seven percent, that being the only competitiveness
16 measure that is at my disposal to use, I'm not in a
17 position to come up with JudgeIt calculation, but --
18 well, the interim plan has four competitive districts.
19 And using exactly that same measure, the plan C9 has nine
20 competitive districts.

21 One of the -- I think one thing that this
22 plan well illustrates is that when one has to draw
23 districts that are fully respective of the Voting Rights
24 Act, that does not necessarily mean that would take so
25 many Democrats away from the mix that additional -- that,

1 you know, a fairly substantial number of competitive
2 districts could not be created. Because here we have a
3 situation of ten minority-majority districts and nine
4 competitive districts on the same map and these shapes,
5 I'm sure, you'll recognize as being very similar to
6 shapes that you looked at during the process.

7 MS. HAUSER: Mr. Chairman.

8 CHAIRMAN LYNN: Ms. Hauser.

9 MS. HAUSER: Mr. Sissons, have you run
10 JudgeIt on this particular plan?

11 MR. SISSONS: No, I have no ability to run
12 JudgeIt.

13 MS. HAUSER: And in terms of the number of
14 majority-minority districts that you indicated, have
15 you -- what steps did you take in constructing this
16 particular map to address the Georgia versus Ashcroft
17 portion of the court's order?

18 MR. SISSONS: I think the answer there is
19 that I was using the purely mathematical computation of
20 50 percent representing a -- well, more than 50 percent
21 representing a majority. And the minority portions that
22 I was using in this mapping, or in this analysis, was the
23 aggregate minority combining Hispanics with all other
24 recognized minority populations.

25 So in my work on this, it was not the issue

1 of examining influence districts or -- I think the term
2 you've been using is substantive representation. This
3 work has been basically kind of looking at it in the --
4 well, in the sort of rather rigid mathematical way we
5 used to look at these sorts of things.

6 MS. HAUSER: All right. And did you --
7 well, I -- it seems noteworthy that this is the first map
8 I can recall, at least recently, where Flagstaff has
9 taken a position with respect to the Metropolitan Phoenix
10 area.

11 Can you describe the thought process that
12 went into doing so in this particular presentation?

13 MR. SISSONS: I think I can respond this
14 way: Insofar as the instructions to me were to -- the
15 City of Flagstaff was aware, through their attorney,
16 David Cantelme's presentation, that of all the maps that
17 the Commission looked at, drew, or adopted, really only
18 the August 17th, 2001 plan accommodated the City of
19 Flagstaff in the way -- in a way that it was, you know,
20 was comfortable with.

21 Then the sort of companion issue for the
22 City of Flagstaff was that, you know, for a map to be
23 found acceptable, you know -- a map that was acceptable
24 to Flagstaff that would be acceptable to the Commission,
25 the court, the general public, in essence, please draft,

1 you know, a situation that treats us well onto what
2 appears to be or would seem to be the most palatable map,
3 in general. Beyond that, I can't speak to Flagstaff's
4 viewpoint.

5 MS. HAUSER: And in drawing this map, did
6 you develop any definitions of any of the significant
7 terms that Judge Fields spoke about?

8 Did you adopt any definitions? And if so,
9 how did you apply them?

10 MR. SISSONS: Chairman, Ms. Hauser, the
11 answer is no to really all of those. I did not examine
12 the effect of Judge Fields' ruling on my perception of
13 what you would be asked to do and trying to align myself
14 in that same fashion.

15 MS. HAUSER: Thank you.

16 CHAIRMAN LYNN: Mr. Huntwork.

17 COMMISSIONER HUNTWORK: Mr. Chairman, I
18 would like to say that we have at times in the past, I
19 wouldn't say criticized Flagstaff, reminded Flagstaff
20 that it isn't sufficient just to present a map that shows
21 just Flagstaff. And it's really meaningless without
22 showing it's incorporated into a whole concept. To that
23 extent, I wouldn't have any criticism for the fact this
24 just doesn't deal with just Flagstaff.

25 I do have this question. It appears to me

1 we have a division of Yavapai County into several pieces.
2 I am not sure I can tell exactly how many are here from
3 what I'm looking at. The thing that concerns me the
4 most, that it appears that the Prescott and Prescott
5 Valley area has, once again, been divided into three
6 pieces. I can't tell where the epicenter is of those
7 lines; but just from my common-sense knowledge, it looks
8 like it's pretty much in the middle of that area.

9 And -- are you telling us the only way that
10 we can reunite Flagstaff is to divide Prescott or have
11 you -- have you devoted yourself to trying to think of an
12 alternative that is unite Prescott and unite Prescott?
13 Because that's a fairly important consideration for the
14 Commission as well.

15 MR. SISSONS: Chairman Lynn, Mr. Huntwork,
16 I very much recognize your -- the issue that you are
17 raising. It is certainly true that in deciding to take
18 plans that the Commission has drawn and sort of put
19 together a plan composed of those parts, to some degree
20 I'm sort of wanting to have these efforts not viewed as
21 kind of -- well, somebody coming in at the last minute
22 with wholly different concepts.

23 In my view, and my advice to the City of
24 Flagstaff, to the extent possible, let's have a map that
25 is composed of districts that have already been

1 scrutinized by the Commission. And certainly, in
2 choosing to use the shape of District 1, as you have
3 configured it in your first adopted plan, that boundary
4 did in fact divide Prescott Valley from Prescott and from
5 Chino Valley, which is not to say that -- well, that's
6 not to say that other configurations couldn't be found;
7 but it might be a bit difficult, insofar as if the
8 District 2 configuration stay as it is and the District 5
9 configuration stays as it is, to a large extent that
10 circumscribes the District 1 containing Flagstaff in such
11 a way that its only way to pick up the population it
12 needs would be to approach that Tri-City area.

13 And as it approaches that area, taking in
14 all three communities does too much; not taking in any of
15 the three means that it's got to travel a much greater
16 distance to find the requisite population to come up with
17 that population size.

18 So it's -- the question that you raise is
19 one that is difficult to deal with, on this map.

20 COMMISSIONER HUNTWORK: And you are saying
21 it's difficult because District -- if you set District
22 5 -- if you set District 2 and treat those as being
23 unchangeable --

24 MR. SISSONS: Then the reunification of
25 Flagstaff, as far as you've been able to figure out,

1 leads directly to the division of Prescott.

2 MR. SISSONS: That's true.

3 COMMISSIONER HUNTWORK: You cannot think of
4 any alternative to those. Well, I would say that you
5 should keep thinking, but --

6 MR. SISSONS: That is true.

7 COMMISSIONER HUNTWORK: Any idea that might
8 accomplish that would be warmly received by the
9 Commission.

10 MR. SISSONS: Yes.

11 CHAIRMAN LYNN: Mr. Sissons, I want to ask
12 a question. It's really in the form of a statement I'd
13 like you to agree or disagree with or challenge in
14 detail.

15 Recognizing that you have been retained by
16 the City of Flagstaff to do some mapping for them --

17 MR. SISSONS: Yes.

18 CHAIRMAN LYNN: -- and recognizing the City
19 of Flagstaff has a perspective or point of view with
20 respect to how they'd like maps to look relative to their
21 city boundaries and their planning area, is it fair to
22 say that, in choosing the pieces and parts of maps, that
23 you chose that you wanted to be sure that your client's
24 primary goal was included in the map?

25 MR. SISSONS: Yes.

1 CHAIRMAN LYNN: And the approximate result
2 of the beginning at that point was, whether intended or
3 otherwise, a division of other communities of interest,
4 which have been established on the record, such as the
5 Tri-Cities area or other parts of the state. And it's
6 really an end sum game, meaning that if you are creating
7 districts and trying to keep a low population deviation,
8 that you simply must do some of those things in order to
9 complete the task.

10 MR. SISSONS: I would find that statement
11 to be true.

12 CHAIRMAN LYNN: Then the last thing I'd ask
13 you to comment on is that simply, any other
14 constituency -- and I use that term in its broadest
15 sense, City of Flagstaff being constituency, Navajo
16 Nation being constituency, City of Casa Grande being
17 constituency -- any constituency might simply engage you
18 or any other map drawer to begin with a premise, and that
19 premise be reflected in the map; and then what happens to
20 the rest of the state happens as a matter of course as
21 you go through the state to achieve the goals that are
22 set forth.

23 MR. SISSONS: On that point, you know, I
24 can -- I can see the appearance or the likelihood of
25 that. However, this is -- this is -- if another sort of

1 simply situated community were to approach me to do that,
2 you know, they would get -- I mean, we would engage in
3 quite a discussion of the trade-offs involved in that
4 mapping.

5 In other words, it wouldn't sort of -- just
6 as in my discussions with the City of Flagstaff, and
7 actually addressing the Flagstaff City Council, the sort
8 of political balances that you are referring to were
9 completely discussed, as -- and that sort of process I
10 would go through with any other constituency client that
11 approached me.

12 CHAIRMAN LYNN: Not approaching trade-offs
13 may have been known, trade-offs were made.

14 MR. SISSONS: Yes.

15 CHAIRMAN LYNN: Any other comments or
16 questions?

17 Mr. Hall.

18 COMMISSIONER HALL: Mr. Sissons, my
19 Commissioners have, I think, adequately discussed issues
20 relative to ripple effect on the communities of interest.
21 But my -- for me, the way I'm working, the way my mind
22 works is, I think we have to really look first at the
23 impact on districts with respect to voting rights issues.

24 So my question is, in the numbers that I'm
25 looking at -- and just to review all of our

1 understanding, Mr. Sissons, obviously, you formerly work
2 and still probably work for the plaintiffs in the case,
3 also now evidently work with the City of Flagstaff. So
4 the specific numbers that you put forward, the
5 percentages in 13, 14, and 15 -- well, I stand
6 corrected -- yeah, the percentages in 13, 14, and 16, are
7 all lower than the existing map that has been precleared
8 by the Department of Justice that this Commission has put
9 forward.

10 So I guess my question to you is this. And
11 I guess that's a by-product of the ripple effect down
12 into Maricopa County. So -- are your other clients aware
13 or in agreement with that impact in light of the fact --
14 pardon me, that they represent the Minority Coalition?

15 I'm trying to -- maybe you are not
16 authorized to speak on their behalf. I know you work for
17 both parties.

18 MR. SISSONS: Sure. I tried to make clear
19 during the court proceedings, I choose not to function as
20 a conduit between both clients. There's kind of a bit of
21 a firewall there.

22 COMMISSIONER HALL: I see.

23 MR. SISSONS: I'm sure Mr. Mandell could
24 look at these figures and tell you whether he feels that
25 his clients might be comfortable with them.

1 Insofar as these percentages are very close
2 to their -- to the values that showed on the Hall-Minkoff
3 test plan, which was kind of the -- from which this was
4 based. And really, it's only kind of the increase of the
5 proportion in District 15, taking a little bit from
6 Districts 13, 14, and 16, that in the aggregate, that
7 sort of grouping of four districts, that the other
8 plaintiffs were presumably happy with at the time that
9 this matter was brought before Judge Fields.

10 Insofar as the kind of minority profile has
11 been changed only to the extent that a fourth voting age
12 district has been created by that reconfiguration, I
13 wouldn't see that as being a diminution of the minority
14 voting strength in that grouping of four districts.

15 COMMISSIONER HALL: Thank you.

16 CHAIRMAN LYNN: Mr. Rivera.

17 MR. RIVERA: Mr. Sissons, although --

18 CHAIRMAN LYNN: I guess Mr. Mandell wants
19 to weigh in on that question.

20 MR. MANDELL: Mr. Chairman, Michael Mandell
21 for the Minority Coalition.

22 To respond for the Minority Coalition and
23 make sure the record is clear, we've not seen any of
24 these maps and take no position on any of the numbers in
25 there.

1 COMMISSIONER HALL: Thank you.

2 CHAIRMAN LYNN: Thank you.

3 MR. RIVERA: You drew up the Minority
4 Coalition 2 way back when, remember that, drew Minority
5 Coalition 2?

6 MR. SISSONS: Did not draw any of the
7 Coalition maps that were prepared -- well, I did not draw
8 any of the maps that had the name "Coalition" in their
9 title.

10 MR. RIVERA: You were going to testify
11 about the Coalition 2 Map and agreed with the Coalition 2
12 Map. Right? Would I be correct in saying that?

13 MR. SISSONS: Yes.

14 MR. RIVERA: Mr. Mandell came up and
15 testified, at the very minimum, the Coalition 2 Map met
16 the Ashcroft criteria, according to them.

17 How does your map compare in terms of
18 minority percentages to Coalition 2? Is it higher than
19 Coalition 2 in Central Phoenix or lower than Coalition 2
20 in Central Phoenix?

21 MR. SISSONS: Mr. Rivera, I do not know the
22 answer to that.

23 MR. RIVERA: You wouldn't know -- I hate to
24 put you on the spot. You would not know whether this map
25 meets the Ashcroft criteria as perceived by the

1 Coalition?

2 MR. SISSONS: I would not know.

3 MR. RIVERA: Thank you.

4 CHAIRMAN LYNN: Okay. Thank you,

5 Mr. Sissons, very much. Thank you.

6 Obviously, we have copies of the map, and
7 as we move forward, you may need to do the same in terms
8 of where we go with this process. Thank you,
9 Mr. Sissons.

10 What I'd like to do now is take a break so
11 that our court reporter can stretch. I'd like to try to
12 keep the break to no more than 15 minutes, and then we'll
13 reconvene and -- reconvene the agenda. So stand in
14 recess for 15 minutes.

15 (Recess taken.)

16 CHAIRMAN LYNN: Next item on the agenda is
17 item V. We'll hold in abeyance any consideration of an
18 executive session.

19 Just for housekeeping purposes, and
20 particularly for those joining us for these meetings, in
21 about 45 minutes or so, we will break for a lunch break.
22 We'll try to keep the lunch break to a reasonable amount
23 of time. It won't exceed an hour. And we'll just pick
24 up the agenda after the lunch break wherever we are in
25 it. So for those of you who may wish to grab lunch at

1 the same time, there are a couple of choices either in
2 the hotel or nearby. I want to give you that heads up.

3 Report on definitions adopted at the
4 meeting of February 3rd, possible presentation,
5 discussion, discussion and possible decision of
6 constitutional terms.

7 Mr. Johnson.

8 MS. HAUSER: Definitions.

9 CHAIRMAN LYNN: Did I surprise you?

10 MR. JOHNSON: Yes.

11 CHAIRMAN LYNN: What would you prefer to
12 do?

13 MR. JOHNSON: I believe --

14 CHAIRMAN LYNN: Several shots of your young
15 child?

16 MR. JOHNSON: There are several things I
17 could suggest.

18 There were three definitions postponed to
19 today's hearing. I don't know if counsel does have a
20 preference.

21 Significant detriment.

22 CHAIRMAN LYNN: Compactness is another.

23 MR. JOHNSON: I can look up the other.

24 CHAIRMAN LYNN: Others were settled.

25 COMMISSIONER HALL: The meeting has been

1 posted for a while. Were you aware of that?

2 MR. JOHNSON: Interest access issues.

3 I think, if you want, I can bring up the

4 presentation from last week, put up information we had on

5 those terms --

6 CHAIRMAN LYNN: Let's start there.

7 MS. LEONI: Compactness was deferred.

8 Compactness and communities of interest.

9 MR. JOHNSON: I guess, want to start with

10 compactness? Significant detriment?

11 CHAIRMAN LYNN: I think probably

12 significant detriment is going to --

13 MR. JOHNSON: Okay. When we last left

14 definitions, one of the things unresolved was a

15 definition for significant detriment. And this example

16 is an example of how that term might apply to communities

17 of interest.

18 COMMISSIONER ELDER: Mr. Chairman.

19 CHAIRMAN LYNN: Mr. Elder.

20 COMMISSIONER ELDER: Could not significant

21 detriment be applied to any of the other five?

22 MS. LEONI: This is an incorrect slide.

23 CHAIRMAN LYNN: Kind of why I pointed it

24 out.

25 (Slide: Definition of significant and

1 definition of detriment.)

2 COMMISSIONER HUNTWORK: In our previous
3 meeting, we had gotten well beyond this point. I think
4 Commissioners Hall and Elder were not there to
5 participate in much of that discussion. And rather than
6 starting over with the raw slides, I think it might be
7 helpful to pick up at the point that we had gotten to.
8 And if they have questions, we can backtrack.

9 COMMISSIONER HALL: Thank you for
10 summarizing for us.

11 COMMISSIONER HUNTWORK: Okay. Well, what
12 we had done was, we actually had gotten to the point of
13 making a motion to define the term "significant
14 detriment" in a comprehensive way. And I do not have the
15 exact formulation of that; but we did have one, I made it
16 in the form of a motion.

17 Commissioner Minkoff declined politely to
18 second the motion on the ground that, not that she didn't
19 feel emphatically she agreed with the definition, but she
20 felt it would be inappropriate to adopt such an important
21 definition without four out of five Commissioners being
22 present and, in effect, five out of five, if two of you
23 concur.

24 So -- let's see. What is the proposed
25 definition?

1 Is there a slide of this, by any chance?

2 MR. JOHNSON: I'll put it up.

3 COMMISSIONER HUNTWORK: I made a motion,
4 defined the term "significant detriment": Any impairment
5 of a redistricting criterion which the Commission
6 determines, based on the record before it, to be material
7 and substantial, but not an impairment which the
8 Commission determines to be minimal or inconsequential.

9 Impairment is "A-I-R" for what it's worth.

10 MR. JOHNSON: What is the last?

11 COMMISSIONER HUNTWORK: "Minimal or
12 inconsequential."

13 CHAIRMAN LYNN: For the benefit of
14 Mr. Elder and Mr. Hall, what we had done at the last
15 meeting, in order to sharpen the focus of the last
16 discussion, in an attempt for discussion purposes to
17 attempt to have a proposed definition, we moved and
18 seconded the discussed modified change ultimately adopted
19 for purposes of discussion.

20 Mr. Huntwork, are you reintroducing this as
21 a motion?

22 COMMISSIONER HUNTWORK: Yes.

23 CHAIRMAN LYNN: Second?

24 COMMISSIONER HALL: Yes.

25 CHAIRMAN LYNN: Thank you.

1 Discussion on the motion. You know, take a
2 moment, particularly Mr. Hall, Mr. Elder, it's a first
3 impression situation for two of you that you've not seen
4 this proposed definition before. If you wish to take a
5 minute, just --

6 COMMISSIONER HUNTWORK: If I continue
7 summarizing a moment as to that, just a little more to
8 the discussion.

9 CHAIRMAN LYNN: Mr. Huntwork.

10 COMMISSIONER HUNTWORK: Commissioner
11 Minkoff agreed with the methodology adopting this general
12 definition, also suggested that we consider refinements
13 or subdefinitions so this could be applied more readily
14 to each of individual criteria that refer separately to
15 significant detriment.

16 Now, with that in mind, the sharing of
17 ideas we had this morning with Mr. Mandell suggested
18 possibly another approach all together, which is in fact
19 the possibility of simply a separate definition for each
20 of the criteria.

21 While looking at that, I think -- and
22 that -- that approach has some potential benefits to it.
23 As I was thinking about it, I, myself, would like to
24 consider the possibility of doing it that way rather than
25 this way. At least talk through both approaches so we

1 have considered them fully.

2 CHAIRMAN LYNN: Mr. Hall.

3 COMMISSIONER HALL: Just for my benefit,
4 with respect to your last comment of having specific
5 qualifiers, if you will, for each goal, I think that that
6 is really pretty simple to comprehend with respect to
7 compactness. You get a score, it's X. I mean, that's --
8 but I guess, obviously, the more challenging category,
9 for example, communities of interest.

10 So, can you give me an example of how
11 that -- how that would work?

12 COMMISSIONER HUNTWORK: Well, the
13 definition on the board a moment ago is one approach and
14 is very similar to the effective representation standard
15 that Mr. Mandell was suggesting. There are some -- not
16 exactly the same -- along the same lines, adequate
17 representation, I think what -- can't remember what our
18 slide said, effective versus -- fair representation
19 versus -- fair representation versus effective
20 representation.

21 COMMISSIONER HALL: So when we say,
22 "deprives a significant portion of that community,"
23 significant being --

24 COMMISSIONER HUNTWORK: Well, okay. I mean
25 I --

1 COMMISSIONER HALL: Fuller definition might
2 be a substantial -- material or substantial, not a
3 minimal or inconsequential portion of the community, if
4 you will.

5 CHAIRMAN LYNN: I think the point here is
6 that -- the pointed issue is adopting a definition that
7 can be applied fairly across the map. And what you are
8 not going to be able to get away from, in my opinion, is
9 some degree of judgment on what is significant and what
10 is substantial.

11 But I think the more we use those terms as
12 we move through the map and create a record that details
13 what those significances happen to be, I think we can
14 figure out whether or not we're applying them equally or
15 whether we've strayed. I mean, it is a working
16 definition, by every sense of that term.

17 Mr. Hall.

18 COMMISSIONER HALL: Real point is, how
19 naive the order is. But that's a whole other point.

20 My question is: Why -- why is it necessary
21 to add, "but not an impairment the IRC determines to be
22 minimal and inconsequential"?

23 COMMISSIONER HUNTWORK: I don't think it is
24 necessary, but this is -- you know, it's an effort to use
25 enough words to encapsulate an area of discretion. And

1 those words -- those words may help to describe a floor,
2 a bottom criteria --

3 COMMISSIONER HALL: I see.

4 COMMISSIONER HUNTWORK: -- as well as the
5 top and sides, and so forth.

6 So, you know, without -- as you say, in the
7 case of compactness, you can actually try to set a
8 numerical standard if you choose to do so. Here it, by
9 necessity, remains somewhat a matter of judgment and
10 discretion. And we are trying to -- as many legal rules
11 do, we are trying to express it clearly enough so that a
12 reasonable person can grasp the idea and seek honestly to
13 apply it in a logical and consistent manner.

14 CHAIRMAN LYNN: Mr. Elder.

15 COMMISSIONER ELDER: Mr. Chairman, could I
16 ask a question of counsel?

17 In attempting to work within the
18 constraints or the opportunities, as that case may be, of
19 Judge Fields' order, this puts it into legal context.
20 Does material and substantial have something we should be
21 aware of as far as terms in a legal sense?

22 In other words, a definition of material,
23 substantial; yes, this was a material event, or no, it
24 was not.

25 MS. HAUSER: Mr. Elder, in another context,

1 there is case law concerning what the word "material"
2 means. And by using that particular word, Commissioner
3 Huntwork's motion was intended to suggest that it is
4 something, you know, at a higher level. It is not just
5 any sort of detriment, but something that truly impairs
6 the achievement of that particular redistricting role.

7 COMMISSIONER ELDER: Term "obvious," is
8 that the same as material and substantial?

9 MS. HAUSER: No. I don't believe obvious
10 is the same.

11 MS. HAUSER: Mr. Huntwork is making a
12 motion to comment.

13 COMMISSIONER HUNTWORK: It's not the same,
14 Commissioner Elder. What we are dealing with is many
15 cases, not obvious. We have information we've gotten by
16 going around hearing from people all over the State of
17 Arizona, and may not have been available to anyone, even
18 in the best informed expert consultant without going
19 through that process.

20 So, to me, obviousness is the opposite of
21 subtly, not the -- not the opposite of significant or
22 insignificant.

23 CHAIRMAN LYNN: Mr. Rivera.

24 MR. RIVERA: Similar to following
25 Mr. Huntwork, something can be obvious not material.

1 Also, can make a change readily seen in the map, might
2 not be a material change to that district.

3 CHAIRMAN LYNN: Any further discussion on
4 the motion?

5 COMMISSIONER ELDER: See if the maker of
6 the motion, modify the motion to delete the phrase "but
7 not an impairment which the IRC determines to be a
8 minimal or consequential," replace that comma with a --
9 comma with a period.

10 CHAIRMAN LYNN: Mr. Huntwork.

11 COMMISSIONER ELDER: I would do that, if
12 necessary. I personally prefer to have that, those
13 additional words as a -- as an aid to interpretation in
14 further understanding and refinement of the definition.

15 I do think this. I think that the words
16 "material" and "substantial" in other contexts will have
17 a lot more legal meaning attached to them than the words
18 "minimal" or "inconsequential" do. And in that regard,
19 one might say that if the court were laying down a rule
20 of law, I would expect to see the period after the word
21 "substantial."

22 But, you know, I continue to struggle with
23 the fact that, although we are held to a strict standard
24 as if we were a court, not even a jury, but a court,
25 being subject to review on that standard, in a

1 nontechnical way, I think that those words add a lot of
2 meaning. So that's my --

3 CHAIRMAN LYNN: Shorthand answer is no,
4 Mr. Elder.

5 COMMISSIONER HUNTWORK: Shorthand answer
6 is, if we can get it passed, I'm not going to change it.
7 If that's what it takes to get it passed, I guess I will.

8 CHAIRMAN LYNN: Further discussion on the
9 motion?

10 MR. JOHNSON: One thing, Mr. Chairman.

11 CHAIRMAN LYNN: Mr. Johnson.

12 MR. JOHNSON: Grammar thing. Might want to
13 put commas after "determines" and "it," so we set off
14 that clause. "So IRC determines, comma, based on the
15 record before it, comma."

16 CHAIRMAN LYNN: Mr. Huntwork, any objection
17 to commas?

18 COMMISSIONER HUNTWORK: No objection to
19 commas, but I would like to ask our counsel what the word
20 "record" means. What is the record before us?

21 CHAIRMAN LYNN: Mr. Rivera.

22 MR. RIVERA: All inclusive rather than
23 exclusive to things that have come in. Judge Fields, in
24 his opinion, seemed to state that it's more than people
25 coming in and testifying in front of the Commission. I

1 think it's presentations. I think it is people
2 testifying in front of you. I think it's geographic
3 outside information that you may be aware of. Census
4 places, whatever you can find on the map, I would be all
5 inclusive rather than limiting, I think.

6 CHAIRMAN LYNN: Are you suggesting, then,
7 that clause come out?

8 MR. RIVERA: I think you leave it in.

9 CHAIRMAN LYNN: For our purposes, the
10 definition of record is more inclusive than simply
11 testimony.

12 MR. RIVERA: Exactly right.

13 COMMISSIONER ELDER: Mr. Chairman, Mr. --
14 Jose, is that to mean, if I went, had a meeting with the
15 Chairman Tohono O'dham, an individual meeting with
16 Mr. Lopez, the Mayor of Nogalas, meeting other people,
17 the wholeness of my perception of what the issues are, is
18 that the record?

19 MR. RIVERA: Yeah.

20 COMMISSIONER ELDER: Not written --

21 MR. RIVERA: That's a good question,
22 Commissioner, start of process, back in 1890, whenever it
23 was, you know, we specifically made that part of the
24 record, outside contacts and Commissioners were allowed
25 to go speak to people. And we had contact forms that we

1 requested people would fill out. But I think that those
2 comments are part of the record. It's not excluded, part
3 of what Commissioners bring in.

4 I preface, when you make a comment based on
5 something like that, I make that on your statement in
6 terms of where you got that from.

7 CHAIRMAN LYNN: Mr. Huntwork.

8 COMMISSIONER HUNTWORK: So we can, by our
9 own comments, add things to the record.

10 MR. RIVERA: That would be part of the
11 record.

12 COMMISSIONER HUNTWORK: If this meeting
13 took place, but Mr. Elder never mentioned it on the
14 record, it would not be part of the record.

15 MR. RIVERA: That's correct.

16 COMMISSIONER HUNTWORK: One last question.
17 What about things we know of our own knowledge that are
18 factually correct and we simply state them? Is that --
19 is that or is it not?

20 MS. LEONI: Evidence versus record.

21 COMMISSIONER HUNTWORK: Does that become
22 part of the record?

23 MS. HAUSER: Mr. Huntwork, Mr. Rivera
24 believe that is part of the record. You, I think, help
25 that record by sharing the factual information that you

1 have, such as it exists, to explain the information that
2 you are bringing in before the rest of the Commission;
3 and I think it has always been helpful. You all are
4 representatives of different parts of the state selected
5 to bring different points of view and different
6 geographic representation to the Commission.

7 So your personal knowledge, let's document
8 it, stated in terms of the factual information you have
9 rather than just stating it as opinion; but I think that
10 that is helpful information to share with your fellow
11 Commissioners. And then it is part of the record, then
12 can be at that point evaluated by your fellow
13 Commissioners for whatever --

14 COMMISSIONER HUNTWORK: Reviewed by the
15 court or anyone else for accuracy of the information.

16 Let me ask this also, then. The way in
17 which we evaluate the information provided to us by
18 others, it seems to me, is also based on our own
19 knowledge and common sense.

20 In other words, we are not receiving sworn
21 testimony. I don't know that we have a single affidavit
22 in our record. Anyone who wants to can get up and make
23 any comment they want to without having to worry about
24 being prosecuted for perjury or even, you know, flatly
25 contradicting themselves within a short time in the same

1 context of the same statement. As we ourselves do
2 sometimes, I might add. We use our own knowledge and
3 common sense to evaluate that kind of information.

4 We also, for example, if 20 people come to
5 a meeting, all stand up say one thing, and one person
6 stands up and says something else, we don't take that as
7 a vote, at least as I perceive it. We consider what each
8 person said, decide what is correct based on their own
9 knowledge, understanding.

10 Two questions. Do you agree we are allowed
11 to do that and should do that?

12 Number two, do we need to state our
13 reasoning on the record? Do we need to resolve these
14 conflicts between opposing information as a matter of
15 record?

16 MS. HAUSER: Commissioner Huntwork, let me
17 take the second part of that first.

18 The extent to which you can do that,
19 it's -- it's probably helpful to state those reasons on
20 the record as clearly as you can, if you are making
21 distinctions between conflicting information that is in
22 front of the Commission.

23 With respect to the first part of your
24 question, I don't believe that anyone intends that you
25 all leave your brains in a box at the door outside when

1 you come into this room. You do have knowledge and an
2 ability to reason that is necessary for you to use in
3 this process. So as information is presented to you, I
4 think the fact that it is not sworn testimony is not
5 particularly significant in this context.

6 The Legislature, itself, has hearings on
7 bills. Many of you probably attended those and people
8 come in, and they make statements and the legislators
9 evaluate that information presented to them. The -- even
10 in a court situation where you have sworn witness
11 testimony, the trier of fact, whether that is a jury or a
12 judge, still evaluates, because you can have sworn
13 testimony that is in conflict. And so there is still an
14 evaluation process that goes on by the trier of fact in
15 terms of the weight of that evidence or the credibility
16 of those particular witnesses, and those are all things
17 that you need to pay attention to in this context.

18 So I think you are correct in stating, if
19 you have 20 witnesses who come in say one thing, one who
20 says another, it's not a question of how many you have
21 saying something; but looking at it in the entire context
22 of the situation.

23 COMMISSIONER HUNTWORK: One last question,
24 if I may.

25 Jose, I'm sorry.

1 MR. RIVERA: I was going to say my comments
2 who are, yep, always put as much detail as I can. My
3 firm also has an active criminal law section of it.

4 COMMISSIONER HUNTWORK: Might simplify
5 things in some way.

6 My last question for you was, there was
7 some language in the judge's order we are attempting to
8 comply with dealt with the use by Commissioners of their
9 own knowledge as opposed to something. And I'm trying to
10 reconcile that statement or understand that statement.

11 Would you explain your own -- the way you
12 make -- what -- the advice you've just given us
13 consistent with that portion of the court's order?

14 MS. HAUSER: My understanding of what was
15 said there -- Mr. Mandell is present, if Coalition has a
16 different view of this, I'd offer the opportunity for him
17 to express that.

18 My understanding, the court in referring to
19 instances when it viewed Commissioners to have relied on
20 their own personal knowledge, I believe it was the
21 court's view that that was to the exclusion of other
22 factual information. And not indicating that you don't
23 have some inability to weigh and evaluate information
24 that is presented to you.

25 Would that be a fair statement,

1 Mr. Mandell?

2 COMMISSIONER HUNTWORK: Before he answers,
3 I just want to ask you, to make sure I understand it: If
4 somebody gets -- it's no different than anything else.
5 If somebody gets up and says something to us we know is
6 not correct, we know it's not correct, we don't have to
7 do what they told us to because no one else stood up and
8 said that's not correct.

9 MS. HAUSER: You'd want to make a record
10 with respect, you know, to be correct; and we can
11 certainly try to, you know, document that in some way.

12 COMMISSIONER HUNTWORK: If we fail to make
13 that record, are we then bound by the statement
14 someone -- do we have to contradict, interrupt people
15 saying things to us we know are incorrect, contradict
16 them at the time, that's the only way we'll keep up with
17 this?

18 MS. HAUSER: You've been doing that.
19 Someone comes before you, asks you for some particular
20 consideration or makes statements with respect to a
21 particular community of interest, those are good times to
22 then say, "Well, wait a minute, what about X," and to
23 fill in those blanks. If you don't do that, I suppose in
24 the absence of some other information in the record, I'm
25 not saying you are bound by it -- what we don't know in

1 the context of the hypothetical you are presenting is the
2 decision point in which that information becomes
3 relevant. And it may or may not result in a particular
4 decision point.

5 COMMISSIONER HUNTWORK: Right.

6 MS. HAUSER: It's hard to answer that
7 question in the abstract.

8 COMMISSIONER HUNTWORK: Many of the people
9 that stand before us are ordinary citizens who feel
10 strongly, may be timid, may have been a very brief thing
11 to come and talk to the Commission. I have no intention
12 whatever of intimidating these people and trying to
13 contradict what they are saying. In fact, even if what
14 they are saying isn't correct, it's wonderful that they
15 have taken their time to come and participate in the
16 process.

17 So, you know, and unless you tell me that
18 I'm obligated to do so in order to preserve the record, I
19 would prefer to being kind to the ordinary citizens and
20 cross-examining the lawyers, if possible; but not people
21 who, you know, are not used to that sort of give and
22 take.

23 MS. HAUSER: Mr. Huntwork, it's possible to
24 get information and be kind at the same time.

25 COMMISSIONER HUNTWORK: It is a knack I

1 might not have.

2 MS. HAUSER: Apologize for asking the
3 question. It depends on the point, depends on what is
4 incorrect about the particular point they are making and
5 whether or not it is possible to correct the record with
6 respect to some other information instead and just let
7 that person make their statement and move on. It's just
8 going to depend on the situation. If we can deal with
9 those case by case, that would be more comfortable than
10 globally.

11 I would like to get Mr. Mandell's response
12 to the point I made, which is you, in my view, under the
13 court's order, his criticism was that he felt that -- and
14 I'm not saying this is true or not, again, since we're
15 talking about complying with the order -- his view of the
16 use of Commissioners' personal knowledge was criticized
17 in connection with doing so, as he saw it, to the
18 exclusion of everything else, to the exclusion of facts.

19 And I would -- and I think that in terms of
20 evaluating what is before you, that you have the ability
21 to use your brains and common sense in evaluating that
22 information.

23 COMMISSIONER HUNTWORK: I don't want to put
24 off the answer. I think it's important. I just want to
25 understand your question, too. I want to understand it.

1 I would understand your answer if it were
2 simply the judge disagreed with the facts we presented
3 based on our own knowledge just as he might have with any
4 other fact he had found. I would certainly understand
5 that. But short of saying that anybody who sent -- we
6 have to correct the factual record with respect to
7 anybody who stands up and says something to us, I
8 don't -- I'm not sure what the stopping-off point is in
9 between those two positions.

10 MS. HAUSER: Again, Mr. Huntwork, I don't
11 believe I said you have to correct the record. I said,
12 if you have information --

13 COMMISSIONER HUNTWORK: I know what you
14 said. I am saying -- I'm asking you what is the
15 stopping-off point between those two positions?

16 Either we are allowed to and judge purely
17 on the basis of the accuracy of the information we state
18 and rely upon our own knowledge or we're not allowed to
19 use our own knowledge to contradict what someone else has
20 said to us. Your question, we can only use our own
21 knowledge where there is no record whatsoever.

22 MS. HAUSER: No.

23 COMMISSIONER HUNTWORK: What's the
24 stopping-off point?

25 MS. HAUSER: That's certainly not what I

1 indicated. I didn't say you can only use your own
2 knowledge when there's no record. I'm talking about
3 using knowledge, experience, wisdom and judgment to
4 evaluate the record in front of you. Some of that record
5 may include information you, as Commissioners, bring
6 forward as well and can be subject to some kind of
7 verification or some kind of, you know, debate by your
8 fellow Commissioners.

9 So it, again, is something that I think we
10 could spend another hour talking about here. But it is
11 difficult to give that kind -- the kind of definitive
12 answer you seek outside the context of some specific
13 information.

14 As we move forward, if there is some
15 particular piece of information that is giving you
16 heartburn, I suggest we deal with it there. But I do
17 want to get Mr. Mandell's view with respect to the
18 ability of the Commissioners to use their personal
19 knowledge to evaluate material that has been presented to
20 them, which I do not believe the court has disallowed.

21 CHAIRMAN LYNN: Mr. Mandell.

22 MR. MANDELL: Mr. Chairman, Commissioners,
23 Michael Mandell representing the Minority Coalition. I
24 don't think it's possible to analyze the issues. You
25 have to analyze without using a grade of personal

1 judgment.

2 I think what the court was trying to say in
3 its order, I know it when I see it test to the exclusion
4 of other issues.

5 Let me give you an example. Last time when
6 the Commission was reviewing the Hall-Minkoff test, there
7 were a number of comments about the change caused
8 significant detriment -- the change caused problems with
9 the area of compactness, yet no -- none of the objective
10 tests for compactness were run. The Polsby-Popper or
11 perimeter test showed increase of compactness as opposed
12 to decreasing. Part of it were shown Commissioners
13 looking at the map. It looks to me like it's less
14 compact than others. There were objective tests to the
15 exclusion of that, looked at that when there were
16 objective tests to determine that.

17 CHAIRMAN LYNN: Mr. Huntwork.

18 COMMISSIONER HUNTWORK: I understand that
19 very well. Thank you.

20 Let me give you another example. If, for
21 example, having been a certified real estate expert in
22 Phoenix for the last 15 years and having done lots of
23 work on various types of real estate activities, I
24 believe I know of my own knowledge that Moon Valley and
25 North has a lot more in common, a lot more shared

1 interests than Sunnyslope and South. Suppose that I
2 believe that, I know that of my own knowledge.

3 Now, what -- I thought the court might be
4 saying that I'm not allowed to introduce or use that
5 knowledge, even though I have it. I can understand the
6 court -- and I'm having trouble with that. I can
7 understand the court saying, "Well, I've looked at all
8 the facts what you thought you knew is factually
9 incorrect there for an invalid criterion; but I'm having
10 a lot of trouble with the fact I can't use the knowledge
11 if in fact I have it."

12 Is -- do you feel that is what the court
13 said, or did I completely misinterpret that?

14 MR. MANDELL: Mr. Chairman, Mr. Huntwork,
15 don't think the court said you have to exclude all
16 personal judgment, for example, in the situation you
17 gave. If you developed community of interest and the
18 Commission adopted community of interest of Sunnyslope,
19 any other community that in fact was mapped community of
20 interest, then -- in doing so, you had said, well, I --
21 you know, based on my experience, here are reasons why,
22 in my experience, I have encountered this, this, and
23 this, then I think that can be used as part of that. And
24 if you've got objective data to go along with that to
25 which shows, the petitioner software shows a lot of good

1 demographic data to develop communities of interest as
2 well as your personal knowledge in combination with
3 objective data, I think is what the court is looking for.

4 An example would be, for others, could be a
5 deferment to someone who is an expert. For issue -- on
6 the issue of competition, the Commission before had
7 Dr. McDonald, who at least had his analyses available,
8 but didn't ever ask him to assist the Commission in
9 actually creating competitive districts.

10 COMMISSIONER HUNTWORK: Right.

11 MR. MANDELL: He was a competitive expert,
12 could have provided that. None of the Commissioners, to
13 my knowledge, are competitiveness experts to simply say I
14 think it is a competitive district without basing it on,
15 well, if you look at past elections and look at voting
16 returns in these districts and how this showed, those
17 type of things, in combination, objective and subjective,
18 I think that's permissible.

19 COMMISSIONER HUNTWORK: This is very
20 helpful to me, and I appreciate very much the, you know,
21 the sense of partnership that we can have, at least at
22 this -- in this setting, as we talk about these things.

23 I want to ask you this last question: When
24 we dealt with the Hall-Minkoff test, we were under a lot
25 of time pressure. We are, as we go into this process

1 that we're going into right now, we are also going to be
2 under a tremendous amount of time pressure. How do you
3 deal with things that you know are right when you don't
4 have time -- if this in fact happens -- if you don't have
5 time to send the experts back to do a mapping and produce
6 demographic, you know, spreadsheets, and so on?

7 How do you deal with that? Do you have to
8 do what you know is wrong because you don't have time to
9 do it right? Or do you do the best you can and hope that
10 the court will be understanding of the situation? Or
11 what -- how would you handle it under those
12 circumstances?

13 MR. MANDELL: Mr. Chairman, Mr. Huntwork, I
14 start off respectfully disagreeing with the time frame of
15 the Hall-Minkoff plan. I don't think you were under any
16 time constraint back at that time, June 2002, in that you
17 were drawing lines for 2004.

18 With regard to the situation now and time
19 constraints, and certainly, there are issues of time,
20 part of that is doing the best job you can do, given the
21 time remaining. Certainly, had the Commission started
22 immediately after the court's order, they would have had
23 an additional two weeks or so to continue to try and come
24 up with additional maps. That not being the case, and
25 being where you are, certainly, you have to do -- live

1 within the confines of what has been created.

2 I don't know how else to put it, other than
3 if I were in that situation, I would try and obtain the
4 best information that I could obtain within the time I
5 had to obtain it.

6 CHAIRMAN LYNN: Ms. Hauser.

7 MS. HAUSER: Mr. Chairman, I think one very
8 important rule goes kind of back to what Mr. Huntwork is
9 saying. When you hear something is incorrect, if you let
10 it go uncorrected, you are admitting whatever has been
11 alleged.

12 I would like to correct for the record
13 right here and now that the Commission did start working
14 immediately. The court's order was issued on the
15 afternoon of January 16th, which was a Friday afternoon.
16 The 19th was the Martin Luther King holiday and state
17 offices closed. Commission requires 48 hours' notice
18 under the Constitution to meet. The Commissioners were
19 each given a copy of the order, telephoned, and their
20 schedules were ascertained. The soonest a meeting notice
21 could be posted was on Tuesday, first business day
22 following the court's order. And the first day we could
23 possibly have met was Thursday, and we met Friday
24 morning.

25 The process began then and work has been

1 under way ever since that meeting to comply with the
2 court's order. Work to comply with the court's order
3 should not be confused with dates on which the Commission
4 has met. So I have heard and listened to the Coalition's
5 representatives mention on a couple of occasions that
6 you've waited, you've waited. And that is just factually
7 incorrect.

8 So I would appreciate that, with the
9 correction of that fact, that you take that information
10 back to the Coalition. Thank you.

11 CHAIRMAN LYNN: Further discussion on the
12 motion, which is to accept the definition on the screen.

13 COMMISSIONER HUNTWORK: Thank you.

14 CHAIRMAN LYNN: Mr. Hall.

15 COMMISSIONER HALL: My only question,
16 Mr. Chairman, we substituted the word "impairment" for
17 "detriment" when the drafters, I'm sure, would have
18 little -- probably didn't realize that we would be
19 parsing two words of significant detriment.

20 My concern is, or question is, why are we
21 adding another word or synonym to detriment? Why not use
22 the word "detriment," say "any detriment"?

23 CHAIRMAN LYNN: We are in fact defining two
24 words, "significant" and "detriment." My experience
25 suggests you don't use a word to define a word.

1 COMMISSIONER HALL: Well, I think that the
2 words around the word define the word. Now we have to
3 define "impairment." Just a thought. I'm just asking.

4 COMMISSIONER HUNTWORK: I think --
5 Mr. Chairman, I would consider amending the motion to add
6 additional synonyms. We had on the board, we had "harm."

7 COMMISSIONER HALL: Injury.

8 COMMISSIONER HUNTWORK: We had injury. And
9 that wouldn't be, you know, damage, injury, harm or --

10 CHAIRMAN LYNN: Or impairment.

11 COMMISSIONER HUNTWORK: I would certainly
12 be happy to do that.

13 COMMISSIONER HALL: It's clear to me,
14 significant detriment is clear to me. I'm just saying,
15 you know, as long as we're here, in the abundance of
16 caution, I'm just asking.

17 CHAIRMAN LYNN: Are you suggesting that
18 those words be added?

19 COMMISSIONER HALL: I am at the mercy of my
20 fellow Commissioners. I'll vote for anything at this
21 point, to be real honest.

22 COMMISSIONER HUNTWORK: I would accept -- I
23 would accept that change to my motion.

24 CHAIRMAN LYNN: Mr. Hall, you accepting the
25 change?

1 COMMISSIONER HUNTWORK: Question: damage,
2 harm, or injury.

3 CHAIRMAN LYNN: Damage, injury, harm or
4 impairment.

5 Is there further discussion on the motion?

6 COMMISSIONER HALL: So we change "other
7 impairment," too, or are we good there?

8 COMMISSIONER HUNTWORK: Why not take out
9 the word "there" but not "which"?

10 MS. HAUSER: Yeah.

11 COMMISSIONER HALL: Great.

12 CHAIRMAN LYNN: Mr. Hall?

13 COMMISSIONER HALL: The second concurs.

14 CHAIRMAN LYNN: All right. So we have --

15 COMMISSIONER ELDER: Call the question.

16 CHAIRMAN LYNN: The question is called for.
17 Any further discussion?
18 All those in favor of the motion, signify
19 by saying "Aye."

20 COMMISSIONER HUNTWORK: "Aye."
21 COMMISSIONER HALL: "Aye."
22 COMMISSIONER ELDER: "Aye."
23 CHAIRMAN LYNN: Chair votes "Aye."
24 Motion carries unanimously.
25 (The slide visually depicted on the screen

1 upon which the motion was based for the
2 definition of "significant detriment" was
3 written into the record by the reporter:
4 "Significant detriment has been defined as
5 any damage, injury, harm or impairment of a
6 redistricting criterion which the IRC
7 determines, based on the record before it,
8 to be material and substantial, but not
9 which the IRC determines to be minimal or
10 inconsequential.)

11 CHAIRMAN LYNN: My understanding is lunch
12 is available and ready.

13 MR. ECHEVESTES: And getting cold.

14 COMMISSIONER HALL: Pretty good for salad.
15 That's fine.

16 CHAIRMAN LYNN: It's a good time for a
17 lunch break. I suggest we take a lunch break, for our
18 convenience and the public, but try to keep it to five
19 minutes. I'd like to do that as soon as possible.

20 Mr. Hall.

21 COMMISSIONER HALL: Question, Mr. Chairman.
22 Is it the intention to go into Executive Session today?

23 CHAIRMAN LYNN: I don't know. I don't
24 think there's a need for an Executive Session at the
25 moment. Certainly there may be a call for one later

1 today.

2 COMMISSIONER HALL: The point is, if we're
3 going to go, let's do it during lunch.

4 MR. RIVERA: At this point, no.

5 MS. HAUSER: Unless you have some reason.

6 COMMISSIONER HALL: I don't.

7 CHAIRMAN LYNN: I don't have a scheduled
8 issue.

9 Without objection, the Commission will
10 stand in recess for lunch until 1:45.

11 (Whereupon, the Commission recessed
12 at 12:44 p.m. and a lunch recess
13 was taken. Open Public Session resumed
14 at 1:55 p.m.)

15 CHAIRMAN LYNN: Commission will come to
16 order. For the record, all Commissioners, with exception
17 of Ms. Minkoff, are present, along with legal counsel and
18 consultants.

19 When we were last together, we had adopted
20 a definition, broad definition, of significant detriment.
21 We have two options at this point, it seems to me. One
22 is to simply be satisfied with that general definition
23 or, in the alternate, to work on definitions that would
24 be more specific with respect to the individual goals
25 contained.

1 To the extent that some of those goals may
2 require their own definition of significant detriment or
3 their own application of the definition, either do that
4 or move on to adopt a definition for compactness.

5 What is your pleasure. Mr. Huntwork?

6 COMMISSIONER HUNTWORK: I think that
7 whether we -- I think we will need to do some further
8 clarification, at some point. And the only question in
9 my mind is whether this is the point.

10 I would like to have as much information as
11 possible, myself, before adopting further refinement.
12 But if, in order to move the process along, for example,
13 when we adjourn this weekend, to leave our consultants
14 with adequate instructions as to what they are to do
15 next; if it will be necessary to have accepted more
16 definite definitions, I think we need to go ahead and do
17 it.

18 CHAIRMAN LYNN: I that's a requisite given
19 the schedule between now and the end of the Monday. We
20 have to have given the consultants as much information as
21 we possibly can between now and the end of the Monday,
22 whenever Monday ends.

23 COMMISSIONER HUNTWORK: In that case, then,
24 I would propose that we at this point consider
25 subdefinitions with respect to -- well, actually,

1 Mr. Chairman, I suggest we finish by defining
2 compactness, so we have a basic definition of each term;
3 then we consider what would be an appropriate
4 subdefinition.

5 CHAIRMAN LYNN: Then without objection,
6 let's move compactness for a moment.

7 As a recap, last week when this definition
8 was considered, there were two points of view and three
9 Commissioners. And it was late in the evening,
10 therefore, we're not going to have three affirmative
11 votes for either point of view. The two methodologies
12 that were being discussed at that time were the perimeter
13 test and the Polsby-Popper test.

14 I wonder, for the sake of Mr. Hall and
15 Mr. Elder, if we get those two definitions up on the
16 board, certainly, not precluding any of the other tests
17 that are available. And there are, I think, seven or
18 eight that are actually available. And that can be run
19 using Maptitude in a relatively quick manner as you are
20 mapping.

21 But the discussion last time was that we
22 had settled on those two to look at. And the discussion
23 was whether or not they could be used jointly at all
24 times or whether we needed to adopt one as the primary
25 and run the other for informational purposes, just as we

1 have determined previously that our test for
2 competitiveness was going to be JudgeIt within the
3 parameters of the 7 percent; but that we would still look
4 at AQD and registration as we went forward looking at
5 proposed maps.

6 So if that is a fair synopsis of where we
7 were, why don't we first take a look at the definitions
8 of at least those two methodologies and maybe a quick
9 review of the others. We may settle on something else at
10 this point.

11 MR. JOHNSON: I don't know if I can steal
12 the attorneys' microphone there if it's tied down over
13 there.

14 CHAIRMAN LYNN: It may not reach, but you
15 can try it.

16 MR. JOHNSON: This will work.

17 MR. JOHNSON: Okay. Actually, let me just
18 quickly run through the little presentation we did
19 before.

20 CHAIRMAN LYNN: You might want to turn it
21 on.

22 MR. JOHNSON: That helps, I guess.

23 We did. What we presented last week, I'll
24 show you quickly, review of academic literature on all
25 these terms. For compactness, first one came up,

1 obviously, visual test, use eye and intuition, decide
2 does that appear to be compact?

3 There's also a number of tests developed,
4 named after people that came up with them, the Roeck
5 test, Schwartzberg test. The perimeter test, as you are
6 familiar, measures the perimeter of each district, sum of
7 all perimeters, and whole plan. And Polsby-Popper, which
8 measures the district shape compared to a circle.

9 Other tests that came up, there are also
10 two population-based tests, the population polygon test
11 and population circle test. Rather than looking at area,
12 look at densities of population, and the Ehrenburg test.

13 These are all the ones in Maptitude. And
14 also, ones came up in our academic research test. So, I
15 mean, the other piece we presented last week is five
16 examples of districts. Just to avoid any implication
17 from current plans, all districts from the 1990s numbers
18 which came up by different measurements. These go in
19 order of improving Polsby-Popper scores. First one is
20 this district, which is a Polsby-Popper of 0.1. See
21 population polygon, .17; population circle, .49.

22 One piece of the discussion last week
23 talked about how these tests -- because they are
24 measuring different elements or different ways of looking
25 at compactness -- can sometimes be contradictory. Sample

1 to Polsby-Popper went up .19 for population; polygon
2 score went down, was .17, now .019.

3 Sample three now getting a little more
4 compact districts, Polsby-Popper up 2.3 on this,
5 perimeter in rural were in very rural.

6 Sample four, Polsby-Popper up 2.4.

7 Sample five, Polsby-Popper now up 2.6.

8 That's to give you a feel what different
9 scores mean in terms of shapes. Polsby-Popper is
10 measuring the shape as is perimeter to a degree.

11 COMMISSIONER HALL: So perfect core is 1.0?

12 MR. JOHNSON: Yes. 1.0 on Polsby-Popper,
13 perfect circle, perfectly compact circle, it's impossible
14 to draw a plan of circles, but is theoretical for
15 compactness.

16 CHAIRMAN LYNN: Mr. Huntwork.

17 COMMISSIONER HUNTWORK: I want to try to
18 understand some of the differences between definitions a
19 little bit better. But before doing that, I want to ask
20 a very general question.

21 Would it be possible to do all the other
22 work first and then last apply the compactness criteria
23 with the instruction that the consultants are to find the
24 compactness test which has the least impact on the
25 districts that we've created using all the other

1 criteria?

2 It seems to me that if -- since compactness
3 is not defined in the statute, and since we are
4 dealing -- in the Constitution, and since we are dealing
5 with the need to be consistent, first and foremost; and
6 secondly, we are told that, you know, we -- we're not to
7 do significant detriment to the other criteria, if we can
8 help it, it seems as if, theoretically, the way to best
9 accomplish those things is pick a definition of
10 compactness that has the least impact on other criteria
11 rather than creating one operatory that has tremendous
12 impact on other criteria.

13 That's the logical way to approach it. the
14 question is whether it's a feasible way to approach it.

15 CHAIRMAN LYNN: It seems to me that the
16 definition might not have the impact because here we're
17 talking about a methodology of determining, but rather
18 the application of that definition. And I'm not even
19 sure that would matter.

20 COMMISSIONER HUNTWORK: Well, I can see,
21 for example, if we -- well, I mean, given that the tests
22 can contradict each other, if you take a look at the
23 districts that were displayed on the screen that we
24 created to reflect communities of interest in northern
25 Arizona, it appears to me that, you know, one test

1 would -- the change we wanted to make might pass the test
2 if we were defining, you know, the area of those
3 districts as, say, a .1 under the population polygon
4 test, I think it was. If one of them came in at a .9, it
5 would have passed that standard of compactness versus the
6 perimeter test, where it went off the charts.

7 I mean, it's just -- it is a fact that,
8 which standard we select for compactness may strongly
9 influence our ability to achieve the other goals.

10 CHAIRMAN LYNN: Mr. Hall.

11 COMMISSIONER HALL: My concern, I'm
12 concerned about prioritizing the remaining goals of the
13 contiguity, geographic features, and compactness.

14 In other words, making an implicit decision
15 arbitrarily, one, that's been a subject of some
16 discussion thus far; and, two is -- I don't think that
17 there is a clear indication that there is a priority.

18 I guess my point is, Mr. Huntwork, that I
19 think that we ought to be as practicable as possible
20 in -- through this process, not only because of the time
21 constraints we're under, also because, where possible, we
22 ought to seek to agree. Because there's going to be
23 plenty of areas where we disagree with those that
24 disagree with us.

25 So my point is that, if the plaintiffs,

1 attorney representing the plaintiffs in this case
2 presently have proposed utilization of the Polsby-Popper
3 test, why not? Why not at least get on the same page of
4 a measuring devise?

5 Now, whether or not we agree with what
6 measure -- see, that's the whole issue, really, is not
7 what tool you use, but how you use the tool. So while
8 they've made a recommendation relative to what the range
9 would be, I'm not suggest -- I think that's a whole other
10 discussion with regard to this Commission, what range of
11 that test constitutes significant detriment? That's a
12 whole other discussion. What tool we use, as long as
13 we're consistent, I think that this particular tool is a
14 relatively accurate and relatively easy-to-use tool.
15 Then I don't know why we should spend time at this point,
16 you know, really discussing the merits of the tool.

17 I think that the real meat of the
18 discussion is what range of the tool is relevant, one;
19 and, in my opinion, once we decide on the tool and the
20 range of the tool, then we -- my opinion, we should apply
21 all of them either at the same time or we should do so
22 randomly to avoid any implicit or any inferred intent on
23 the part of this Commission to make a decision that would
24 predict an end result that we had somehow foreseen.

25 There were some inferences that, even in

1 our decision relative to the starting point of the grid
2 and what directly we went -- we decide that had some end
3 result. That was ludicrous. We had inferences we all
4 waited so Ms. Minkoff wouldn't be here. Someone hired
5 Oliver Stone relative to a new conspiracy theory on any
6 given day.

7 My point is, I want to avoid those red
8 herrings all together and get right back to the meat of
9 what we're really about doing. That's my perspective.

10 CHAIRMAN LYNN: Mr. Elder.

11 COMMISSIONER ELDER: I suppose this is a
12 request for Mr. Johnson, as well as a comment to Mr. Hall
13 as we get into the discussion of this a little further.

14 You mentioned in your presentation there
15 were -- you could see the difference and ease of getting
16 compactness of urban areas as opposed to rural areas. We
17 have distinct urban areas in the state as well as rural
18 areas.

19 Does one of the options between population
20 polygons give an easier way of handling urban and rural
21 districts as well as compactness goes?

22 MR. JOHNSON: No. Any time you move rural
23 area or rural district blend with urban area, you are
24 going to be able to make it more compact. So --

25 COMMISSIONER ELDER: I was thinking the way

1 you apply it, all wholly rural, all wholly urban, get
2 diversity between the way various options present
3 compactness.

4 Is there one of them that is better
5 portraying compactness in both instances, given the
6 context of rural-to-urban placement?

7 MR. JOHNSON: If you are -- so if you are
8 comparing to plans to see which one is more compact --

9 COMMISSIONER ELDER: No.

10 MR. JOHNSON: As long as both have the same
11 number rural districts or urban districts, either
12 Polsby-Popper or perimeter, same measurement.

13 COMMISSIONER ELDER: Perimeter key,
14 perimeter length in rural or urban -- some urban, freeway
15 to nearest bridge crossing, an area where there's not a
16 bridge going across the Verde River. That very compact
17 area or way a district may function is very linear
18 because that's the way the transportation system works.
19 Or Grand Canyon, other barriers in the state, mountain
20 ranges, both sides of the mountain makes it compact,
21 doesn't seem to give a real good picture of compactness,
22 how population of the people seem to work.

23 MR. JOHNSON: Yes. One thing I found in my
24 review of academic research is Mr. Young kind of looked
25 at a whole bunch of different measures. In the end, came

1 around, said each has some value, but none of them are
2 good. So, ultimately, comes down to looking at what a
3 district looks like, knowing that kind of thing, making a
4 decision on it.

5 Given our situation as we sit here today,
6 that, my understanding is, is as nonlawyers, that's not
7 really an option for us. So, none of the measurements
8 we're talking about would take into account the factors
9 you are talking about.

10 COMMISSIONER ELDER: Then going back to, I
11 believe, one of Mr. Mandell's statements and some of the
12 attorneys' opinions and whatever during the case, they
13 were looking for a way of applying something uniformly
14 across the state to all districts. Because of the
15 disparity between, you know, the way systems look at
16 compactness, can we apply it evenly, or can we, you know,
17 say, in urban areas, works wonderfully, well, compactness
18 seems to work; rural areas, other factors seem to play
19 and place -- the lower area where we place for hierarchy
20 of review or approval.

21 MR. JOHNSON: Looking at the whole plan,
22 measuring the whole plan, perimeter, gives you -- the
23 perimeter test will give you the quickest way of
24 evaluating those two plans.

25 The Polsby-Popper will also be quick.

1 Challenge Polsby-Popper gives a good average score for
2 whole plan. You also need to look at how many end, how
3 many max, Polsby-Popper. Each has advantages and
4 disadvantages.

5 COMMISSIONER ELDER: Last area relation
6 says, in 106, geographical compactness, any area, six
7 options take in a density factor.

8 In other words, if you had 70, 80 percent
9 of the population in -- let's just use Flagstaff went
10 over here, picked up 5 percent population, 2 percent in
11 another area, something almost like a centroid of mass,
12 if you took all the people as one weight, where is that
13 centroid? And then the distance to the perimeter, does
14 that ever get into play?

15 MR. JOHNSON: Yes. Population circle,
16 population polygon do measure population density type
17 things, not as common, in particular, takes a lot more
18 computer power to run. And -- I mean, they didn't --
19 wasn't this debate in the trial, all parties looked at
20 perimeter and Polsby-Popper? Those two do what you are
21 talking about.

22 COMMISSIONER HUNTWORK: I just wanted to
23 say what I proposed earlier. Number one was not
24 referring to the priority of compactness, or I didn't
25 think that it was. It certainly was not referring to the

1 consistency. Once we pick a standard, whether we apply
2 it -- it will be applied, the standard would be applied
3 statewide.

4 So I'm still intrigued by the question of
5 whether there is one that might allow us to have the
6 districts evaluated as compact.

7 See, this is not -- this is not trying to
8 get around compactness. Compactness is an undefined
9 term. And we are going to define it. So why -- it seems
10 to me we're almost obligated to pick a definition that
11 impacts the other criteria as little as possible if in
12 fact it's possible and meaningful to do that.

13 CHAIRMAN LYNN: Mr. Huntwork, we're not
14 defining it as we're picking a way to measure that
15 definition.

16 COMMISSIONER HUNTWORK: No.

17 CHAIRMAN LYNN: Let me just finish, because
18 I think we may disagree on this. And that's fine. I
19 think all of the methodologies that have been proposed
20 are ways of getting at the concept of compactness,
21 however you define it. And it's defined by virtue of
22 each of the methodologies approaches that constant in
23 whatever academic scrutiny was applied during the
24 development of each of those formula.

25 COMMISSIONER HUNTWORK: Right.

1 CHAIRMAN LYNN: And, frankly, I don't think
2 it matters. And I'll tell you why.

3 I think as long as we are consistent with
4 whichever definition we pick -- and I, like Mr. Hall,
5 feel very strongly that because -- let's remember what we
6 are doing here. We're trying to comply with the court's
7 order and trying to look pack at what the court said to
8 do. And the fact of the matter is, if I believe that if
9 we sat here today and said, look, from the standpoint of
10 complying with the order and from the standpoint of
11 evaluating any map that we might complete in reference to
12 other maps that might have been drawn by some other
13 process or by this Commission earlier in our
14 deliberations, that if we settled on Polsby-Popper
15 because it seems to have common acceptance and simply use
16 it as our measurement, not definition, but measurement of
17 compactness, we have comparative measurement. And that's
18 all we need to do. I don't think we need to do anything
19 more than that. I don't want to talk about it anymore.
20 I would love to have a motion that says, let's use
21 Polsby-Popper. Let's get on with it.

22 COMMISSIONER HALL: So moved.

23 CHAIRMAN LYNN: Is there a second?

24 Nice try.

25 CHAIRMAN LYNN: Mr. Elder.

1 COMMISSIONER ELDER: Mr. Chairman, I
2 believe my concerns -- I'm not so sure I'm ready to stop
3 discussion on it, because we have so many areas -- we
4 have like 80, 90 percent of this state that is rural.

5 I -- just as you were speaking, why did the
6 framers of Proposition 106 put in geographical
7 compactness as an issue? What were they concerned with
8 before they brought this to the fore.

9 One is, we saw several of the districts
10 either were presented to us or we did ourselves that some
11 of the people says, how would we ever campaign in this
12 district? It would take us two days to drive from the
13 southeast corner of the state to the southwest corner.
14 Factor density of rural population of district. Somehow
15 have to get that in. That's where compactness factor
16 came in. That's where people relate, interact, get to
17 and from places of polling. They can go to debates,
18 whatever it might be, to get participation.

19 Really needs to be considered from that
20 standpoint. I'm not so sure Polsby-Popper does that.

21 CHAIRMAN LYNN: I disagree. My reading,
22 why we're doing this has nothing to do with rural and
23 urban. It has everything to do with political
24 gerrymandering. That's why noncompact districts are
25 formed because you can put certain groups or individuals

1 or incumbents or others in a district and not worry about
2 how compact it is.

3 One of the measurements of doing something
4 objectively, how compact it is. Just like contiguity,
5 don't have odd connectors or odd trails running through
6 mountain ranges that connect very disparate areas other
7 than for what seems obvious purpose, it you state people
8 who should be together and communicate with one another
9 and be represented by an individual. But I have to tell
10 you, that for the purposes of what we're doing right now
11 and for the purposes of complying with the court's order,
12 I don't think that the Polsby-Popper test advantages
13 rural or urban districts in any specific way that would
14 cause me any harm to use it.

15 MR. JOHNSON: Mr. Chairman, if I might have
16 one comment, might clarify things, too.

17 CHAIRMAN LYNN: Mr. Johnson.

18 MR. JOHNSON: If we were to be asked what
19 is the best approach, the Commission used the best
20 approach the first round. Academic research is clear
21 each test has its strengths, weaknesses, and none achieve
22 what are truly the goals.

23 How we have compact districts measuring a
24 gerrymander, preventing a gerrymander for some
25 unmentioned reason, each has its problems. You have to

1 apply your judgment, look at them. As Professor Young
2 said, compare the results and apply your own judgment and
3 look at the district as well.

4 That is what the academics say is the best
5 approach. That's what, if asked, is the best approach;
6 but that is not one we can do under this order.

7 CHAIRMAN LYNN: Mr. Hall.

8 COMMISSIONER HALL: I think my -- I think
9 that if we used a measuring tool, and whatever that is,
10 and Polsby-Popper is fine with me, that this Commission
11 still has the discretion to, in the event we were to
12 determine that a particular district exceeded whatever
13 standard we said with respect to whatever tool we used to
14 measure it, that we have the discretion to state why we
15 feel that a particular district may or may not.

16 And if, for example, a compactness measure
17 caused significant detriment to communities of interest,
18 that ought to so be stated on the record. We make an
19 exception and move on. I don't think we're handcuffed by
20 the tools utilized. I agree, we pick a tool, move
21 again -- again make a motion for the Polsby-Popper tool,
22 then we discuss what is the range we utilize in utilizing
23 that tool as a measurement device.

24 CHAIRMAN LYNN: There's a motion. Is there
25 a second?

1 COMMISSIONER ELDER: Second.

2 CHAIRMAN LYNN: Thank you, Mr. Elder.

3 Discussion on the motion.

4 Mr. Huntwork.

5 COMMISSIONER HUNTWORK: Mr. Chairman, you
6 know, I apologize that my earlier comments caused
7 frustration. We're -- remember, we're all working to the
8 same goal and all doing it to the best of our ability and
9 intellectual capacity. And my comment, I still believe,
10 was accurate. And I put it forward in the utmost good
11 faith. I'm sorry that -- I'm sorry that the Commission
12 found it so irritating.

13 However, what I find difficult is to adopt
14 any particular application that I do not understand at
15 all. And here I would like to simply ask our consultants
16 to take a simple example and explain to me how it would
17 be evaluated using a number of different factors.

18 And the example I would like you to use is
19 to take a big square and right in the middle of it put,
20 population density. That dissipates evenly as it
21 radiates out from the center of the square. And show me
22 now, compare, as far as I'm concerned, compare two
23 different approaches using two different tests. One
24 test, draw a line right straight down the middle of the
25 square so you have two correct angles of equal

1 population, which obviously is not the least perimeter.

2 And the other example would be to take a
3 little square in the middle, in the densest part that
4 contains the maximum -- an equal population, contains
5 exactly half the population, and tell me how that would
6 score under each of those tests, and any other test that
7 might be particularly helpful in comparing those two
8 things.

9 Obviously -- it seems obvious to me the
10 population polygon test would do best with the second
11 one. But perhaps I don't understand it well enough. But
12 it certainly is obvious the perimeter test, line down the
13 middle would flunk the perimeter test as compared to the
14 small square in the middle.

15 Theoretically, the line down the middle is
16 the full length of one of the sides. Square in the
17 middle is a little, tiny square, very short perimeter,
18 right?

19 MR. JOHNSON: Well, I mean -- fair
20 comparison of the two, you have to include the outer
21 boundary of the whole region, because otherwise, you are
22 really comparing the line down the middle, a border of
23 two districts to the small circle, which is only the
24 border of one district, or doubling --

25 COMMISSIONER HUNTWORK: You double both

1 lines.

2 MR. JOHNSON: That depends --

3 COMMISSIONER HUNTWORK: One line, very
4 short one, very long, perimeter line down the middle
5 flunks, obviously --

6 MR. JOHNSON: It's driven by how I set up
7 the test, how quickly population density is spread, very
8 dense immediately dropped off. Yeah, square would be
9 very small; but if you did a more gradual spread -- I
10 mean -- the more gradual spread of population in the
11 inner square get larger, take in half the population.

12 COMMISSIONER HUNTWORK: Okay.

13 MR. JOHNSON: Depending how I set up, comes
14 out differently.

15 COMMISSIONER HUNTWORK: I take a very rapid
16 decrease once you get to a certain point.

17 MR. JOHNSON: Again, however I set up the
18 test is going to drive the result. So --

19 COMMISSIONER HUNTWORK: Mr. Chairman, I
20 think we have to do this. To me, this is finding out --
21 if I understand how these things work in this example,
22 I'll understand the answer to the question asking. It's
23 not that complicated a question. Honestly not. I
24 understand your answer.

25 Fine, assume the population density in the

1 middle which is very great and ends abruptly at the
2 periphery.

3 MR. JOHNSON: The square will beat two
4 rectangles.

5 COMMISSIONER HUNTWORK: Under perimeter. I
6 understand perimeter. Explain the other tests to me. I
7 don't understand any of them.

8 MR. JOHNSON: Okay. I can do that.

9 Actually, last week, understanding the
10 difference that Polsby-Popper does better on a circle,
11 perimeter does better on square, being familiar with
12 that, we talked about that. The difference between a
13 population polygon, population circle, is essentially
14 exactly the same.

15 A population polygon will give a better
16 score for a square district and population circle better
17 for circle. Density drops off under both those tests.

18 COMMISSIONER HUNTWORK: What is the
19 influence? How does -- under -- under Polsby-Popper and
20 under the population density test, whether it's a polygon
21 or circle, I don't care, is the little square in the
22 middle more compact or are there tests under which the
23 little square in the middle is the test that is most
24 compact?

25 MR. JOHNSON: I don't know of one where the

1 little square would be less compact.

2 COMMISSIONER HUNTWORK: Okay.

3 CHAIRMAN LYNN: Mr. Hall.

4 COMMISSIONER HALL: Jim, I -- there's lots
5 of times I really admire intellectual capability.

6 COMMISSIONER HUNTWORK: I have to
7 understand what you're talking about.

8 COMMISSIONER HALL: I'm saying, I'm kind of
9 a practical -- old cowboy from the mountains. And so
10 I -- but let's just say, for example, you and I decide to
11 play basketball, decide every basket four points apiece,
12 all right? Both agree, then we play. So who cares? If
13 we -- if we all agree, and my point is, a practical
14 point, that the plaintiffs are fine with this particular
15 measuring devise, whatever we're going to measure or
16 score the game with, pick a measuring point, score game
17 with and go see what we need to do. Who cares?

18 COMMISSIONER HUNTWORK: I do. I care very
19 much. I need to tell you why.

20 COMMISSIONER HALL: Okay.

21 COMMISSIONER HUNTWORK: I'm sorry, you
22 know, don't want to step too far back. But I thought
23 Proposition 106 was bringing together five ordinary
24 citizens to make common-sense judgments.

25 What Proposition 106, under the court

1 order, turns into is five citizens and now four, which is
2 a major problem, not having the balance that is called
3 for while we are making these decisions. But -- but four
4 citizens defining rules in the abstract, which are turned
5 over to a panel of experts to apply the rules. And we
6 are then held to a standard, not of common sense, but of
7 strict scrutiny. And this is now not a common sense,
8 ordinary citizen process. It is an expert process. That
9 strict scrutiny standard turns this into an expert
10 process.

11 I only have input at one point, which is
12 laying down the rules that they are going to apply. If I
13 can't make intelligent input at that point, I can't do
14 anything. I'm out of it. The Commission is out of it.
15 So the very minimum that I want to have is an
16 understanding of what rules we're asking them to apply.

17 COMMISSIONER HALL: But I disagree with
18 that analysis. And maybe from a pure -- and probably,
19 Jim, probably that's due to my own legal ignorance.
20 While we all agree the issue of strict scrutiny is a bad
21 ruling, I am still convinced, and my full intentions are
22 that at some point near the end of this process that we
23 are to exercise our judgment. I totally agree that is
24 why we're hired. I think I know that's what I intend to
25 do. If I'm told that I can't inject some common sense,

1 say, you know what, we may be X percent over a
2 compactness standard, but it's for the following reasons,
3 which are clearly what we have heard or what we think is
4 right, that's what I intend to do still. And if I'm
5 wrong in doing that, Jim, and if the highest courts say
6 that I'm wrong, then I'm wrong.

7 I totally agree with you in principle. But
8 I'm saying -- I'm saying, at this point, I think we just
9 need to pick a tool and then utilize that tool to measure
10 so we can move forward and have an opportunity to
11 exercise our judgment. I don't think our role is to
12 completely turn it over to the experts, even though the
13 purest interpretation of the judge's ruling may say that.
14 I don't agree with that. That's not what I intend to do.

15 CHAIRMAN LYNN: Mr. Huntwork.

16 COMMISSIONER HUNTWORK: Mr. Chairman, I
17 think that the -- I would respectfully disagree with the
18 judge in this way.

19 To the extent that there are subrules to be
20 created, I believe that the legal process ought to be
21 that the court would make those rules and then we would
22 apply them. But to the extent that the court has said as
23 part of its order that we are to make those rules, I just
24 do not feel that I can fulfill that part of the order
25 without understanding the rules that I am making.

1 And so --

2 CHAIRMAN LYNN: Did the example that you
3 and Mr. Johnson discussed help you understand those rules
4 any better?

5 Or asked in the alternate, what more can we
6 provide that would get you in a position where you would
7 be comfortable looking at one or another of these
8 measurements?

9 COMMISSIONER HUNTWORK: Well, perhaps if we
10 went to one of the examples where the decisions that we
11 made show improvement on 164 and detriment on the other,
12 and if I could understand why it did, it would help me
13 choose which of those standards I would prefer to use.

14 MR. JOHNSON: Mr. Chairman, Commissioner
15 Huntwork, I'm not aware of any time in our process where
16 perimeter and Polsby-Popper disagreed. I think they
17 followed each other. There may be some out there that
18 I'm not thinking of. In 10, 12 reports I summarized in
19 the trial, they went hand in hand.

20 COMMISSIONER HUNTWORK: I may be truly
21 confused. I thought you started out, produced opposite
22 paradoxal results.

23 MR. JOHNSON: Actually, slides showing here
24 examples, population circle test, let me go back to that,
25 Polsby-Popper and population polygon conflicted. That

1 actually can happen.

2 COMMISSIONER HUNTWORK: That's what I'm
3 saying -- said. Can you explain to me why that happened?
4 What is the mechanism that caused that to happen, so I
5 can try to see if it's important in my thinking about
6 that?

7 MR. JOHNSON: Sure. Palsby-Popper is
8 graphical. This district is less compact. When looking
9 at it, then this one, so by Palsby-Popper -- had it
10 backward. This one is more compact when you look at it
11 than the example one. On just an area -- that's
12 Palsby-Popper only.

13 COMMISSIONER HUNTWORK: But why -- you say,
14 "when I look at it." Palsby-Popper, tell me again why
15 it's more compact under Palsby-Popper.

16 MR. JOHNSON: This one fills more of the
17 circle than would be drawn around it. If you drew a
18 circle that kind of went all the way around the district
19 and touched at each corner, essentially, this district
20 fills more of that circle than this one does.

21 COMMISSIONER HUNTWORK: Okay.

22 MR. JOHNSON: This one population polygon
23 measure higher than the example to this one's population
24 is much more focused. Its population is heavily
25 Flagstaff, then comes out here and gets a piece of

1 Bullhead; comes up here, gets this rural area,
2 population, whatever it is, 170,000 or whatever the
3 population was. Is fairly compact in the Flagstaff area;
4 whereas, sample 2 has a lot of people at Navajo and a lot
5 of people at Kingman.

6 So its population is spread considerably,
7 have a hundred thousand in the Navajo Nation, 50, 60
8 thousand way over here on the end. So it's population is
9 spread all over the place. And so its population
10 measure, population polygon score comes out considerably
11 lower. Does that help?

12 COMMISSIONER HUNTWORK: Yes, it does. That
13 helps tremendously.

14 MR. JOHNSON: Okay.

15 CHAIRMAN LYNN: Further discussion on the
16 motion?

17 Mr. Huntwork?

18 COMMISSIONER HUNTWORK: Mr. Chairman, you
19 know, understanding the distinction, or understanding why
20 there is a difference is extremely helpful. I have to
21 say now that I would greatly appreciate it if you could
22 bear with me a little while, while I kind of integrate
23 that information.

24 Bear in mind that, you know, Mr. Elder has
25 made some important points about, on the one hand, making

1 the districts convenient, you know, population so people
2 can come and hear the candidates; so a candidate elected
3 by the central area might have -- the population center
4 might have something in common with the, you know, all
5 other people in outlying portions of the district.

6 There are important considerations involved
7 in choosing one of these tests over the other. And it --
8 and I think that when it comes time to apply the test, we
9 will have some discretion to weigh one factor against
10 another. But at the same time, we will be having to make
11 decisions that maximize the benefit under both tests.

12 So it's not -- it's not as if the test we
13 choose is truly neutral. It will draw everything toward
14 it. And I would just like to think a little bit about
15 the difference between a population-centered test and a
16 purely abstract-geometrical test.

17 I mean, my quick instinct is that the
18 population-centered test seems a lot better to me, that
19 this is -- this process is about people, not about
20 geometry. We had some fun with the, you know, with the
21 grid, knowing that it was ultimately -- we were going to
22 be looking at the human factors to adjust it. But here
23 is one that is an anchor. This is one that has weight
24 and substance. It's going to pull the whole result
25 toward itself. I would rather -- I think I would rather

1 pull it toward people than toward -- than toward
2 geometry.

3 CHAIRMAN LYNN: Mr. Elder.

4 COMMISSIONER ELDER: Mr. Chairman, would
5 the maker of the motion, since he's looking for just one
6 process, change his motion to population polygon as an
7 item to select?

8 COMMISSIONER ELDER: Did you want to answer
9 for me?

10 MS. HAUSER: No.

11 MS. LEONI: Can we offer -- Chairman Lynn,
12 could we offer some information that you may like to have
13 while that motion is being discussed?

14 CHAIRMAN LYNN: Motion is still being
15 discussed. Want to delay your answer in light of
16 information we might get.

17 MS. LEONI: Little information.

18 CHAIRMAN LYNN: Ms. Leoni, Mr. Johnson.

19 MR. JOHNSON: Mr. Elder and Mr. Hall.

20 Polsby-Popper and perimeter, population
21 polygon take 20 minutes or so to run, at each step to
22 run.

23 COMMISSIONER HALL: That is the answer I
24 was going to run. Each step in process, not just I
25 finish, run the test.

1 COMMISSIONER HALL: If you recall in the
2 past process, we would always analyze competitiveness,
3 wait for JudgeIt, and -- again, folks, Jim, I -- frankly,
4 and respectfully, I think you are overplaying this whole
5 deal.

6 I disagree. It's going to pull its weight
7 in a significant matter. Downtown Maricopa, believe me,
8 I was just there, is pretty dense. It's not like pockets
9 of people are not there. Hell, I can't get through
10 traffic in an hour. That's where the heart of this is
11 going to go. You are overdoing this.

12 As a practical matter, the reason I feel
13 most the appropriate test. One, plaintiffs proposed it;
14 two, quick, easy to run; three, relatively accurate
15 measurement.

16 So that's -- hey, don't know how else --
17 that's where I'm at.

18 COMMISSIONER HUNTWORK: Well, we had --

19 CHAIRMAN LYNN: Mr. Huntwork.

20 COMMISSIONER HUNTWORK: We had discussions
21 about the compactness of some districts that really did
22 work their way into the metropolitan area where we put --
23 we had the choice between creating two districts with
24 more open space or one district that was much more dense.
25 And the one that -- and so these measurements affected

1 decisions that we made.

2 I fail to see how it could not have an
3 impact on this if we take it as a serious consideration.
4 I want to understand, when we run the competitiveness
5 tests, how long does that take it, when we do it -- do
6 you run a competitiveness test? I don't mean Arizona
7 Quick and Dirty, we decided to use, you know, the other
8 test. Do you do that every time you redraw a line or do
9 you do it kind of in a frame after you've made a group of
10 changes?

11 MR. JOHNSON: We make a group of changes,
12 looking in one area where we think we can make an
13 improvement, play around with it, actually watching AQD
14 numbers --

15 COMMISSIONER HUNTWORK: AQD -- not consult
16 it, not test. We adopted, adopted another one?

17 MR. JOHNSON: As making small changes in an
18 area or big changes. I'm watching AQD as kind of a
19 ballpark. If it's getting close, then we stop, send it
20 off to Dr. McDonald, or in the case of this, we hand it
21 to him, because he's been with me, he runs JudgeIt
22 scores.

23 COMMISSIONER HUNTWORK: How long does it
24 take?

25 MR. JOHNSON: When he's there with me, 20,

1 30 minutes.

2 MR. RIVERA: About 45 minutes.

3 COMMISSIONER HUNTWORK: 45 minutes. You
4 have a simple proxy test, gives you some idea, test
5 identify what the outcome is going to be. When we
6 adopted the JudgeIt standard, didn't we say, well, it's
7 going to take 40 minutes to run it, every time we run it,
8 therefore we ought to run AQD because it's instantaneous?

9 Now we're getting that argument for
10 justification, selecting what may be inferior or
11 inappropriate --

12 CHAIRMAN LYNN: Not from me. I want that
13 on the record. This is not about expediency, it's about
14 relevance.

15 Let me try it one more time. When
16 Flagstaff came in this morning, gave us a map, Flagstaff
17 in an attempt to show their map, was at least as compact
18 and slightly more so than the current Legislative map ran
19 Polsby-Popper, see numbers of .3 to .32, .32, .32,
20 slightly more compact.

21 We have a number of maps on which, as a
22 whole, not district by district, but as a whole, have
23 relative numbers of compactness as an average of the
24 individual district compactness formula that
25 Polsby-Popper gives us. The only -- and remember, we're

1 not doing this in isolation, we're doing it in
2 combination with five other factors.

3 So the issue here would be, when we draw a
4 map, we can analyze it and say that it is either more or
5 less compact as a map than some other map. And so when
6 we're finished with this process, that is either more or
7 less compact than any other map we've drawn. And it's
8 that comparative information that is useful to me.

9 Now, other information may be information
10 useful to you and to Mr. Elder and to Mr. Hall and
11 Ms. Minkoff, if she were here. For me, all I care about
12 is making a judgment whether the map is sufficiently
13 compact to comport with other alternatives we've
14 discussed, and whether or not the court would see it as a
15 compact map relative to other choices. Beyond that, I'm
16 not sure I care. And it doesn't have anything to do with
17 expediency.

18 COMMISSIONER HUNTWORK: Mr. Chairman, I
19 want to, so I understand you, if the population polygon
20 test produced that same result for you, you would find it
21 equally acceptable to Polsby-Popper?

22 CHAIRMAN LYNN: I might. Only difference
23 is, I don't know, nor do I have any reason to believe,
24 that the plaintiffs or judge would, A, be familiar with
25 the test; B, understand its application; or C, accept its

1 results.

2 I do know, however, plaintiffs and court
3 are at least passingly familiar with Polsby-Popper and
4 accept it. And that, to me, is a good enough reason to
5 choose it.

6 Ms. Hauser.

7 MS. HAUSER: I lost a microphone here.

8 COMMISSIONER HALL: That's on purpose. I'm
9 kidding.

10 MS. HAUSER: Mention one other thing.

11 COMMISSIONER HALL: It's not on.

12 MS. HAUSER: Thanks.

13 Compactness criteria does not have to be
14 absolute. You'll evaluate it against other criteria, may
15 cause significant detriment at this time.

16 You mentioned taking the entire plan,
17 seeing if the map compact is enough as compared to other
18 maps. Different maps, different criteria going on. You
19 have to focus on causing -- whether or not
20 competitiveness is causing significant detriment to
21 compactness criteria or whether or not you choose to
22 sacrifice compactness to achieve some other neutral goal.

23 CHAIRMAN LYNN: In order to do that, my
24 point is, all we need is simple measurement consistently
25 applied across the mapping process to do it.

1 MS. HAUSER: Correct.

2 CHAIRMAN LYNN: I think Polsby-Popper
3 passes the test, just to be particularly illustrative.

4 On the motion, further discussion?

5 Mr. Elder.

6 COMMISSIONER ELDER: Mr. Chairman, you
7 say -- made the comment just now that it would be applied
8 across the board evenly. And if one of the tests
9 provides better continuity between an urban rural
10 situation than that would be applied evenly where there
11 is disparity between rural population and rural areas and
12 urban areas, then I don't believe that it does get
13 applied evenly across the entire state.

14 For that reason, I would prefer a different
15 process or a different way of evaluating the compactness,
16 something that provides us with a better handle on what
17 is compact across the state, looking at the various
18 disparities or differences between the urban and rural
19 areas.

20 CHAIRMAN LYNN: Let's ask Mr. Johnson that
21 question specifically.

22 Mr. Johnson, does the Polsby-Popper
23 disadvantage, in terms of its application, rural versus
24 urban districts?

25 MR. JOHNSON: The rural districts will come

1 out with lower scores under Polsby-Popper. And I
2 couldn't agree more with Commissioner Elder that we
3 definitely would love to measure, take into account rural
4 versus urban applications. That measure has not yet been
5 invented. And there's desperate need. Some professor
6 will make a great deal of fame if he comes up with it.

7 At this point, noncompactness takes into
8 account big a unpopulated mountain in the middle of the
9 district, just no test that does it. That's why academic
10 literature concludes tests useful tools; but, ultimately,
11 you have to know the area and look at it to decide.
12 But -- but in terms of a test that we could choose and
13 use, there is none that achieves that.

14 CHAIRMAN LYNN: Mr. Huntwork.

15 COMMISSIONER HUNTWORK: Mr. Chairman, based
16 on what little I understand at this moment, it appears to
17 me, I'm sure this is vastly oversimplified, it appears to
18 me that the population polygon test would apply better in
19 rural areas and in areas that mix rural with urban, and
20 would probably not make much difference in urban areas.
21 And if I have to choose one test, based on what I am
22 understanding right now -- and the next thing anybody
23 says to me could easily upset that understanding because
24 it is not deep or firmly held -- if I had to choose one
25 right now, it would be population polygon. So for that

1 reason, I would vote against the current motion.

2 COMMISSIONER HALL: Let me ask you a
3 motion, for the sake of discussion, that a rural district
4 is .2, .2 less than urban district. My understanding
5 is -- may be oversimplified how scores rural over urban,
6 not particularly relevant. What is relevant is, I have
7 to have some way to measure if competitiveness is causing
8 significant detriment to any other goals; and in this
9 case, compactness. So if a rural district is .5 and this
10 is .7, what I'm measuring is not that versus this. What
11 I'm saying, if I make this more competitive, and it makes
12 it .4 or .35, then that -- then I then determine,
13 pursuant our definition, that is, quote/unquote,
14 significant detriment.

15 So that's why I am struggling with this
16 whole idea, rural versus urban. It doesn't matter
17 because we are measuring the impact of competitiveness on
18 a particular district on its own. Right? Am I missing
19 something here?

20 COMMISSIONER HUNTWORK: No. I think the
21 impact is competitive.

22 COMMISSIONER HALL: Right. Why we're here,
23 by the way, because we lost the lawsuit regarding
24 competitiveness.

25 COMMISSIONER HUNTWORK: Yes. Exactly.

1 What I'm saying is this, that process you are describing
2 is going to take place no matter how, no matter which
3 test we use. But since we are going to be creating
4 districts in the absence of other factors that are
5 compact based on this test, I would like to use the test
6 that naturally, by its own nature, produces the better
7 districts.

8 COMMISSIONER HALL: I think that's an
9 assumption.

10 COMMISSIONER HUNTWORK: But I'm being asked
11 to make a snap decision based on what I know right now.
12 What I know right now is that the population polygon test
13 seems to me to make better rural districts because --

14 COMMISSIONER HALL: I appreciate your
15 renewed concern about rural Arizona, I have to tell you,
16 really, when we boil this down.

17 COMMISSIONER HUNTWORK: Gosh, that's not
18 fair. I've always had that concern from the very
19 beginning.

20 COMMISSIONER HALL: I'm teasing.

21 COMMISSIONER HUNTWORK: Well, please. I
22 state an honest opinion, and I'm going to vote the way I
23 am.

24 COMMISSIONER HALL: I call the question,
25 Mr. Chairman.

1 CHAIRMAN LYNN: Question has been called
2 for.
3 Any further discussion?
4 If not, all in favor of the motion, signify
5 by saying "Aye."
6 COMMISSIONER HALL: "Aye."
7 CHAIRMAN LYNN: Chair votes "Aye."
8 All opposed, "No"?
9 COMMISSIONER HUNTWORK: "No."
10 COMMISSIONER ELDER: "No."
11 (Motion fails.)
12 COMMISSIONER HALL: For the record, I bet
13 Ms. Hauser we'd have five two-two votes. I want to say
14 that's one.
15 MS. HAUSER: I don't recall betting.
16 COMMISSIONER HUNTWORK: Mr. Chairman, I
17 move we adopt the population polygon test.
18 CHAIRMAN LYNN: It's moved we adopt
19 population polygon.
20 Second?
21 COMMISSIONER ELDER: Second.
22 CHAIRMAN LYNN: Discussion on the motion.
23 COMMISSIONER ELDER: Mr. Chairman, I'd like
24 to draw an example here and ask Mr. Johnson exactly how
25 it would affect either option that we go about selecting.

1 If, to get more competition, we decide that this type of
2 composition is the way to go, that has one ramification.

3 Then the second would be to go in and say,
4 okay, we go in here and we do this; and then we have a
5 district that does that. Which one of those propositions
6 or options in compactness tells us which is more compact?

7 MR. JOHNSON: Are you asking which of the
8 approaches is more compact or plans?

9 COMMISSIONER ELDER: We have variables, or
10 the heart of Mr. Huntwork's square and square, and the
11 density said could here is 160, whatever, thousand and
12 here is 160,000, this perimeter, plus this perimeter,
13 this district, that perimeter for that district and say
14 this one provides you benefit.

15 If you go in and to get enough population,
16 we are picking up some rural and combining with urban,
17 and in the other example, that was the overlay, you take
18 primarily urban and then pick up a whole bunch of rural
19 in one district, does it affect -- which would affect the
20 outcome between population or Polsby-Popper?

21 MR. JOHNSON: I mean --

22 COMMISSIONER HALL: Can I interrupt this
23 real quick?

24 Dan, the hypothetical districts you've
25 drawn completely violate communities of interest, right?

1 COMMISSIONER ELDER: It's quite possible,
2 yes.

3 COMMISSIONER HALL: So if it does not meet
4 our test of community of interest, why discuss
5 hypothetical communities of interest, whether they
6 violate one of the other goals?

7 COMMISSIONER ELDER: You come back to
8 detriment, substantial detriment.

9 COMMISSIONER HALL: Right.

10 COMMISSIONER ELDER: All six, all six, to
11 go down the list, and substantial detriment, compactness,
12 if we do this thing.

13 COMMISSIONER HALL: But if already thrown
14 out by community of interest --

15 COMMISSIONER ELDER: I don't think we can
16 go that route, go down, say community of interest and
17 competitiveness as the only things we're going to decide
18 on.

19 COMMISSIONER HALL: I didn't say the only
20 thing.

21 COMMISSIONER ELDER: The whole Proposition
22 106, that's where we upset the problem, not to look at
23 these things in total, to take a look at all factors of
24 106, irrespective of what the judge said.

25 COMMISSIONER HALL: I get that. So if it

1 already is significant detriment of community of
2 interest, then what the compactness score is, is
3 irrelevant?

4 CHAIRMAN LYNN: Mr. Huntwork.

5 COMMISSIONER HUNTWORK: Mr. Chairman, I
6 think that, you know, we have this issue, to some extent,
7 in the areas surrounding Phoenix, which Mr. Hall does not
8 count really as rural because they are going to be urban.

9 COMMISSIONER HALL: Referring to growth
10 areas we've discussed.

11 COMMISSIONER HUNTWORK: Referring to growth
12 areas and growth areas raise issues of this kind. So
13 there isn't a community of interest problem that prevents
14 maps that look like this from possibly arising.

15 And as a matter of fact, you know, we have
16 this issue in the maps that we created now. We've got
17 this issue. And the question is, you know, is there a
18 measure of compactness more compatible with the way the
19 Commission viewed this problem in the past than another
20 way?

21 COMMISSIONER HALL: Let me ask what you are
22 saying, take districts, go in north?

23 COMMISSIONER HUNTWORK: Not one, all.

24 COMMISSIONER HALL: One --

25 COMMISSIONER HUNTWORK: Answer the

1 question, take all of them. Before you say take one of
2 them, changing the question, his question, take all of
3 them, is it the test that produces a more or less compact
4 map?

5 COMMISSIONER HALL: Sorry. Let's take all
6 of them. You are saying -- if I understand what you are
7 saying is, is that a Polsby-Popper score on those,
8 because we're measuring -- let's just say, for the sake
9 of this assumption, whole conversation is one major
10 assumption, let's say it's .75, right? One of those
11 districts, or all of them, average .75, right?

12 So you are saying, if we use the other
13 measuring devise, that that would help, that would help
14 those districts in what regard? This is where you are
15 losing me. Let's say, for the sake of assumption, .75
16 Polsby-Popper. You are saying there is another measuring
17 device that helps it how?

18 COMMISSIONER HUNTWORK: Okay, Josh, here's
19 what I'm saying. We have a number of important reasons.
20 I think maybe some districts down in Tucson may
21 illustrate better than --

22 COMMISSIONER HALL: Simple question.

23 COMMISSIONER HUNTWORK: But it doesn't
24 necessarily have a simple answer. If you want an answer
25 to the question, you have to listen to the answer.

1 One proposal in Tucson, take area north of
2 Tucson. That is quite open.

3 COMMISSIONER HALL: Right.

4 COMMISSIONER HUNTWORK: And bring down and
5 put a tip of it in an area that is very, very urban.

6 COMMISSIONER HALL: Okay.

7 COMMISSIONER HUNTWORK: In order to achieve
8 competitiveness. And my question is: Is there a
9 measure -- obviously, under the, what I've heard about
10 these tests, that is a violation of compactness, no
11 matter how you do it.

12 But the question is: That makes that --
13 that is going to make those districts less compact,
14 whether you use perimeter or Polsby-Popper. But I don't
15 know -- I don't know what happens with population
16 polygon, don't know what happens with the other tests.

17 I believe Commissioner Elder asked an
18 absolutely critical question when he asked: Is there a
19 test that gives for compactness, accepted test in the
20 literature, that gives us greater flexibility to do
21 things like that, or is it going to violate them all in
22 pretty much the same way? It's a critical test to the
23 very thing we're trying to accomplish.

24 COMMISSIONER HALL: I respectfully
25 disagree, because that -- while that's neat for academic

1 analysis, it's not practical to what we're doing, Jim.
2 We're here to determine if you have ways to determine
3 significant detriment. In my mind it's what tool you
4 use. It's irrelevant why you're trying to use the
5 hardest tool in assuming that -- and a tool that no one
6 else is referring to.

7 I don't understand. It doesn't seem to
8 benefit anyone in the abstract that it could benefit.
9 But what we're trying to accomplish is simply a way to
10 measure significant detriment.

11 COMMISSIONER HUNTWORK: Josh, I apologize.
12 It's sort of a step back.

13 Mr. Elder raised in a more concrete way the
14 question I raised at the beginning, which was, is there a
15 test that is more compatible with what we're trying to
16 accomplish?

17 I don't think the judge's order requires us
18 to go into that analysis blindfolded if we can help it.
19 But I also don't want to frustrate and exacerbate the
20 feeling of pressure that we're all under to get something
21 done and get it done fast.

22 COMMISSIONER HALL: We're past that point.
23 But go ahead.

24 COMMISSIONER HUNTWORK: I'm past that
25 point, too.

1 COMMISSIONER HALL: Okay.

2 COMMISSIONER HUNTWORK: I'm past that
3 point, too. And -- well, and I could make snide remarks
4 about what other Commissioners are saying as well or
5 better than my other Commissioners are.

6 COMMISSIONER HALL: No disrespect, Jim.

7 COMMISSIONER HUNTWORK: Fine. I don't take
8 any insult and pleasure, I'm not going to do it. Let's
9 respect each others' frustration. I think it's a good
10 question, love to have an answer.

11 If have to act right now, again, without
12 any more information, without knowing the answer to this
13 question or any others based on my paper thin
14 understanding, I still think population polygon is a
15 superior test.

16 CHAIRMAN LYNN: Happens to be the motion on
17 the floor. Population polygon test, I might share with
18 you, is going to go down two-two. Having said that, and
19 understanding that it is clearly a significant issue, my
20 suggestion is, we take that vote, move to applying
21 significant detriment to those, to those definitions that
22 we have agreed on, and ask that any other information
23 might be brought to bear on resolving this issue be
24 brought to us at some point, because I don't want to sit
25 here and discuss this for another two hours right now.

1 COMMISSIONER HUNTWORK: Okay.

2 CHAIRMAN LYNN: I think the points of view
3 are well-defined. Simply don't comprise enough of us to
4 pass anything. So talking about it for another hour on
5 the same basis is not going to resolve it any more easily
6 than we've done in the last hour.

7 COMMISSIONER HUNTWORK: Mr. Chairman, I
8 call the question.

9 CHAIRMAN LYNN: The question has been
10 called for on the motion to adopt the population polygon
11 test as our measurement for compactness.

12 All those in favor, say "Aye."

13 COMMISSIONER HUNTWORK: "Aye."

14 COMMISSIONER ELDER: "Aye."

15 CHAIRMAN LYNN: Opposed, say "No."

16 COMMISSIONER HALL: "No."

17 And that's two, for the record.

18 Two twos.

19 CHAIRMAN LYNN: Would you let me vote?

20 COMMISSIONER HUNTWORK: I thought you were
21 voting twice.

22 CHAIRMAN LYNN: Chair votes "No."

23 (Motion fails.)

24 CHAIRMAN LYNN: If you have five, you're on
25 your way.

1 This is not resolved at the moment.

2 It's my suggestion, on those definitions
3 where we have agreed, let's start looking for
4 applications of significant detriment to those and try to
5 adopt some of those definitions, unless there is some
6 compromise I'm unaware of on the issue of compactness.

7 MS. HAUSER: Mr. Chairman.

8 CHAIRMAN LYNN: Ms. Hauser.

9 MS. HAUSER: This might be a really good
10 time for the Executive Session to get legal advice on the
11 issue.

12 CHAIRMAN LYNN: I'm not sure I can get
13 three votes on that. Let me try.

14 Just a moment.

15 Is there a motion for Executive Session?

16 COMMISSIONER HUNTWORK: So moved.

17 CHAIRMAN LYNN: Is there a second?

18 COMMISSIONER ELDER: Second.

19 CHAIRMAN LYNN: Pursuant to A.R.S.

20 38-431.03(A)(3) and A.R.S. 38-431.03(A)(4), the
21 Commission at this will vote on going into Executive
22 Session.

23 All in favor of Executive Session, signify

24 "Aye."

25 COMMISSIONER HUNTWORK: "Aye."

1 COMMISSIONER ELDER: "Aye."

2 CHAIRMAN LYNN: Chair votes "Aye."

3 COMMISSIONER HALL: I'm voting "Aye."

4 (Motion carries.)

5 MS. HAUSER: Mr. Chairman, let me reflect
6 also in order to (sound system screeches) -- jeeze -- in
7 order to give the appropriate advice to the Commission, I
8 am going to require the attendance of Mr. Johnson in this
9 Executive Session as well.

10 CHAIRMAN LYNN: Let the record note
11 Mr. Johnson will be joining us for specific information
12 in the Executive Session.

13 Ladies and gentlemen, I have no idea how
14 long this will last. I invite you to hang out.

15 MR. ECHEVESTE: Mr. Chairman, I ask the
16 Commissioners to turn their mikes off, please. Switch
17 them off.

18 (Brief recess was had as the Commission
19 secured the room and prepared to
20 go into Executive Session.)

21 (Whereupon, the Commission recessed Open
22 Public Session and convened
23 in Executive Session from 3:13 p.m. until
24 3:35 p.m. at which time Open Public
25 Session resumed.)

1 CHAIRMAN LYNN: The Commission will come to
2 order.

3 For the record, all four Commissioners
4 previously present are present, along with legal counsel,
5 consultants, and staff.

6 What is the Commission's pleasure with
7 respect to the issue of compactness? Or would you like
8 to move on to another definition at this time?

9 Mr. Elder?

10 COMMISSIONER ELDER: Mr. Chairman, I guess
11 I need to make a motion first, then we can discuss it.

12 I would move that we adopt the
13 Polsby-Popper method of analyzing compactness.

14 CHAIRMAN LYNN: Is there a second?

15 COMMISSIONER ELDER: I'm going to second
16 that.

17 CHAIRMAN LYNN: Discussion?

18 Mr. Elder?

19 COMMISSIONER ELDER: I look at the process
20 on developing the compactness. And compactness is
21 interrelated, integrated into the whole process of
22 looking at, in my -- and this is my opinion -- in the
23 whole process of looking at communities of interest and
24 the ability to look at different issues within their
25 area. Where it is compact, you get more -- shoot,

1 redundant, more compactness, more focus on the issues
2 that are involved.

3 With that said, I'm not so sure that either
4 one of them is going to provide me with a whole lot more
5 of a basis upon which to make a decision. As long as we
6 are using it, or as long as I'm using it to compare one
7 option to another option and, according to Mr. Johnson,
8 either process will give me that comparison, one is a
9 little less compact or one is a little more compact, and
10 we can run it on individual districts and not necessarily
11 as a whole, can look at two or three districts, okay,
12 let's look at this option. If we move this line over a
13 little bit, what is the effect of compactness with that
14 move so we can go through and not have to look at the
15 ripple effect all the way through?

16 Until we're prepared to do that, then
17 either process will work, in my -- for my use as a
18 Commissioner and the way I vote. And for that reason,
19 just to break the deadlock, I'm willing to go with the
20 Polsby-Popper.

21 CHAIRMAN LYNN: Thank you, Mr. Elder.

22 Further discussion on the motion?

23 MS. HAUSER: Mr. Chairman, can we clarify
24 what the wording of the motion would be, other than
25 compactness is we use the Polsby-Popper test? Seems like

1 there needs to be a little rewording, such as compactness
2 is -- or -- a compact district or map is one measured
3 under Polsby-Popper test. I'm looking for the right
4 wording, but needs a little something.

5 COMMISSIONER HALL: Two parts to the
6 definition. One is, what is the instrument we use? And
7 two is what is the range? The qualifier of what -- you
8 know what I'm saying? When is it no longer compact? I
9 think that's a separate discussion. The intent, if I
10 understand it, of the maker, is what tool I think we'll
11 use to evaluate compactness per Ms. Hauser's,
12 quote/unquote, "definition."

13 MS. HAUSER: Okay.

14 COMMISSIONER HALL: That's a total separate
15 discussion.

16 COMMISSIONER ELDER: Fine with me. Select
17 methodology, develop definition of compactness, using
18 that as a tool.

19 CHAIRMAN LYNN: Mr. Huntwork.

20 COMMISSIONER HUNTWORK: Mr. Chairman, I --
21 I'm still going to vote against the motion. But as long
22 as we're doing this, I mean, it seems to me that we
23 should include whatever the standard for a reasonable
24 compact district is. Is there --

25 COMMISSIONER HALL: So what do you propose?

1 COMMISSIONER HUNTWORK: I propose to ask
2 Mr. Johnson if there is a commonly understood notion of
3 what a compact district is applying that test.

4 MR. JOHNSON: No. There is no commonly
5 accepted definition by any of the tests.

6 COMMISSIONER HUNTWORK: So it's just really
7 relative to -- relative to some other possible way of
8 doing it. You measure the decrease in the amount of
9 compactness, say this one is more compact than that?

10 MR. JOHNSON: That is the typical approach
11 to it.

12 MS. HAUSER: Dispersion of --

13 MR. JOHNSON: One thought, if you want to
14 be more specific, some of the other reasons for putting
15 silhouettes up, what each one is up, if one is outside
16 the bounds, maybe call that significant detriment.

17 COMMISSIONER HUNTWORK: As you did with
18 competitiveness, each specific test, measure
19 competitiveness, here is what a competition district is.

20 MR. JOHNSON: Correct.

21 COMMISSIONER HUNTWORK: If going to --

22 COMMISSIONER HALL: I think the question is
23 a good one. Is .5 compact? I don't know. That's a
24 question.

25 COMMISSIONER ELDER: Let me ask a question,

1 Mr. Chairman, of Mr. Johnson.

2 Is there something like one standard
3 deviation away within the range? If a range is, say,
4 within a 10th, then they're -- it's almost a moot
5 question, both compact or relatively compact or not
6 enough there to make a difference. Two-tenths a big
7 difference, not compact in relation one to the other?

8 MR. JOHNSON: Yes. That is almost word to
9 word what plaintiffs proposed significant detriment,
10 change Polsby-Popper score, I think, .1.

11 COMMISSIONER HUNTWORK: Not talking
12 significant detriment, talking about compact. What is
13 compact?

14 COMMISSIONER HALL: Right.

15 CHAIRMAN LYNN: Compactness is, one more
16 time, a relative term on a scale from zero, meaning
17 totally noncompact, to one, meaning as compact as you can
18 get. I don't believe, and Mr. Johnson correct me if I'm
19 wrong, any sort of brightline between zero and one that
20 one could say, if it's under that line, it's not compact;
21 and if it's over that line, it is compact.

22 The best you can do is say it falls
23 somewhere on that range, and that relative to other tests
24 or other maps or other things for comparative purposes,
25 it either compares favorably or unfavorably with those.

1 MR. JOHNSON: Actually, in academic
2 research, we searched long and hard for that kind of
3 thing to help this effort along, and the only comment we
4 found even remotely like that one proposal, for the
5 record you can test, suggested .4 was the brightline to
6 use. However, when they went to test that, just theory,
7 it was proved it's impossible to draw a plan with nothing
8 under .4. So there is no writing in the literature that
9 sets out any type of line.

10 CHAIRMAN LYNN: Mr. Huntwork.

11 COMMISSIONER HUNTWORK: Well, I'm trying to
12 think this -- think about this practically, as you are.
13 And when we give instructions to go and draw us maps that
14 are -- that contain compact districts, to the extent
15 practicable, then, you know, I'm not sure what we're --
16 what we're telling them to do.

17 They have to have a target to shoot for.
18 We're perfectly willing to settle for .5. They'll draw
19 districts that are .5.

20 CHAIRMAN LYNN: I would not want to give
21 that or any other instruction as qualitative to that
22 extent.

23 Here's my thought. Mr. Johnson, correct me
24 if I'm wrong. As you draw any map, when you are taking
25 variety of factors into account, one of them being

1 compactness, as you apply the factors, isn't it almost
2 automatic for you to attempt to draw that district
3 relative to the factors that are in play, as compactly as
4 you can, recognizing that that is a desirable outcome of
5 any map, the districts should be as compact as they can
6 be while treating those variables in whatever manner you
7 are treating them?

8 MR. JOHNSON: Yes. Whenever we have an
9 instruction to do something, we always try to do that in
10 the most compact manner possible, improve in a compact
11 manner, possible for one group, Democrats next to us, 130
12 miles away, because of the goal of compactness, use one
13 by it.

14 CHAIRMAN LYNN: In order to achieve
15 compactness on a relative scale, it's something
16 essentially built into the process to try to achieve it.

17 What we can do is measure the result of
18 your attempts by having either district or map tested by
19 one of the methods and compare it to other maps that we
20 might have drawn or other districts we might have drawn
21 how well you have done what you are trying to do.

22 MR. JOHNSON: Yes.

23 COMMISSIONER HUNTWORK: Mr. Chairman, I
24 have an example I think absolutely refutes that. If I
25 could -- I'll wait if you --

1 CHAIRMAN LYNN: No.

2 COMMISSIONER HUNTWORK: So obvious to me.

3 CHAIRMAN LYNN: Getting to the point, we'll
4 vote on the motion anyway. This is the appropriate time.

5 COMMISSIONER HUNTWORK: We're starting out.
6 About to get a map, or instructed you provide us a map,
7 shows as many competitive districts as possible, taking
8 into account only population variations, compactness
9 plays no role whatsoever in that map. At least you were
10 told not to apply it.

11 So now, if, we haven't determined yet what
12 order we're going to do things in, if the next thing we
13 were to do to that was to adjust it for compactness, the
14 very first question would be how compact do you want it
15 to be? It's not a question of relativeness. We're
16 already automatically weighing one factor against
17 another. And unless we say, anything over three flunks
18 the test, .3 or whatever, you just don't know what to do
19 as between compactness as competitiveness.

20 Is that correct?

21 MR. JOHNSON: Yes. The comments I was
22 making earlier, because you are dead right, if the
23 instruction improve compactness of map as the sole goal
24 or improve compactness while preserving what is there,
25 you are right, need measurement to shoot for. But what I

1 said before is also accurate because compactness always
2 has been done while doing other tests. We've never been
3 instructed purely to just go for a certain compactness
4 number, always used in conjunction with other goals.

5 COMMISSIONER HALL: I think that is the
6 point. Technically speak, you are correct, Jim. If we
7 said, okay, we're combining, you know, Democrats in South
8 Mountain with Republicans in southern Yavapai County,
9 that if we just simply said, go now and make this
10 district more compact, then I think you are right, I
11 think we'd have to have some application of a minimum
12 standard.

13 I think the point is, we're going to say we
14 know Yavapai County has expressed their desires with
15 respect to community of interest. We know the Hispanic
16 community in that area is community of interest. We're
17 asking you to respect the communities of interest. We're
18 asking you to make these districts more compact; also
19 asking you to follow geographic features, et cetera, et
20 cetera. The conversation makes the flow this way. I'm
21 doing -- thinking out loud here. Don't set specific
22 qualifier compactness, define compactness, general terms.

23 The Commission will, relative to
24 compactness, it comes on a case-by-case basis while, you
25 know -- if -- as you say, for example, in 1990, the maps,

1 the district with respect to the Navajo Nation at that
2 time was not particularly compact, but accommodated
3 voting rights related issues where, and this Commission,
4 and I think at some point on a voted basis, you know
5 what, granted, there is less compactness. Where I think
6 that the focus becomes is when we consider significant
7 detriment and we say, okay, putting into play all these
8 variables, community of interest, geographic fixtures,
9 compactness, in order to make it, quote/unquote, more
10 competitive, what constitutes significant detriment by
11 adjusting that?

12 I think, frankly, we did a very good job of
13 that already. The issue is, they just want it more
14 specifically qualified. I think we have done it in many
15 respects. I think it's a matter of redoing that in a
16 different format.

17 So, you know, what would be wrong with
18 saying something to the effect of, you know, that
19 compactness is, you know, is -- deals with geographic
20 dispersion measured by the Polsby-Popper test,
21 something -- some general statement relative to
22 definition of that particular concept.

23 CHAIRMAN LYNN: Mr. Huntwork.

24 COMMISSIONER HUNTWORK: Well, either way,
25 I'll vote against the motion because of the test being

1 applied. But I would feel a lot better about it if we
2 tried to define a standard of what is a compact district
3 because the statute says -- the Constitution says,
4 Districts shall be competitive to the extent practicable.
5 It doesn't talk about compactness. It says we favor
6 competitiveness. And yet, even with that wording, we
7 have said this is a competitive district.

8 Now we're saying they shall be compact.
9 And with that even more direct wording, we are not
10 defining what we mean by a compact district, only how it
11 would be measured. I feel that's not only an
12 inconsistency but a definite lack. I would not do it
13 that way.

14 CHAIRMAN LYNN: It's a fallacy in
15 reasoning, Mr. Huntwork. I mean, this -- with all due
16 respect, whereas the literature and the science allows us
17 various bright lines in terms of competitiveness, those
18 bright lines are absent with respect to compactness. And
19 it's a relative term rather than an absolute term.
20 Therefore, we have to do the best we can with what is
21 available. And that's the best we can do.

22 Ms. Hauser.

23 MS. HAUSER: Mr. Chairman, in terms of the
24 case law that deals with the issue of compactness, there
25 is a lot of just reference to requirement and why it's

1 there. But there are a few cases that speak about
2 compactness in terms of really it being about the
3 aesthetics of a district. It is an aesthetic term. It
4 is one of the quotes I just pulled is that it relates to
5 the relative geographic dispersion of a district.

6 So my suggestion, take it for what you
7 will, in terms of furthering this discussion, is that you
8 do have -- perhaps, this is why I asked the question
9 about the motion the way it was stated -- some definition
10 says compactness describes the relative geographic
11 dispersion of a district. There is no particular ideal
12 of geographic compactness. But compactness shall be
13 measured by the Polsby-Popper test. That is a way to
14 deal with the general concept, and then indicate what
15 measure you are using. And I'm tossing that out for your
16 consideration.

17 CHAIRMAN LYNN: I ask the maker of the
18 motion, Mr. Elder, if that language is acceptable?

19 COMMISSIONER ELDER: If we -- Mr. Chairman,
20 if we have decided to combine it into one definition,
21 yes. In other words, not separate out the motion as to
22 the process as to what test we're going to use and then a
23 definition, I think that would combine it, and I so make
24 that motion.

25 CHAIRMAN LYNN: Second?

1 COMMISSIONER HALL: Yes.

2 CHAIRMAN LYNN: As amended, we're in
3 discussion on that motion. We'll reread it at some
4 point.

5 CHAIRMAN LYNN: Yes, Mr. Hall concurred.

6 COMMISSIONER HALL: I concur.

7 CHAIRMAN LYNN: I want to give Mr. Elder a
8 moment to read it.

9 COMMISSIONER ELDER: Lettering
10 capability --

11 I believe my motion would be amended to
12 read: "Compactness describes the relative geographic
13 dispersion of a district. There is no particular ideal
14 of geographic compactness. Compactness shall be measured
15 by the Polsby-Popper test."

16 CHAIRMAN LYNN: That is the motion on the
17 floor.

18 Is there further discussion on the motion?

19 If not, all those in favor of the motion,
20 signify by saying "Aye."

21 COMMISSIONER ELDER: "Aye."

22 COMMISSIONER HALL: "Aye."

23 CHAIRMAN LYNN: Chair votes "Aye."

24 Opposed say "No."

25 COMMISSIONER HUNTWORK: "No."

1 CHAIRMAN LYNN: Motion is passed three to
2 one. And that definition of compactness will be added to
3 our list of definitions.

4 Now, the next question that arises -- and I
5 hope it doesn't arise for very long -- is whether or not
6 there is any specific measurement beyond the definition
7 that we've just adopted that we can reasonably apply
8 compactness for what it's worth, and it may not be worth
9 very much. I don't think there is, given it's a relative
10 term and one that helps us judge either districts or maps
11 as they are created to see how well we have comported
12 with what we just defined. But since there is no bright
13 line, it's difficult for us to artificially create one.
14 And I would respectfully submit we shouldn't try.

15 COMMISSIONER HALL: Well, let me just
16 piggyback on that, Mr. Chairman.

17 I think you are right. For example, I'm
18 looking here at the example proposed by Mr. Eckstein last
19 week. You know, his example was that the district
20 boundary, significant detriment would mean changing the
21 matter in the map that causes the Polsby-Popper test to
22 change less than .1.

23 Well, it's difficult to have that standard
24 if you don't know changing from what. So I agree with
25 you. I concur. I think we have to analyze every

1 district on a case-by-case basis, that you can't set a
2 specific measurable standard of variation when you don't
3 know what you are varying from because every situation
4 is going to be different based upon the other factors of
5 community of interest and contiguity and geographic
6 features, and et cetera.

7 So I just wanted to concur with your
8 assessment.

9 CHAIRMAN LYNN: Mr. Huntwork.

10 COMMISSIONER HUNTWORK: Mr. Chairman, I --
11 you know, I think that -- the logic of saying that a
12 district is competitive if it falls in this range and
13 it's not competitive if it falls outside that range also
14 is the same, is what you've just discussed with
15 compactness.

16 I don't see any -- in my mind,
17 notwithstanding the point you made before, I don't see
18 any logical distinction between talking about the
19 competitiveness of a map versus the compactness of a map.
20 The overlay to say, well, you have to have a certain
21 number of competitive districts, and they have to be
22 competitive within this range is the same logic as
23 saying, well, in order to be compact, you have to have a
24 certain number of compact districts and they have to be
25 compact within this range.

1 I'm not talking about, to go backwards, I,
2 of course, disagree with the conclusion regarding
3 competitiveness.

4 CHAIRMAN LYNN: Right.

5 COMMISSIONER HUNTWORK: I would -- I don't
6 disagree with the logic regarding compactness. But the
7 same plaintiffs have told us that they expect to see a
8 numerical difference. There is no logical difference
9 that I can see between the two concepts. So I just feel
10 that, despite the fact that I agree wholeheartedly with
11 your logic, I find the inconsistency very disturbing.

12 CHAIRMAN LYNN: Mr. Hall.

13 COMMISSIONER HALL: Point well taken,
14 Mr. Huntwork.

15 I think in a volume, you are 100 percent
16 right. The difference, in my mind, is that we did not
17 lose a lawsuit for not making enough compact districts.
18 We lost the lawsuit for not making enough competitive
19 districts. And the judge is the one who specifically
20 referenced the range, specifically referenced the number
21 of competitive districts we must have. And because that
22 is really the issue, I think that this Commission's
23 decision relative to that is a direct by-product of the
24 judge. I don't think -- I know we didn't make that
25 decision before an order while we utilized certain ranges

1 had discussions in regard to a variety of tests.

2 That's why I think from a purely analytical
3 standpoint analysis, there are inconsistencies is
4 absolutely right. In our world today, I think that that
5 is the difference is that what we're really trying -- I
6 have little confidence we're going to get hammered on for
7 not having a district have .05 less compact more than it
8 should have been. That's where I'm at.

9 CHAIRMAN LYNN: Mr. Huntwork.

10 COMMISSIONER HUNTWORK: One more short
11 point. I'm sure not going to make a motion, short
12 additional comment, and I'll desist.

13 Yes, but the next case, when we -- when we
14 have made more competitive districts and satisfied some
15 people.

16 COMMISSIONER HALL: Right.

17 COMMISSIONER HUNTWORK: But at the expense
18 of compactness because we didn't have a standard, the
19 logical inconsistency between those two is quite
20 compelling. And somebody, some plaintiff, is certainly
21 likely to test that inconsistency.

22 COMMISSIONER HALL: I think there's some
23 merit to that.

24 I think my question to you is, if we can't
25 really set a, quote/unquote, standard of what is,

1 quote/unquote, compact, right, because certain districts
2 may be compact, but may be less compact than other
3 districts. So if you adopt, for example, the
4 Mr. Eckstein's proposed explanation of a variation that
5 significant detriment would be .12, that particular
6 score -- what I can't figure out, and if you can explain
7 this to me, hey, I think you are point here, .1 from
8 what? Because, in my mind, some district .5 may be good
9 and another one, you know, may be .7. I don't know.

10 Frankly, we haven't gone there yet. But
11 I'm just -- I'm asking how do you have a measuring
12 difference when you don't know what you are measuring
13 against?

14 COMMISSIONER HUNTWORK: I will -- we're
15 going to face this problem very graphically, very shortly
16 when we see a map that has made the maximum number of
17 competitive districts; but has not taken compactness into
18 account at all. And from this point forward, every map
19 that gets drawn and redrawn based on that will suffer
20 from a fatal flaw, an original sin, if you will, that we
21 never defined a base standard for compactness and
22 adjusted the competitive map to that base standard and
23 then adjusted and then used some other standard to
24 determine significant detriment from that standard. The
25 parallels in logic are striking almost undeniable, and

1 that's all. I'm not going to make an exotic motion, just
2 going to be defeated.

3 COMMISSIONER HALL: Wouldn't you agree,
4 Jim, when we take a map and look at it considering
5 primarily competitiveness in this community, knowing
6 where communities lie -- for example, Navajo Nation
7 considers themselves a community of interest, don't feel
8 competitiveness should override community of interest.
9 Commission felt that way then, probably feel that way
10 now, issues on compactness become subservient to
11 community of interest. If you apply all the issues of
12 community of interest, geographic features and
13 compactness, in many respects, they take care of
14 themselves, and then we are more able to determine what
15 is significant detriment.

16 MS. HAUSER: Mr. Chairman.

17 COMMISSIONER HUNTWORK: I think we've
18 discussed it enough, Mr. Chairman. I respect Mr. Hall's
19 point. Perhaps we can move on.

20 CHAIRMAN LYNN: Ms. Hauser.

21 MS. HAUSER: I hate to interrupt.
22 Sometimes things need to be clarified for the record.

23 There was a reference to, you know,
24 communities of interest, and knowing where they are at
25 this point. And certainly, the Commission has a record

1 in front of it from previous deliberations with respect
2 to communities of interest. Just remind everyone we have
3 definition community of interest, geographic boundaries
4 have not been presented to you as yet, you have not made
5 a determination which communities of interest you have
6 fit that definition.

7 CHAIRMAN LYNN: Thank you, Ms. Hauser.
8 Mr. Elder.

9 COMMISSIONER ELDER: I -- before Jim
10 decided to avail himself of -- anyway.

11 Significant difference in relation to
12 compactness. In my opinion, if we were to give the
13 instructions to NDC, we now want you to apply
14 compactness; and in doing so, we lose one, two, three --
15 going to be some level where we would lose a competitive
16 district, at what point then does losing the competitive
17 district give us a substantial detriment and, therefore,
18 would be the limit I would be looking at with
19 compactness.

20 If the effects of applying compactness
21 either affects -- it's really all the others. you have
22 to look at them in a complete assessment as opposed to
23 individually. Don't know how otherwise. Maybe sometimes
24 some priorities or priorities 106 take precedence, one
25 area may not take precedence over another. In some

1 areas, compactness may not make a difference to
2 competitiveness to the area or community of interest or
3 to geographic judicial boundaries. If so, we ought to
4 apply it to the nth degree.

5 With that, I don't think we can go in,
6 apply across the board; say, apply it to the nth degree
7 when it will, indeed, affect other factors of 106. I
8 think to keep in compliance with the judge's order with
9 looking at competitiveness, I believe that the
10 compactness has got to be subservient to the other
11 aspects of the 106.

12 CHAIRMAN LYNN: Just to clarify, Mr. Elder,
13 I don't know about subservient; clearly, the issue is
14 applying competitiveness first is what the judge is
15 asking us to do. All of the other criteria then become
16 secondary in the sense of their application. That is the
17 order of there application. Not necessarily order of
18 important, order of applying to a map. That's the
19 process we've essentially adopted at this point.

20 COMMISSIONER ELDER: With that said, one,
21 per judge's order; other for second level almost in
22 inherently; third, fourth, the sequence we'd apply for
23 look at this or give directions to NDC. First priority
24 is competitiveness, second priority is, and I think
25 that --

1 CHAIRMAN LYNN: We've done some of that
2 already.

3 COMMISSIONER ELDER: Yes, something gave
4 directions or Commission here on Monday, gave to NDC. I
5 wholly fully agree with that direction.

6 So I think there's going to be times -- and
7 I made mention of it earlier -- sometimes community of
8 interest will take priority over the judicial. And
9 that's why I ask Ms. Dworkin the question, is it the
10 ethnic form, geometry, or is it the jurisdictional area
11 of the Navajo Nation, jurisdictional area? That was her
12 definition. Is that the same definition we take with the
13 Hispanic community doesn't have jurisdictional boundaries
14 if we go through the whole process, different criteria,
15 different parts of the state, can't take a vote to change
16 priorities of hierarchy, how we evaluate the various
17 responses to a specific point.

18 CHAIRMAN LYNN: Thank you.

19 Mr. Huntwork.

20 COMMISSIONER HUNTWORK: Well, one of the
21 questions you asked, Commissioner Elder, again, goes
22 right straight to what we're about to do next, and that
23 is with the competitive map that we'll see at some point
24 if we can quit arguing about the definitions. The very
25 first thing that is happen is that that competitive map

1 can be reduced from -- hypothetically, let's say that
2 that map produces 25 competitive districts.

3 COMMISSIONER ELDER: Go for broke, 30.

4 COMMISSIONER HUNTWORK: Don't think it can
5 because of registration difference in the state. It can
6 produce a lot of competitive districts.

7 The very first parameter I would apply
8 logically to that map would be compactness, because the
9 reason, as soon as we see it, as soon as everybody sees
10 it, the reason that that map is going to be unacceptable,
11 first and foremost, on first visual impact, is going to
12 be compactness. And it can be reduced, probably, if we
13 take any reasonable definition of compact district.

14 My guess, that's going to be reduced from
15 20 to 12 or some -- and what is left will have some
16 reasonable degree of visual compactness. And by failing
17 to do that, by failing to do that now, at the first step,
18 or anywhere in the process, there is, hidden in whatever
19 map we come up with, that very fallacy, it cannot be
20 eliminated unless we say something right off the bat to
21 say that these competitive districts that have been
22 created by taking a piece of Ahwatukee and a piece of
23 Flagstaff, or whatever it is you have to do to fail the
24 compactness test.

25 COMMISSIONER HALL: So what do you

1 recommend?

2 COMMISSIONER HUNTWORK: I recommend
3 creating a parameter that says that a district that
4 isn't -- doesn't at least pass this muster, is not
5 compact.

6 CHAIRMAN LYNN: What parameter is that?

7 MR. JOHNSON: Mr. Chairman, if I may, maybe
8 help with that. One thing, I have the summary of
9 compactness measurements, various plans we looked at in
10 the past. Give you a reference point, including the
11 1990's plan and grid you see by the Polsby-Popper test
12 where they fall, if that would be useful to you.

13 CHAIRMAN LYNN: Do you think that's useful,
14 Mr. Huntwork?

15 MR. JOHNSON: Or space it out.

16 COMMISSIONER HUNTWORK: Might be. In the
17 original grid, we used county boundaries, for example, to
18 stop the random flow of directions. We've never done
19 anything quite like this before. And not having some
20 mechanism to control the --

21 COMMISSIONER HALL: What is the minimum
22 score in the current adopted map? What is the minimum
23 score?

24 CHAIRMAN LYNN: For a district?

25 COMMISSIONER HALL: Right.

1 MR. JOHNSON: The one Judge Fields just
2 ruled on. Here, let me put it up on the screen. Here.
3 The way to read this is the number, each row shows a
4 number of districts in that plan below that score. By
5 Polsby-Popper, a .25 score, no districts in the grid plan
6 fall under that, to just above it, which is why I started
7 there.

8 In the 2001 plan, plan adopted November
9 9th, 2001, nine; in the 2002 plan, ten, and so on.

10 Then we go down. Let's look at
11 Polsby-Popper, .2 scores how much districts, each plan
12 fell below that. Zero, again, for the grid, four, six,
13 six, kind of reflects how compactness really is a flag
14 for gerrymandering. You see that showing up here when
15 you look at the 1990 plan. And then you get .2, .15, or
16 .1.

17 And so these could be, one of these points
18 might be something you might want to use as significant
19 detriment would be district falling below that.

20 As discussed before, we might also want to
21 include relative measure in there, just because above .2,
22 if it drops from .22, .3, may also be a significant
23 detriment.

24 CHAIRMAN LYNN: If I understand the chart,
25 you would be suggesting if we were to adopt anything as a

1 relative standard, it would be .2, or below, given that
2 that is a threshold of some significant. But it seems to
3 me that on a scale of zero to one -- and I understand
4 that these are not geometric progressions in terms of
5 going from .12, .2, but they are -- but they are
6 calculated in some fashion, much the same way I
7 understand that earthquakes are calculated on that scale.
8 That a 7 is not just a little worse than a 6. It's a lot
9 worse than a 6. So -- that .2 might functionally be the
10 place to draw the line. But it doesn't seem to be
11 particularly compact.

12 And so it's not a very big hurdle to get
13 over. It just means that, based on what we've looked at
14 or might look at, we might be able to cross that
15 threshold. That's my point about not having a specific
16 threshold to cross.

17 COMMISSIONER HALL: Six districts below
18 that.

19 MS. HAUSER: Score the plan, not individual
20 districts.

21 MR. JOHNSON: Number of districts that fall
22 below that point.

23 If you choose --

24 CHAIRMAN LYNN: Plan overall average score
25 or composite?

1 MR. JOHNSON: Average.

2 COMMISSIONER HALL: Six districts below .2.

3 CHAIRMAN LYNN: May have six districts
4 above .8.

5 MR. JOHNSON: If you settle for significant
6 detriment district falling below .2, essentially,
7 everything above grid the would fail, if you set one
8 five.

9 COMMISSIONER HALL: One seven five. I'm
10 asking --

11 MR. JOHNSON: I can do -- Doug.

12 COMMISSIONER HALL: Don't have that yet.

13 MR. JOHNSON: In about two minutes. Floor
14 .15, all plans listed in the past, except for the 1990's
15 plan; but you are right, we would also think about
16 including a relative measure as well.

17 COMMISSIONER HUNTWORK: Mr. Chairman, it
18 seems as if an absolute measure is how you define
19 compactness and a relative measure how you define
20 significant detriment.

21 And it also seems as if the fact that there
22 are some districts that fail is good because we're -- in
23 some cases, we had to make districts noncompact in order
24 to accomplish other margins. Not talking something
25 absolutely passes, talking about something reasonably

1 reflects what our concept of compactness is so that we
2 can do something to separate the ridiculous from
3 practical.

4 COMMISSIONER HALL: What I was suggesting,
5 we said a floor.

6 COMMISSIONER HUNTWORK: Uh-huh.

7 COMMISSIONER HALL: So if all maps cleared
8 1.75, what is wrong is if a set has been at a floor of
9 1.75, it in my opinion addresses your concern, so it is
10 completely ridiculous that districts stretch one end of
11 the state to another. That automatically brings us to
12 the floor. We then may have different variables relative
13 to significant detriment. In my mind, that is a whole
14 other issue.

15 COMMISSIONER HUNTWORK: Gosh, I'm saying
16 first about the old process.

17 COMMISSIONER HALL: Right.

18 COMMISSIONER HUNTWORK: No doubt, we
19 considered compactness all the way through it and in
20 adopting districts.

21 COMMISSIONER HUNTWORK: We knew we'd be
22 making some exceptions to compactness. I don't think
23 we'd adopt a compactness standard. All districts were
24 created even, though, ones we knew were not being
25 compact, they'd pass the test, that's not compact.

1 COMMISSIONER HALL: Wouldn't a floor
2 eliminate the ridiculous districts?

3 COMMISSIONER HUNTWORK: Some districts have
4 just in terms of compactness alone are pretty --

5 COMMISSIONER HALL: I'm saying if 100
6 percent of our districts as currently exist, we can make
7 exceptions for other --

8 COMMISSIONER HUNTWORK: Yeah.

9 COMMISSIONER HALL: -- to accommodate other
10 criteria, wouldn't a floor, some reasonable floor, just
11 be an immediate elimination of districts completely
12 ridiculous. I'm asking --

13 COMMISSIONER HUNTWORK: Willing to think
14 about that approach.

15 COMMISSIONER ELDER: Mr. Chairman,
16 Mr. Johnson, let me -- I'm going to a specific area of
17 the state; but it probably is a good example.

18 If we look at an area or community of
19 interest, that was primarily the river communities, Yuma
20 all the way to the north, and it extended in three, four,
21 five miles, picks up enough population to be a district,
22 would that fall under the floor we've been discussing
23 right there because so long, narrow?

24 MR. JOHNSON: I don't know. I'd have to --

25 COMMISSIONER ELDER: The reason I ask

1 that -- I don't want to get a definition if we come up
2 with three or four other items out of 106, that are
3 criteria of 106, that that really predominate in this
4 area, it is imperative that we make a district that looks
5 like this.

6 MR. JOHNSON: Right.

7 COMMISSIONER ELDER: Say, because we set a
8 floor, set a number on compactness, oh, no, significant
9 detriment comes back. No, you can't do it. That does
10 not make sense to me.

11 MR. JOHNSON: One thing that might help
12 that, let the attorneys jump in, if I might state that.
13 Comparing compactness communities of interest, comparing
14 to the extent practicable -- to the extent practicable,
15 significant detriment only kicks in when comparing one
16 set of criteria to community?

17 MR. JOHNSON: All .45, see differences
18 between different plans there.

19 COMMISSIONER HALL: I don't understand.
20 There's not an average of any districts beneath 1.75.

21 MR. JOHNSON: Couple minutes. 1.75.

22 COMMISSIONER HALL: Absolute floor on our
23 plan.

24 MR. JOHNSON: Oh.

25 COMMISSIONER HALL: It's above 1.5 and

1 below 2.0.

2 MR. JOHNSON: We have a one seven, a couple
3 of one nines, one eights, one eight, one eight --

4 COMMISSIONER HALL: The floor right now is
5 one eight, one eight.

6 MR. JOHNSON: One seven. The --

7 COMMISSIONER HALL: Is that the border
8 district?

9 MR. JOHNSON: Didn't get enough sleep last
10 night. I think it is the river district. Yes. So it's
11 District 3, the Arizona strip and river. .17 is District
12 3.

13 COMMISSIONER HALL: Okay. River district.
14 You were on it, Dan.

15 COMMISSIONER HUNTWORK: Reasonable
16 hypothesis, any district less compact than -- least
17 compact than districts we created in adopted plan would
18 be significant detriment. That would be a way of --

19 COMMISSIONER HALL: But -- what I was
20 thinking --

21 COMMISSIONER HUNTWORK: Two steps at once.
22 To say any district that you create by your ultimate
23 competitiveness map that is less compact than the best
24 compact district that we create for other reasons, would
25 be significant detriment to compactness.

1 COMMISSIONER HALL: Well, I think I agree
2 with what you are saying. I want to make sure. Here's
3 how my mind was thinking.

4 If we had a floor for minimum compactness,
5 that would automatically eliminate ridiculous districts.

6 I think the second question is, in my mind
7 is, do we have to have a measurement, though, when we are
8 actually saying, does favoring competitiveness cause
9 significant detriment to this goal? Then I wonder if we
10 need another measuring quantifier, if you will, to
11 determine what is significant detriment.

12 In my mind, clearly based on information
13 we've seen, .1 is way too high.

14 COMMISSIONER HUNTWORK: Yeah.

15 COMMISSIONER HALL: Heavens, some only .17.
16 So, I mean -- but what I'm asking, is that not -- may
17 need a subsequent measuring variable.

18 COMMISSIONER HUNTWORK: Logic, as we talk
19 about this, what occurred to me is, we balanced other
20 goals against competitiveness as we went along. And
21 because of a community of interest, or, you know, some
22 other factor, we were willing to come up with districts
23 that were as noncompact as 1.7.

24 CHAIRMAN LYNN: .17.

25 COMMISSIONER HUNTWORK: .17.

1 COMMISSIONER HALL: Right.

2 COMMISSIONER HUNTWORK: So the only
3 question then is, you know, would we -- since we are to
4 favor competitiveness at least as much as the other
5 goals, I guess, would that not make sense as being on
6 equal balance with the other goals?

7 I hate to --

8 COMMISSIONER HALL: No. I understand. My
9 question to you would be -- and maybe it's not a question
10 counsel wants you to answer -- but I'm just asking, is --

11 COMMISSIONER HUNTWORK: Ask them.

12 MR. RIVERA: I'm out. Executive Session.

13 COMMISSIONER HALL: I'm just --

14 MS. HAUSER: Pause before you answer.

15 COMMISSIONER HALL: I'm asking if the judge
16 or the legal system would have difficulty with us
17 utilizing the standard based upon a map that they didn't
18 agree with. I'm just asking.

19 MR. RIVERA: You know, I don't know the
20 judge has difficulty. There's -- if this thing plays out
21 and there's litigation sometime afterwards, all you are
22 doing is bringing in old maps --

23 MS. HAUSER: No. Let me confer before you
24 say anymore.

25 (Discussion off the record between.)

1 counsel.)

2 MR. RIVERA: And what happens is you are
3 looking at something that the judge has already referred
4 a different standard. I'm not sure if you want to start
5 comparing old maps as opposed to setting up a different
6 standard or specific guideline you can do here without
7 referencing back to someplace else.

8 COMMISSIONER HALL: In other words, what if
9 we said .17 is our floor?

10 MR. RIVERA: That's your decision, decision
11 you need to make.

12 CHAIRMAN LYNN: By the same token, isn't
13 that number arbitrary?

14 MR. RIVERA: Define definition. Define why
15 coming up with the number, be consistent on it.

16 MS. HAUSER: May I --

17 CHAIRMAN LYNN: Please.

18 MS. HAUSER: I agree with that. I also
19 think that in terms of researching what is the
20 appropriate level of concern with respect to compactness,
21 that it is permissible for you to draw on your prior
22 experiences in map drawing and looking at the particular
23 comfortable level you had with the relative compactness
24 of districts that you are familiar with.

25 So to the extent that that analysis, that

1 research leads you to conclude that gee, you are not
2 comfortable with things that go too far away from .175.
3 I think that is something that you can consider, and it's
4 not arbitrary.

5 COMMISSIONER HALL: So I guess my question
6 is, what is wrong with us saying that, pursuant to
7 Mr. Huntwork's suggestion, that any district that falls
8 below a Polsby-Popper compactness score of, whatever it
9 is, of .17, is significantly detrimental? Is that the
10 intent of what you are saying?

11 COMMISSIONER HUNTWORK: Yes. I think it's
12 important to include significant detriment to --

13 CHAIRMAN LYNN: Is there a motion to that
14 effect?

15 COMMISSIONER HALL: Yeah.

16 CHAIRMAN LYNN: Second?

17 COMMISSIONER HUNTWORK: Yeah.

18 CHAIRMAN LYNN: Discussion.

19 MR. JOHNSON: If I may. Very good
20 discussion for an issue, makers of the motion, makers
21 relative to changes. Comfortable with anything above .17
22 or change .6 to .3 is also a concern.

23 CHAIRMAN LYNN: Mr. Huntwork.

24 COMMISSIONER HUNTWORK: When we -- we will
25 be having to discuss relative changes as we talk about

1 other factors, as well as just talking about
2 competitiveness. Compactness weighs against all of the
3 factors.

4 COMMISSIONER HALL: Right.

5 COMMISSIONER HUNTWORK: If we are to
6 achieve compactness to the extent practicable, just as we
7 are to achieve, you know, to respect communities of
8 interest to the extent practicable.

9 COMMISSIONER HALL: And I agree with that,
10 Mr. Huntwork, because we've defined competitiveness,
11 which I think we're required to do. Now, basically, set
12 a floor on what that is. I just don't know, Doug, if we
13 have enough information, really, or expertise, frankly,
14 to do that. Because, you know, if you had told me, pick
15 a number, identify .7, 70 percent, or C little D, I
16 know -- who knows, I don't know if we have any districts
17 over .7. I think us not knowing, really -- it's
18 difficult for us to set a standard when really we don't
19 have, I think, a relative understanding of the overall
20 impact of a standard. But I'm --

21 COMMISSIONER HUNTWORK: See, if I were
22 going to set a base standard -- Mr. Chairman, I'm sorry.

23 CHAIRMAN LYNN: Go ahead.

24 COMMISSIONER HUNTWORK: -- it would be --
25 it wouldn't be this number. This is one that includes

1 the significant detriment. My idea of a compact district
2 is more compact than some of the ones that we created in
3 order to balance one of our mandatory criteria against
4 another one.

5 And so this number merely reflects a
6 feeling about how far we have been willing to go in the
7 past with respect to other issues. And to that extent, I
8 think is an interesting and useful summary of where we've
9 been.

10 CHAIRMAN LYNN: Motion is to set a floor of
11 .17.

12 COMMISSIONER HALL: One seven.

13 CHAIRMAN LYNN: .17.

14 COMMISSIONER HALL: In other words, to
15 restate the motion: That significant detriment to
16 compactness occurs when a district falls below a .17
17 Polsby-Popper score.

18 MS. HAUSER: That's --

19 COMMISSIONER HALL: That's exactly what I
20 just said.

21 MS. HAUSER: No, it's not.

22 CHAIRMAN LYNN: Ms. Hauser, want --

23 MS. HAUSER: Significant detriment to
24 compactness occurs when a district is below a
25 Polsby-Popper score of 0.17.

1 COMMISSIONER HALL: I said "falls" and she
2 says "is." Major difference there.

3 CHAIRMAN LYNN: Is that acceptable to the
4 maker and seconder of the motion?

5 COMMISSIONER HUNTWORK: I can't remember.
6 It's acceptable to me.

7 CHAIRMAN LYNN: You are one of them.
8 Mr. Hall is the other.

9 COMMISSIONER HALL: (Nods.)

10 COMMISSIONER ELDER: Yes.

11 CHAIRMAN LYNN: Discussion on the motion
12 just stated.

13 If not, all those in favor say "Aye."

14 COMMISSIONER HUNTWORK: "Aye."

15 COMMISSIONER ELDER: "Aye."

16 COMMISSIONER HALL: "Aye."

17 CHAIRMAN LYNN: Chair votes "No."

18 Motion carries three-one.

19 COMMISSIONER HALL: Want to explain the
20 motion?

21 CHAIRMAN LYNN: No. My explanation is
22 throughout the record, no reason to explain it.

23 Any more to do with compactness, gentlemen,
24 or may we move on?

25 Fair enough.

1 Let's -- it seems to me that that completes
2 our list of definitions. We still have to go back and
3 determine whether or not the application of significant
4 detriment to definitions needs to be any further defined,
5 and if it does, in which cases it does. I understand
6 consultants may have information that may be helpful in
7 that regard.

8 Is that where you would like to go next?

9 MR. RIVERA: Break?

10 CHAIRMAN LYNN: Break. I'm sorry. Time
11 flies when having fun. A quick hour and a half. Let's
12 take 10 minutes.

13 CHAIRMAN LYNN: I say 10, 15. If I say 15,
14 it's an hour. We'll try to take actually 15 minutes.

15 (Recess taken.)

16 CHAIRMAN LYNN: The Commission will come to
17 order.

18 For the record, all four Commissioners are
19 present. For the record, Commissioner Minkoff continues
20 to be, for the month, excused.

21 We have now completed the -- most of the
22 definitions we need to deal with. There are, I believe,
23 two or three other applications of significant detriment
24 we might want to consider. Then I'd ask for us to look
25 at the definitions in total, as we have looked at them

1 completely, and see if at that point there's anything
2 anyone wishes to alter before we finally adopt them and
3 pass them along to the consultants as our definitions for
4 the purpose of this exercise.

5 I should put on the record, at every one of
6 these meetings, that the Commission restates that what we
7 are doing is solely and specifically to comply with the
8 order of the court, and that we do so under protest, and
9 we are actively seeking not only a stay, but an appeal of
10 the judge's ruling.

11 So let's look at significant detriment to
12 contiguity.

13 MS. LEONI: Thank you, Chairman Lynn, and
14 Members of the Commission.

15 These are additional proposals for
16 discussion of supplemental definitions in your
17 conversation of what constitutes significant detriment in
18 your requirement to favor competitiveness. This applies
19 only to competitiveness.

20 Each one of these slides, and there's just
21 three more, start out with a definition you adopted of
22 particular criterion. The adopted definition for
23 contiguity is very loose, very broad. And it would seem
24 from our -- what we would propose for our discussion --
25 for discussion by you is a noncontiguous is one which is

1 not in physical contact.

2 COMMISSIONER ELDER: So moved.

3 CHAIRMAN LYNN: Is there a second?

4 COMMISSIONER HUNTWORK: Second.

5 CHAIRMAN LYNN: Discussion?

6 Mr. Huntwork.

7 COMMISSIONER HUNTWORK: Well, having made
8 the definition so broad, I agree. I -- you know, the
9 natural reaction is to say significant detriment is
10 something that is not, you know, insubstantial contact,
11 and so on; but, actually, we have compactness to deal
12 with that issue. And that's why we adopted the broad
13 definition of contiguity. So this seems to me to be
14 consistent with the logic we applied with the original
15 definition.

16 CHAIRMAN LYNN: Other discussion? If not,
17 all those in favor of the issue signify by saying "Aye."

18 COMMISSIONER HUNTWORK: "Aye."

19 COMMISSIONER ELDER: "Aye."

20 COMMISSIONER HALL: "Aye."

21 CHAIRMAN LYNN: Chair votes "Aye."

22 Motion carries and is so ordered.

23 Next, Ms. Leoni.

24 MS. LEONI: Thank you, Chairman Lynn.

25 The next criterion that we have prepared a

1 slide for is significant detriment to the equal
2 population standard.

3 On the 3rd, you adopted the definition,
4 "Precise equality: Plus or minus one person with each
5 deviation justified on the record."

6 I think that is an accurate statement of
7 it. A proposed definition of significant detriment would
8 be: Anything more than the minimum deviation from equal
9 population necessary to achieve another redistricting
10 goal and comply with constitutional mandates.

11 CHAIRMAN LYNN: Before we consider that as
12 a motion, I need to ask a question, because it occurs to
13 me in that proposed definition, one of the things that is
14 included in there is going to be readily discernible;
15 that is to say, we can make a determination as to whether
16 or not achieving another redistricting goal has been
17 accomplished by deviating from a very tight definition of
18 equal population.

19 Less obvious is what constitutes a
20 constitutional mandate. And even though there is case
21 law that suggests margins, until that is tested, I don't
22 know that we can fairly determine it.

23 MS. LEONI: Chairman Lynn, you've broken my
24 cover. There is debate in this state about the meaning
25 of a term. And our record, your record in these

1 proceedings reflects that. And the definition begs that
2 question.

3 You are also correct that other states have
4 chosen standards. I know of at least two that have an
5 overall deviation of no more than one point up and down.
6 But I have no basis of recommending that to you in
7 Arizona.

8 CHAIRMAN LYNN: Ms. Hauser.

9 MS. HAUSER: Mr. Chairman, you previously
10 took the approach with equal population that, although
11 other states sometimes are able to tolerate deviations up
12 to even 10 percent, that the way the Arizona Constitution
13 is worded, that you would attempt to achieve population,
14 more population balance more along the lines or closer to
15 what you would have to achieve with respect to
16 Congressional, unless compliance with some other goal
17 made it necessary for you to deviate. And then you
18 justified each of your deviations on the record.

19 So I think in order to -- if you were to
20 continue along that, with that approach, this definition,
21 minus, with a period after "redistricting goal" would
22 suffice.

23 CHAIRMAN LYNN: Mr. Huntwork.

24 COMMISSIONER HUNTWORK: Mr. Chairman, I am
25 also in the school that says that equal population means

1 equal population. And whatever the Arizona mandate was
2 before Proposition 106 was adopted, it's now equal
3 population. And it is equal population to the extent
4 practicable. And with the data and, you know, computer
5 programs that are available today, that is very, very
6 equal indeed.

7 Now, having said that, we have allowed
8 deviation in our own maps previously to achieve primarily
9 the Voting Rights Act solutions. Voting Rights Act is
10 pseudo-generous, in my opinion, which means a unique
11 problem because it's federal. And the federal trumps the
12 state rule, even the state constitutional rule.
13 Because -- so I don't believe that we can say that the
14 deviations that we use in order to minimally comply with
15 the federal Voting Rights Act would be applicable to any
16 other purpose.

17 What I do believe we could say, what I
18 believe we could do is look at the question of whether we
19 allowed population variations for any other reason and
20 focus on how much of a variation we allowed. Because I
21 do not believe that we could comply with the judge's
22 order by failing to adjust for competitiveness as much as
23 we had adjusted for community of interest, let us say,
24 although I -- you know, I think -- I don't agree with the
25 logic, but I do think in order to comply with the order,

1 that we need to consider that. Rather than leaving it
2 vague, I would ask the question, how far did we deviate
3 for a purpose other than to achieve a voting rights
4 compliance?

5 MS. LEONI: We'll have that information for
6 you, Commissioner Huntwork, in just one moment.

7 CHAIRMAN LYNN: Ms. Hauser.

8 MS. HAUSER: Mr. Chairman, Commissioner
9 Huntwork, I do have a detailed summary of every plan
10 made. Doug has a summary of those deviations, if
11 interested in other deviations, which were some of those
12 other than the Voting Rights Act.

13 MR. JOHNSON: Mr. Chairman, Mr. Huntwork,
14 the largest deviations in the 2004 plan, other than for
15 voting rights reasons, were in the East Valley. We had
16 districts that were 2.1 -- yeah, the largest, 2.17
17 percent overpopulated, the reason being, the impact on
18 community of interest required for those through the
19 whole plan.

20 So those are the largest deviations we
21 have. Some part -- some part of that were carryovers
22 from the interim plan.

23 COMMISSIONER HUNTWORK: As you think about
24 this, too, they were -- you know, they were forced on us.
25 Always a question, is there no other way to protect it?

1 So significant detriment in this context wasn't
2 necessarily an absolute number. It was really a
3 balancing, a balancing test.

4 MR. JOHNSON: Let me go back.

5 CHAIRMAN LYNN: Jim, could you relate that
6 to the proposed definition, either supporting it or
7 quarreling with it?

8 COMMISSIONER HUNTWORK: Let me see the
9 proposed definition again with the period taken off, with
10 the less taken off --

11 MR. JOHNSON: Let me add one other note. I
12 went back, it's on the screen now, it's hard to read, is
13 what was adopted November 9th, 2001, so it didn't have
14 the impact of the interim plan on it, the largest
15 deviation here in a nonvoting rights related situation,
16 1.74 percent overpopulation.

17 COMMISSIONER HUNTWORK: I see everything we
18 did was a result of the voting rights.

19 MR. JOHNSON: Right.

20 COMMISSIONER HUNTWORK: In that case, it
21 may have been as well. You are looking at that. Now,
22 what district was that?

23 MR. JOHNSON: It changed the East Valley.
24 It's either Mesa or Chandler.

25 CHAIRMAN LYNN: Mr. Johnson qualified that

1 as a nonvoting rights deviation.

2 COMMISSIONER HUNTWORK: From the 2001 plan.

3 But I -- I just want to make sure. There is a record why
4 we did it, which I cannot recall at this moment. It did
5 have to do --

6 MS. HAUSER: I have it here, if you want
7 it.

8 MR. JOHNSON: Yeah, it was District 18,
9 which was the Mesa District.

10 COMMISSIONER HALL: Mesa.

11 COMMISSIONER HUNTWORK: Okay. And then,
12 Lisa, do you have -- are you looking at the record to --

13 MS. HAUSER: I'm going through about 5,000
14 trial exhibits to find -- trying to search for --

15 CHAIRMAN LYNN: Comment is, right here
16 among many.

17 MS. HAUSER: Right here among a bunch of
18 stuff.

19 CHAIRMAN LYNN: Not at your fingertips.

20 MS. HAUSER: Hang on. I'll find it.

21 CHAIRMAN LYNN: If you could, Mr. Johnson,
22 go back to definition. I'd like to move that along as
23 Ms. Hauser is trying to get that answer.

24 So if -- I mean, if you can envision that
25 definition with a period after "goal."

1 COMMISSIONER HUNTWORK: Okay. Then looking
2 at that, I would disagree with that definition because it
3 seems to subordinate equal population.

4 In other words, if in order to protect a
5 community of interest, we had to make one district 15
6 percent bigger or 15 percent smaller than another, where
7 is the tradeoff? Anything more -- we -- 15 percent, no
8 problem, because we're achieving another goal.

9 CHAIRMAN LYNN: But let me remind you that
10 the only measurement for significant detriment is as
11 between competitiveness and another goal, not communities
12 of interest. It's competitiveness, and in this case,
13 equal population.

14 COMMISSIONER HUNTWORK: Mr. Chairman, I do
15 understand. But I'm looking at a definition that says
16 that we may be able to have districts of -- with a 15
17 percent difference in order to achieve competitiveness
18 because it's, you know, anything to achieve
19 competitiveness.

20 CHAIRMAN LYNN: Ms. Leoni.

21 MS. LEONI: I thank you, Chairman Lynn.

22 Commissioner Huntwork, the intent of the
23 last clause of this definition was to capture, at the
24 outside, at least the federal constitutional bounds which
25 are less than 10 percent.

1 Now, the Arizona bounds may be far narrower
2 and, indeed, this Commission has been operating as if
3 they are far narrower than that. It has not been tested
4 by a court. That language, as inartfully drafted as it
5 is, was drafted to capture at least federal. I think if
6 the competitiveness adjustment took the deviation above
7 that, there would be quite a bit of federal difficulty
8 with the plan.

9 COMMISSIONER HUNTWORK: We could replace
10 that by saying, in no event no greater than 1.7 percent
11 that would create the gap.

12 CHAIRMAN LYNN: Mr. Hall.

13 COMMISSIONER HALL: I'm districts with
14 respect to voting rights, issues over 1.7 percent.

15 COMMISSIONER HUNTWORK: Correct.

16 COMMISSIONER HALL: I'm not sure I
17 understood what you said.

18 COMMISSIONER HUNTWORK: If voting rights,
19 the voting rights changes were unique because they were
20 necessary to comply with federal law.

21 COMMISSIONER HALL: Right.

22 COMMISSIONER HUNTWORK: Which trumps all
23 provisions of the Arizona Constitution, even with respect
24 to competitiveness.

25 COMMISSIONER HALL: Right.

1 COMMISSIONER HUNTWORK: We are comparing
2 one Arizona criteria to another.

3 COMMISSIONER HALL: Right.

4 COMMISSIONER HUNTWORK: And so I'm saying
5 that we should go as far as we did to accommodate any
6 other of the Arizona criteria, but not the federal voting
7 right's criteria. That was my -- that's why I said that.

8 CHAIRMAN LYNN: Ms. Hauser.

9 MS. HAUSER: The deviation in District 18
10 overpopulated 3,567 persons was to get to a zero
11 population deviation which would require shifting all the
12 population. We looked at it in the tests on August 13
13 and the Commission decided not to do that. Because of
14 its other impacts, it largely follows major roads.

15 So, again, because of -- the record is more
16 detailed than that, but because of -- it's one of those
17 things where following a major road would --

18 COMMISSIONER HUNTWORK: Which was
19 geographical boundaries and barriers and things.

20 CHAIRMAN LYNN: Yet another criteria.

21 COMMISSIONER HUNTWORK: I think the number,
22 then, was it 1.7?

23 MR. JOHNSON: 1.74. 1.74.

24 COMMISSIONER HUNTWORK: Then I think the
25 definition makes sense if we replace the language that is

1 highlighted with the phrase, "but in no event greater
2 than 1.74 percent."

3 CHAIRMAN LYNN: Are you offering that as a
4 motion?

5 COMMISSIONER HUNTWORK: Well, I think it
6 should say, "to achieve competitiveness." Because that's
7 the only goal that this is being used for.

8 MR. JOHNSON: You want it at the end?

9 COMMISSIONER HUNTWORK: In the middle where
10 it says, "to achieve another redistricting goal." It
11 should say, "to achieve the goal of competitiveness."

12 Mr. Chairman, I would offer that,
13 reluctantly; because if it were up to me, I wouldn't
14 allow any population deviation. And those we did, you
15 know, were a result of compromises; so on that, the
16 Commission had to make previously, in order to get the
17 job done. I'm against -- I'm against any population
18 deviation to the extent we can possibly avoid it.

19 Nevertheless, because of the situation
20 we're in, I'll move that we adopt that definition for
21 purposes of complying with the current order.

22 CHAIRMAN LYNN: Is there a second?

23 COMMISSIONER HALL: I second that.

24 CHAIRMAN LYNN: Thank you.

25 By way of discussion, Mr. Huntwork, I'm not

1 sure I should tell you what I would do if it were up to
2 me. I wouldn't even be here.

3 Mr. Elder.

4 COMMISSIONER ELDER: State again why or how
5 we came up 1.74 as opposed to rounding it off to 1.7 or
6 1 -- isn't it 1.75 or something? Was this a specific
7 number that came out in testimony that said we had to be
8 or that is what was precleared and that was the maximum
9 they would allow --

10 CHAIRMAN LYNN: Didn't have anything to do
11 with it.

12 COMMISSIONER HUNTWORK: The reason I
13 suggested it, Mr. Elder, is because it is a deviation
14 that this Commission previously approved as a tradeoff to
15 equal population in order to achieve one of the other
16 criteria set forth in Proposition 106, which was not
17 mandated by overriding federal law.

18 COMMISSIONER ELDER: Okay.

19 CHAIRMAN LYNN: Further discussion on the
20 motion?

21 Ms. Leoni.

22 MS. LEONI: Thank you, Chairman Lynn. I
23 just wanted to clarify what your consultants are
24 understanding: That that is 1.74 deviation in a single
25 district; it's not the overall deviation.

1 COMMISSIONER HUNTWORK: Yes. That is
2 correct.

3 CHAIRMAN LYNN: That is. And I think
4 perhaps adding that language might be appropriate.

5 MS. HAUSER: In a district.

6 CHAIRMAN LYNN: In a single district.

7 COMMISSIONER HUNTWORK: Yes.

8 MS. HAUSER: I'll read you -- it's not a
9 complete sentence there.

10 CHAIRMAN LYNN: Would you like to try some
11 better language?

12 MS. HAUSER: It's not a complete sentence.
13 Doesn't say anything.

14 CHAIRMAN LYNN: I've been constitutionally
15 against fragments for a long time.

16 MS. HAUSER: Significant detriment. So
17 significant detriment to equal population in a district
18 is anything more than the minimum deviation from equal
19 population necessary to achieve the goal of
20 competitiveness, in no event greater than 1.74 percent.

21 COMMISSIONER HUNTWORK: At the end.

22 MS. HAUSER: 1.74 percent.

23 "Significant detriment to equal population
24 is anything more than the minimum definition from equal
25 population necessary to achieve the goal of

1 competitiveness, but in no event greater than 1.74
2 percent in any district."

3 COMMISSIONER HUNTWORK: 1.74 should be
4 1.75.

5 CHAIRMAN LYNN: Motion made and seconded,
6 1.75.

7 COMMISSIONER HALL: Yeah.

8 CHAIRMAN LYNN: 1.75.

9 COMMISSIONER HALL: Hundredths of hairs.

10 CHAIRMAN LYNN: Discussion on the motion?
11 If not, all in favor of the motion, signify
12 by saying "Aye."

13 COMMISSIONER HALL: "Aye."

14 COMMISSIONER ELDER: "Aye."

15 COMMISSIONER HUNTWORK: "Aye."

16 CHAIRMAN LYNN: Chair votes "Aye."

17 Motion carries unanimously.

18 MS. LEONI: Do be encouraged, this is the
19 last slide.

20 Significant detriment, community of
21 interest definition, which was adopted by the Commission
22 on the 3rd of February. And for your discussion and
23 consideration, a proposed definition of significant
24 detriment to communities of interest in its fragmentary
25 form violation of -- a violation of community boundary

1 that significantly undermines the ability of the
2 community of interest to promote its interests
3 legislatively.

4 Now, the original definition we had, and we
5 can definitely put that up, it had such qualifiers as
6 fair with regard to representation and raised some
7 question. So we tried to redesign a definition that
8 still brought in the -- the thought of -- the
9 representational quality of the community of interest.

10 CHAIRMAN LYNN: At a minimum, it seems to
11 me, I throw this out just for a suggestion, that to the
12 extent that each of these is being defined, vis-a-vis
13 competitiveness, and another goal --

14 MS. LEONI: Yes.

15 CHAIRMAN LYNN: -- that each of the
16 constructions of the definitions of significant detriment
17 should clearly make that point, as we just did with the
18 last one. This one should also be modified in that same
19 manner.

20 Mr. Hall.

21 COMMISSIONER HALL: I would add the word
22 before promote "adequately promote."

23 MS. LEONI: To adequately promote, split
24 the infinitive.

25 MR. JOHNSON: To promote adequately.

1 CHAIRMAN LYNN: I think the word
2 "adequately" is dangerous, subject to all sorts of
3 interpretation.

4 COMMISSIONER HALL: Every word up there is.

5 CHAIRMAN LYNN: That one in particular.

6 COMMISSIONER HALL: Not hard to undermine
7 the ability to promote.

8 CHAIRMAN LYNN: Mr. Huntwork.

9 COMMISSIONER HUNTWORK: Before we wordsmith
10 this one, there was another one on the board this
11 morning.

12 MS. LEONI: We'll reproject that.

13 COMMISSIONER HUNTWORK: Please reproject
14 that. Much better approach and more similar to what
15 plaintiffs were proposing as well.

16 MS. HAUSER: Mr. Chairman, this particular
17 definition uses the word "significant" within it, using
18 the same term.

19 COMMISSIONER HUNTWORK: Yes.

20 MS. HAUSER: Whatever you do needs to avoid
21 that.

22 COMMISSIONER HUNTWORK: The other one.

23 CHAIRMAN LYNN: Third from the left.

24 COMMISSIONER ELDER: Hey, eagle eye.

25 I don't ever mean to be flip about

1 anything; but if I've not learned anything in three years
2 of doing this, ladies and gentlemen, this is -- next
3 Friday is our third anniversary as a Commission. If you
4 don't keep your sense of humor, you probably would have
5 been hanging by a tree from now, self-imposed, --

6 MR. RIVERA: Top door.

7 COMMISSIONER HUNTWORK: Self-imposed.

8 CHAIRMAN LYNN: Three years is about it for
9 me.

10 Take your time. Finding it will shortcut
11 the process, I am confident.

12 Since we're not meeting next Friday, I
13 invite each of you celebrate our anniversary any way you
14 choose.

15 MS. HAUSER: Jose and I have plans.

16 CHAIRMAN LYNN: Clearly, everything you do,
17 do responsibly. If you don't touch adult beverages, you
18 just don't get the sense of what we've gone through.

19 MR. RIVERA: Mayor Donaldson is going to
20 have something at his house.

21 CHAIRMAN LYNN: To which none of us are
22 invited.

23 I didn't mean that, Mr. Mayor.

24 All right. Let's see what this brings.

25 MS. HAUSER: Bring shirts.

1 MR. RIVERA: And we'll all bring shirts.

2 COMMISSIONER HALL: There is fair and
3 significant.

4 MS. HAUSER: That's not the one.

5 COMMISSIONER HUNTWORK: I think that the
6 problem with the way this works is that it's not intended
7 to be a complete redefinition. I think the idea would be
8 significant detriment in the context of communities of
9 interest entails significant detriment by which we mean
10 the original broad definition; not, you know, not
11 substantial, and so on.

12 Just use the original broad definition,
13 "Significant detriment to the ability of that community
14 to have" -- and I like the word "suggested" by
15 Mr. Mandell -- "to have effective representation or
16 deprive a significant portion of that community of
17 effective representation."

18 CHAIRMAN LYNN: Just so we all understand
19 what you are -- what you might be proposing, could you
20 start with that definition and end where you wanted to
21 and see if it applies?

22 COMMISSIONER HUNTWORK: Yeah. This
23 definition would be read, in effect, in a single
24 paragraph with the original definition. Start out with,
25 "The definition of significant detriment," and then you

1 say, "in the context of."

2 CHAIRMAN LYNN: Communities of interest.

3 COMMISSIONER HUNTWORK: "Communities of
4 interest, significant detriment means."

5 MR. JOHNSON: Let me get this here.

6 COMMISSIONER HUNTWORK: I need the -- the
7 one that you started with.

8 MS. LEONI: The one -- which one do you
9 need?

10 COMMISSIONER HUNTWORK: I need the one just
11 up on the board. I was almost reading from it and now
12 it's gone.

13 MR. RIVERA: You were going to quickly.

14 COMMISSIONER HUNTWORK: Okay. So start
15 with the text there and put the cursor at the beginning
16 of the text.

17 In the context of, "With respect to
18 communities of interest: Significant detriment means
19 significant detriment to," and then delete everything
20 down to the word -- that's it -- "ability of that
21 community to have," and then I would like to suggest we
22 say, "effective representation or deprives a significant
23 portion of that community of effective representation."

24 COMMISSIONER HALL: Should we change the
25 word "significant"?

1 COMMISSIONER HUNTWORK: I want to use the
2 defined term there specifically to avoid defining it in
3 terms of something else. You know, it's a drafting
4 technique. But we have defined it. It means all of
5 these things. So by using it again, we're not
6 undercutting or modifying what we mean by it.

7 MS. HAUSER: I think he's talking about the
8 use of the word "significant portion."

9 COMMISSIONER HALL: What is a "significant
10 portion"?

11 COMMISSIONER HUNTWORK: Ah.

12 COMMISSIONER HALL: Is it "substantial"?
13 "Material"? I'm just asking. It seems to me that if I
14 say, you know, 15 percent of that community of interest
15 is significant, and you say 25 -- you know what I'm
16 saying?

17 COMMISSIONER HUNTWORK: I do think that
18 that is the sense of what you are saying is, yes, we want
19 to capture these same thoughts when we use the word
20 "significant" there.

21 MS. HAUSER: Jim, just for purposes, Jose
22 and I will be dealing with these definitions a lot. How
23 is the latter part of that, "depriving a significant
24 portion of the community" really different than depriving
25 the community? Or detriment of the ability to the

1 community as a whole?

2 COMMISSIONER HUNTWORK: I think it's an
3 excellent question. What I'm thinking is, number one,
4 the court recognized the obligation, if we can, to
5 recognize the whole community, if we can. We recognized
6 it, we had pointed out early and often where splinters of
7 the community had been excluded. And when they tried to
8 go to there representatives. They found that he truly
9 represented somebody else and could care less about their
10 problems.

11 So we have considered it to be one of our
12 goals. And the judge, I think, clearly endorsed that to
13 keep from, you know, lopping off significant portions of
14 the community in order to achieve the other goals. And I
15 believe we are entitled, and even obligated, to do the
16 same thing in order to achieve the goal of
17 competitiveness. And the judge as much has said so.

18 COMMISSIONER HALL: What would be wrong
19 with putting a period right after "representation"?

20 MS. HAUSER: The first "representation"?

21 COMMISSIONER HALL: Right.

22 COMMISSIONER HUNTWORK: That doesn't deal
23 with the problem of fragmenting a community.

24 COMMISSIONER HALL: Yeah, it does.

25 COMMISSIONER HUNTWORK: The judge told us

1 we weren't allowed to fragment a community.

2 MS. HAUSER: He did not. I disagree.

3 COMMISSIONER HUNTWORK: Put up the --

4 CHAIRMAN LYNN: He said to the extent you
5 are going to.

6 MS. HAUSER: Favor.

7 CHAIRMAN LYNN: Put a community of interest
8 in a district. And again -- well, and again, this is
9 relative to competitiveness.

10 COMMISSIONER HUNTWORK: That's correct.

11 CHAIRMAN LYNN: That, certainly, a whole
12 community of interest can go within a district, so long
13 as we have geographically defined what that whole is.

14 COMMISSIONER HUNTWORK: That's correct.

15 And that's what I'm saying. I think he even said more
16 than that. I think he said we should.

17 CHAIRMAN LYNN: I think he said a lot more
18 than that. In fact, one of the things he also said was
19 that, if you put a community of interest in a district,
20 that in order to make a competitive district, you might
21 also put a different, not similar, community of interest
22 in the same district. And to the extent that those two
23 communities not only cancel each other out, but one is
24 substantially more powerful than the other; yes, they are
25 disparate and, yes, it's a competitive district; but what

1 you've essentially done, if you talk about effective
2 representation, is cancel one group's representation by
3 the imposition of the other group.

4 MS. HAUSER: Mr. Chairman, let me just
5 point out what the judge said, Inclusions of Law,
6 paragraph 34 that, "The Commission's discretion to
7 protect a community of interest is limited to include
8 placing the entire community within the boundaries of a
9 Legislative District."

10 He's not saying you can't split one for
11 whatever reason you choose, but you are -- your desire to
12 protect the community is limited to keeping it together,
13 not combining it. He raised that in connection, not
14 combining it with other similar communities to create
15 homogeneous districts.

16 COMMISSIONER HUNTWORK: Right. That's what
17 I and I believe Chairman Lynn are saying. That phrase at
18 the end reflects our ability under the judge's order to
19 preserve the entire community of interest in a single
20 district.

21 CHAIRMAN LYNN: Mr. Hall.

22 COMMISSIONER HALL: I just have a problem
23 defining significant detriment with significant
24 detriment. What is wrong with respect to some
25 communities of interest substantial or material reduction

1 in the ability of that community to have effective
2 representation, period?

3 COMMISSIONER HUNTWORK: In my opinion, as
4 you know, I spent a lot of time drafting legal documents,
5 not necessarily laws; this is definitely a new experience
6 for me as it is for all of us. But in drafting legal
7 documents, when you introduce new words, you introduce
8 ambiguity.

9 COMMISSIONER HALL: We already did with the
10 larger definition.

11 COMMISSIONER HUNTWORK: You didn't reuse
12 them all.

13 COMMISSIONER HALL: I did material and
14 substantial.

15 COMMISSIONER HUNTWORK: You didn't say,
16 "not minimal or inconsequential."

17 CHAIRMAN LYNN: Ms. Hauser, I --

18 COMMISSIONER HUNTWORK: To that extent, you
19 weaken --

20 MS. HAUSER: Mr. Chairman, I have drafted a
21 lot of legislation. In this context, Mr. Huntwork is
22 correct. It is okay to take a term that you have, an
23 entire term that you've completely defined, "significant
24 detriment" is defined, so that you would then sort of
25 lift that definition previously created by the Commission

1 and place it in the context of this.

2 What is difficult to do is to just take a
3 word, "significant," you know --

4 CHAIRMAN LYNN: In a different context.

5 MS. HAUSER: -- away from the definition
6 and use that.

7 COMMISSIONER HUNTWORK: I agree with that.
8 Now that that is focused on, we need to fix that. Not
9 taking the thought out, clarifying the thought.

10 CHAIRMAN LYNN: What we are doing here is
11 not changing the definition of significant detriment.
12 What we're doing is embellishing it, if you will, to
13 specifically apply it to communities of interest.

14 COMMISSIONER HUNTWORK: Correct.

15 CHAIRMAN LYNN: We've defined it and then
16 we are embellishing that definition as it relates to
17 communities of interest.

18 The question is whether or not we should,
19 by similar construction, embellish it on the others as
20 well or for the other goals, as well. That's a different
21 question. But we are where we are.

22 COMMISSIONER HUNTWORK: I believe that's
23 what we were doing. And all I meant -- I didn't mean
24 literally that we staple it on right here. I mean, when
25 we read all the other definitions, in effect, it means

1 this same thing. It is a supplement to this general
2 definition, not a replacement for it.

3 CHAIRMAN LYNN: All right. We're down to
4 perhaps substitution for the next to the last line in
5 terms of the significant portion.

6 COMMISSIONER ELDER: Mr. Chairman.

7 CHAIRMAN LYNN: Mr. Elder.

8 COMMISSIONER ELDER: I have some problems
9 with that from the standpoint that we have overlapping
10 communities of interest in many areas. And it could very
11 well easily be determined that you would have significant
12 detriment to a specific community of interest. You know,
13 Lisa is looking at me. Why could that possibly be? You
14 take an area as an example. I'm trying to think.

15 CHAIRMAN LYNN: Central Phoenix.

16 COMMISSIONER ELDER: Central Phoenix. We
17 have historic Phoenix overlap areas we may end up for
18 competitive needs or because of maybe there's an overlay
19 of Hispanic area with part of the Historic district with
20 part of the school district with part of something else
21 to say, gosh, we have to look at each one of these
22 overlapping communities of interest, have geographic
23 boundaries and cannot do significant damage to a portion.
24 That's where I get the problem, a significant portion of
25 a community of interest. We've got to take those and

1 work with them together.

2 So I would prefer to have that last two
3 sentences or two lines taken out.

4 CHAIRMAN LYNN: Mr. Huntwork.

5 COMMISSIONER HUNTWORK: Mr. Chairman,
6 the -- you know, in many cases, we haven't been able to
7 fully accommodate communities of interest because of the
8 conflicting communities of interest that we have. But
9 this is only as -- as the factor of competitiveness is
10 added to that equation. This is to say -- this is simply
11 to say that we're not going to break up community -- a
12 community of interest solely to achieve competitiveness.
13 And the court has told us that we are allowed to do that.

14 CHAIRMAN LYNN: Ms. Hauser.

15 MS. HAUSER: Mr. Huntwork, what I'm trying
16 to understand, then, is if you have -- if by a
17 competitiveness change you are splitting a portion,
18 splitting off a portion of a community and that causes
19 significant detriment to a portion of the community's
20 ability to have effective representation, has it not --
21 if you hid that point that it's a substantial portion of
22 the community, is it not also covered already under the
23 ability of the community to have --

24 COMMISSIONER HALL: That's my point.

25 MS. HAUSER: -- effective representation.

1 COMMISSIONER HUNTWORK: I don't believe it
2 is. Let me give you an example.

3 The Navajo Nation. I believe that, you
4 know, if we were to conclude that the Navajo Nation could
5 elect at a lower percentage than including the whole
6 nation in one district; and if we were to conclude that
7 by splitting the Navajo Nation we could achieve a more
8 competitive district in northeastern Arizona, I still
9 believe that we would not be entitled to take a
10 significant portion of the Navajo Nation and throw it to
11 the wolves to be represented by whomever, so that when
12 they called their representative -- and I don't think
13 significant in this case means -- you see, the whole
14 point is, I'm trying to create two different issues. The
15 ability of the Navajo Nation to elect one representative
16 is covered by the first part. You are trying -- I
17 understand what you are trying to do. And bear with me
18 here.

19 This is too complicated to say verbally
20 very well. But you are trying to say that the
21 significance in the second part means the same thing as
22 in the first part. And it doesn't. It's addressing two
23 entirely different problems. The ability of the Navajo
24 Nation to elect one representative is covered by the
25 first part. But how do you protect, you know, 20, 30,000

1 individual Navajos who may be thrown off into a district
2 that has a representative that could care less about
3 their problem?

4 CHAIRMAN LYNN: Mr. Huntwork, to the
5 extent -- and I think this brings up a very interesting
6 point, and there's no answer, per se; but it's an
7 interesting discussion, because to the extent that -- and
8 let's use the Navajo Nation as an example. With 100,000
9 population, give or take in that community of interest,
10 it is quite conceivable to me to split that community of
11 interest between two districts insofar as a significant
12 percentage of that population would still have the
13 ability to elect representation.

14 Therefore, representing the entire
15 community, even though some parts of that community
16 reside full time in another district and, therefore,
17 because we're not dealing with city council or board of
18 supervisors, we're dealing with state legislation at this
19 point, it affects, the entire state affects the entire
20 area as it is put together. And one could argue, I'm not
21 saying I'm arguing it, but one could argue that the
22 entire nation is represented, even though some portion of
23 it is outside of that district because the majority of
24 that district is represented and, therefore,
25 representatives are looking out for their interests at

1 the state Legislature.

2 COMMISSIONER HUNTWORK: And absolutely one
3 could argue that. That is not consistent with what
4 people have come to us to say; including, you know, many
5 of the people who are plaintiffs in the current lawsuit
6 brought in examples of parts of the Hispanic community
7 that had been lopped off and were not --

8 CHAIRMAN LYNN: I agree with you.

9 COMMISSIONER HUNTWORK: It is not
10 consistent with what the Navajo Nation has said to us.

11 CHAIRMAN LYNN: I agree with you a hundred
12 percent. All I meant by making that statement is that
13 we're in a situation now where a judge has told us --

14 COMMISSIONER HUNTWORK: Right.

15 CHAIRMAN LYNN: -- that it is perfectly
16 acceptable to do that if we are, in doing so, creating
17 more competitive districts.

18 COMMISSIONER HUNTWORK: Mr. Chairman, this
19 is the crux of the matter right here. That's why I asked
20 to reread what the judge said because the judge
21 specifically allowed us to keep the community together.
22 And this is why. I am very confident that the judge
23 understood this issue and was doing exactly what I'm
24 proposing to do, which is completely consistent with how
25 this Commission has wanted to do it all along. We are

1 not required by the judge to, in this instance, to go
2 against our own better judgment. And I would prefer not
3 to do so. But in order to protect it, we need to make
4 sure the definition has this caveat.

5 CHAIRMAN LYNN: So how would you propose --

6 COMMISSIONER HUNTWORK: I would propose
7 that we say: That deprives a material and substantial,
8 not minimal or inconsequential, portion of the community.

9 COMMISSIONER HALL: Well, let me ask you
10 this: Given that position, what if someone came to us
11 and says, "We want to be split"? Our definition would
12 preclude that.

13 My point is that the first part allows us
14 to determine whether or not what occurs constitutes
15 significant detriment to the ability of that community to
16 have effective representation, and it does not add as a
17 caveat: Anytime somebody is split off, that constitutes
18 the same thing when if, in fact, we did receive some
19 testimony saying they wanted to be split off, that would
20 be evidence that splitting off would help them in their
21 effective representation.

22 So -- I agree with Lisa's former
23 perspective that the larger -- the former statement, the
24 larger umbrella, that is inclusive enough, and why would
25 we add another restriction when we don't really know what

1 people may say?

2 CHAIRMAN LYNN: Mr. Huntwork.

3 COMMISSIONER HUNTWORK: I think in the
4 situation you described, the community says, we want to
5 be split -- Sun City is an example of somebody that
6 wanted to be split in a particular way, and a good
7 example.

8 The point is, that does not deprive a
9 material and substantial portion of that some community
10 of effective representation. They have come to us and
11 told us that that actually increases the effectiveness of
12 their representation and that's why they wanted to do it.
13 We would have to listen to, and we heard conflicting
14 stories from Sun City.

15 COMMISSIONER HALL: Right.

16 COMMISSIONER HUNTWORK: And we today use
17 our best judgment as to which one made the most sense to
18 us and for them. We had to weigh one story against
19 another and come to a logical conclusion. But this
20 definition allows us to do that.

21 COMMISSIONER HALL: Well, the part that
22 didn't want to be split would come in and they said you
23 followed your own definition because it was substantial,
24 and we think it was material, and that was arbitrary to
25 your definition.

1 CHAIRMAN LYNN: Again, this is only
2 applied, number one, when we wish to favor --

3 COMMISSIONER HUNTWORK: Try.

4 CHAIRMAN LYNN: -- when we wish to favor a
5 community of interest. And the judge is talking about --

6 COMMISSIONER HALL: I thought it was to
7 favor competitiveness.

8 CHAIRMAN LYNN: In what Lisa read from the
9 trial court --

10 COMMISSIONER HALL: I'm sorry.

11 CHAIRMAN LYNN: -- if the Commission
12 intended to favor a community of interest, it could only
13 do so by including all of it within a district. And --

14 MS. HAUSER: No way.

15 MR. JOHNSON: Mr. Chairman, it's to respect
16 a community of interest rather than favor it.

17 CHAIRMAN LYNN: Pardon me. To respect a
18 community of interest. So once we've determined a list
19 of communities of interest, if we intend to respect any
20 one of them, our limit on respecting them is simply to
21 keep them whole within a district. It doesn't extend to
22 matching them up with other like communities of interest
23 for additional representation, if you will; but rather
24 once a community is placed within a district, if we are
25 respecting it, we keep it whole and then we're in -- the

1 intent is to actually find disparate communities of
2 interest which would make a heterogeneous district which
3 would theoretically be more competitive.

4 COMMISSIONER HUNTWORK: I agree.

5 CHAIRMAN LYNN: So, I'd like to make some
6 progress with this definition. And I'm wondering if
7 either Mr. Huntwork, Ms. Hauser, Mr. Johnson, Ms. Leoni,
8 anybody in the audience, could offer a definition that we
9 might at least get on the floor and vote on.

10 COMMISSIONER HUNTWORK: I move we adopt
11 this definition as is refinement of the general
12 definition as applies.

13 CHAIRMAN LYNN: Go ahead and read it.

14 COMMISSIONER HUNTWORK: "Specifically, with
15 respect to communities of interest, significant detriment
16 means, significant detriment to the ability of that
17 community to have effective representation, or" --

18 COMMISSIONER HALL: Deprives in a --

19 CHAIRMAN LYNN: No.

20 COMMISSIONER HUNTWORK: -- "or,
21 deprivation of a material or substantial, but not a
22 minimal or inconsequential portion, of that community of
23 effective representation."

24 CHAIRMAN LYNN: Is there a second?

25 COMMISSIONER ELDER: I need to read it.

1 COMMISSIONER HUNTWORK: I'd like to put an
2 "A" in front of means -- (a) means and significant, I'd
3 like to put an A, in parentheses; and before deprivation,
4 (b).

5 MS. HAUSER: The comma belongs after
6 inconsequential instead of portion.

7 COMMISSIONER HALL: How about and/or?

8 COMMISSIONER HUNTWORK: I'm familiar with
9 litigation in which courts have recently over the years
10 castigated lawyers for and/or.

11 MS. HAUSER: It's terrible.

12 COMMISSIONER HUNTWORK: The reason, it gets
13 you into a logical loop rather than solving the problem.

14 CHAIRMAN LYNN: All right. So with those
15 modifications, that is the motion. Is there a second?

16 COMMISSIONER ELDER: Second.

17 CHAIRMAN LYNN: Discussion on the motion.

18 COMMISSIONER HALL: I wonder if we could
19 make it longer.

20 CHAIRMAN LYNN: Given enough time, I'm sure
21 we can.

22 Does it serve -- I mean, look, the test
23 here is not that we're going to define it and leave it.
24 The test is, we're going to define it and use it.

25 The question is: Does it serve the purpose

1 of doing what we have just discussed, be either wish to
2 do or wish to prevent from happening in terms of our
3 application of this to the communities of interest that
4 we identify?

5 Discussion on the motion? If not, all
6 those in favor of the motion, signify by saying "Aye."

7 COMMISSIONER HUNTWORK: "Aye."

8 COMMISSIONER ELDER: "Aye."

9 COMMISSIONER HALL: "Aye."

10 CHAIRMAN LYNN: Chair votes "Aye."

11 Motion carries unanimously.

12 (The motion as voted upon read:

13 "With respect to communities of interest
14 significant detriment means (a) significant
15 detriment to the ability of that community
16 to have effective representation, or, (b)
17 deprivation of a material or substantial,
18 but not a minimal or inconsequential,
19 portion of that community of effective
20 representation.")

21 MS. LEONI: Chairman, that's the end of our
22 presentation on definitions.

23 CHAIRMAN LYNN: Can't tell you how
24 disappointed I am you don't have more presentation on
25 definitions.

1 COMMISSIONER HUNTWORK: Mr. Chairman, I
2 have a motion that relates to definitions, if I could.

3 CHAIRMAN LYNN: To all or to one?

4 COMMISSIONER HUNTWORK: To the definition
5 of community of interest.

6 CHAIRMAN LYNN: Then let's go back to the
7 adopted language. I don't know whether you have it,
8 Mr. Johnson, but we have it on a handout.

9 COMMISSIONER HALL: I don't have it.

10 CHAIRMAN LYNN: A community of interest is
11 a group of people in a defined geographic area with
12 concerns about common issues, such as religion, political
13 views, history, position, demography, history, culture,
14 social -- should be socioeconomic -- socioeconomic
15 status, trade, or other common interest that would
16 benefit from common representation.

17 That I believe is where we are.

18 CHAIRMAN LYNN: Social is not what was in
19 the motion adopted. Socioeconomic would make more sense.

20 MR. JOHNSON: Just to clarify, that term is
21 actually right out of one of the academic writing.

22 CHAIRMAN LYNN: Not socioeconomic?

23 MR. JOHNSON: Right.

24 CHAIRMAN LYNN: Substantially means the
25 same thing. I'm not going to quarrel.

1 Mr. Huntwork.

2 COMMISSIONER HUNTWORK: Mr. Chairman, I
3 believe something is missing from this definition; and I
4 am, of course, gravely concerned as we go along going to
5 think of things missing from all the definitions.

6 One has just jumped out at me in this one,
7 and that is, I believe we have to add at the end, "the
8 notion that the community is not divided by other issues
9 of equal or greater significance."

10 A classic example is the distinction that
11 we made between the Hopis and the Navajos, for purposes
12 of federal representation, and failed to make for
13 purposes of state representation. And the argument is,
14 well, there are many issues in common. There are,
15 obviously, Native American rights issues, and there are
16 issues of health care and poverty and jobs and many
17 issues that are common. But at least at the federal
18 level, there were supervening issues which the Hopi, in
19 particular, made it crystal clear were overwhelmingly
20 significant. And I want to make sure that we have in
21 here the ability to distinguish those types of
22 situations. And I'm not sure we do if we don't add these
23 words.

24 CHAIRMAN LYNN: Ms. Hauser.

25 MS. HAUSER: Mr. Chairman, to that point,

1 the record, at least, according to the information you
2 received from the Hopi Tribe, was such that the Hopis
3 described community of interest, indicated that they did
4 not have these common ties with the Navajo. That was in
5 fact the debate. The Navajo Nation said they did have
6 those kinds of common ties.

7 So in that situation, it was -- probably
8 had more to do with rather than -- if I understand what
9 you are saying correctly, it would be as if the
10 Commission determined that they were a community of
11 interest combined, combined community of interest with
12 respect to one situation but not another. And the record
13 that the Hopi Tribe made would be to the contrary.

14 COMMISSIONER HUNTWORK: Of course that is
15 true, Ms. Hauser; but by the same token, the record that
16 the Navajo Tribe made was that they had these issues in
17 common and the Commission, as with many cases of
18 conflicting evidence, had to use our own knowledge and
19 wisdom and common sense to decide what was correct and to
20 what extent.

21 But also I think it's critically important
22 to understand that, at least for me, a part of the
23 equation was the issues that divided as well as the
24 issues that unite. And so without specifying and saying
25 I agreed on this, disagreed on that, and so on and so

1 forth, the lack of community with respect to some
2 critically important issues helped to solidify the
3 decision that there was not a -- that there was not a
4 community of interest for federal purposes. I voted
5 against for state purposes as well. You may recall,
6 although the record did not indicate, it showed a
7 four-one vote, it was a three-two vote. Perhaps this is
8 the opportunity to clarify that particular record.

9 CHAIRMAN LYNN: Well, with respect to
10 adding to the definition to amending the definition,
11 would you state it again so I see if there is a second?

12 COMMISSIONER HUNTWORK: I would like to add
13 at the end, "and which is not divided by other issues of
14 equal or greater importance that would benefit from
15 separate representation."

16 CHAIRMAN LYNN: Is there a second?

17 COMMISSIONER ELDER: Second for discussion.
18 I'm not quite sure I understand the addition as to why we
19 would need that again.

20 COMMISSIONER HUNTWORK: Well, in my mind,
21 you know, in my mind, the Navajo and the Hopi are
22 merely -- are merely the most obvious example. And I
23 thought, I actually thought by focusing on them, it would
24 be obvious why this was needed.

25 Ms. Hauser makes a technical argument that

1 perhaps that is not why we did what we did in that case.
2 But, in any event, this definition would, I think, you
3 know, say that all people in a particular socioeconomic
4 class are in the same community of interest, even though
5 they may been in different -- from different cultural
6 backgrounds, different geographical areas. Because they
7 may be united by economic status. And they might in fact
8 benefit from common representation. But they have many
9 other things that are completely dividing them and
10 separating them. And I just think that the notion of
11 what is at the core, there are more things uniting them
12 than dividing them is at the core of defining a community
13 of interest.

14 MS. HAUSER: Again, we don't have any, Jose
15 and I have no position with respect to which way you
16 should to go on this particular question; but only the
17 desire to be able to implement and carry these
18 definitions forward.

19 The question I have is, for example, in a
20 homeowner or neighborhood association-type community of
21 interest, we would hear speakers talk about the issues
22 that they had in common that they want to address
23 legislatively; but they may have many differences of
24 opinion on a wide variety of other issues.

25 I mean, they -- from -- I mean, you name

1 it, but there may be something that unites them
2 legislatively. If this is added to the definition, would
3 we then need to have a record made anytime somebody comes
4 forward to ask them about the things that divide them as
5 well so that you can make that evaluation?

6 That is -- I guess that's my question and
7 concern as to the level of record you would need to
8 create to substantiate this definition.

9 CHAIRMAN LYNN: And I think the converse.
10 I'll get to you, Mr. Hall.

11 COMMISSIONER HALL: Uh-huh.

12 CHAIRMAN LYNN: Just as you get to me most
13 of the time.

14 I think -- I think the point Ms. Hauser
15 makes to me clarifies my position against adding the
16 wording because this is something that is either promoted
17 by testimony, somebody comes in and says, please consider
18 us as community of interest; and if there's conflicting
19 testimony, that too will be on the record. And that it
20 is then up to the judgment of the Commission as to which
21 and how those communities are to be treated based on the
22 totality of the record and the information that is
23 available.

24 And in fact, what we did was make that
25 determination on the basis of a number of things, even

1 though there were a number of similarities between the
2 two communities, there certainly were a number of
3 differences that were pointed out as well. The problem
4 that I have is sort of proving the negative, proving what
5 they don't have in common. And I'm concerned if you
6 don't have ready testimony where that is the case, you
7 simply don't address it. And I'm not sure we can make
8 that determination on a case-by-case basis.

9 I frankly like the definition the way it
10 is, and I'm not inclined to change it.

11 Mr. Hall.

12 COMMISSIONER HALL: I agree with that,
13 Mr. Chairman. I think we have a determination. We can
14 determine ourselves, Mr. Huntwork, if they would benefit
15 or if they would not benefit from common representation.
16 But I think that the added information simply complicates
17 the matter and does not help us any.

18 CHAIRMAN LYNN: Mr. Huntwork.

19 COMMISSIONER HUNTWORK: Mr. Chairman, I
20 hear that. I think Mr. Hall's argument is that it's
21 implicit anyway.

22 COMMISSIONER HALL: Right.

23 COMMISSIONER HUNTWORK: And if that is the
24 case, it certainly doesn't hurt to make it explicit.

25 But here is what I think is the crux of the

1 matter. If we -- I am concerned about the record as
2 well. And I agree with you that we make the decision on
3 the record. But if we don't allow -- if our definition
4 simply makes it irrelevant that there are differences,
5 then it's not going to matter whether people come in and
6 say, "But there are all these differences." We're going
7 to say it doesn't matter. If we're going to logically
8 consistently apply our definition, you guys are a
9 community of interest, you don't get to tell us about the
10 differences. We're here to hear about the similarities,
11 not about the differences.

12 The only argument that has any weight with
13 me, I think we have to allow that. The only argument
14 that even makes me stop for breath in all this argument,
15 it may be implicit anyway. If it's not implicit anyway,
16 we have a disastrous argument.

17 CHAIRMAN LYNN: If it's implicit we make a
18 finding based on these things, we will in the next couple
19 days, it's my fervent hope, get to the place we'll be
20 reaffirming findings we have previously made and
21 attacking geographic definitions as well to those
22 communities.

23 So I think it is a matter of making
24 findings depending on, I do think it is implicit.

25 Any further discussion on the motion? The

1 motion is to amend, using Mr. Huntwork's language. All
2 those in favor of the motion, signify by saying "Aye."

3 COMMISSIONER HUNTWORK: "Aye."

4 CHAIRMAN LYNN: Those opposed, say "No."

5 COMMISSIONER ELDER: "No."

6 COMMISSIONER HALL: "No."

7 CHAIRMAN LYNN: Chair votes "No."

8 Motion defeated, one to three.

9 COMMISSIONER HUNTWORK: Mr. Chairman, I'd
10 like to say, at least two of the Commissioners voted
11 against the motion on the ground the notion was implicit
12 anyway, therefore, the amendment is not necessary. Is
13 that correct?

14 CHAIRMAN LYNN: In part.

15 COMMISSIONER HALL: Yes.

16 COMMISSIONER HUNTWORK: Okay.

17 CHAIRMAN LYNN: Okay. Are there any more
18 definitions or applications of definitions we need to
19 address this evening in order for NDC to feel that they
20 have gotten specific definitions which, when asked to
21 apply them, can be applied?

22 MR. JOHNSON: Mr. Chairman, I think we're
23 all set.

24 CHAIRMAN LYNN: That's scary.

25 CHAIRMAN LYNN: Mr. Hall.

1 COMMISSIONER HALL: Mr. Chairman, can I
2 request before we move, whenever that is, to a study
3 session, we get an update?

4 MS. HAUSER: Yes, I have one.

5 COMMISSIONER HALL: Thank you.

6 CHAIRMAN LYNN: What I suggest at this
7 point we do the following. This is the suggestion for
8 the remainder of the evening. I want to make this
9 overall suggestion so not only members of the public
10 clearly find something better to do on Saturday night,
11 and the Commission can be clear about where we're going
12 and how we're going to get there.

13 I suggest, first of all, we take a break.
14 We're coming up on the time to do that, anyway.

15 Let's have this break be minimal, 15
16 minutes. And following the break, NDC will make a
17 presentation with respect to the geographic configuration
18 of communities of interest. That presentation will be
19 made available to the Commission in hard copy.

20 And I would suggest we take our own time
21 this evening, which otherwise would be used for sleep, in
22 all probability, to review in detail that presentation,
23 and return tomorrow afresh at some hour that we will
24 determine to begin discussing which of those communities
25 we wish to reaffirm with geographic boundaries.

1 And to do that in the most efficient
2 fashion, I would ask NDC simply go through that
3 presentation, we answer any very general questions about
4 how they came to include something or not; and then that
5 we recess at that point for the evening and reconvene
6 tomorrow morning at a time that you would suggest.

7 Does that seem reasonable to the
8 Commission?

9 Mr. Huntwork.

10 COMMISSIONER HUNTWORK: Mr. Chairman, I add
11 to emphasize initial presentation be as brief and
12 succinct as possible in detail. I'll figure that when I
13 have time finally to sit down, look at things rather than
14 all slowed down by --

15 CHAIRMAN LYNN: Given that, what I would
16 ask, Mr. Johnson, is that the primary portion of your
17 presentation be concerned with how you arrived at what
18 you are handing out. Because what you are handing out is
19 self-evident. You are handing out a number of maps with
20 designated maps, and so on. And that going through the
21 list is perhaps superfluous. We'll go through it
22 tomorrow in detail.

23 Address how you came to arrive at whatever
24 you are handing out and then hand it out and we'll go
25 from there.

1 CHAIRMAN LYNN: Mr. Johnson.

2 MR. JOHNSON: Did you want to take a
3 15-minute break?

4 CHAIRMAN LYNN: I'm sorry. Thank you.
5 It's been a long day. 15-minute break. Please let's try
6 to be back at 6:20. We might be able to get out of here
7 by 7:00. We'll recess for 15 minutes.

8 (Recess taken.)

9 CHAIRMAN LYNN: Commission, come to order.
10 All four Commissioners present, counsel, consultants and
11 staff.

12 MR. JOHNSON: Mr. Chairman, pursuant to
13 instructions to revisit very quickly where we are in the
14 process last week, Commission adopted a process, first
15 step adopting definitions. Actually, I guess we're in
16 stages two and three, adopting communities of interest
17 based on definitions and NDC defining communities of
18 interest and their boundaries.

19 That's what this step is, us attempting to
20 go through the record in the time that we've had and
21 bring up a list of communities of interest that were
22 discussed before and present to you information on them
23 from which you can decide whether or not they meet your
24 definition of community of interest.

25 We were interested, to prepare this list,

1 in including and identifying their boundaries to whatever
2 extent possible, and to map each one of them in a
3 stand-alone geographical depiction, not a plan or map of
4 the state, individual maps of each area in question.

5 So that's -- the other instructions listed
6 here are things for, I guess, tomorrow. The adopt
7 definition, this is one we've reviewed considerably
8 today. I'll skip over that. And let me put this in
9 context before I get into any details, and I'm not going
10 to go into a lot of detail at this point.

11 I should point out, hundreds of people
12 commented throughout this process in meetings, through
13 e-mail, writing the Commission in all different forms,
14 pretty much any form you can imagine, the Commission took
15 comments. What I'm presenting on these slides are
16 representative quotes. This is certainly by no means
17 exhaustive. And there are many, many more than I'm going
18 to show here.

19 EACO, Tri Cities, Cochise, Hopi, Navajo,
20 and many others had hundreds of comments on that one
21 community. This is a representative sample, our quick
22 review. I fully expect the Commissioners will have
23 differing views on what the record reflects and what
24 would be a more representative opinion. This is a
25 presenting from our review.

1 We certainly expect discussion and perhaps
2 disagreement with how we chose with the quotes we chose
3 or definitions of communities that they describe. And
4 this is presented as a review of the record. NDC is not
5 presenting these communities to say these meet the
6 definition or don't meet the definition, simply reporting
7 on the record. And as we've discussed, this is three
8 years of Commission work, reviewed over essentially the
9 last five days. So this is not an exhaustive list, but
10 it should be a good one to get us going and jumping into
11 this process.

12 The presentation I have and that has been
13 handed out presents these communities in two groups in
14 roughly alphabetical order. It differs from alphabetical
15 order if three, four communities in the same location,
16 and I put those together. So you'll see them together.

17 The first group is essentially the
18 presentation from July of 2001 of Arizona units of
19 representation. That -- the maps, the same maps you saw
20 there, and the list of communities, and that is what came
21 out of that July 2001 discussion, then the second group
22 is other communities of interest.

23 Obviously, the Commission's consideration
24 of communities did not stop with the July AUR
25 presentation, and then the use of those AURs to build the

1 first draft map. Commission continued to take input on
2 communities of interest. And while, just to clarify one
3 thing, the AUR, a couple communities of interest, but
4 there are -- the AUR list does not encompass all
5 communities of interest. Many other communities of
6 interest came up after you build AURs for the building
7 block of the draft.

8 First step, AUR'S. Second step, walking
9 through other communities of interest we captured in our
10 review. Quotes, representative quotes, presented grouped
11 into groups. One is looking at quotes, define the
12 identity. What makes that community? And second is a
13 note, either a note or quote on what are the boundaries
14 of that community.

15 So I think, if it's all right with the
16 Commission, I think I'll just run through the list so
17 that the public and people here get a big picture view of
18 what is in here, and then leave the details and
19 individual quotes for your review this evening and
20 discussion tomorrow, if that pleases the Commission.

21 CHAIRMAN LYNN: Without objection, if you
22 want to go through them fairly quickly, Mr. Johnson.

23 MR. JOHNSON: Yes.

24 COMMISSIONER HUNTWORK: I sort of have an
25 objection in that I can go through them, we can hand them

1 out to the people here if they are interested in them.
2 And -- you know, I'd like to get busy looking at them
3 rather than just having them listed. Because that's
4 where there is real work, in effect.

5 CHAIRMAN LYNN: What is your pleasure,
6 gentlemen, in terms of Mr. Johnson's presentation?

7 COMMISSIONER HUNTWORK: I just as soon skip
8 any reading or listing once identified in this so we get
9 busy with it. Maybe enter a copy of this in the record
10 so it shows what we're all going to be looking at, at an
11 opportunity, and making copies for any member of the
12 public interested in them.

13 MR. JOHNSON: Sounds good. One thing I
14 mentioned, for the members at a break, since it's hard to
15 read, per my slide, if any member of the public wants to,
16 I'll e-mail the presentation to them from right here. It
17 won't hurt my feelings not to.

18 CHAIRMAN LYNN: Okay. Then without
19 objection, we'll --

20 Ms. Leoni.

21 MS. LEONI: Thank you, Chairman Lynn. I'm
22 not objecting. I do want to note on the record on the
23 presentation on process second, the third bullet point,
24 which are in incorrect order. We're well aware of that.
25 So it's in the record. This is intended to correct that.

1 CHAIRMAN LYNN: Thank you.

2 Then we will consider that Mr. Johnson has
3 completed his presentation this evening.

4 MR. RIVERA: Very succinct and to the
5 point.

6 CHAIRMAN LYNN: And we will take these
7 under advisement and look at them tomorrow morning.

8 Now, I'm --

9 COMMISSIONER ELDER: Mr. Chairman, will
10 that constitute a -- how he arrived at these particular
11 boundaries?

12 CHAIRMAN LYNN: It could, or include any
13 other number of questions you might ask relative to any
14 one of these as they come up.

15 Mr. Johnson.

16 MR. JOHNSON: Very quickly, how we arrived
17 at this list, off the July 1st list, AUR's from a
18 five-day review of the record and my recalling key
19 communities as we went through this process. Obviously,
20 I don't think I did a perfect review.

21 MR. RIVERA: And definitions.

22 COMMISSIONER ELDER: Mr. Johnson, I was
23 more interested, second, third page says, "Hispanic,
24 Maricopa, and Southern." We have some very specific
25 boundaries there. How are those boundaries delineated or

1 defined? Is that what we will do tomorrow morning?

2 MR. JOHNSON: I would say that -- the AUR
3 section, those maps are -- they were discussed and
4 adopted in July of 2001. I wasn't there. I can't give
5 specifics of that. I would add that it may very well be
6 in all the hearings and testimony we received since then
7 you would choose to modify those borders.

8 COMMISSIONER ELDER: Okay.

9 CHAIRMAN LYNN: Is there anything more that
10 we need to consider this evening?

11 I want to -- I am tempted -- I even want --
12 I shouldn't bring it up, I guess. I am tempted to have a
13 call to the public. A long day, had one to start the
14 day, no people here -- I would ask -- anybody want to
15 address the Commission this evening as opposed to
16 tomorrow morning?

17 MS. LEONI: Judy.

18 CHAIRMAN LYNN: Ms. Dworkin. Keep it
19 short.

20 Without objection, Ms. Dworkin. One thing
21 I never tried to do is restrict public comment. We often
22 ask the public to provide us with their input at various
23 times during the meeting. So I'm delighted to give that
24 opportunity. If you would, since you don't have a yellow
25 slip, at this point, state your name and affiliation for

1 the record.

2 MS. DWORKIN: Judith Dworkin, counsel for
3 the Navajo Nation.

4 Simply I'd like to clarify a point I made
5 in response to a question to Mr. Elder this morning that
6 has come up in discussion during the day and is now very
7 relevant with respect to the handout on communities of
8 interest.

9 The question came up as to whether or not a
10 community of -- into the Navajo Nation was concerned
11 with, and I'm only paraphrasing, was jurisdictional or
12 was ethnic. I said "jurisdictional," and it was the
13 boundaries of the reservation.

14 When you review your handout this evening,
15 you will see that clearly, one, community of interest is
16 each of the tribal reservations defined by the boundaries
17 of the reservation. And my answer this morning was
18 specific to that community of interest. But under your
19 definition of community of interest, there are other
20 communities of interest that the Navajo Nation considers
21 itself a part of. One is a community of interest of
22 Indian Reservations within it's geographical boundaries,
23 that is a community of interest of the Navajo Nation and
24 the Hopi Tribe. And another broader is a community of
25 interest of Native Americans with respect to and

1 particularly the reservations of the Apache Tribes.

2 And so when I discuss community of
3 interest, I know that you all understand. But wanted to
4 clarify for the record that there are these overlapping
5 communities of interest, like an onion skin, the most
6 critically important to the Navajo Nation is that of its
7 jurisdiction.

8 Thank you.

9 CHAIRMAN LYNN: Thank you, Ms. Dworkin.

10 Any other members of the public wish to
11 address the Commission at this time? If not, let me ask
12 the Commission for a time to begin tomorrow. We are --
13 we are noticed, I believe, for an 8:30 start. And unless
14 there is some reason to deviate from that time, I would
15 suggest that we begin then.

16 I certainly want to begin as early as we
17 can, because it's going to be a long day and a long
18 Monday as well. Without objection, 8:30 tomorrow
19 morning? Very well. Is there any other business to come
20 before the Commission today?

21 MR. ECHEVESTES: Mr. Chairman, just
22 housekeeping. Doug asked me to print out that
23 presentation on single pages. It's being done right now.
24 If you would all just hang around for a little while,
25 while it's being printed so I can give it back to you.

1 CHAIRMAN LYNN: Or can you deliver it to
2 our rooms or whatever if we're not here?

3 MR. ECHEVESTE: Okay.

4 CHAIRMAN LYNN: We're all somewhere in this
5 facility, except Mr. Huntwork.

6 COMMISSIONER HUNTWORK: How long? When
7 will it be done?

8 MS. JONES: Being printed.

9 CHAIRMAN LYNN: How long before being done?
10 10 minutes? Hour? Three hours?

11 MR. ECHEVESTE: Hopefully, 10 minutes or
12 so. Can't guarantee it. Have to check and see.

13 CHAIRMAN LYNN: Okay. Any further business
14 from Commissioners? From counsel?

15 All right. The Commission will recess
16 until 8:30 tomorrow morning. I believe the same
17 location. I think we're in the same room tomorrow
18 morning. The Commission will stand in recess.

19 (Whereupon, the Commission adjourned at
20 approximately 6:39 p.m.)

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