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CALIFORNIA STATE ALLOCATION BOARD
RULES AND PROCEDURES SUBCOMMITTEE
PUBLIC MEETING

SENATE OFFICE OF RESEARCH
1020 N STREET, ROOM 200
SACRAMENTO, CALIFORNIA 95814

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APPEARANCES

MEMBERS OF THE SUBCOMMITTEE PRESENT:

SENATOR LONI HANCOCK, CHAIRPERSON

SCOTT HARVEY, Chief Deputy Director, Department of General Services, designated representative for Ron Diedrich, Acting Director, Department of General Services.

ASSEMBLY MEMBER JEAN FULLER

ASSEMBLY MEMBER JULIA BROWNLEY

REPRESENTATIVES OF THE STATE ALLOCATION BOARD PRESENT:

LISA KAPLAN, Assistant Executive Officer

P R O C E E D I N G S

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SENATOR HANCOCK: Actually I'd like to get started by just going around the room. We have a small enough group of people here. I don't know everybody's name. I know quite a few people. Just we are and why you're interested. Ms. Fuller.

ASSEMBLY MEMBER FULLER: All right. Well, I'm Jean Fuller and I'm the Assembly Member from the 32nd District.

MR. HARVEY: Good afternoon. I'm Scott Harvey. Chief Deputy Director at Department of General Services and one of my joys is serving on the State Allocation Board on behalf of our Director.

MS. CLARK: I'm Mary Clark and I'm the court reporter.

SENATOR HANCOCK: The court reporter. Okay. Hi.

UNIDENTIFIED SPEAKER: I'm with DGS and I'm doing the Webcast.

SENATOR HANCOCK: Okay.

MR. SMOOT: I'm Lyle Smoot. I work with the Facilities Division of Los Angeles Unified School District. Obviously we do a lot of coming before the Board asking -- begging for money.

1 SENATOR HANCOCK: All right.

2 MS. GARRITY: I'm Mavonne Garrity, Senator Alan
3 Lowenthal (indiscernible).

4 MR. GONZALEZ: I'm Richard Gonzalez, Richard
5 Gonzalez & Associates.

6 MR. PADILLA: Ian Padilla with CASH.

7 MR. BROOKS: Duwayne Brooks. I'm right now with
8 Murdoch, Walrath & Holmes. For 14 years, I was
9 (indiscernible) sat on the Board (indiscernible).

10 SENATOR HANCOCK: Okay. Institutional memory.
11 All right. We need some of that -- oh, okay.

12 MS. HERRERA: I'm Patti Herrera with CASH.

13 MR. BURNS: I'm Scott Burns. I'm a professional
14 (indiscernible) parliamentarian and President of California
15 State Association of Parliamentarians.

16 SENATOR HANCOCK: Oh, great. Excellent. Thank
17 you for being here.

18 MR. DeLONG: Chris DeLong with Hancock, Gonos &
19 Park.

20 MS. JONES: Lisa Jones with Public School
21 Construction.

22 MR. SCHMIDT: Greg Schmidt, Secretary to the
23 Senate.

24 MR. HANCOCK: Bruce Hancock, Hancock, Gonos & Park
25 and for six years, I was the Assistant Executive Officer for

1 the Allocation Board and worked for 13 -- how many years? I
2 can't remember, Lisa. For some years prior to that, I as in
3 OPSC.

4 SENATOR HANCOCK: Great.

5 MS. FERRERA: Ana Ferrera with Murdoch, Walrath &
6 Holmes, representing the County School Facility Consortium.

7 MS. KAPLAN: And I'm Lisa Kaplan. I'm the
8 Assistant Executive Officer.

9 SENATOR HANCOCK: And?

10 UNIDENTIFIED SPEAKER: I'm Nathaniel. I'm the
11 intern for Senator Hancock.

12 SENATOR HANCOCK: Learning. That's government
13 organization.

14 So welcome everyone. It is my hope that we can
15 have a few short, focus meetings to develop some broadly
16 agreed on rules and procedures for the State Allocation Boar
17 and take up also some of the policy areas in which the lack
18 of a stated regulation led to extended debate and difficulty
19 in achieving resolution on the part of the Board.

20 It's been interesting to me that, you know, for a
21 while it wasn't even clear that we made motions and that
22 things would be adopted and could be amended and move
23 forward in a kind of really orderly way.

24 So hopefully -- what I was actually thinking was
25 that today if we hear from both Mr. Burns and Mr. Schmidt

1 about the two different sets of rules for conducting public
2 business. One is Robert's which is now the default model
3 for the SAB. The other is Mason's which the default model I
4 think for the Assembly -- yes, Jean -- as well as the Senate
5 and Greg, who knows more about this than any of us, can talk
6 about Mason's.

7 But if we could really talk about what we might
8 want to do in terms of getting one body and then direct Lisa
9 to look over the draft rules here in light of either
10 Robert's or Mason's, whichever we might think would be
11 better, and make a decision on that, something that we could
12 look at, mark up, and then just approve at our next meeting.

13 And then I think we're going to need some other
14 meetings to talk about such things as the process for
15 setting the agenda, the binder. A number of us have talked
16 informally -- at least on the Senate side -- about how to
17 make the binder the most useful focused document that we can
18 really work from and in an efficient manner.

19 There are other issues such as the officers, how
20 they're elected, the Implementation Committee. We once had
21 a long session about appeals process for the Board which is
22 really important because sometimes things go awry and
23 districts don't agree with the decision that's been made and
24 whether or not to have what we're calling a mercy clause,
25 you know, which the most classic one, the secretary has

1 cancer and therefore doesn't get the revised application in
2 on time, what constitutes mercy, or a district turns down a
3 bond two or three times. Does that constitute hardship.

4 There are some things we just need to clarify so
5 that we don't have to debate them every single time they
6 come up. And this was under objectives and goals in your
7 binder. I just wondered if members of the Committee had
8 anything they wanted to add to this.

9 If now, why don't we get through --

10 ASSEMBLY MEMBER FULLER: I might be interested in
11 just adding processing of the audience, how long the
12 audience gets to talk, how do we decide when they're
13 acknowledged, what is the criteria. I think -- you know, my
14 viewpoint on this -- and Loni -- the Senator had to really
15 twist my arm to be here, but she did and I'm here -- is that
16 when I originally started in 2006 on the SAB Board, we sort
17 of operated a little differently. And of course we weren't
18 as troubled at that time financially. So the situation was
19 easier. Pretty much people were doing protocols that they'd
20 done over and over, but there was no chaotic ambiguity
21 around the issues that there is now.

22 So the processing of the people in the audience
23 was much, much faster and so somehow for me that's my
24 interest in this whole thing is. So if people come up --
25 you know, I don't want them to have to come up like three

1 times or ten times. You know, I want to figure out a way
2 where we process them pretty quickly with some -- you know,
3 maybe it's school district rules. I don't know, you know,
4 but in the interim that everybody gets and that then give us
5 some way to estimate how long the agenda should be in the
6 first place when we're setting the agenda because now we
7 can't seem to estimate how long the agenda should be, so
8 it's huge, and then legislators just can't give a six hour
9 meeting month after month and so the whole thing starts
10 unraveling.

11 So for me it's not so much -- it's a little bit
12 about which set of rules is it, but for me it's a lot more
13 about how did we get to the point where now we're just like
14 a giant forum out there and nobody really seems to
15 understand what the policies and procedures are underneath
16 that and so we just endlessly debate in the forum and we
17 never get to deciding motions or processing, sort of ends it
18 for everybody for a time being.

19 SENATOR HANCOCK: Good. So I'm going to add
20 public comment.

21 ASSEMBLY MEMBER FULLER: Thank you.

22 SENATOR HANCOCK: Public comment because I know
23 that city councils have really almost a legally established
24 requirement for public comment. I don't know if that's part
25 of Robert's. I don't know if it's -- Mason's does not have

1 it I don't think. But let's find out.

2 MS. KAPLAN: And one of the things I would like to
3 make as we go understand under the discussion tab what the
4 Board can do is look at Robert's and look at Mason's and
5 decide which one they want to be the default and then create
6 their own operating rules and procedures and where issues
7 are not addressed, default is motion, but that they can add,
8 you know, specific to the State Allocation Board, that if
9 you want public comment to be three minutes, that would be
10 in the rules and procedures.

11 SENATOR HANCOCK: Right.

12 MS. KAPLAN: That I would --

13 MR. HARVEY: I'd like to remain open on the
14 question as to whether or not one of those well-established
15 processes or forms of conduct couldn't be ours. I mean
16 maybe we will decide that Robert's suits us just peachy keen
17 or that Mason's does or it may be that we have to have a
18 hybrid, given the nature of what we do.

19 And if I can just segue into your very last
20 comment, to me that is one of the most important things
21 which is resolving business so that we don't continue to
22 continue. We have resolution and we move on and the dicey
23 issue around that and I think it was in something Ms. Kaplan
24 prepared is what role if any should reconsideration play and
25 can we have a reconsideration process given what the

1 Attorney General had to say about our ability or not.

2 But to me, it isn't just about moving paper. It's
3 making sure people in a transparent way can see what we are
4 doing but that we actually do it and we don't forum shop.
5 We don't continue items until there are six votes. We don't
6 play those games. We move the agenda.

7 SENATOR HANCOCK: Hear, hear. Having -- just
8 having established that the -- first, we were going to hear
9 from Mr. Burns, just to quickly walk us through Robert's and
10 then from Greg Schmidt as Senate Parliamentarian to do the
11 same with Mason's.

12 MR. BURNS: I'm not reading all these notes. Just
13 one page I want to look at.

14 Thank you again. I'm Scott Burns. I'm President
15 of the California State Association of Parliamentarians. I
16 work as a Professional Registered Parliamentarian which
17 means I'm credentialed by the National Association of
18 Parliamentarians and then I'm also a member of the American
19 Institute of Parliamentarians and the American Congress of
20 Parliamentary Lawyers. Until shortly ago, I was also an
21 attorney for the California Department of Transportation
22 across the street, so --

23 SENATOR HANCOCK: Ah-ha. Okay. Your day job.

24 MR. BURNS: Just in case anybody hadn't seen it, I
25 thought I should let you know that if you're trying to

1 decide based upon heft, it's pretty an equal decision, you
2 know. They're both thick books with a lot of details and
3 I'm not -- I've know I've been asked here to speak primarily
4 on Robert's Rules of Order and in doing so, I want to
5 distinguish a little bit about how it differs from Mason's,
6 hopefully without stealing thunder from Mr. Schmidt.

7 I sent in, Ms. Kaplan, a couple of write-ups that
8 go into some detail and so I don't want to go through all
9 that detail before you again. You know, obviously you and
10 staff have a chance to look at those later.

11 I'm more interested in kind of a conceptual
12 difference between the two authorities. The -- Robert's was
13 first developed a little over a hundred years ago as an
14 adaptation of the rules for the U.S. Senate and House of
15 Representatives because there was a lot of disagreement as
16 to exactly what parliamentary procedure was and what it
17 should be for organizations that were not legislative
18 bodies: religious organizations, non-profit organizations.

19 And so Henry Robert tried to come up with
20 essentially a codification of what was then the common law
21 parliamentary procedure and the Senate and House Rules would
22 try to come up with something that would be an adaptation
23 that could be used by ordinary societies.

24 Mason's on the other hand was developed in
25 California in the Senate, is now published by the National

1 Conference of State Legislators and is intended more for
2 legislative bodies and there's a distinct difference in
3 philosophy between the two authorities.

4 Robert's, I should mention, first of all is not
5 the only parliamentary authority. I brought a copy of the
6 Standard Code of Parliamentary Procedure which is published
7 by the American Institute of Parliamentarians and is thinner
8 and is essentially an attempt to bring Robert's a little
9 more up to date, less arcane, less archaic language,
10 eliminating some of the more confusing, obsolete forms but
11 essentially the same general principles.

12 In any event, there's a philosophical difference
13 and that is that Robert's is focused on member-driven
14 organizations. So one of the reasons Robert's is so thick
15 is because of issues that have arisen in member-driven
16 organizations over the past hundred years that needed an
17 answer.

18 And so Robert's is intended to be a fully
19 authoritative resource for whatever has come up. Mason is
20 somewhat similar but with the special needs for legislative
21 bodies and if I were to say the biggest difference between
22 the two is that Robert is very concerned with membership
23 organizations where you -- one of the principal things you
24 have to be worried about are the rights of people who aren't
25 there. Okay.

1 We're going to have a meeting of a club with a
2 thousand members, only a hundred show up, but the people who
3 aren't there have rights as well, whether it's a motion
4 that's going to be adopted or amending the bylaws or
5 whatever.

6 So Robert's has protections built in, things
7 requiring prior notice, higher vote -- two-thirds votes for
8 certain things, previous notice of certain actions. Mason
9 is -- because it's dealing with legislative bodies and --
10 predominantly and recognizing that legislators essentially
11 are working as representatives, but you can't have an
12 artificial restriction on a legislator's ability to take
13 certain actions for the benefit of his constituents merely
14 because somebody didn't show up at a meeting or because
15 someone else didn't get proper notice.

16 So there's a bit of a different philosophy between
17 the two authorities. Some examples: Under Mason's, a
18 failure to abide by the rules doesn't invalidate an action.
19 The majority's always in control. So under Mason's, even
20 though you've got an authoritative rule book and, as
21 Ms. Kaplan suggested, you're always going to supplement with
22 your own rules no matter what authority you establish, under
23 Mason's if you violate your rules, the action may still --
24 as long as the action taken is fair, just, equitable, and
25 proper, not a result of fraud, it's a legitimate action.

1 Under Robert's, your rules have to be followed.
2 There is a motion where you can suspend the rules, but if
3 you violate your rules, depending upon the circumstances, it
4 can invalidate the action.

5 Under Mason, the majority is always in control.
6 Okay. Everything is a majority vote. Under Robert's, there
7 are some things that require a two-thirds vote, again to
8 protect the rights of either minorities who are present or
9 individuals.

10 So, for example, if you want to cut off debate,
11 it's a two-thirds vote in Robert's. It's a majority vote in
12 Mason's. Even if you have something that requires a
13 two-thirds vote, Mason allows you to change that rule by a
14 majority vote. So really Mason's is -- you know, the
15 majority is in control.

16 And again it's recognition -- I believe one of the
17 members here said you've got legislators who are together,
18 need to get business done, we're going to get business done
19 and if a majority's willing to move on it, we're going to
20 move on it. We're not going to allow a minority to control.

21 Rules of debate are a little bit different. Under
22 Mason's a strict reading of Mason's, every member gets to
23 speak one time and one time only on an issue. By custom and
24 practice, typically may be able to speak a second time in an
25 issue, particularly if something needs to be clarified.

1 Under Robert's, each member gets two times.
2 Robert's allows up to ten minutes per speaker, although
3 again most organizations adopt a two- or three-minute rule.
4 Mason's doesn't actually have a time limit, but again most
5 organizations have a rule.

6 In Robert's, typically motions need to be
7 seconded. In Mason's, they don't. So any member is free to
8 make a motion. Again in Robert's, two-thirds vote for most
9 things -- or pardon me -- majority vote for most things but
10 two-thirds for some. In Mason's, it's typically always a
11 majority vote.

12 I heard a concern registered about reconsidering.
13 In -- they're both somewhat similar in that in order to move
14 to reconsider something, it typically has -- motion has to
15 be made by someone who voted on the prevailing side.
16 Robert's is a little more in a committee structure. It says
17 anyone who didn't vote on the losing side. So Robert's
18 allows a motion to reconsider by someone who wasn't present
19 or who abstained voting.

20 That said, the big criticism about Robert's is
21 that it is an authoritative work. As a professional
22 parliamentarian, I'm often called in to rescue groups who
23 adopted Robert's as their parliamentary authority because
24 they wanted to have a procedure for making motions,
25 seconding, voting, and then a dispute arises -- a legal

1 dispute arises and they discover that they're -- because
2 it's their parliamentary authority, they're bound by
3 something in the back of the book that they never read or
4 never knew existed and all of a sudden, they've violated
5 some rule, which is why I suggest that no matter which
6 authority you ultimately go with, you're going to want to
7 adopt special rules to make things work more efficiently for
8 you.

9 I would never recommend someone adopt any
10 parliamentary authority and just use it.

11 One of the advantages of Mason's for a body such
12 as yours is that obviously it is the legislative authority
13 for your Assembly Members and Senators, so at least for
14 veterans, they're probably familiar with the procedure.
15 First-termers may get a little bit confused by it.

16 Robert's on the other hand is the predominant
17 parliamentary authority in the country right now. About
18 80 percent of organizations use it. So many of the people
19 that come before you, whether they be school boards or
20 others, are probably using Robert's at least at the basic
21 level. So they're a little more familiar with it.

22 To a certain extent, I think your decision may be
23 somewhat academic and the reason I say that is because all
24 of the complication in Robert's comes from its procedures --
25 you remember Robert's is designed for large -- primarily for

1 large organizations, religious bodies, conventions, labor
2 unions, professional associations, nonprofits, and so it's
3 got a lot of procedures for, you know, how do you -- to keep
4 things orderly when you have anywhere from 60 to 60,000
5 people together in a room.

6 It also, however, expressly says that when you've
7 got a small board or a committee consisting of 12 members or
8 less, then informality is the rule and you only fall back on
9 the more complicated rules if the process breaks down.

10 So, for example -- and I've got this in one of my
11 handouts. Under the formal procedure of Robert's, the
12 presiding officer sits back, facilitates the meeting, but
13 doesn't participate in the proceedings. Okay.

14 Under the committee rules, the presiding officer
15 is a fully participating member, makes motions, is allowed
16 to vote, allowed to debate. In the formal procedure, all
17 motions have to be seconded. In committee procedures, no
18 motions need to be seconded. So the second is -- does not
19 exist.

20 In the committee structure and small board
21 structure, the rules on debate go out the window. So there
22 is no limit on the number of times anybody can speak and
23 there is no motion to close debate. You continue debating
24 until the group decides it's ready to move on and again
25 by -- essentially by consensus or majority vote.

1 So while there are many differences between
2 Robert's and some of the other parliamentary authorities for
3 larger groups, I think for a group of your size it's really
4 almost -- as I say, the complications of Robert's go out the
5 door and it really gets down to the philosophical
6 differences.

7 Do we want an authority that allows majority vote
8 as the plain and simple rule no matter what we're doing or
9 do we want a rule that has a higher vote threshold for
10 certain things. Do we want something -- for example,
11 Robert's has I think 26 pages on the rule for consideration,
12 which motions can -- whether a motion can be reconsidered
13 depends upon when it was made, who made it, who wants to
14 reconsider it, how much time is elapsed, whether it can
15 still be renewed or not, and whether it's a procedural
16 substantive motion or a privilege motion. Okay.

17 If I were to go to the standard code, for example,
18 it's very simple. Anybody can move to reconsider at any
19 time period. Okay.

20 SENATOR HANCOCK: Okay. I think we should
21 probably --

22 MR. BURNS: Right. And with that I think I've
23 pretty much said everything I needed to say and if there are
24 any questions now or later, I'll be in the room until you're
25 done.

1 SENATOR HANCOCK: Right. Thank you very, very
2 much.

3 MR. BURNS: Thank you.

4 MS. KAPLAN: Thank you, Mr. Burns.

5 SENATOR HANCOCK: Mr. Schmidt.

6 MR. SCHMIDT: Well, bless his heart, he did manage
7 to cover a lot of the points that I was asked to discuss,
8 varying in nature. But it occurred to me when I was listen
9 to that that perhaps you're looking at the wrong form when
10 you discuss either Robert's or Mason's.

11 Mason's is kind of an err document for the conduct
12 of business in the Legislature, and in fact 99.9 percent of
13 the business in the Legislature falls under the respective
14 rules of the House.

15 And there are many elements of Mason's which we
16 may refer to periodically, but in fact we rarely use Mason's
17 for any determinative purpose in the course of any given
18 day.

19 Mason's is compendium and an attempt to bring some
20 order out of chaos in putting together very disparate parts
21 of legislative procedure from throughout the country. It
22 was done by a fellow who was the Assistant Secretary of the
23 Senate, Paul Mason. We're proud that we handed it over to
24 NCSL because we don't have to take care of it anymore.

25 But in fact we really don't use it very often and

1 at least as far as the Senate goes, the rules and usages of
2 the Senate ultimately can be considered prevailing when
3 there's a conflict between what we've done historically and
4 what Mason's suggests we do.

5 So I think -- the decision that you would make
6 about what rule format you use, if I were in your position,
7 I would kind of be concerned about what is it that I'm
8 voting on and trying to deal with on a regular basis. It's
9 not making decisions about whether you're going to
10 participate in the parade or put in a float or anything.
11 There are specifically kind of legislative decisions.
12 They're the kind of decisions I think that you would make in
13 a subcommittee of the Budget Committee.

14 And so perhaps what you really should look at are
15 the rules of the Assembly and the Senate and then see if
16 those can provide some sort of a basic format for your
17 decision-making process. Expand it as necessary for the
18 kinds of things that you do that maybe are different from
19 the Legislative process.

20 As was stated, I mean Robert's is an organization
21 rule manual. Mason's is a legislative rule manual, so it
22 kind of depends on whether you think you're a legislative
23 body, which I presume in a sense you are, or not.

24 And that would be my suggestion is to take a look
25 at the House rules.

1 MR. HARVEY: Do you have any advice as to what we
2 are? I've heard us referred to as legislative,
3 administrative, quasi-judicial, and we probably at any one
4 time are all of those things.

5 But given the fact that we are created in
6 statute --

7 MR. SCHMIDT: Um-hmm.

8 MR. HARVEY: -- and given what the prior speaker
9 had to say about the -- what I perceive is the informality
10 and the advantages thereof, do you have any comments about
11 that as a process, where things are done by majority and you
12 don't need the second and you can reconsider at any time. I
13 mean does that facilitate moving an agenda or does that keep
14 it open.

15 MR. SCHMIDT: Well, it's kind of two different
16 ways. The way that we perform on the floor of the
17 Legislature is one thing and then the way that you perform
18 in your subcommittee or committee here may be more analogous
19 to the way the legislative committees work.

20 And there are some specific sets of rules as to
21 how you move business along in committees, but also
22 successful chairs and members of committees know that the
23 agenda moves along if you have a good chair, if you're
24 courteous, if you're respectful of the people that fly up
25 all the way from LA to talk, that you provide them

1 sufficient amount of time to make their point and that you
2 still manage to move the agenda along.

3 So again I -- you know, I don't know how to
4 characterize what you do because I've never sat in a State
5 Allocation Board meeting.

6 MR. HARVEY: I'll give you my seat --

7 MS. KAPLAN: As you should -- you should.

8 MR. HARVEY: -- for a meeting. Would you like to
9 do that.

10 MR. SCHMIDT: I presume you hand out money. Is
11 that --

12 MR. HARVEY: When we have bond authority and --
13 yes, we try to anyway.

14 MR. SCHMIDT: Yeah. Or something, you know. And
15 to me that's kind of a legislative act, but then that's my
16 bias because that's what I do, but -- I mean a lot of this
17 is resolved by commonsense and decency and courtesy and
18 nonetheless, I would take a look at committee procedures
19 within the Legislature to see if they're applicable for the
20 kinds of things you want to do.

21 SENATOR HANCOCK: I think that's actually a very
22 good suggestion because, you know, what we do in both the
23 Assembly and the Senate is the presentation of the issue,
24 speakers in favor, speakers opposed. And then you have to
25 have a motion, except we are not allowed in the Legislature

1 to amend on the floor. You have to take the amendment in
2 the next committee or several days in advance and I think
3 the State Allocation Board would find that very cumbersome
4 meeting once a month.

5 So that's why for me Robert's -- which it always
6 seems like it's grammatical, it's like learning to parse a
7 sentence in the eighth grade. I mean because there's a way
8 you make a motion, it gets seconded. If somebody doesn't
9 like that motion, they can amend the motion.

10 MR. HARVEY: Or substitute.

11 SENATOR HANCOCK: Or do a substitute motion. And
12 it becomes clear instead of a sort of endless discussion,
13 which we don't get into in the Legislature at all but we do
14 on the SAB, which is why I think getting clear staff
15 recommendations and then having a motion on that, but yes,
16 having the ability to amend would --

17 MR. SCHMIDT: Well, you can amend in a committee
18 setting.

19 SENATOR HANCOCK: Yes.

20 MR. SCHMIDT: We have some specific things we
21 require for you to amend in committees. I mean like you
22 have to bring amendments and we don't do holographic
23 amendments --

24 SENATOR HANCOCK: Right. Right.

25 MR. SCHMIDT: But you could make that

1 accommodation if you choose to.

2 SENATOR HANCOCK: Well, my experience at the SAB
3 would be that it's actually easier to make amendments on the
4 floor because you hear from the different districts, you
5 hear from the staff. Well, what do you think?

6 ASSEMBLY MEMBER FULLER: You know, I think -- I
7 want to go -- I love all this discussion. I think this is
8 thoughtful, but I want to go back to sort of the end.

9 One of the things that Scott brought up is, okay,
10 so at the end of the day, who's the final arbitrator, you
11 know. Like we're going to pick a model here, but it's not
12 going to be the final arbitrator. I mean the final
13 arbitrator is going to be whom.

14 And in the case with the legislative floor, what I
15 find to be most helpful even though I'm much better
16 grounded, after being a superintendent for 17 years, in
17 Robert's Rules of Order than I am in Mason's. I'm still the
18 new guy kind of learning my way around it.

19 What I find is that everybody that comes in the
20 Legislature is willing to agree that Wilson or you are the
21 final arbitrator and so when we get into it, somebody passes
22 a little note up to you guys and you tell us what it is and
23 we all -- and that's it, we're done.

24 In our situation, the uncertainty that has come
25 out of the chaos of the financial controls being different

1 than they were like my first four years have led to the fact
2 that we're -- we never have a final arbitrator, but we're
3 now down to questioning which rules do we have even.

4 In my first four years, we never questioned those
5 rules and we never questioned who the final arbitrator is.
6 Now we're asking, well, if our own attorney tells us which
7 rules we can have or we can't have and that's what the
8 Senator and I both really agree on.

9 SENATOR HANCOCK: Yeah.

10 ASSEMBLY MEMBER FULLER: We want to know who is
11 that final arbitrator because I don't think we really agree
12 that that was the person that was the final arbitrator and
13 that's what kind of brought this question.

14 So for me the which comes first, chicken or the
15 egg question here is, is what is it that we can lawfully
16 accept as the final arbitrator and that every legislator
17 would be lawfully bound to and then work from that premise.

18 And then if I were to define myself on this Board,
19 90 percent of what I've done is appeals work.

20 SENATOR HANCOCK: Yes.

21 ASSEMBLY MEMBER FULLER: You know, this is an
22 appeals board. This is very much like when you have a
23 development -- at least for me, you have a development and
24 you have this little board and then everybody comes and they
25 don't like the way they've been taxed for some reason or

1 another and it's an appeals process. And it stems all the
2 way from, you know, needing mercy to, you know, the rule
3 doesn't exactly fit the circumstance.

4 And in the first four years, the Implementation
5 Committee worked really, really well because the mediation
6 process in the Implementation Committee was well honed and
7 well received, and so by the time those appeals came to
8 those of us on the Board, there was really -- it was a real
9 bipartisan approach. I mean it was pretty simple, the
10 question was stated to us in a way that we were just focused
11 on the question. We weren't focused on the -- everything
12 else.

13 In the last year and a half, I've been
14 increasingly frustrated that the questions that have been
15 posed to us have been the everything else and it's so
16 occluding of the everything else, that even I who sat on a
17 board for 17 years and the Senator sat on one even -- maybe
18 not longer. I know that -- but probably has been longer --
19 have not been able to, you know, devolve what the question
20 is that we should be doing.

21 So then if we go to a committee meeting format,
22 which I like that idea where -- I'm not exactly sure it's
23 fair to the staff, but if the staff says okay, this is what
24 you ought to do and then the appeals people say this is what
25 you ought to do, and then, you know, there's some clarifying

1 rule in the middle that's a criteria that we base it on that
2 Lisa has provided for us or whomever, then maybe we could
3 come to some appeals precedence that would not break new
4 legislation because I don't think that's what we're there
5 for but would give us a judicial review for that unique
6 circumstance.

7 And I think that's what's not been happening
8 because the first four years, we didn't have that many
9 unique circumstances. You go four years and you maybe have
10 like one unique circumstance.

11 SENATOR HANCOCK: You didn't have appeals.

12 ASSEMBLY MEMBER FULLER: Well, we did have
13 appeals.

14 SENATOR HANCOCK: Oh, okay.

15 ASSEMBLY MEMBER FULLER: It's just that, A, there
16 was always bond money; B, there was always a list; C,
17 everybody pretty much knew where they were on the list
18 because they'd been on the list forever through a couple of
19 different Board configurations, and anybody who had a
20 problem, we sent them back to the Implementation Board and
21 the Implementation Committee knew that that -- they had to
22 straighten it out there because when they came back, we were
23 going to stand behind what the Implementation and the staff
24 decided. That was what was going to be.

25 Now it's like nobody really figures out what

1 happened anywhere along the way and it comes back and so we
2 just start making up rules and then we don't know who the
3 final arbitrator is, so we just keep making them up to our
4 satisfaction based on who's there and who's not.

5 And I think that's where the Senator has a really
6 good point is she wants something that sticks. And so using
7 a rule that makes it stick seems logical. For me I don't
8 think legislators are going to abide by a rule because I
9 haven't really seen that work too well in the Legislature.

10 MR. SCHMIDT: It takes a lot of work.

11 ASSEMBLY MEMBER FULLER: So I'm a little
12 challenged --

13 MR. SCHMIDT: Difficult to say we got a successful
14 model of anything.

15 ASSEMBLY MEMBER FULLER: I'm a little challenged
16 until I know who it's going to be that's going to be the
17 final arbitrator and then the rules are fine with me. You
18 know, I don't -- it doesn't matter to me so much.

19 SENATOR HANCOCK: Well, now let's just take
20 that -- because I added that to the list, Jean --

21 ASSEMBLY MEMBER FULLER: Okay.

22 SENATOR HANCOCK: -- down here with public
23 comment.

24 ASSEMBLY MEMBER FULLER: Like who's the final know
25 it all person.

1 SENATOR HANCOCK: Because it is true in the
2 Legislature, it is Dotson and you.

3 MR. SCHMIDT: Well, yeah. And traditionally
4 that's the way we resolve things though. In fact there's
5 another step past that and that's if people disagree with
6 the ruling of the parliamentarian, they can go to the
7 respective rules committee for the House.

8 SENATOR HANCOCK: Oh, the rules committee. Okay.
9 Now in Robert's, as I remember it from local government, the
10 presiding officer essentially interprets Robert's and you
11 can overrule the chair. There's always a motion to overrule
12 the chair.

13 MR. BURNS: (Indiscernible-away from microphone).

14 SENATOR HANCOCK: Right.

15 ASSEMBLY MEMBER FULLER: So it's the Board itself.
16 But then when it comes to like the question of like for
17 reconsider, for example, there's a guiding rule sequence
18 that's already in there if you violate -- if I understood
19 what you said -- and I'm not -- if you violate whatever your
20 rule is that you have in Robert's, then you invalidate the
21 action, whereas in Mason's, all you basically do is restate
22 it until a majority of it -- a majority vote wins whatever
23 it is. Is that -- am I stating that correctly?

24 MR. BURNS: I may have misstated that. There are
25 some rules --

1 MS. KAPLAN: Come on up.

2 SENATOR HANCOCK: Let me just make a comment
3 first. I think both of you made the point that what we
4 might be choosing now is it's a default model. So like what
5 we have here in the back of the book is a proposed set of
6 rules with at the very end of the rules do we default to
7 Robert's or default to Mason's and maybe as we have this
8 discussion today, we could indicate in which ways we'd like
9 either Mason's or Robert's better and then Lisa can do up
10 another draft putting in some of those modifications.

11 Frankly I would be very grateful if you guys would
12 just look at those drafts and if you see something that your
13 experience tells you isn't going to work, let us know.
14 Yeah.

15 MR. BURNS: Very quickly. Just -- I didn't mean
16 to lead you astray. In Robert's, the only rule that's
17 really going to cause you any problem with possibly
18 invalidating an action is a failure to give prior notice of
19 things when prior notice is required.

20 I'm assuming as a state board you're probably
21 governed by Bagley-Keene or something similar.

22 SENATOR HANCOCK: Yes.

23 MR. BURNS: And so Robert's isn't really going to
24 be a factor for that. You've got your statutory
25 requirements for notice. So in Robert's if there's a

1 procedural error, any member can call for a point of order,
2 but a point of order has to be timely and if the point of
3 order isn't timely, it's -- you just move on. The only time
4 it would be problem --

5 SENATOR HANCOCK: A point of order is not
6 reconsideration.

7 MR. BURNS: A point of order is not
8 reconsideration, no.

9 SENATOR HANCOCK: Okay. Right.

10 MR. BURNS: A point of order is just you're
11 alleging the rules are being violated.

12 SENATOR HANCOCK: Right.

13 MR. BURNS: So just a very quick example. If you
14 had rules for reconsideration and you're reconsidering
15 something that you shouldn't be, under Robert's unless
16 someone rises to a point of order and points out your error
17 in procedure now, the fact that you did it incorrectly is
18 immaterial because no timely point of order was raised.

19 ASSEMBLY MEMBER FULLER: So we can really almost
20 always in Robert's redo a motion if you --

21 MR. BURNS: Right.

22 ASSEMBLY MEMBER FULLER: -- if what? If --
23 what's -- criteria are present.

24 MR. BURNS: Right. In fact, paraphrase it,
25 Robert's almost works on like -- almost like a no harm, no

1 foul. The rules were being violated, but nobody cares.
2 Things are moving along. You just continue moving along.

3 ASSEMBLY MEMBER FULLER: Okay. But if somebody
4 cares is where a problem comes.

5 MR. BURNS: But if somebody cares and raises an
6 objection, an appeal, a point of order, then your presiding
7 officer has to deal with that point of order. Yes, you're
8 correct -- or you're incorrect, subject to being overruled
9 by the body if the body disagrees.

10 MR. SCHMIDT: Technically that's the same under
11 Mason's. There's lesser rules we have in the Legislature
12 that are not self-effectuating rules. So they're really
13 invoked until someone notices, for example, the lack of a
14 quorum or all those kinds of -- the biggest issues we have
15 in the Legislature are committee voting problems because
16 people leave.

17 ASSEMBLY MEMBER FULLER: We have that problem too.
18 We'll get there next.

19 MR. SCHMIDT: People leave -- you know, open the
20 roll and then continue to debate, close the roll again, and
21 all those kinds of things.

22 SENATOR HANCOCK: Okay. And maybe we should just
23 look at that for a second. What about the issue of a
24 quorum. Is there any difference in Mason's and Robert's and
25 if there -- if a quorum is established -- well, first of

1 all, can you do business before a quorum is established and
2 second of all, if you lose the quorum during the meeting,
3 can you put things on call or can you pass things with a
4 majority present and voting.

5 Because I think we've had some issues around that.

6 ASSEMBLY MEMBER FULLER: Yeah, because in the
7 first four years, we did not hold the roll open I don't
8 believe. I can't remember even once, but the difference was
9 we rarely ever went for more than an hour. So everybody
10 kind of knew they had to go and be there and, you know, your
11 staff would call you if there was, you know, an issue that
12 you really wanted to vote. If it didn't -- we sort of
13 trusted each other enough because we'd all been there for a
14 really long time, that it was going to work itself out. I
15 mean that's the only thing I can say.

16 Now, between having the meetings down here where
17 you're -- you just can't run down here fast enough to do it
18 and having them go -- you know, as soon as it goes over two
19 hours --

20 SENATOR HANCOCK: Yeah.

21 ASSEMBLY MEMBER FULLER: -- you know, it's just a
22 mess and you don't really know how long before people are
23 going to terminate their testimony because they can keep
24 getting out of the audience and walking up and, you know,
25 sitting in front of the podium sort of as long as they want

1 to do that.

2 You -- we have kind of went to the last couple
3 meetings sort of our own hold the roll open, if somebody
4 asks, and then it got to be we'll hold the roll open if
5 somebody calls from, you know, the next county and now we're
6 a little up in the air again on that.

7 SENATOR HANCOCK: You mean in terms of public
8 comment.

9 ASSEMBLY MEMBER FULLER: Well, remember we decided
10 not to vote one of the last times until another member's
11 committee finished over there and we didn't know when that
12 was going to be and some of the rest of us wanted to leave
13 and if you -- and we had had the additional complication of
14 what is it, six -- you don't -- if you don't have six --
15 what is it?

16 MS. KAPLAN: Six members constitute a majority.

17 ASSEMBLY MEMBER FULLER: Yeah. If you don't have
18 six members, then the whole thing fails. So if you're
19 sitting there waiting to vote and you leave and then that
20 person doesn't come until much later, but there's now not
21 enough people there, then you have to keep bringing it up
22 over and over and over so they get six votes. So we'd have
23 to change that six rule or we have to -- we can't hold the
24 roll open in my mind.

25 MS. KAPLAN: And my one question -- you know, and

1 maybe, Lisa, you know. I don't believe we -- or the State
2 Allocation Board as a body can change the six as the
3 majority.

4 ASSEMBLY MEMBER FULLER: Then somehow we --
5 whatever name we call the rules that we adopt and I don't
6 care, we need to -- I think we need to meet that constraint
7 head on because I think it's going to be a while before our
8 meetings get short enough for us to go back to not holding
9 the roll open because there's six that are legislative --

10 MS. KAPLAN: And one of the things -- what I did
11 was take on quorum and voting which is on -- in the draft.
12 I did kind of a hybrid of that that six constitutes a
13 quorum. If a motion is made by six and then people leave,
14 you can have the roll call stay open for other people to add
15 on. If it falls below like five people at the meeting, the
16 meeting can still occur, but nobody can make a motion on any
17 item because it does six of a quorum of the State Allocation
18 Board to do anything.

19 ASSEMBLY MEMBER FULLER: So then for -- for
20 example, let's say you vote something, you hold it open for
21 another -- the seventh person. The seventh person comes and
22 wants to reopen it and one of the original six is now gone,
23 in regular law, all the people who voted on it in the first
24 place would have to be there or you couldn't change it.
25 Does that make sense?

1 So -- and we're going to have that problem of
2 people coming and going.

3 MS. KAPLAN: Well, what you can also do is like a
4 hybrid, kind of like as it's done on the floor. You know,
5 if it's -- an item opens and there's six people there and
6 it's, you know, a four-two vote, you can't close the item
7 because to close it means it fails, and if there's only six
8 people there, you have to wait until the others and then
9 they vote on it and whatever it ends up, it ends up that
10 gets six votes.

11 However, if the first roll call was opened and it
12 was a six-oh vote, that can close and that action item
13 passes and we can write -- basic like if it's a six-oh, no
14 one Board member can be the one that changes it to fail like
15 on the floor.

16 ASSEMBLY MEMBER FULLER: So basically it's a
17 Mason's -- as we know it a Mason's rule.

18 MS. KAPLAN: A Mason's rule.

19 ASSEMBLY MEMBER FULLER: Yeah. Okay. And maybe
20 for the sake of clarity, we should say -- you know, call it
21 by the name that we know it, that rule, and then the model
22 is a hybrid.

23 I'm a little -- honestly, I have a little bias
24 about doing a hybrid model for the SAB. As long as I've
25 been here four years, we've changed -- so much and by the

1 way, I will be leaving soon because I'm going over to the
2 Senate and there won't be a seat for me.

3 So I think this open door/revolving thing
4 continues to happen. So I'm very, very nervous about having
5 a hybrid rule that there isn't one person -- I mean I would
6 really rather say it's either one or the other and here's
7 the arbitrator and that arbitrator's going to be around for
8 a long, long time than the other. But at the end of the
9 day, if we just can't make that work because of the new
10 circumstances, then maybe we call it the hybrid model, and
11 then I believe we're going to have to have a training for
12 the whole SAB Board and maybe a manual or something to hand
13 out after that -- after we adopt it in order to not create
14 new confusion over a hybrid model. Does that make sense?

15 MS. KAPLAN: Well, and what --

16 SENATOR HANCOCK: Yeah, except that what I'm
17 hearing is that we have a hybrid now with Mason's as
18 default. Do we? Not necessarily a hybrid, but we have
19 rules of the Senate and the Assembly.

20 MR. SCHMIDT: No. Those are specific legislative
21 rules that have been adopted. I mean we have limitations,
22 for example, on reconsideration. You could do it once, you
23 know --

24 SENATOR HANCOCK: Right.

25 MR. SCHMIDT: -- you know, I mean those are

1 specific house rules that aren't necessarily Masonic.

2 ASSEMBLY MEMBER FULLER: By hybrid, I mean --
3 yeah. By hybrid, I mean putting some of Robert's and some
4 of Mason's together or making up our own combinations. By
5 non-hybrid, I would be saying that it's one whole, all
6 Mason's or it's one whole, all Robert's whichever -- and I
7 don't care -- I'm not so much about the default as one but
8 that the -- once you get into that mode, that's the whole
9 thing. You don't have some special SAB clause for a certain
10 case within that model.

11 MS. KAPLAN: And just so you know, the draft that
12 you do have under your tab discussion is kind of a mock-up
13 of what you guys have seen that were brought before you, was
14 basically came from the Assembly rules and the Senate rules
15 not based off of Robert's rules.

16 So what you have currently set here is mostly
17 Assembly and Senate and committee rules of what this -- so
18 it's specific a little bit more spelled out in detail to the
19 State Allocation Board, but the base is for the most part
20 Mason's.

21 MR. HARVEY: But it is a hybrid because it's
22 neither Mason's or Robert's.

23 SENATOR HANCOCK: Yeah.

24 MR. HARVEY: So the answer -- Assembly Member
25 Fuller's concern, it may function well because of how the

1 drafter sees us, but it is a hybrid. It's neither one.

2 Correct?

3 ASSEMBLY MEMBER FULLER: So when -- yeah. So when
4 you go to an arbitrator -- you know, unless they have a
5 manual or a training or something that they pass on in
6 perpetuity and they're given that rule, how do they be the
7 final guide.

8 SENATOR HANCOCK: Yeah. They'd have to have a
9 list of the rules and then a default mode to know where to
10 default to, if there was something that wasn't covered in
11 the rules.

12 MR. HARVEY: So the only way that works for me,
13 parroting kind of what Ms. Fuller had to say, is that our
14 hybrid would have to be very small.

15 SENATOR HANCOCK: Yeah.

16 MR. HARVEY: Very -- for very unique circumstances
17 if we do it at all and then we do have a fall back which is
18 more universally acceptable. Otherwise I'm kind of in her
19 camp given the nature of the change without continuity
20 somewhere and I don't know who that person would be unless
21 we hire a parliamentarian and use that person over and over
22 and over again, and I'm not sure we want to bear that
23 expense -- or we should bear that expense.

24 SENATOR HANCOCK: Right. That's --

25 MR. HARVEY: So as a result, I think your point

1 about turnover needs to be factored in.

2 ASSEMBLY MEMBER FULLER: Well, I just think --
3 we're back here like two questions and I think this is good.
4 We're debating what -- I mean obviously -- this not
5 necessarily perfect answer here, but we are laying on the
6 table all the issues that have --

7 MR. HARVEY: There's a motion for that by the way.

8 ASSEMBLY MEMBER FULLER: Yeah -- that emerged and
9 of those motions that emerged, the one for me was who's the
10 final arbitrator because at the end of the day I'm the old
11 teacher. I want to look at who's the teacher who's going to
12 tell me, all right, it's this way or it's not that way and
13 then that's what -- you know, that's what we do. You know,
14 and if we come up with -- and I'm not going to call it a
15 hybrid. I'm going to just say something -- that is not pure
16 Mason's or pure Robert's, then we have to do some kind of
17 job on who that arbitrator is and how they become the
18 authority on that issue so that they are always around for
19 us to accept. And that does probably necessitate some cost.

20 In a school district, that would be your board
21 policy, but I'm not sure that the SAB would have that
22 capacity.

23 MS. KAPLAN: Regulation.

24 ASSEMBLY MEMBER FULLER: So anyway, the only
25 question I'm trying to answer --

1 MS. KAPLAN: Come on, Lisa Jones, you've been here
2 for 30 years.

3 MR. HARVEY: Lisa Jones, 30 years. When did you
4 start, at 12?

5 MS. JONES: Something like that. I would say I
6 would pose caution to the subcommittee in doing regulations
7 because once you start doing regulations on your procedures,
8 you're stuck with them and it's really kind of hard to
9 change them as you evolve.

10 So I would say for purposes of this meeting,
11 please stay away from trying to regulations on operating
12 procedures.

13 SENATOR HANCOCK: I would agree with that. So
14 what we're basically trying to do is just adopt our internal
15 regulations and unless we want to do something that is
16 clearly not in law at the present time, we would not need to
17 do legislation or anything like that.

18 MS. KAPLAN: One of the things that the Board may
19 also consider as they're doing this is to put in their rules
20 and operating procedures that maybe every January this is
21 adopted and, you know, takes a Board to change --

22 SENATOR HANCOCK: Like we do in committees.

23 MS. KAPLAN: -- you know, as the Senate and
24 Assembly adopt their House operating rules every year, so
25 that it can't change, that it isn't a moving document.

1 SENATOR HANCOCK: That's a good idea. That's a
2 good idea. Yes.

3 MR. SCHMIDT: You know, when you get right down to
4 it, when you review everything that we do in the
5 Legislature, there really aren't that many rules --

6 SENATOR HANCOCK: Right.

7 MR. SCHMIDT: -- that you confront on a daily
8 basis. Most of it's simply driven by the formula of
9 legislation, the creation of the file, committees setting
10 their business, the time deadlines that are in the
11 legislative calendar. There's really very little that we
12 fight about in terms of rules.

13 SENATOR HANCOCK: I wonder if we could -- if
14 people have a sense of either Robert's or Mason's.
15 Personally I don't care. I'd be happy to pick one, do
16 default, ask Lisa to see if she needs to update this and
17 have us proceed to vote on it at our next meeting.

18 The one thing I would say is that this is the
19 number of appeals which are the things that take time but
20 also some of the issues that have come up around policy and
21 the bonds, and I've had some of -- you know, how do we spend
22 the money for green schools, how do we define seismic,
23 eminent danger of collapse. After discussing that in
24 connection with some appeals, the Division of the State
25 Architect said that there was no definition and they need

1 \$200,000 to do a study to get one.

2 Well, there's no definition. I mean there -- so
3 in many ways, we've become a zoning adjustments board which
4 is a very different animal than a legislative body. It's
5 about adjudicating particular cases in a way, you know,
6 saying whether or not you can override normal procedure in
7 certain cases.

8 ASSEMBLY MEMBER FULLER: I think we have had to
9 appeal -- we have answered some appeals without criteria or
10 feeling rounded in our criteria --

11 SENATOR HANCOCK: That's right.

12 ASSEMBLY MEMBER FULLER: -- and as a result of
13 that, then there have been compounding cases that become
14 what you're talking about --

15 SENATOR HANCOCK: Precedent.

16 ASSEMBLY MEMBER FULLER: -- well, just -- but it's
17 moved from an allocation board to --

18 SENATOR HANCOCK: An appeals board.

19 ASSEMBLY MEMBER FULLER: -- appeals board, but
20 then the appeals -- the last thing you just said, the zoning
21 and the arbitrating of the specific terms of individual
22 cases have been driven precedents that have been driven new
23 meanings to decisions and I think that's why we're getting
24 uncomfortable as a board as we're beginning to feel like,
25 you know, we are ourselves in danger of legislating through

1 Board action and we don't want to be -- we do not want to be
2 in that position. I don't think any of us want to be in
3 that position.

4 SENATOR HANCOCK: Okay. I'm wondering -- maybe we
5 should move also to comments from the public after we hear
6 from Mr. Burns again, just to see if people have any
7 suggestions then because we should end at 5:00. I agree
8 with Ms. Fuller. Meetings should begin -- but maybe we
9 could direct Ms. Kaplan to review these draft rules that she
10 has in light of either Mason's or Robert's and send them to
11 us when they're ready, have us look at them, see if there's
12 any -- if we would like to adopt them quickly at our next
13 meeting or whether we would want to amend them in any way.

14 MS. KAPLAN: And then whatever we do, we take
15 then -- I would finish and then we could take to the full
16 Board forum.

17 SENATOR HANCOCK: Yes.

18 ASSEMBLY MEMBER FULLER: Actually I really would
19 like -- and I'm breaking my own rule here because I can see
20 I'm going to push us back. I would like us to decide who we
21 want to be the arbitrator. I think the Board needs to have
22 a decision and they need some information on who they're
23 accepting as arbitrator regardless of what rules they take.

24 I mean I think that has to be -- is it the
25 Attorney General, is it our own attorney, is it, you know,

1 the legislative rules.

2 I think we need to answer that question and once
3 we've answered that question, then I think we will have the
4 answer to is it Mason's, is it Robert's, is it someone
5 we're -- like our own attorney that we're asking then to
6 review this document and come up with what they think it is
7 because the person who we decide is the final arbitrator of
8 all such questions, that's the person that we go to if these
9 rules don't -- we don't feel they apply and until we have
10 that person, I'm not sure that the rules make any
11 difference.

12 If Lisa redoes these rules and we have our next
13 meeting and somebody doesn't like them, we're still stuck
14 with, okay, are we going to ask our own attorney, are we
15 going to ask -- you know, Rob, are we going to ask the
16 chair, are we going to call over to the legislative office.

17 SENATOR HANCOCK: But it won't be a matter of
18 liking or not liking the rules. Once we have rules --

19 ASSEMBLY MEMBER FULLER: Yeah. But there needs to
20 be a final arbitrator.

21 MS. KAPLAN: I think --

22 ASSEMBLY MEMBER BROWNLEY: Well, then they
23 would -- the lawyer would opine on the rules that we've
24 passed.

25 ASSEMBLY MEMBER FULLER: And that's what we were

1 just saying.

2 ASSEMBLY MEMBER BROWNLEY: Oh.

3 ASSEMBLY MEMBER FULLER: Remember our last meeting
4 where none of us particularly agreed with our attorney.

5 MS. KAPLAN: I think maybe if the Subcommittee
6 recommends -- because I think whatever the Subcommittee
7 recommends then has to go up to the full Board for adoption
8 if it's to change from Robert's. But if the Subcommittee
9 recommends Mason's, then maybe it should be recommending
10 whether it's possible to have Dotson or Gregory Schmidt, you
11 know -- I don't know how it works or who's an arbitrator on
12 Mason's, you know, or an expert or if they decide Robert's
13 rules. I think a third party, independent, neutral, that
14 would understand, you know, whether it's an expert or
15 something like that or if there's an expert -- because I
16 think you're going to have differences if you have -- and
17 maybe disagreements whether you use somebody internal be it
18 a DGS attorney or the Leg. Counsel.

19 It's going to be in the age-old who decides. So
20 maybe if there was an outside agreed-upon party that was an
21 independent like the AG or something like that, then that
22 may be --

23 MR. HARVEY: Every time we ask the AG, it costs
24 us. Let's acknowledge that.

25 ASSEMBLY MEMBER FULLER: And in the past when our

1 first Chair -- it was our Chair, not our last Chair or our
2 last Chair, but like three Chairs ago, it was the Chair
3 because she'd been there for a really, really long time and
4 all the rest of us were a little newer than she was and
5 nobody ever questioned it.

6 SENATOR HANCOCK: Do we know why the turnover
7 happen -- started to happen?

8 MS. KAPLAN: Term limits.

9 SENATOR HANCOCK: Yeah. Was it term limits
10 kicking in or --

11 ASSEMBLY MEMBER FULLER: Well, I know --

12 SENATOR HANCOCK: -- something else?

13 ASSEMBLY MEMBER FULLER: Well, I know Jack and
14 Simitian and -- you know, Jack left and Simitian just didn't
15 want to -- whatever, wasn't on there again and --

16 ASSEMBLY MEMBER BROWNLEY: Gene Mullen

17 ASSEMBLY MEMBER FULLER: Gene Mullen left because
18 of term limits.

19 MS. JONES: And Margett was termed out.

20 ASSEMBLY MEMBER FULLER: Margett was termed out.
21 Yeah. That was a hard one too. And then we lost the
22 appointee, the lady.

23 MS. JONES: Rosario.

24 MS. KAPLAN: Um-hmm.

25 ASSEMBLY MEMBER FULLER: Rosario, yeah. Because

1 she got in a fight over the expenses and just all kinds of
2 other issues and there was again no arbitrator, so when I
3 looked into our causes, I couldn't figure out how you
4 resolve it with the arbitrator. So anyway she left and now
5 our last Chair got another job and our other Chair before
6 that got another job.

7 So a combination of more opportunities opening and
8 terms limits.

9 ASSEMBLY MEMBER BROWNLEY: It was my understanding
10 that -- I thought that the SAB was operating without rules
11 prior to this. That was one of the reasons why we suggested
12 doing this. So they -- I don't know what they, you know,
13 arbitrated on because there -- they weren't operating by a
14 set of rules.

15 MS. KAPLAN: It's my --

16 SENATOR HANCOCK: Lisa, I'm going to be the Chair;
17 how about that. Robert's

18 MS. JONES: I forgot your gavel by the way.

19 If I may, I just want everybody to realize that
20 this -- although the Board has never technically adopted
21 rules, it was always worked on the Senate Rules. Senator
22 Leroy Greene who sat on the Board for many, many decades, he
23 made it very clear that it would -- the Board would run by
24 Senate rules.

25 And so although we didn't necessarily adopt them

1 every year, the Chair and -- at the time, we had a
2 seven-member Board and everybody was in agreement to work
3 under Senate rules.

4 And so it's been an unspoken rule, if you will.

5 SENATOR HANCOCK: So then why do we think --

6 MR. HARVEY: Why don't we start there.

7 SENATOR HANCOCK: Yeah. Lisa, if I can ask why
8 then has the statement sort of been made that we operate
9 under Robert's?

10 MS. JONES: Well, I think it's everybody's
11 different interpretation of how they see the Board in
12 action. Some meetings -- I will say for the most part the
13 Board is -- there's been common courtesy. We've been able
14 to get through agendas. We've been able -- the Board's been
15 able to make great decisions and move things off the plate
16 and new things come on.

17 But I think it's all interpretation of everybody
18 out in the audience and how they see the Board making
19 decisions and -- I'm just giving you a little background.

20 SENATOR HANCOCK: Okay. Rebecca.

21 MS. BAUMANN: Senator Hancock, if you look at the
22 date on the Robert's rules that you use in the back of your
23 folder --

24 SENATOR HANCOCK: Yeah.

25 MS. BAUMANN: -- you'll see that that's dated

1 2/25/09 at the very bottom. It's the document that you
2 wanted shared with everybody.

3 SENATOR HANCOCK: Oh, the sort of synopsis of
4 Robert's that I -- yeah.

5 MS. BAUMANN: Senator, this one.

6 SENATOR HANCOCK: Yeah.

7 MS. BAUMANN: It's dated 2/25/09 because I came
8 back following the February meeting of the SAB where
9 Mr. Sheehy indicated that we would follow Robert's rules
10 under his reign, and so I printed those out for you and for
11 all the members of the SAB to use at a subsequent meeting.

12 SENATOR HANCOCK: This one right here. It's just
13 two pages. It should be at the very back of the Robert's
14 section.

15 MS. BAUMANN: Yeah.

16 MR. HARVEY: So as Chair, Mr. Sheehy made a
17 preference call.

18 ASSEMBLY MEMBER FULLER: And that makes sense to
19 me because I don't think I -- I never really -- sorry to
20 say, I never really picked up on him saying that about
21 Robert's Rules. So -- but you don't --

22 MR. HARVEY: -- probably talking.

23 ASSEMBLY MEMBER FULLER: It only makes sense to me
24 that it was Leroy Greene because that's the first exposure I
25 ever had as a superintendent sitting in the back of the room

1 is one -- when he was there. So in my mind, that's how
2 everything was always run. I didn't have a name for it. It
3 didn't know -- I didn't really know it was Mason's actually.

4 SENATOR HANCOCK: Okay. Are there any other
5 comments from the public just in terms of a suggestion as to
6 which we might pick as a default? Because then I'd like to
7 ask Lisa to go back and redraft according to whatever we
8 pick as default or say that we're going to operate under
9 Senate rules, Mason's, or Robert's except as specified
10 because I do think that makes sense.

11 Every committee, for instance, in the Legislature
12 has slightly different rules. Some people do sign-in order.
13 Some people do, you know, bill order, that kind of thing.
14 So that -- that they can vary and I think if we have it, you
15 could work from that, Lisa --

16 MS. KAPLAN: Um-hmm.

17 SENATOR HANCOCK: -- and then we would have
18 something --

19 MS. KAPLAN: Um-hmm.

20 SENATOR HANCOCK: -- that we could actually mark
21 up.

22 ASSEMBLY MEMBER FULLER: So if I understand you, I
23 would be willing to meet again after Lisa has found the
24 exceptions that might not work under either Mason's or
25 Robert's or Senate, whatever, that are listed somewhere in

1 here and then we would discuss those and then I think that
2 we probably should invite the Chair to that meeting -- it
3 sounds like the Chair --

4 SENATOR HANCOCK: Yes.

5 ASSEMBLY MEMBER FULLER: -- has had the
6 prerogative in the past to either decide Mason's or decide
7 Robert's and we should specifically highlight to her if
8 someone is smart enough to figure out what we've said out of
9 this whole mess that's been the problem, the four problems
10 that we want to solve based on a model that we're picking.

11 And for me, that would be fine as long as each --
12 like I would -- as I'm now informed, I would prefer that it
13 would be Mason's and I'm willing to take the Senate -- I
14 don't know the difference between the Senate and the
15 Assembly, but the Senate always does something more than the
16 Assembly does. So --

17 MR. SCHMIDT: Pretty minimal actually.

18 ASSEMBLY MEMBER FULLER: -- I would be willing to
19 take that just because I think we have an arbitrator that at
20 least all the legislators --

21 ASSEMBLY MEMBER BROWNLEY: -- like one motion
22 you --

23 ASSEMBLY MEMBER FULLER: -- are going to agree to.
24 Whether they want to or not, they will.

25 SENATOR HANCOCK: Yeah.

1 ASSEMBLY MEMBER FULLER: So -- and I don't
2 think -- I don't know anybody else in the room that I know
3 that everybody will agree to, so that would be my first
4 suggestion.

5 I don't know if it's better or worse and I don't
6 know if the Chair would agree.

7 SENATOR HANCOCK: Try a motion.

8 ASSEMBLY MEMBER FULLER: Okay. Thank you. I
9 would like to make a motion that we adopt -- is that what
10 you want me to say -- that we use Mason's to evaluate the
11 draft in here for custom exceptions that we might need and
12 bring it back as a mock -- as a --

13 SENATOR HANCOCK: Mock-up.

14 ASSEMBLY MEMBER FULLER: -- mock-up at the next
15 meeting and invite the Chair to participate in the
16 discussion of that template.

17 ASSEMBLY MEMBER BROWNLEY: And if we're currently
18 operating under Robert's rules, I'll second that.

19 SENATOR HANCOCK: I would actually like to make an
20 amendment that we adopt something that we think makes sense
21 before we ask the Chair to sit in and look and the reason is
22 because she is so busy right now with Finance and everything
23 else that's on her plate, STRS, PERS, she has a lot.

24 MS. KAPLAN: And just if I can say, I actually
25 keep the Chair informed and so she does see this and --

1 ASSEMBLY MEMBER FULLER: Yeah, but -- okay. Now,
2 if I'm allowed to amend -- accept her amendment under
3 whatever rules we're operating at the moment, then I would
4 accept that amendment if we allowed her in the sitting to
5 amend with us again if there's anything in there she doesn't
6 think will work.

7 SENATOR HANCOCK: Oh, yeah.

8 ASSEMBLY MEMBER FULLER: Yeah. Great.

9 SENATOR HANCOCK: Absolutely.

10 ASSEMBLY MEMBER FULLER: In other words --

11 MR. HARVEY: Point of clarification.

12 SENATOR HANCOCK: Okay. Point of clarification.

13 MR. HARVEY: Is your Mason's comment based on the
14 Senate version or Mason's in its pure version because I
15 heard a preference for the Senate version of Mason's.

16 ASSEMBLY MEMBER FULLER: At this point, since we
17 are so lucky to have someone from the Senate and since it
18 has been clarified that in the past the tradition has
19 dictated the Senate, therefore people who have participated
20 in Implementation Committees far longer than we have are
21 more likely to be more familiar with that, I am defaulting
22 to that.

23 I have to tell you I have little knowledge about
24 what --

25 MR. HARVEY: Thank you for that clarification.

1 ASSEMBLY MEMBER FULLER: -- might be.

2 SENATOR HANCOCK: But the good news about that is
3 that when we get the draft back we can really read it and if
4 any of us want to make changes, particularly in light of the
5 fact that we are not a legislative body as much as we're
6 evolving into an appeals body and that we need to have rules
7 and procedures and criteria for that, you know, I think we
8 need a way to move forward in casting these rules.

9 So the motion -- as the Chair heard the motion,
10 the motion is that we will operate under Senate rules which
11 have Mason's as a default and we ask Ms. Kaplan to review
12 the rules and do any redrafting that needs to be done and
13 bring it back to us and that we will then go over it line by
14 line and hopefully we'll agree with it and would be able to
15 pass it.

16 ASSEMBLY MEMBER BROWNLEY: Or move it to the --

17 MS. KAPLAN: Agree here and then to the full --

18 ASSEMBLY MEMBER BROWNLEY: To the full body.

19 SENATOR HANCOCK: Yes.

20 MS. KAPLAN: Then one --

21 ASSEMBLY MEMBER FULLER: Where is the Chair
22 inserted?

23 MS. KAPLAN: Well, one question that I have is if
24 you've agreed kind of Mason's/Senate version shall be what
25 you want to recommend, that this then -- that recommendation

1 at least as the default go to the full SAB because at last
2 month's Board meeting, you adopted Robert's rules as the
3 default.

4 ASSEMBLY MEMBER FULLER: I don't mind waiting
5 another month under Robert's, but it's up to you. I'm more
6 worried about --

7 SENATOR HANCOCK: I don't either.

8 ASSEMBLY MEMBER FULLER: I'm more worried about --
9 I just want to know if the Chair thinks she can live with
10 what we're going to do and then we send it on to the Board
11 and I don't care what the timeline is.

12 MS. KAPLAN: If it's okay, I've been working with
13 the Chair, making sure that she is aware of what is coming
14 to this, so that I can -- what I'm doing work with the Chair
15 and take her suggestions before I bring it back to you.
16 Does that work?

17 SENATOR HANCOCK: That will be very good.

18 ASSEMBLY MEMBER FULLER: Great. That works. That
19 would be very good.

20 SENATOR HANCOCK: Okay. Now, this is Robert's
21 again. This is something that can be -- does the
22 Secretary -- and I'm not sure if it's -- which Lisa we're
23 looking at, read the motion back because motions evolve.
24 You know how they are.

25 ASSEMBLY MEMBER FULLER: And --

1 MS. KAPLAN: From what I understand is the motion
2 is adopt Mason's via the Senate version and for me to
3 evaluate the draft based on Mason's and Senate rules and
4 come back to the full Board for discussion, while at the
5 same time bring this and have the discussion with the Chair
6 for her input before I come back to you.

7 ASSEMBLY MEMBER BROWNLEY: So we're going back to
8 the full Board not back to the Committee and then to the
9 Board.

10 SENATOR HANCOCK: No. We're coming back to this
11 Board.

12 ASSEMBLY MEMBER BROWNLEY: Well, she said the full
13 Board.

14 SENATOR HANCOCK: This Committee.

15 MR. HARVEY: Committee. Committee.

16 ASSEMBLY MEMBER FULLER: After the mock-up is
17 done.

18 MS. KAPLAN: Sorry. This Committee. Sorry.

19 ASSEMBLY MEMBER FULLER: With input from the
20 Chair.

21 ASSEMBLY MEMBER BROWNLEY: Right. Right.

22 SENATOR HANCOCK: Yeah. Okay.

23 ASSEMBLY MEMBER FULLER: And the only thing I
24 would change about this is the way the Senator said it
25 was -- and I think it's more terminology correct that it's

1 the Senate House rules with the default to the Mason's. Is
2 that the correct way to say that?

3 MR. SCHMIDT: Senate rules.

4 MR. BURNS: Senate rules.

5 SENATOR HANCOCK: Okay.

6 ASSEMBLY MEMBER FULLER: I got to learn some --

7 SENATOR HANCOCK: Okay.

8 MS. KAPLAN: All right.

9 SENATOR HANCOCK: So the motion's been moved and
10 seconded and there will be Minutes in which the motion will
11 be written out; right, Lisa?

12 MS. KAPLAN: Yes.

13 SENATOR HANCOCK: Okay.

14 MS. KAPLAN: I will work with Lisa Jones. The
15 Lisa-Lisa team will work together.

16 MS. JONES: And we also have the transcript too,
17 so --

18 SENATOR HANCOCK: Perfect.

19 MS. JONES: -- we're all covered.

20 SENATOR HANCOCK: Okay. Good. So we'll take the
21 vote. Chair voting aye.

22 MR. HARVEY: Aye.

23 MS. KAPLAN: Hancock aye; Fuller aye; Harvey aye.

24 ASSEMBLY MEMBER BROWNLEY: Aye.

25 MS. KAPLAN: Brownley aye.

1 SENATOR HANCOCK: So that motion has passed.
2 Good. What I would like to do is suggest some additions
3 that she write in and also take additions from anybody else
4 on the Committee.

5 For example, I think the new rule to specify a
6 yearly update of the rules as we discussed and I think that
7 they should clearly state rules for a quorum.

8 MS. KAPLAN: And I do have that under quorum and
9 voting at the bottom.

10 SENATOR HANCOCK: And on-call or not. Yes. So
11 just as you look at the review to look at that and then I
12 would say -- yeah, a process for appeals.

13 ASSEMBLY MEMBER FULLER: And some time limit for
14 the audience or some --

15 SENATOR HANCOCK: Oh --

16 ASSEMBLY MEMBER FULLER: Public comment
17 recommendations.

18 SENATOR HANCOCK: Yeah. Recommendation on public
19 comment. Will it be after each item? Will it be 30 minutes
20 in the beginning where people can raise any items before
21 we've discussed them.

22 MR. HARVEY: Items not on the agenda, I would hope
23 because you could speak to the item as it comes up on the
24 agenda. So public comment normally is items not on the
25 agenda.

1 ASSEMBLY MEMBER FULLER: I think we're going to
2 look up and see if there's any applicable thing in the
3 Senate rules and -- or in Mason's and then if there's not,
4 you're going to figure out as best you can from the
5 collective experience in here what works and put it for
6 review at the next meeting.

7 MS. KAPLAN: Absolutely.

8 SENATOR HANCOCK: Yeah. I mean actually it might
9 work -- if we do the committee structure in which -- in this
10 case, it will be staff presents the recommendation. It's
11 not a bill.

12 MR. HARVEY: Right.

13 SENATOR HANCOCK: And then you have speakers --
14 then you would have public comment.

15 MR. HARVEY: Right.

16 SENATOR HANCOCK: Right.

17 MR. HARVEY: That's on the agenda.

18 SENATOR HANCOCK: Yeah. And it's on the agenda.
19 After which time a Board member would make a motion.

20 MR. HARVEY: Right.

21 SENATOR HANCOCK: Because my interest is in having
22 motions that can clearly be amended or moved so that --
23 yeah. So we don't --

24 ASSEMBLY MEMBER BROWNLEY: But I think public
25 comment at the end of a meeting -- at least what I'm

1 accustomed to and maybe the Senate rules don't include is,
2 but it is a time for members of the public to speak to
3 really any issue they would like to speak to.

4 The Board can't deliberate on that or engage in a
5 discussion of any sort, but it is the opportunity for the
6 public to talk to us about anything they want to talk to us
7 about.

8 MR. HARVEY: Or if you do pick something for
9 action, you have to put it on a future agenda.

10 ASSEMBLY MEMBER BROWNLEY: Yeah. And somebody
11 could say something and I'd say, well, let's discuss this
12 and I would ask that this be put on an agenda later on so it
13 can be noticed and we can discuss it.

14 SENATOR HANCOCK: Okay. So that's what we'll do.
15 I actually --

16 MR. HARVEY: I have one more item that I'd --

17 SENATOR HANCOCK: Yeah.

18 MR. HARVEY: -- that crossed my mind. Again
19 I'm -- it's funny how you fall back on the things you're
20 comfortable with and I'm thinking --

21 SENATOR HANCOCK: Exactly.

22 MR. HARVEY: -- about my days on the city council.

23 SENATOR HANCOCK: We all know Robert's, that's
24 what it --

25 MR. HARVEY: Exactly. I'd like us to discuss the

1 value propriety in this case of having ex-parte
2 communication disclosure.

3 ASSEMBLY MEMBER FULLER: I don't know what that
4 means exactly.

5 MR. HARVEY: That means private conversations that
6 take place out of the public setting and all you do in
7 those -- what we did at the city council is if you met with
8 the BIA or you met with the teachers association, you simply
9 disclosed before the matter that that's who you had met
10 with.

11 The idea is transparency, that the public has the
12 right to know who may have talked with you about the item.

13 ASSEMBLY MEMBER FULLER: Well, I think we need
14 someone to -- as Lisa's looking into that, figure out -- I
15 think there's -- under the three different models for
16 dealing with that, you know, one is, is the Bagley -- the
17 one we use, the Bagley -- what --

18 MS. KAPLAN: Keene.

19 ASSEMBLY MEMBER FULLER: What?

20 MS. JONES: Keene.

21 ASSEMBLY MEMBER FULLER: The Bagley Keene and
22 another is the Brown Act and I don't know what city council
23 uses, but they may have their own city council policy, but
24 they all have a little different method of specifying how
25 you deal with that. So I would say look it up in Mason's

1 and us feedback on that and the next thing that's the
2 inclusion issue.

3 SENATOR HANCOCK: Right. But, you know, I think
4 the motion as we passed it actually would allow Lisa to come
5 back with a set basic operating procedures. I -- and once
6 we get those, I think it's another meeting for appeals
7 process and transparency, exactly what you're raising,
8 ex-parte and what do you do because people have endless
9 debates about whether you can't have any at all or do you
10 just disclose them or whatever. And that would be more
11 to -- and hopefully there'll be fewer appeals, you know, if
12 we get really clear operating procedures here.

13 And then another thing I think is going to take
14 another meeting is actually looking at the binder and having
15 Board members get a format that'll help staff
16 recommendations pop out at us and explain the pros and cons
17 so that -- but neither -- that is an operating rule.

18 So if we could keep those two things for future
19 agendas and just try to get the basic operating rules nailed
20 down at our next meeting, I think that would be good.

21 If people agree, we could adjourn, but again I do
22 think we should ask if there's any comments from members of
23 the public, any advice, any --

24 MR. SMOOT: Lyle Smoot representing Los Angeles
25 Unified. I also was a prior member -- I functioned as the

1 Assistant Executive Officer for the State Allocation Board
2 for it seemed like about a hundred years. It was really
3 only 14.

4 I just want to say that, you know, the board did
5 operate for many years using the Senate rules and it seemed
6 to work very well. I would ask that you consider your
7 arbiter in this conversation as to who that -- you know,
8 what agency, what -- who's going to provide that function.

9 It would be nice to really nail that down so you
10 have a recommendation. I think the rules will help, but
11 speaking from the audience's perspective, it seems like
12 sometimes your current arbiter, the attorney for General
13 Services, isn't always independent. Forgive me for saying
14 that, Scott, but that's --

15 MR. HARVEY: I would respectfully disagree, but we
16 will have own opinions --

17 MR. SMOOT: I would expect you to.

18 SENATOR HANCOCK: Would you have a suggestion?

19 MR. SMOOT: Well, if it turns out that you are in
20 fact using Senate rules, then the person or unit that
21 interprets the Senate rules would be good. Otherwise maybe
22 hire your own attorney.

23 SENATOR HANCOCK: Okay. Well, not in times of
24 crisis financially when we're not funding schools, so --

25 MR. SMOOT: I understand the cost ramifications.

1 SENATOR HANCOCK: So we'll have to
2 think -- yeah.

3 MR. SMOOT: Thank you very much.

4 SENATOR HANCOCK: Thank you. Any other comments?
5 If not, we will adjourn the meeting and we will meet again
6 certainly no later than a month, Lisa.

7 MS. KAPLAN: I will work on that, yes.

8 SENATOR HANCOCK: And when the draft is done, I
9 know coordinating all our schedules is hard, but let's try
10 to do it --

11 MS. KAPLAN: That's the first thing I'll start
12 doing is coordinating the schedules because that seems to
13 take the longest.

14 SENATOR HANCOCK: Yeah. 3:00 o'clock probably is
15 a good time. Maybe Wednesdays when we don't have State
16 Allocation Board, but we --

17 ASSEMBLY MEMBER BROWNLEY: I have a -- I chair the
18 Education Committee that starts at 1:30 on Wednesdays.

19 SENATOR HANCOCK: Okay. So maybe Tuesdays is
20 better. Okay. Anyway find a time --

21 MS. KAPLAN: I will work with staff.

22 SENATOR HANCOCK: -- find a 3:00 o'clock day when
23 our committees get out and we'll review and we'll do it.

24 ASSEMBLY MEMBER FULLER: Thank you. Nice job --
25 Senator, nice job.

1 MR. HARVEY: Thank you very much.

2 ASSEMBLY MEMBER BROWNLEY: Should we move to
3 adjourn the meeting?

4 SENATOR HANCOCK: I'd say go for it.

5 ASSEMBLY MEMBER BROWNLEY: I move to adjourn this
6 Subcommittee hearing.

7 ASSEMBLY MEMBER FULLER: I second it.

8 SENATOR HANCOCK: Hearing no objection --

9 (Whereupon, at 5:08 p.m. the proceedings were recessed.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
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