

1 the comments. We do need to move on very shortly. I'm
2 sure no one wants to go past 4:30.

3 MS. RUWART: I want to add one more thing about
4 process and procedure for those of you not familiar with
5 the Board's process. Board member Yee is correct. More
6 information is good, but that doesn't necessarily mean
7 more alternatives are good.

8 If you could work together amongst yourselves
9 to develop consistent or coherent, that is ideal. So we
10 encourage you to find common ground in developing your
11 alternatives.

12 With that said --

13 MR. DAVIS: Ken Davis.

14 I just want to clarify a comment that Susan
15 Borgman made and that is the Alternative B that is
16 suggested by our Chief Counsel is to post the -- have a
17 public log maintained of the information and then
18 provide it to the Chief of Board Proceedings who will
19 post it on the agenda or calendar that coincides with
20 the matter being heard not on -- not on the website.

21 MS. RUWART: Was there a -- yes.

22 MR. RIVERA: On behalf of the Silicon Valley
23 Leadership Group -- Gus Rivera, I'm sorry, with Intel.

24 On behalf of the Silicon Valley Leadership
25 Group and its related companies, there's been a lot of

1 talk of alternatives, but there's been a tremendous
2 amount of support with the language as is, so I just
3 wanted to state that on the record.

4 MS. RUWART: Thank you. Good job.

5 You're done.

6 MS. MATULICH: Hi, this is Diane Matulich. I'm
7 from Silicon Valley Leadership Group and there's three
8 members also on the telephone that are listening, and I
9 believe we did submit a written letter, so we hope
10 that's in the record.

11 MS. MANDEL: Diane Matulich, M-A-T-U-L-I-C-H,
12 right, Diane?

13 MS. MATULICH: Right, yes.

14 MS. RUWART: We personally haven't seen it.
15 Doesn't mean it's not here. It's probably -- did it get
16 sent to Diane Olson or Brad Heller?

17 MS. MATULICH: I know it was sent to --

18 MR. EVERETT: This is Kirk Everett with the
19 Silicon Valley Leadership Group.

20 The letter was sent to all Board members. We
21 can make sure it gets to the appropriate person.

22 Thanks for considering our comments.

23 MS. RUWART: No problem. And that just, again,
24 one more item of information that might help people.

25 It's great to send things to Board members. Please send

1 them to Board Proceedings or to Brad, because they are
2 the collectors of the official comments. If you send
3 them to Board members and not to us, then it gets lost
4 in the shuffle.

5 MS. MANDEL: And, Kirk, this is Marcy. If you
6 send anything to the controller's office, you need to
7 copy me or it could be, I don't know, a little while
8 before I see it.

9 MR. HELLER: All of our information -- this is
10 Brad Heller.

11 My contact information is on our website, and
12 you can access it through a link, the link on our home
13 page for this meeting that says 12/14/05 right here. If
14 you link on that, it will take you to a page with a
15 first notice we issued for this project and it has all
16 my contact information.

17 I will go ahead and take a look for it as well,
18 and if we can locate it, we'll go ahead and get it
19 disseminated.

20 MS. RUWART: Was there any more --

21 MR. EVERETT: We'll make sure we beat the
22 deadline and make sure you all get a copy of the letter.

23 MR. HELLER: Thank you.

24 Was there another comment on top of that?

25 MS. RUWART: No, there was somebody back there.

1 MR. NIELSEN: This is Richard Nielsen.

2 I kind of echo Joe's previous comments about
3 the historic development of all of this.

4 It seems the answer is in the hands of the
5 Franchise Tax Board. They have the policy of not
6 wanting to communicate. From what everything I have
7 heard here is the Board is not reluctant to have them
8 communicate. So, I guess, maybe the solution and the
9 resolution is in their hands; it's to change the policy.

10 Now, if they need something in writing to
11 encourage that, then, you know, I would limit the scope
12 of whatever you put in writing.

13 MR. HELLER: And with that final comment,
14 although not really final since everyone will have until
15 next Friday to submit written comments or telephone me,
16 if you'd like, or e-mail as well, we're going to move on
17 to our disclosure issue.

18 Now we're on page 31 of the information that
19 was posted on the website in September, and it starts
20 with Section 5033. It says "Public Records (First
21 Alternative)" in parentheses. And real briefly, I just
22 wanted to set up the issues so that we're all on the
23 same page as we go forward commenting.

24 And I think also, as I explained, for the
25 Franchise Tax Board, this is not as much of a major

1 concern for them, since most information in appeals of
2 the Franchise Tax Board are already publicly disclosable
3 information once received by the Board. However, it's a
4 very big issue of property taxes and business taxes
5 cases, especially business taxes.

6 And basically the Section 5033 first
7 alternative essentially is an attempt to set forth the
8 Board's current practice, which is essentially to
9 provide -- well, I should go back a little bit.

10 To the extent that a taxpayer requests an oral
11 hearing before the Board members and it actually
12 proceeds to a hearing, the Board generally allows -- you
13 know, based on the Bagley-Keene Open Meeting Act, the
14 Board is required to allow the public to attend the
15 meeting. The public can then listen to the meeting.
16 They can also record it, both orally and visually, so
17 they can have a video representation.

18 And based on those -- the Bagley-Keene
19 provisions, the Board has already concluded that the
20 Board will provide information that has been publicly
21 disclosed at a Board hearing to the public following the
22 conclusion of a business taxes matter.

23 And so the public is usually entitled to a copy
24 of our official minutes and also a copy of the
25 transcript of the actual hearing itself so they can see

1 what transpired, and also any documents that are
2 actually introduced into the record at the oral hearing
3 itself. However, most of the underlying information
4 remains confidential taxpayer information and will not
5 be provided to the public pursuant to a Public Records
6 Act request in a nonredacted form, and even then, only
7 if we can redact it in a manner so that you wouldn't be
8 able to identify the taxpayer.

9 So if you were still to ask for a redacted
10 version of Joe's case, we still can't give you Joe's
11 case information because it's redacted so it doesn't say
12 "Joe's case." So essentially that's a pretty limited
13 situation.

14 And what we've found is, despite the Open
15 Meeting Act's policy of making the Board's meetings open
16 so that the public can participate and stay informed
17 about how the Board's administering all of its many tax
18 programs, what we found is it's generally hit or miss.
19 It just depends on the particular hearing.

20 If the parties tend to discuss in detail all of
21 the factual issues presented to the Board at the
22 hearing, then the transcript of the hearing tends to
23 contain exactly what you would need to understand what
24 the Board members did.

25 In other cases, where people are just referring

1 back and forth to documents, people are tangentially
2 referring to something by a title or something as "the
3 deduction" or "the income" or whatever other -- you
4 know, the D & R or Issue 3 or other things, it may
5 become practically impossible for the public to really
6 follow what's going on at a hearing, much less
7 practitioners or other, you know, members of the Board
8 staff.

9 And so we have set forth Section 5033, first
10 alternative, as a proposal to continue that practice
11 into the future and to continue essentially just
12 disclosing exactly what we do currently, which is the
13 transcript and, you know.

14 We've now prepared also a second alternative,
15 which starts at 5033, in parenthesis, "Second
16 Alternative," and that's basically a four-section
17 alternative proposal.

18 And what it does is, it basically takes the
19 Board's historical analysis that allowed them -- the
20 Board members and Board staff -- to discuss a taxpayer's
21 confidential information at the Board hearing itself,
22 which essentially is based on a taxpayer's waiver of
23 their right to confidentiality by discussing it in a
24 public oral hearing and concludes that essentially the
25 waiver continues to apply to all the information that

1 would be directly relevant to the issues being decided
2 by the Board, even if they're not actually disclosed on
3 the record.

4 So following a hearing, if, in fact, a
5 taxpayer -- the taxpayer at the hearing, of course, is
6 always able to get their own confidential information,
7 but if, you know, another representative who was at the
8 hearing, some other taxpayer, say, a reporter from one
9 of our journals, wants to figure out what the underlying
10 factual basis was or the timing of certain facts or
11 whatever, assuming they're directly relevant to what the
12 Board decided on at that hearing, then this alternative
13 would allow Board staff to disclose that information
14 pursuant to a Public Records Act request. And that's
15 basically the innovative -- that's basically the
16 innovative substance of the secondary proposal.

17 In order to make that work, essentially we
18 created -- it specifically informs taxpayers in
19 Section 5033.1 that there, in fact, is a waiver being
20 done when you're -- that you're, in fact, giving an
21 implied waiver when you request an oral hearing in front
22 of the public under the Open Meeting Act which has been
23 the case all long but is not something that really
24 taxpayers are informed of currently unless they have a
25 representative who's generous enough to inform them that

1 there is confidential information that they may be able
2 to retain if they don't request one.

3 And then also, in effect, it basically creates
4 a mechanism in 5033.2 that allows taxpayers who then
5 request that certain information not be disclosed at the
6 oral hearing are subject to a Public Records Act
7 request, and that language we've already received
8 comments on is very -- is currently somewhat loosely
9 written because we really weren't exactly clear on what
10 the parameters needed to be for that, so we are aware
11 that it definitely could use further work on defining it
12 with more detail or specificity. And we'd be glad to
13 hear comments regarding that today.

14 Basically it allows this mechanism for people
15 to request that certain information be preserved and
16 then it also creates a provision that preserves the
17 Board's attorney-client privilege to the extent that
18 that privilege actually extends to a specific bit of
19 advice they received from their attorneys and only in
20 cases where it would be covered by the attorney-client
21 privilege as provided in the Evidence Code.

22 And so it's not necessarily that it wouldn't
23 apply to every bit of information that possibly has been
24 looked at by an attorney or Board member, but certainly
25 actual legal advice provided by the Legal Department to

1 Board members and not in an open meeting context where
2 it would otherwise become disposable and no longer
3 retain its privilege. So it's very limited. Let me put
4 it that way.

5 And -- but anyway, if I -- let me backtrack a
6 little more. Maybe I can make myself more clear. But
7 essentially the majority of documents that involve a
8 particular taxpayer's case go through lots of levels of
9 review, and the potential for something to lose its
10 privilege status is great just because of the amount of
11 people who see information and the way it's shared and
12 the fact that it can be incorporated into certain types
13 of files. There's just a multitude of situations.

14 And so all this really does is it says to the
15 extent that some document -- or I shouldn't say
16 document -- a document containing advice or actual oral
17 advice from attorneys to the Board members that still
18 retains that privilege, the Board has not waived it
19 somehow by creating this additional disclosure. That's
20 really all that was intended by that provision; and to
21 the extent that both my explanation and the provision
22 failed to do so, feel free to give me those comments as
23 well.

24 But essentially I just want to say that 5034 is
25 really not an alternative. That's just a -- that will

1 go along with the entire package, fees for copying
2 transcripts and stuff, and that's not part of the
3 changes or the alternatives. But essentially at this
4 point we can open it up for comments on both the first
5 and second alternatives.

6 MS. RUWART: Here's how I'd like to have people
7 just consider structuring it is global comments about
8 first or second, you know, the general parts of it. At
9 some point I would like to go through each part, A, B,
10 C, D for phrasing and for specific issues. So maybe
11 right now we'll open it up to just either clarification
12 questions or global "I totally prefer the first way" or
13 "I totally prefer the second alternative." Let's do
14 that for a few minutes and then get down to brass tacks.
15 Yeah. Peter Michaels.

16 MR. MICHAELS: Peter Michaels. And I prefer
17 neither of the two alternatives and, in fact, think
18 neither of them complies with the law.

19 And the conduct of the meeting, according to
20 the rules we're working with here under Section 5020,
21 cites Bagley-Keene. Bradley just cited Bagley-Keene.

22 I'm looking at one of the provisions cited
23 here, and it says in the Bagley-Keene law section 11126
24 of the Government Code, it says nothing in this article
25 shall prevent the State Board of Equalization from

1 holding closed sessions for the purpose of hearing
2 confidential taxpayer appeals or data the public
3 disclosure of which is prohibited by law.

4 Well, is it prohibited by law or not?

5 Yesterday I had a hearing in front of the Board
6 where our property -- my client -- one of my client's
7 property statements, the attachments, the appraisal data
8 report, the work papers, all correspondence and all
9 expert reports were introduced as a part of the record.

10 All right.

11 Now, let's juxtapose that with a court ruling
12 which the State Board of Equalization lost in which the
13 Appellate Court here in the State of California, 1989
14 GATX case says staff work papers, appraisal data reports
15 containing financial information, cash value appraisals,
16 projections of income, expenses, interest cost,
17 depreciation, those are, according to the Court of
18 Appeal, this is the law, State of California, you're
19 ignoring proprietary, confidential. Bagley-Keene was
20 intended to protect the disclosure of the very
21 information you're saying should be disclosed.

22 This is not just standing on principal. Anyone
23 who has been in business knows the importance of trade
24 secrets and proprietary information, cost margins,
25 expenses.

1 What essentially is being presented here is a
2 choice between due process and trade secrets, a choice
3 between having the business affairs information remain
4 your private business affairs information and not that
5 of the public or your competitors or your would-be
6 competitors, highly charged as that information is. You
7 get a choice: Keep my secrets and no due process, or
8 due process and tell the world what my margins are.
9 Neither of those is permitted by the law, so neither
10 alternative is acceptable.

11 MS. KINDALL: May I make a comment?

12 MS. RUWART: Your name, please, for the record?

13 MS. KINDALL: Oh, I'm sorry. Ami Kindall.

14 With regard to state assessee matters, by the
15 way, the law is different from the cases you're citing.
16 Taxation Code 743 specifically provides state assessee
17 matters have to be held in open session, so that law is
18 not applicable to the very types of cases you're most
19 interested in. I'd just like to have that be on the
20 record.

21 MR. MICHAELS: Well, that is not inconsistent
22 at all. Of course there are public sessions, but how
23 does that conflict with what the law itself is? The
24 Board -- nothing shall prevent -- this is
25 Bagley-Keene -- the Board from holding closed sessions.

1 for the purpose of hearing confidential information.
2 That's exactly what's going on here. The Board can
3 close its session for a --

4 MS. KINDALL: Not for state assessee matters.

5 MS. RUWART: May I just -- may I just
6 interject? This is an interested parties meeting.
7 We're trying to get different points of view and
8 comments, not to revolve anything. Well, I mean, unless
9 we can. But I don't think we can. Okay. Mr. Kamp.

10 MR. KAMP: I would note further 743 is -- the
11 way it's worded, it says state assessees may assess
12 petition hearing shall be open to the public, comma,
13 except that the Board members may confer after the
14 taking of evidence with staff, which by implication
15 can't confer in closed session with anybody else.

16 And then you have Prop 59, which is now the
17 law, effective for about a year, that you could construe
18 every statute requiring open meetings or open records
19 broadly and anything limiting that narrowly, so -- and
20 that's -- and the GATX case arose out of the private
21 railroad car tax. There's no statute like 743 that
22 would govern any of those hearings.

23 MS. RUWART: New points. Yes.

24 MR. GOLDBERG: This is Lenny Goldberg. I
25 appreciate Mr. Heller's introduction in which he said,

1 not reflecting, presumably, his point of view, but that
2 people in the public have said that it is impossible to
3 follow any cases because you have no underlying
4 information.

5 I'll begin by saying I'm speaking in favor of
6 the second alternative. And it's ironic because, in a
7 court context, the proceedings of the court are on the
8 record. Documents that have been filed are public
9 documents, and what the taxpayers say and what the
10 Franchise Tax Board or opponents are saying is in a
11 court filing.

12 Now, what's ironic here is that we have an
13 unusual situation here, as Mr. Vinatieri said, we have
14 elected officials, so that elected officials more so
15 than a judge who may or may not -- is elected, but in a
16 different context -- we need to be able to know that
17 elected officials are actually doing their job in an
18 honest, direct manner, weighing the evidence, looking at
19 these cases appropriately.

20 So then the argument becomes, if we do not know
21 that an elected official is actually acting on the basis
22 of the record that's before them, we cannot hold them
23 accountable.

24 And so I really appreciate the staff
25 alternative. It does make it clear, because I know in

1 cases of my own where I've tried to find out what's
2 going on, it's very, very difficult to hold any
3 accountability, to provide any accountability for a
4 decision on a case.

5 The second alternative provides a great deal of
6 that with presumably appropriate protection for the
7 taxpayer and then the section preservation of harmful
8 information.

9 Now, one more comment. This may be a legal
10 matter, and those of you who have done state assessee
11 cases can say this is the law and not for interpretation
12 by the Board of Equalization, but I find it tremendously
13 ironic that anyone in the world can know what anybody's
14 home and land are valued at, or any business, you know,
15 Intel or Cisco or any business in the state of -- any
16 business or land in the state of California can pull
17 those up on assessor's records, usually remotely now on
18 a computer, and yet the --

19 MS. MANDEL: That's not what he's talking
20 about.

21 MR. GOLDBERG: No, no. I know. But this gets
22 to the question of property tax. That particular pieces
23 of land, the value of particular telephone poles, shall
24 we say, or switching equipment, or -- but really in
25 terms of just raw land owned by a utility, we cannot get

1 access to those values.

2 Now, if that's a legal matter, I'll stand
3 corrected. If it's not a legal matter, then state
4 assessee appeals should make public what the sum
5 breakdown beyond here's the total value of all of our
6 land and equipment.

7 MR. HARRIS: Lenny, this is Bill Harris from
8 Intel. You know, I guess what I'd like to make a point
9 is for local property taxes, yes, you can find out what
10 our land is valued at as of Prop 13. It doesn't tell
11 you what the land is valued, what its value is now. It
12 doesn't give you market value. It used to before
13 Prop 13, but it doesn't anymore. Same with the
14 buildings. And there is no way you can find out -- you
15 can get a value on our personal property, but you can't
16 get all the details, Lenny. They can't provide that
17 data.

18 MR. GOLDBERG: That's questions of levels.
19 And, Bill, I would say that in a -- I've looked at a lot
20 of property data for businesses such as yours, and
21 because there is so much revision in new construction
22 and reassessment, you get much, much closer,
23 particularly with regard to building, if not land, to
24 what market value may be. In any case, the assessed
25 values are exposed to the public. They certainly are at

1 time of sale. They are not for state assessees.

2 MS. MANDEL: But, Lenny, they are for state
3 assessees. The unitary value of all the property and
4 its allocated value --

5 MR. GOLDBERG: To the counties.

6 MS. MANDEL: -- to the counties is public
7 information. It's the Board roll, and you can go look
8 at it.

9 MR. GOLDBERG: Not broken down by, let us say,
10 the land holdings of Pacific Gas & Electric.

11 MS. MANDEL: There is a separate -- the
12 allocated values, there's an allocated value to the
13 counties and there's a value to the land.

14 MR. THOMPSON: Ken Thompson, Valuation
15 Division. The Board roll has, with the exception of
16 railroads, has fallen under the statute. The Board roll
17 has individual land parcels of every state assessee
18 listed on the Board roll by county. It's public record.

19 MR. GOLDBERG: I stand corrected.

20 MR. MICHAELS: And you can be corrected on
21 something else, too. You suggested that -- you seem to
22 disregard the notion of a submission of evidence under
23 seal. This is the aberration here. The rule in courts
24 of law, every court of law in the state of California,
25 in the United States of America, every court of law

1 recognizes and provides for the submission of
2 confidential information or information that's otherwise
3 sensitive under seal.

4 MR. GOLDBERG: And this rule does that.

5 MR. MICHAELS: Every court of law.

6 MR. GOLDBERG: And this rule does that, too.
7 It says that if you are -- if you have -- it might be
8 harmful to the taxpayer, you can do that. But in
9 general, all of the information that is available in a
10 court of law is not available to anyone trying to hold a
11 Board of Equalization member accountable for the
12 decisions they may make.

13 MS. RUWART: May I interject? This is good.
14 This is all good stuff. What I'd like to do is, these
15 were good general comments about the general policies of
16 pro and con of each provision. I'm sure there's other
17 thoughts. What I'd like to do at this point is, putting
18 aside the legal issues for the moment, for the moment,
19 yes, because, No. 1, I'm going to say, the Board
20 believes that it has the legal authority to enact either
21 of these alternatives. That obviously is questioned by
22 some. We are more than happy to accept alternative
23 legal analyses. We've talked about the main points of
24 one of those lines of approach here. I think we got
25 them for the record.

1 What I'd like to do now is putting aside the
2 legal questions, let's talk practicalities and policies.

3 And really, even putting aside broad policies
4 for the moment, let's go through the first alternative
5 A-B-C-D-E, get the technical issues out, do the same for
6 the second alternative, and then rope it back for
7 general pro and con or suggestions, just to structure
8 the conversation a little bit.

9 MR. MICHAELS: That's great. And just if I may
10 make one observation, there are a couple of earlier
11 sections, I think, that are implicated in our focused
12 discussion about 5033, mainly 5020 and 5022(a)(3)(E).

13 MS. RUWART: And what I would like to do is, I
14 see that, I see 5020, and that's a general -- that's a
15 reference. And, I'm sorry, what was the second one?

16 MR. MICHAELS: Page 23. I think it is
17 5022 (a) (3) (E).

18 MS. RUWART: Yes. It's on top, very top of
19 page 23.

20 MR. MICHAELS: Yeah.

21 MS. RUWART: I'm going to make a judgment call
22 right here and say that we can discuss those issues in
23 their numerical order.

24 I see how they would be implicated, but I think
25 that it's probably more constructive to do 5033 first.

1 MR. MICHAELS: Thank you.

2 MS. RUWART: Okay. That said, 5033 is intended
3 to be our current procedures, and a codification for our
4 current procedures and policies.

5 Aside from the legal question, does anybody --

6 MR. MICHAELS: I'd like a clarification. In
7 (b), it says, the fourth line down, it says, "Open to
8 public inspection unless exempted."

9 MS. RUWART: I'm sorry, I was going with
10 Section (a). I'm sorry, Subsection (a), aside from the
11 overarching legal question, any issues? Good.

12 Subsection (b)?

13 MR. MICHAELS: Could I get a clarification?
14 Just it says here on the fourth line down, "Unless
15 exempted from disclosure by state or federal law." What
16 does that contemplate?

17 MR. HELLER: And that's basically, if you're
18 looking at 5033, the reason it gets to our current
19 policy with that statement is because those
20 confidentiality provisions take care of those State and
21 federal laws that prohibit disclosure.

22 And under the Board's current interpretation of
23 the waiver applicable to oral hearings, basically that
24 waiver would not apply to any information that wasn't
25 actually discussed at the oral hearing on the record

1 and, therefore, any information that wasn't discussed on
2 the record would not be exempt from disclosure under
3 this provision, because of the confidentiality statute.

4 MR. MICHAELS: Without again arguing the law or
5 anything, if I say, for example, the words "cost
6 indicator," have I then opened everything underlying my
7 cost indicator to public disclosure?

8 MR. HELLER: Just exactly what you said on the
9 record, and we could provide a transcript of that.

10 MS. KINDALL: Is that for State's -- Peter,
11 you're just in a different category from most everybody
12 else because you said state assessee matters and the law
13 just happens to be different there. I know we're always
14 going to disagree on this.

15 MS. MANDEL: In this example -- sorry. Marcy.
16 If, say, an appeals tax party came in and said,
17 "My Schedule A," and the only thing involved was my
18 interest deduction, does my whole Schedule A all of a
19 sudden --

20 MS. KINDALL: There's a series of documents on
21 State assessee's hearing.

22 MS. MANDEL: I'm not talking about State
23 assessee. Income tax returns.

24 MR. VINATIERI: One at a time.

25 MS. RUWART: One speaker at a time, please.

1 MR. HELLER: Let's say we were talking about a
2 business tax scenario. As I indicated earlier, this is
3 a not really applicable to Franchise Tax Board appeals
4 because there is statutory authority for the full
5 disclosure of almost basically all the information that
6 the Board receives with regard to an appeal from the
7 Franchise Tax Board.

8 And, so, let's say we're in a business tax
9 matter and a taxpayer was petitioning an issue dealing
10 with sales of interstate commerce, and that's something
11 that would be taxed by California, because it's
12 interstate commerce, and they simply said "my sales" and
13 "interstate," would that necessarily allow the Board to
14 disclose every word that we have that lists every
15 transaction, then, in interstate commerce? Absolutely
16 not.

17 Under 5033 first alternative or the Board's
18 current policy, we would not disclose that.

19 The person who made a Public Records Act
20 request could get a copy of the hearing transcript where
21 you actually said "transaction" and "interstate
22 commerce" and see who said that, and that would be
23 basically the limit, unless we took those schedules,
24 some Board member or the taxpayer actually introduced it
25 into the record on the hearing. Absent that, they are

1 not disclosable public records currently or under the
2 first alternative.

3 MS. PELLEGRINI: Peter, the other thing is
4 Carol Minden's AB 1752, which basically said when it
5 comes to the tax programs, we don't have to provide the
6 information, but when it comes to every other piece of
7 information given to the Board members, it needs to be
8 out there in the front for you.

9 So it was very specific about not including the
10 tax requirement.

11 MR. MICHAELS: Okay. I remember that.

12 MS. PELLEGRINI: And that kind of is exactly
13 what this wording --

14 MS. RUWART: Was intended to capture.

15 MS. PELLEGRINI: -- was intended to capture,
16 was that particular realm.

17 MS. RUWART: Any on Subsection (b)?

18 Okay. Subsection (c) talks about the minutes
19 of the meeting.

20 Subsection (d) is a couple of provisions about
21 transcripts.

22 Is there any comments on (d) (1)?

23 (d) (2)?

24 (d) (3)?

25 (d) (4)?

1 (d) (5)?

2 Or (d) (6)?

3 Very good.

4 Moving on to 5033, the second alternative, were
5 there any particular comments on 5033(a)?

6 MR. MICHAELS: Yes, I note -- Peter Michaels
7 speaking.

8 I notice that the term "hearing" is defined on
9 page 5 to include a written presentation. "Hearing" as
10 defined means a taxpayer's oral or written presentation
11 before the Board during Board meetings.

12 So does that mean here, I guess in either
13 scenario, that even if a taxpayer waives the hearing,
14 that by submitting a writing for consideration by the
15 Board, without an oral argument, that there is the risk
16 of proprietary and confidential information being
17 disclosed?

18 MR. HELLER: No. That's not the case, and I
19 thank you for pointing out the difference in the
20 definitions though. I definitely need to stay aware of
21 that.

22 But essentially the way that this works is that
23 the 5033 economic alternative is just
24 providing -- is -- really only states the bare bones of
25 the first alternative.

1 And then as you can read on 5033.1, the
2 condition is the actual waiver on requesting an oral
3 hearing, and that's right in 5033.1(b) where it says,
4 "If a taxpayer submits a written request for an oral
5 hearing before the Board," and so it lets them do that,
6 and then also as part of the provisions dealing with
7 protection of harmful information, at least the way
8 they're currently written, it would require the Board to
9 make a ruling on their request in time for the taxpayer
10 to withdraw their request for an oral hearing and still
11 preserve confidentiality.

12 So it's really designed so that a taxpayer can
13 request an oral hearing, get through the process, be
14 requesting that certain information be kept
15 confidential, and if that's denied and there's now
16 this -- there's now a situation where information they
17 don't want disclosed is to be disclosed, they can
18 withdraw or waive their request for an oral hearing at
19 that time.

20 MS. MANDEL: What you see on page 34, Effective
21 Date of Waiver, Peter.

22 MR. HELLER: Correct.

23 MS. RUWART: And to be more succinct about it,
24 the second alternative actually is not as wide open as
25 maybe even arguably as it could be.

1 We've gone with the Open Meetings Act idea, or
2 if you are seeking the benefit of an oral hearing before
3 the Board, you are now waiving your right to keep secret
4 things that -- keep confidential things that you're
5 talking about in public and your public elected
6 officials are talking about and can be held accountable
7 for.

8 What we've chosen to say is that that's the
9 line, and if the Board is making a decision on writings,
10 then we're going to continue our current policy
11 essentially.

12 This may or may not be desirable, but this is
13 what the alternative contemplates in its current form.

14 MR. HELLER: Is that okay? Does that answer
15 the question?

16 MS. RUWART: Yes.

17 MR. NIELSEN: I had a question. You've got
18 "adjudicatory hearings."

19 MS. RUWART: That may not be the best word.
20 Was that in (a)?

21 MR. NIELSEN: That's in (a). It wasn't in the
22 first (a).

23 MS. RUWART: Okay. We will take a look at
24 that.

25 Anything else on Subsection (a)?

1 Subsection (b)?

2 Okay. Subsection (c)? Transcripts again. I
3 don't know why there's only three. Maybe we could make
4 a cross-reference instead. I'm just kind of looking at
5 that. Oh, I know why. We just have to -- you would
6 adopt one or the other alternatives. That's why. So
7 we'll have to just make sure we conform all that,
8 conform to the alternative it is from.

9 The next section is 5033.1, the waiver of
10 confidentiality, and the second alternative.

11 Subsection (a), this describes the waiver
12 mechanism and how we get there. Subsection (a) deals
13 with waivers of Franchise Tax Board. Any comments with
14 respect to Franchise Tax Board matters, any comments?

15 MR. HELLER: I think also that does add a
16 little bit of importance especially to taxpayer appeals
17 from the Franchise Tax Board who may or may not be aware
18 that they just made their entire -- that entire dispute
19 before the Franchise Tax Board a public issue by
20 appealing to the Board.

21 And we do -- it would be preferable if they
22 could weigh the consequences before making their
23 decisions. I know -- I think there's some FTB staff who
24 let the taxpayers know that as well, but it wouldn't be
25 bad if they could see it in writing.

1 MS. RUWART: Subsection (b), waiver with regard
2 to essentially our business taxes, timber yield, and
3 special taxes and fees program.

4 MR. MICHAELS: Peter Michaels.

5 Speaking to the last sentence of (b) says,
6 "Such waiver shall only apply to information provided to
7 or obtained by the Board that is directly relevant to
8 the issues to be discussed."

9 Whose discretion is that? Is that the Chief of
10 the proceedings division? Is that a staff appeals
11 division lawyer? Is that -- who gets to decide what's
12 directly relevant?

13 MS. RUWART: Is that our disclosure officer?

14 MS. KINDALL: That's actually one of my
15 concerns with this action, regulation change.

16 MS. RUWART: Agreement?

17 MS. KINDALL: We're agreeing.

18 MR. PETERS: We're friends.

19 MR. HELLER: We haven't fleshed out a mechanism
20 yet.

21 MS. RUWART: But any thoughts about that?

22 MR. NIELSEN: The other thought is, is the
23 taxpayer going to be notified of those such requests?
24 They should have the ability to comment on what they
25 think is relevant and not relevant and whether something

1 should be disclosed or not.

2 MS. KINDALL: I think it has to be -- you
3 cannot have a discretionary standard that somehow staff
4 is deciding what was relevant and what is not. You have
5 to basically go with the documents that went to the
6 Board members or the documents that were submitted and
7 that's what has to happen; otherwise, you won't have a
8 functional rule.

9 MR. NIELSEN: The problem with that is that
10 Franchise Tax Board or the Board of Equalization can
11 submit a whole slew of stuff.

12 MR. MICHAELS: Talking about sales tax here.

13 MR. NIELSEN: Or same, any situation. Sales
14 tax they can put in a whole file. It's not relevant to
15 half of the stuff that's in debate, you know. Just like
16 the example, interstate commerce sales, they can put in
17 a whole audit that has a whole lot of other stuff in
18 there and you may have one interstate sale that's being
19 questioned.

20 You know, I don't think you're going to come up
21 with a bright line.

22 MR. MICHAELS: You can have an audit with 11
23 issues, only one of which is being contested.

24 MS. KINDALL: You cannot expect staff to go
25 through what were the issues that were relevant and

1 which documents pertain to those. You have to have at a
2 Board meeting what is -- you have an actual procedure
3 where you follow an existing rule, and submitting
4 documents into evidence, and those are documents that
5 become part of the record. And the other party can
6 object to that submission.

7 MR. KAMP: I don't have -- I think in court
8 it's assumed that basically anything that's filed as
9 part of a motion is public record.

10 The stuff that led up to the filing, the
11 depositions and everything else, is not necessarily
12 public record.

13 But that is a bright line that is a fairly
14 bright-line test. And the problem is just saying
15 everything is confidential. I don't think you can make
16 that stick after Prop 59. Some journalist is going to
17 complain if you have a rule that's just so broad that it
18 covers everything.

19 MR. NIELSEN: Even in court now it's hard to
20 keep things confidential because they easily can go in
21 there and get things unsealed.

22 But I think your proposal, yeah, if there's a
23 record of what's being entered into by both parties and
24 all that kind of stuff, that's better than the way it is
25 now.

1 MS. MANDEL: Well, Richard's point is, when
2 you're talking about -- or part of the point that I'm
3 hearing is that when you're talking about business tax
4 matters and special tax matters where the Board is the
5 administrator of the tax, the taxpayer's information
6 with the Board is confidential information. Their audit
7 information, everything is confidential. Just like you
8 can't go ask FTB to give you the audit on so-and-so.
9 It's confidential taxpayer information, tax return
10 information, confidential taxpayer information.

11 What I'm hearing is, okay, so I have this whole
12 audit, I have my whole file, and I've got one problem
13 that I would like the Board to actually decide. And
14 that's the only part -- you know, I understand I'm going
15 to a hearing before the Board, I'm going to talk, so the
16 whole world is going to know that I had this, you know,
17 alleged interstate sale and they're going to know
18 everything. But I've got all this other junk in my
19 audit. I've got my return. That's all confidential.

20 All the staff has to do -- not that they would
21 ever do this, because -- oh, my goodness -- but, you
22 know, if you're a neurotic taxpayer, you think they
23 could do it, it could happen, they take the whole audit
24 file and send it up as part of the Board meeting
25 materials. And now all of your legal -- you know, your

1 rights as a taxpayer to have your information --
2 taxpayer information held confidential is sort of -- is
3 blown up. That's what I hear you saying.

4 MR. GOLDBERG: At the Franchise Tax Board you
5 don't see the results of what may be a multi-year-long
6 audit. You see only those documents filed relative to
7 the issue at hand, and those are public. But you
8 certainly don't see the -- if there's one issue out of
9 many that's at issue, you don't see the entire audit.

10 MS. MANDEL: No, you don't. And remember that
11 the franchise tax matters before the Board are
12 different, and they've always been of the view that
13 everything that comes filed with the Board on a
14 franchise tax matter is a public record, just like it
15 would be in a court.

16 The difference is where the Board has been
17 acting as an administrator of the tax, that that's
18 taxpayer confidential information. And if there's going
19 to be this provision, what I'm hearing is, how do you
20 set the standard of relevance?

21 So you need to have a bright line that anything
22 that gets sent to the Board members in the meeting
23 packet or that they get on the case, that that
24 confidentiality as to that information, which currently
25 is part of taxpayer confidential information, would be

1 waived. What Richard's saying is, well, what would
2 prevent staff from just dumping the world in before the
3 Board and making that -- you know, blowing up the
4 confidentiality?

5 MR. GOLDBERG: This is Lenny. As somebody
6 who's never been privy to any of that, it would seem to
7 be that perhaps the wrong word -- "relevant" is the
8 wrong word, but really what we're talking about is that
9 is related to or directly on point, not a legal word,
10 obviously, to the issues at hand, which gives direction
11 to staff not to make a subjective judgment but to only
12 submit that material that is related to the issue at
13 hand, which is what, after all, all that you see in a
14 Franchise Tax Board case.

15 So it really isn't a question of seeing all the
16 background audits. It's only -- the Board is
17 adjudicating a case, and the issues -- the information
18 presented as part of that case is what is on point to
19 the issue at hand.

20 MS. RUWART: Okay. Very good. I don't want to
21 foreclose any different comments. Yes, sir.

22 MR. NIELSEN: Just one follow-up, sort of
23 consistent with what I said before on the other one.
24 You know, you disclose to the taxpayer at least
25 something's being requested. Same thing here.

1 Depending on what the ultimate resolution is, at least
2 to have the taxpayer have the ability to comment on what
3 staff's putting in, assuming they know what staff's
4 putting in, whether they think it's relevant or not,
5 then at least it, you know, it can be decided before
6 somebody else asks for it and the Board can rule on
7 whether it's relevant or not.

8 MS. RUWART: Okay. So noted.

9 Just in the interest of time -- this is all
10 very fascinating and good stuff. (c)(1) A and B just
11 states the statement of what, when and how you waive
12 your confidentiality. You do it by requesting your
13 hearing. Any comments? (c)(2).

14 MR. MICHAELS: Legal authority, that's a
15 separate discussion.

16 MS. RUWART: That is. Thank you for
17 recognizing that. (c)(2), it restates the same --

18 MR. MICHAELS: Sorry. Pardon me. What does it
19 mean here in (1)B? It says "files and application."
20 What is an application? Is that a petition?

21 MS. RUWART: No. That's a welfare -- I think
22 the application is either Article 2, part 13 or --

23 MR. MICHAELS: Oh, okay. Thank you.

24 MS. RUWART: (c)(1)B, it's not a petition.
25 It's either a Section 11 or it's a welfare. Yeah.

1 MR. MICHAELS: Then paragraph 2, it does use
2 those same words as before, directly relevant, maybe on
3 point.

4 MS. RUWART: Yes. Very good.

5 (d), we can have a substantive discussion about
6 this, I'm sure, (d)(1) -- actually, (d)(1) and (2) are
7 the same or similar. Brad, why don't you just summarize
8 them and we can discuss them together, if necessary,
9 (d)(1) and (2), the waivers.

10 MR. HELLER: Basically (d)(1) and (2) is just
11 designed basically to put an effective date of the
12 waiver so that, as we were just responding to Peter's
13 earlier questions, this is the mechanism that says that
14 even though a taxpayer's requested an oral hearing in
15 the earlier part of this section which, under
16 subdivision (d) -- or (b) -- excuse me -- would trigger
17 this waiver, it's not effective under (d)(1) until the
18 public agenda notice is issued for that hearing.

19 MR. MICHAELS: There's only ten days before the
20 hearing.

21 MR. HELLER: So ten days before. And then it's
22 still not effective if they've waived their right to the
23 oral hearing as of that time. And then, as you can see
24 in the next provision, we're going to try to have a
25 response to their request for preservation of harmful

1 information by that time so the taxpayer can make an
2 informed decision on whether they really want a hearing
3 or don't.

4 MS. RUWART: We felt that gave the maximum
5 amount of time for the taxpayer to determine what they
6 wanted to do. Yes.

7 MR. GOLDBERG: Does (2) apply to Franchise Tax
8 Board cases?

9 MS. RUWART: No, because their waivers are as
10 soon as --

11 MR. GOLDBERG: So as written.

12 MS. MANDEL: Yeah. It says (b) and (c), and
13 FTB would be (a), so it's not covered.

14 MR. GOLDBERG: Thank you.

15 MS. KENDALL: So this moves up the timing on
16 state assessee matters to the beginning.

17 MS. RUWART: Yes. Until ten days before.

18 MR. HELLER: Correct. Ten-day change. But it
19 would help people who want to follow the hearing
20 actually understand what's going on.

21 MS. RUWART: And that was the reason behind it.

22 (e), here are some exceptions. (e) (1),
23 personal information, this follows standard statutory
24 and current practice, statutory practice. You don't
25 even have to worry about your home address, home phone

1 number, Social Security or federal identification
2 number. Are there any questions about that, or
3 comments?

4 MR. HELLER: I might just quickly add, you
5 know, the Board is concerned with identity theft and
6 basically having the ability for somebody to just come
7 in here with a Public Records Act request and get
8 thousands of Social Security numbers, names and
9 addresses. So there may be need to work with it to make
10 it more appropriate to the particular programs, but it's
11 definitely something we wanted.

12 MR. GOLDBERG: Wearing my privacy hat, which I
13 also wear, I think you want to make sure that there's a
14 general phrase or other personal identifying
15 information. If it were credit card numbers or bank
16 account numbers, which are not -- bank account numbers,
17 for example, which are not included in here, you would
18 want to make sure those are not --

19 MS. KENDALL: We don't actually have the
20 authority to redact that information. We have kind of
21 gone out a little bit on a limb and gone ahead and said
22 that this information is going to come out because
23 especially in franchise matters it's always there and
24 it's very sensitive information. But we don't really --
25 if we go with this route of saying this information

1 becomes public, we don't really have the authority then
2 to say but this is not and this is.

3 MS. MANDEL: Lenny, is there some privacy
4 statute that we could rely on for -- I mean, because
5 sometimes, particularly, like, an income tax case there
6 might be credit card statements.

7 MS. KENDALL: They're in there.

8 MS. MANDEL: They're in there and they're
9 released.

10 MR. SPERRING: This is Jon Sperring. Your
11 dependents' Social Security is on your tax return.

12 MS. RUWART: So not just the taxpayer's Social
13 Security but other individuals as well.

14 MR. SPERRING: Yeah. Minor children.

15 MR. GOLDBERG: So that's public.

16 MS. RUWART: That's public.

17 MS. KENDALL: We're doing that. We're on the
18 side of the angels. No one's going to question us.

19 MS. RUWART: We'd like to get the Board the
20 laundry list. That would be great. You know, in a
21 moment we're going to jump to 5033.2.

22 MS. KENDALL: We have a workload issue right
23 now. If you start adding those kinds of documents,
24 you're going to have to have staff redacting it and
25 you're going to have to come up with the authority for

1 doing it.

2 MR. GOLDBERG: You know, in some legislation
3 there has been authority to say you may not use a full
4 number but you can use the last four digits or something
5 like that, and it becomes an automatic question, because
6 there really is no public interest to knowing what the
7 actual account number is.

8 MS. RUWART: Yes. A part of this, I think,
9 with all -- I'll just put my personal opinion in here --
10 with all this privacy and all that, it's very important,
11 but also individuals and representatives also need to
12 have some responsibility. And so if you're going to go
13 give a whole slew of credit card data to the Franchise
14 Tax Board as part of your brief, you know, maybe people
15 can work, you know, themselves, "Can I just redact
16 everything but the last four words," or whatever. We're
17 never going to be able to catch -- just for the good
18 reason we're never going to be able to catch everything.

19 So we are going to try the best we can. We're
20 going to codify what is practical. We want to hear what
21 the laundry list would be, but I'm not going to
22 guarantee everything is going to get in there for the
23 reasons that Ami stated.

24 (e) (2), Tax Returns. This sounds like a pretty
25 big change. Brad, do you want to?

1 MR. HELLER: Yeah. Once again, here on this
2 is -- this has slightly less emphasis than the Personal
3 Information Act because the Personal Information Act
4 applies much more broadly and it really is much more
5 concerned with theft, but at the same time, there's been
6 some concern and this one also deals with basically all
7 the programs, but essentially if a person is contesting
8 simply like one Schedule A deduction, as Marcy was
9 trying to use as an example earlier, we don't
10 necessarily think that because the Franchise Tax Board
11 is submitted the entire personal and other personal
12 income tax returns that the Board should then go ahead
13 and provide information to the public on every single
14 line in there.

15 And the fact there's a disclosure statement on
16 some interest in an LLC they sold or that they're doing
17 a 1031 exchange with some other business property or
18 whatever isn't really relevant to the public, it's not
19 relevant to the appeal, it's not relevant to the Board's
20 decision, so this was just an effort to try to recognize
21 that. And basically that's just why it's there.

22 MS. RUWART: So were there any particular
23 comments on the phrasing of that policy? Great.

24 MR. GOLDBERG: Is this more restrictive than
25 the current?

1 MR. HELLER: Currently we provide basically the
2 entire return as provided by the Franchise Tax Board to
3 the Board, and so this would be more restrictive. So
4 instead, that information on a return that wasn't
5 relevant to the appeal, it wouldn't -- it would be
6 redacted from the version provided to somebody who
7 requested it on a Public Records Act request.

8 MS. KINDALL: Could you repeat that? I wasn't
9 following.

10 MR. HELLER: What I was saying is this is more
11 restrictive than current policy in a sense that normally
12 when we receive -- if we receive a return from a
13 Franchise Tax Board, our current policy is that that is
14 now a document that we would produce pursuant to a
15 Public Records Act request and that we would not redact
16 other areas of the return that weren't relevant to the
17 appeal.

18 This is suggesting that to the extent that
19 there's areas that just have no relevance at all to the
20 issues before the Board, that we would now -- that we
21 would redact those.

22 MS. KINDALL: I'm not sure, again, one, who is
23 making that determination, and, two, what the authority
24 is? I'm very uncomfortable with that to the point where
25 I'd say I think there's no authority for that position

1 whatsoever.

2 MS. RUWART: Okay.

3 MS. PELLEGRINI: This is Debbie Pellegrini.

4 I would just like to kind of let everyone know,
5 back to what Ami is saying what the current process is,
6 and I'll use Franchise Tax Board as an example, when we
7 get a request for a Franchise Tax Board Public Records
8 Act, I have a staff person who makes a copy of the
9 entire thing, takes a felt tip pen, and reading every
10 line, taking out the items. Now, it just so happens the
11 items right there have numbers in them, so somebody can
12 look through and start doing numbers.

13 But that's where you -- what Ami is saying is a
14 work-load issue we have gotten. And she didn't say
15 this, but some requests have come in and said, "Can I
16 have every appeal that has been filed for the last four
17 months?" And we are talking a tremendous work load to
18 go through. And, you know, I think when you think about
19 this, let's make sure that staff really catches what is
20 the most critical, which is that social security number,
21 and we certainly don't want home addresses going out.

22 MS. KINDALL: And, again, there's also an
23 authority issue, because what happens, the Franchise Tax
24 Board, normally their materials are confidential and
25 it's at the Franchise Tax Board. There's statutory

1 authority that says once they have to do a judicial or
2 administrative proceeding, that information can be
3 provided. Now, all of sudden we've lost
4 confidentiality.

5 Where is your authority to withhold anything?
6 Social security numbers have their own confidentiality
7 associated with them, so there is authority there. We
8 have gone -- again, we've gone out and said we're going
9 to go ahead on our own authority and take out those
10 phone numbers and take out those home addresses and take
11 our chances that there isn't anyone who is going to sue
12 us on that. Once you go past that, the further you go,
13 the more you're out on a limb.

14 We did try and do some legislation this year.
15 That was the Runner Bill, which would codify what the
16 Board did. That legislature did, not for this reason
17 I'm sure, but did not go forward.

18 We've got two problems here. One is, and I
19 think more importantly, because we can always get the
20 legislation if we need it, but there better be some
21 funding and some body behind that legislation, or you've
22 created a rule that we can't practically work with.

23 MS. RUWART: Any comments?

24 MS. CROCETTE: I just wanted to ask you a
25 question about your comment that representatives might

1 want to take some responsibility for it. I mean, is
2 that a practical way of saying that?

3 MS. RUWART: You know, it was just my
4 completely personal, unofficial, Board opinion, that
5 when I do things that I have to give people data, I take
6 my own making sure that I'm only giving them exactly
7 what I want them to have and they need to have.
8 Probably my comments should be just disregarded.

9 But it's something --

10 MS. CROCETTE: It would seem to me like the
11 vested interest would be mostly theirs. We've got three
12 million things that we're looking at. They've got one.
13 So that is a balance at least admittedly.

14 MS. RUWART: It's just something to be thought
15 about.

16 Yes, sir.

17 MR. GOLDBERG: Yeah, this is Lenny.

18 I'd be concerned on FTB cases, since it's
19 already gone through a winnowing process as to what's at
20 issue, that there be a further winnowing on as a result
21 of this.

22 MS. RUWART: Okay. Yes. Anything else
23 different?

24 MR. SHAH: Carole?

25 MS. RUWART: Yes.

1 MR. SHAH: Why doesn't the FTB redact the
2 income tax returns and send us what's just necessary?

3 MS. RUWART: I don't know.

4 FTB, Neil has a question for you.

5 MR. LANGSTON: Well, we do partly and partly we
6 don't because almost always the amount of income is at
7 issue. There are a lot of things that are at issue in a
8 Franchise and Income Tax appeal that, for example, to
9 establish that this is the taxpayer's tax return, the
10 current method is, you use the social security number.
11 The name and the address is relevant to verify things.

12 We do, though, as a policy matter, we don't
13 throw the whole return on there anymore as exhibits. We
14 try to show the relevant parts of the return.

15 But we believe that, you know, within this
16 sphere of confidentiality is the Board staff and Board
17 members.

18 And, you know, that's something I suppose we
19 could work on. But I'm not sure that you want to get
20 lots of exhibits with black lines all over the place so
21 you can't really evaluate what the taxpayer is doing.

22 But, we do -- we have, you know, the new law
23 passed saying we can't have a social security number
24 visible in mailing, and we redact certain federal
25 information when we give an IRS transcript pursuant to

1 federal law. But in general, I mean, you're always
2 going to have that balance between getting a full and
3 fair adjudication. Maybe a Board member or Board staff
4 might think one of those things that we knocked out was
5 relevant. Traditionally, it's all been under one big
6 umbrella. It's when it goes out to the public, people
7 who aren't parties and aren't part of the Board staff,
8 that you then do the redaction.

9 And that's so that you -- really so the Board
10 members and staff can really look and see maybe there's
11 something they think is relevant, even though it's
12 confidential.

13 MS. RUWART: Okay. Yeah, sounds good.

14 (e) (3), the Exemptions by the Board. Unless
15 there's phrasing questions with that, it basically
16 brings us right next to the next section. Are there any
17 phrasing questions?

18 MS. MANDEL: The "sensitive information," this
19 is like when we have one of those HRAs and we try not to
20 talk about what they really said their personal issues
21 were.

22 MS. RUWART: Speaking of Section 50 -- yeah,
23 5033.2, moving on to that.

24 MR. MICHAELS: Is there a source for the word
25 "sensitive"? Is that like in a statute or something?

1 MR. HELLER: No, it's not.

2 MR. MICHAELS: Very Californian.

3 MR. HELLER: Absolutely. Sensitive to the
4 issue is all that really is, without any ability to
5 write a better word at the same time.

6 MR. KAMP: Both your remark and your remark are
7 too hard to follow. You should both compete with Jay
8 Leno.

9 What I was going to suggest is my question,
10 does this language, "sensitive," isn't there a statute,
11 isn't there some language that's developed in the court
12 cases on trade secrets or something about what is a
13 trade secret, what is the core of what the courts will
14 protect from disclosure in a lawsuit?

15 MR. NIELSEN: And that's the issue that you
16 have with the assessment appeals Board at the local
17 level. They have the ability to close the hearing for
18 trade secrets. And I think there's three categories or
19 something. And we're literally fighting over that all
20 the time because some City attorneys or County attorneys
21 will take the position your financial information does
22 not fall within that. Therefore, they won't cover it.

23 Other assessment appeals boards will say it
24 does fall within that.

25 There are court cases that arguably say some

1 financial information even falls within trade secrets
2 and so forth.

3 So that's the problem I have here. You have
4 "sensitive," you have the word "harmful," and, you know,
5 you're going to get back again to who is going to be
6 interpreting it and applying it, because I can tell you
7 at the assessment appeals Board level, we go round and
8 round on that when we make a motion to close a hearing.

9 MS. RUWART: Well, I'm glad you mentioned that
10 because by the time we get down to Subsection (d),
11 Subdivision (d), you will find who is going to make that
12 decision. We did decide who was going to make that
13 decision. It's going to be the Chair of the --

14 MR. NIELSEN: It would be nice to have some
15 guidelines.

16 MS. RUWART: So if everybody has read this one,
17 maybe we should just go through and talk about comments
18 to (a).

19 MS. CROCETTE: 5033.2?

20 MS. RUWART: Yeah.

21 MR. KAMP: I think you need to -- I think
22 whatever problems Mr. Nielsen pointed out with the
23 assessment appeals Board, I think the language that
24 governs them is probably much narrower than the word
25 "sensitive." Maybe you could provide some suggestions

1 for a good alternative.

2 MR. MICHAELS: Actually in the State Bar
3 submittal here it cites Revenue and Taxation Code
4 Section 1605.4 and provides that any party -- well, it's
5 in the writing from the -- anonymous writing from the
6 tax section, state and local tax committee of the
7 State Bar.

8 MS. RUWART: Okay. Very good. We will -- like
9 Brad said, this is our -- we just want to put out the
10 general idea. I thought I heard a comment about, you
11 know, what is harmful?

12 MR. HELLER: I think, too, the only other thing
13 I'd say is that, you know, I mean, we certainly are
14 aware of the term "trade secrets." And it wasn't -- you
15 know, it wasn't a fear of adding confusion by using that
16 term. It actually was an idea that maybe there was more
17 out there to be protected than necessarily trade
18 secrets.

19 I know we received comments that, you know,
20 that this type -- that basically the disclosure of any
21 information can have a chilling effect, even if we don't
22 change our policy, but by having the current policy that
23 we do have. And so we were kind of experimenting with
24 this language in the idea of inviting comments to help
25 us get towards the idea of what about the person who's