

Admin.

January 14, 2005

## First Supplement to Memorandum 2005-7

### **Recording of Commission Meetings**

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We received a letter from Donie Vanitzian commenting on the issues that are discussed in Memorandum 2005-7 (available at [www.clrc.ca.gov](http://www.clrc.ca.gov)). The letter is attached.

Ms. Vanitzian strongly objects to the possibility that the Commission might not provide the public with copies of digital recordings of our meetings, but might instead merely make them available for inspection in the Commission's offices. She correctly notes that this would be very inconvenient for many people.

Ms. Vanitzian's general point is a good one. Providing copies of recording files would enhance the public's ability to follow and participate in the Commission's process (although actual requests for meeting recordings have been rare in the past).

Ms. Vanitzian dismisses our practical concerns about the resources required to distribute recordings of our meetings on the Internet, noting that the British Parliament provides live streaming audio of their proceedings. We do not have the resources of the British Parliament. With a total staff of four, our information technology work is performed on a shoestring. Expansion of operations would take further resources away from our legal work and could add to our expenses — at a time when our resources are already stretched very thin. This obstacle is not insurmountable, but it is real.

Another practical consideration is the potential chilling effect of distributing recordings of our meetings, especially in electronic form. Ms. Vanitzian has no sympathy for this concern, but it is a legitimate one. Members of the public who testify before the Commission are not public figures. The risk that testimony will be taken out of context and republished on the Internet in order to embarrass or defame may well deter some from participating.

Public concern about personal privacy is not merely hypothetical. For example, we received a number of anonymous communications in response to our most recent tentative recommendation on common interest developments (see Memorandum 2005-2 (available at [www.clrc.ca.gov](http://www.clrc.ca.gov))). In fact, the letter that

prompted the discussion of our recording policy was itself submitted on condition of anonymity. In the past we have had witnesses testify without giving their names, so as to protect their identity. Such a person might decline to participate if recordings of meetings were routinely distributed on the Internet.

In deciding whether to make our recordings available to the public, the Commission will need to balance the legitimate interest in enhanced public openness against the cost of providing the additional service and the negative effect it might have on public participation in our process.

Respectfully submitted,

Brian Hebert  
Assistant Executive Secretary

**Donie Vanitzian**  
*Arbitrator*

December 27, 2004

Mr. Brian Hebert  
Assistant Executive Secretary  
cc: Mr. Nat Sterling  
California Law Revision Commission  
3200 5th Avenue  
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**THE TEMPLE OF BLAME  
AND  
HIDE THE MEETING**

**Re: Memorandum 2005-7; Recording of Commission Meetings  
Your December 8, 2004 and December 21, 2004 correspondence**

Dear Mr. Hebert,

I appreciate your taking the time to tape the past CLRC meeting for me on tapes that I provided, and also, thank you for your response to my December 13, 2004 correspondence regarding the CLRC meeting tapes and proposed change in CLRC policy for public access. The letter stated that the CLRC has decided to now record its meetings digitally, with the public making appointments to listen to the recordings on the CLRC computers at either the Sacramento or Palo Alto offices. Please see my comments to this ridiculousness below.

My concerns then, are the same now. Just as the CLRC's present documents are available to the public on its website for downloading, so too, can digital recordings be made available to the public as downloads.

As I explained to you, that there is no legitimate reason for the CLRC to disenfranchise any citizen that is unable to accommodate the CLRC's self-imposed stringent viewing requirements. Forcing individuals to fly, drive, or take a train to Sacramento or Palo Alto merely to "listen" to recordings that can range anywhere from three minutes to thirty hours, is unreasonable and will have a chilling affect on public access. Or, perhaps that is what the CLRC intends, given the power your

agency wields over people like me and how I will live in my residential deed-restricted albatross.

### **DIGITAL RECORDING FILES AND ITS CHILLING EFFECT ON THE PUBLIC OR THE CLRC?**

What part of "public" does the CLRC not understand? When one attends a public meeting, one intends to be filmed and recorded.

The CLRC's statement (pg 2) that "In short, the files will be of no use to most members of the public" blah, blah, blah. You, and your CLRC cohorts are *hoping* such meetings continue to fly under the radar and little if no attention is drawn to the damage you create with respect to injecting yourselves into the laws under the guise of legitimacy, and creating and recommending what the rest of us will live by. That is why you destroy the tapes right at or under 30 days isn't it? If you truly were above board as a government agency working *for* the public there would be no need to destroy even *one* tape. It is however to your advantage, as you say, to make sure that those who influence you are *not heard doing just that on tape*.

*No different than a homeowner association board of directors!* I am stunned by comments like this:

*Those who participate in Commission deliberations should expect that their comments might be noted and circulated more broadly. However, our deliberative process depends on a free flowing and frank exchange of views. If meeting participants are worried about an unguarded statement being used against them, they may be less forthcoming.*

**Too bad.**

### **LEGAL REQUIREMENTS**

Many statutes and case laws address issues you raise. For example, in the words of one court, Government Code section 54953.5 provides that "[a]ny person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings on a tape recorder. . . ." Section 54953.7 provides that legislative bodies of local agencies "may impose requirements upon themselves which allow *greater access* to their meetings than prescribed by the minimal standards set forth in this chapter." *Choice-in-Education League v. Los Angeles Unified School District*, 17 Cal.App.4th 415 (1993). It says NOTHING about LESS ACCESS.

If I'm not mistaken, the California Law Revision Commission falls under the auspices of the "government." Your web site is: [www.clrc.ca.gov](http://www.clrc.ca.gov), emphasis on the "gov." The employees are civil servants who serve at the pleasure of the public. On November 2, 2004, 7,489,682 Californians approved Proposition 59, otherwise known as the Public Records, **Open Meetings Act**. The California Constitution, Article 1, Section 3 is expressly amended in part to include, "*The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.*" It goes on to say, that this *shall be*

*broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access.* A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

Mr. Hebert, the CLRC influences the laws that I live by. *Therefore, as Joe Public, I want to hear every single utterance, every word from every CLRC meeting - and I don't want another apology for "jumbled" meetings inclusive of "extraneous material" - I want the entire CLRC meeting - every committee - every speaker - in an audible and comprehensible form.*

The CLRC bars what clearly should be permitted in making an accurate record of what takes place at such meetings. The action of this Commission is too arbitrary and capricious, too restrictive and unreasonable. *Wollam v. City of Palm Springs*, 59 Cal.2d 276 (1963); *Alves v. Justice Court*, 148 Cal.App.2d 419 (1957); 35 Cal.Jur.2d Municipal Corporations, § 228.

*There should be no compromise in accurately reporting transactions of a public governing body*, particularly in a democracy where truth is often said to be supreme. Governmental measures based upon police power should always be well defined and reasonably exercised. "If a shorthand record of such a meeting is more accurate than long hand notes, then the use of shorthand is to be approved." *Wrather-Alvarez Broadcasting, Inc. v. Hewicker*, 147 Cal.App.2d 509 (1957). "If the making of a tape record is a still better method of memorializing the acts of a public body it should be encouraged." *Nevens v. City of Chino*, 233 Cal.App.2d 775 (1965). That was 1965!

### **THE BROWN ACT**

As one court stated, "Intent in enacting the Brown Act, Government Code section 54960(a) is clear: *"The Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."* *Los Angeles Times Communications LLC v. Los Angeles County Board of Supervisors*, 112 Cal.App.4th 1313, 1321 (2d Dist.2003), review denied (2004).

### **DISENFRANCHISING THOSE OF US WHO NEED ACCESS THE MOST - BUT CAN LEAST AFFORD IT**

*Let me remind the CLRC that over 4 million Californians are unemployed - yet you remain on the government's payroll - so it may seem easy for the Commission to place stipulations on others when it does not affect you.* This forces individuals to fly, drive, or take a train to Sacramento or Palo Alto merely to "listen" to recordings that can range anywhere from three minutes to thirty hours, and it *IS unreasonable*. The CLRC is presumably not open on Saturdays and Sundays or evenings. Many of us may have to arrange and pay for babysitters, caretakers, time off from work and other responsibilities, let alone transportation.

## THE TEMPLE OF BLAME

[Memo. 2005-7]

For anyone who is immobile, physically challenged and seniors in particular, making arrangements to get to Sacramento or Palo Alto from anywhere in California, is no different than booking a flight to Mars. It is impossible.

Traveling to your offices to listen to tapes every month is **unreasonable**. **It amounts to a penalty for wanting to assert one's rights.**

Your reasoning is flawed and it appears that the only people who will not be inconvenienced by your decisions, are the CLRC and its employees.

Even with the Davis-Stirling Act's provision for Open Meetings, owners are still unable to enforce it. Why? Because the CLRC refuses to recommend penalties for recalcitrant boards. You will recommend arbitration, mediation, waiting time periods, stipulations on construction defects, architectural control issues, termite control, volunteer status definitions for titleholders, insurance specifications, and a host of other **nonsense**, but when it comes to penalties against boards, you refuse to touch the topic, instead dancing all around it. ***Now, those of us who want to see and hear first hand what the hell goes on down there and who and what is responsible for bastardizing these laws, the CLRC is shocked! Surprised! And then unilaterally pulls the plug in hopes it will prevent public access.***

**CONCLUSION**

As a Systems Analyst, I'll pass on taking apart your preposterous and embarrassingly flawed arguments on *File Size* and *Format Incompatibility*. Let it suffice to say, the CLRC was ill informed and I hope you didn't pay for that advice with taxpayer funds. Even the British and Scottish Parliaments make their sessions available via Internet, some in real time, so too can the CLRC.

Sincerely,

D. Vanitzian