

**THE BROWN ACT**  
**CA Gov't. Code Section**  
**54950 *et. seq.***

Office of the County Counsel



MIKE HARRO

"I sort of thought your presentation was going to be in powerpoint."

# Ethical Value to Government Transparency Laws

## 1. *Trustworthiness:*

The public trusts a process that it can observe.

## 2. *Respect:*

All perspectives have a right to be heard and considered in the public decision making process.

# **The Heart of Government Transparency Laws**

The conduct of the  
public business IS  
the public's  
business

- "School trustees call themselves into question with reprimand"
- County Broke Law on Hospital; Supervisors' secret talks on closing King/Drew trauma unit were illegal, Dist. Atty. Cooley says
- "Student Senate violates law with secret ballots
  - Anonymous votes used by members, candidates suffer"

# The Right to Open Government

- Proposition 59 of 2004– the right of the people to open meetings and public records is now in the State Constitution.  
(Cal. Const. Article I § 3(b))
- Courts will likely construe the public's rights broadly and the government's right to conduct secret business narrowly.
- New legislation must justify reason for exception to public access.

# Transparency Rules

- Conduct Board business in open and publicized meetings
- Allow public to participate in Board meetings
- Allow public inspection of records





# Brown Act- Legislative Intent

“In enacting this chapter, the Legislature finds and declares that the public...boards..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...**”

# **Brown Act- Legislative Intent (cont'd)**

“The people of this State **do not yield their sovereignty** to the agencies which serve them. The people, in delegating authority, **do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.** The people **insist on remaining informed** so that they retain control over the instruments they have created.”

# **Brown Act-Six Categories:**

1. To Whom Does it Apply?
2. What is a Meeting?
3. The Agenda Requirements
4. The Public's Rights
5. Closed Sessions
6. Consequences for Violations

# 1. To Whom Does it Apply?

- Applies to “legislative bodies”
- “Legislative body” means:
  - (a) governing board of local agency
  - (b) governing board committees created by formal action of the governing board
- Does not include individual decision makers e.g. department heads

# Committees NOT subject to Brown Act

- Ad hoc advisory committees made up solely of governing board members and constituting less than a quorum
  - No continuing subject matter jurisdiction
  - Limited term
- Committees not formed by act of legislative body

## 2. What is a meeting?

- Any congregation of a majority of the members of the legislative body at the same time and place to hear, discuss or deliberate on any matters within its jurisdiction.

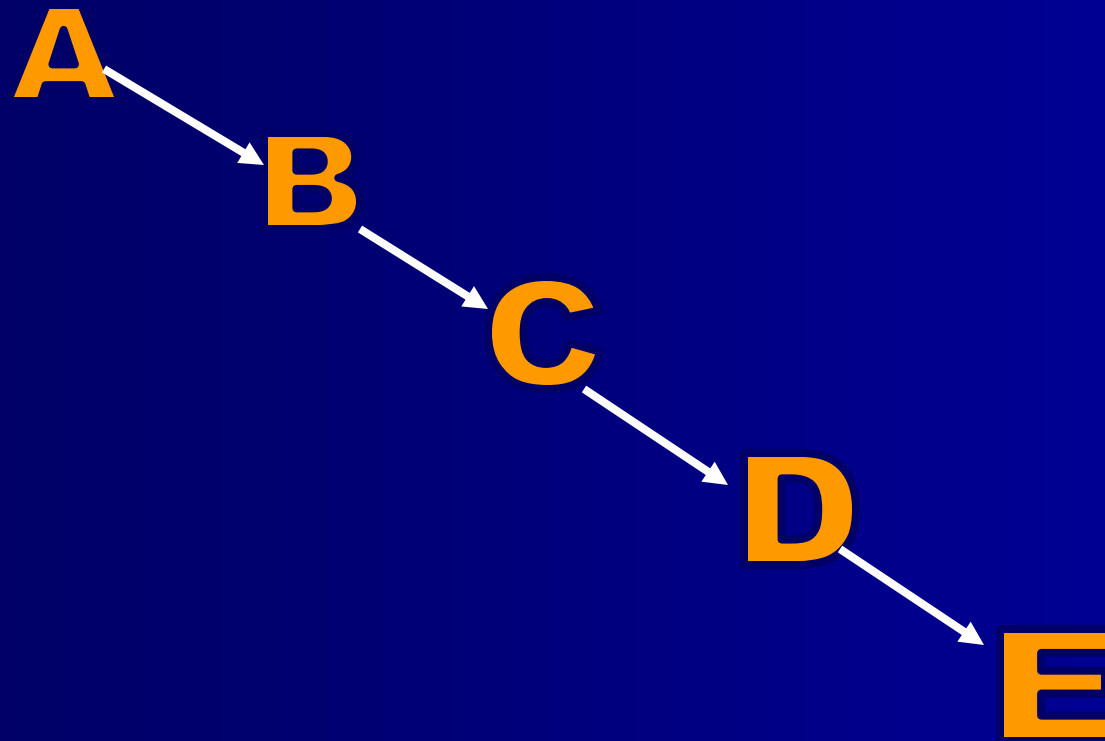
**What this means:** A majority may not consult outside an agency-convened meeting.

# Brown Act Illegal Meetings

A majority of members may not “develop a concurrence as to action” on business through serial meetings, intermediaries, communication, or other means of subterfuge.

# Illegal Meetings (cont'd)

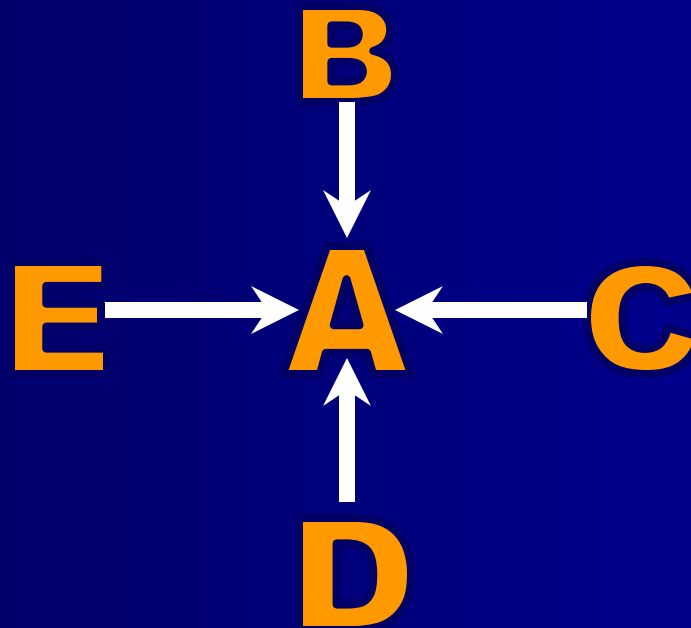
Basic "Serial" Meeting (5 members)





# Illegal Meetings (cont'd)

Intermediary or "hub" meetings (5-members)



# What is NOT a meeting?

- Individual contacts between board members and another person
- Majority of board at conference open to public
- Majority of board at social or ceremonial occasions (as long as majority does not discuss board business)
- Majority of board at public meeting on topic of local community concern

# 3. Agenda Requirement

- Regular meeting- Agenda posted 72 hours in advance
- Special meeting- Agenda posted 24 hours in advance
- Limited exceptions where business not on the agenda may be transacted
- Must contain a brief description of every item to be discussed
- Closed session items must be listed
- Must include time for public comment

# No Consideration of Matters Not Properly Agendized Unless

- Majority vote determines emergency exists
- Two-thirds vote determines need to take immediate action if the matter came to agency's attention after agenda posted

# 4. Rights of Public

- Right to be notified of items on agenda
- Right to attend without identifying oneself
- Right to record the meeting
- Right to speak before or during consideration of an item
- Right to see Board materials
- Right to say anything, even if unrelated to agency business

# Limited Circumstances Where Boards and Commissions May Speak To Items NOT On The Agenda

- Brief response to statements or questions
- Brief announcement or report on own activities
- Ask questions for clarification
- Refer to staff for information
- Request staff to report back
- Direct staff to place matter on future agenda



# 5. Closed Session

- **Allowed:** Litigation, personnel, real property, labor negotiations
- Must announce **before** going into closed session
- Must report out in open session **after** closed session what “action taken”



# Disclosure of Information from Closed Session

- Disclosure or leaking of information learned in closed session is prohibited
  - Injunctive relief, referral to grand jury, disciplinary action
- Disclosure permitted
  - Legislative body grants consent
  - Confidential inquiry to DA or grand jury
  - Information that is not confidential

# 6. Consequences of Brown Act Violations

- Lawsuit brought by the DA or any interested persons
- Violations may be stopped by civil lawsuit
- Some actions, if not “cured”, may be declared void
- Criminal sanctions for intentional violations (up to 6 months in jail/\$1,000 fine)
- Attorney’s fees