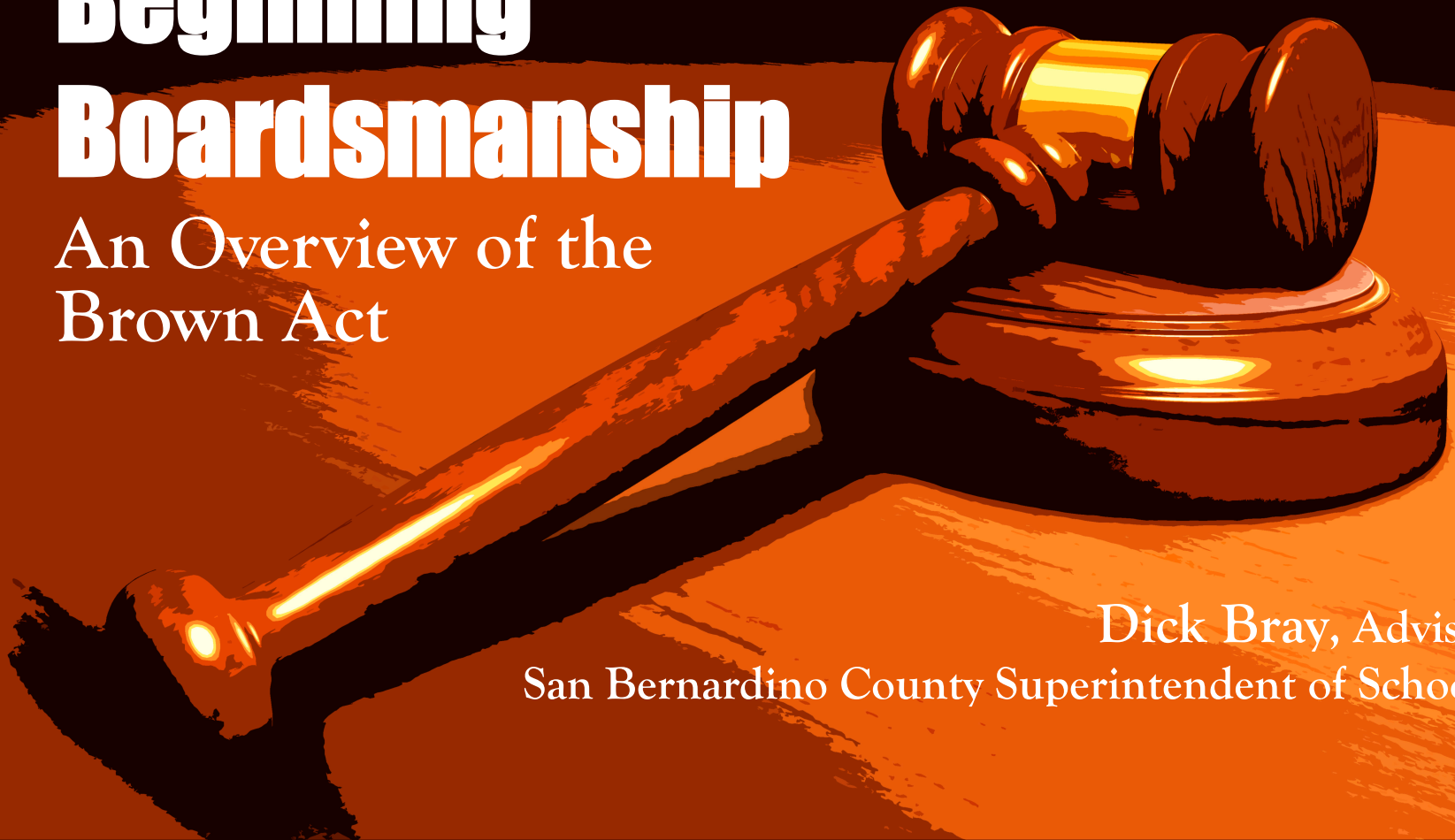
Beginning Boardsmanship

An Overview of the Brown Act



Dick Bray, Advisor
San Bernardino County Superintendent of Schools

The Brown Act:
An Overview of the Open Meeting Law

All conduct of board business is governed by
(or at least subject to) **the Brown Act**



Open Meeting Law

Government Code 54950 states:

"In enacting this chapter, 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 their deliberations be conducted openly."



Newly Elected Member
Not in Office Yet

Government Code 54952.1.

Any person elected to serve as a member of a legislative body who has not yet assumed the duties of office shall conform his or her conduct to the requirements of this chapter and shall be treated for purposes of enforcement of this chapter as if he or she has already assumed office.



Posting the Board Agenda

The board agenda is to be posted 72 hours before a regular meeting.

1. In addition to the posted agenda, the board packet (with the exception of closed session materials) needs to be made available to any inquiring member of the public.

2. When a handout is presented to the board at a meeting that had not been included in the packet 72 hours earlier, the public must be informed of its availability for their review upon request.
   [Government Code 54957.5]



Opportunity for Public Comments

Opportunity for public comments at all regular and special meetings is required by the Brown Act.

1. The public is afforded time at all regular board meetings for comment on non-agendized matters within the board's jurisdiction at a specifically designated point on the agenda

2. Public comments on agendized items of all regular and special board meetings may be made before or while under consideration by the board before the board acts on the items



Opportunity for Public Comments (continued)

3. The public is afforded time for comment on closed session items before the board goes into closed session

4. The public comments portion of the agenda is not intended for the board to conduct a dialogue with the public; rather, it is for the board to hear the public.

5. Public comments should not lead to a board discussion or action on any matter not on the published agenda [Government Code 54954.2(a)(2)]



Closed Session

Closed session items are the only items exempt from being open to the public as described in Government Code 54954.5

1. Conference with real property negotiators
2. Conference with labor negotiators
3. Conference with legal counsel – existing litigation
4. Conference with legal counsel – anticipated litigation
5. Liability Claims
6. Threat to public services or facilities



Closed Session (continued)

7. Public employee appointment
8. Public employee performance evaluation
9. Public employee discipline/dismissal/release
10. Specific complaints or charges brought against an employee by another person or employee [Government Code 54957(b)(2)]
11. Student expulsion [Education Code 35146]



Action in Closed Session

Any action taken in closed session must be reported to the public in open session immediately following the closed session.

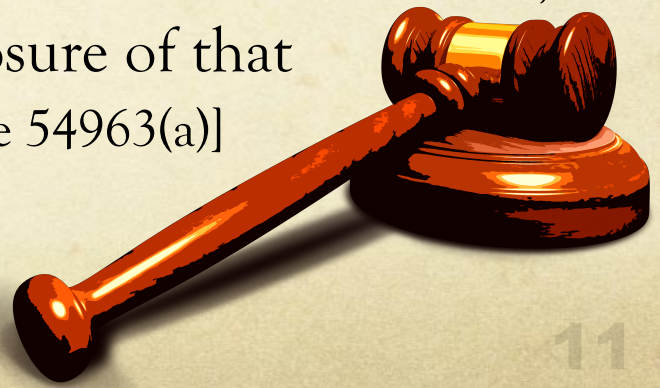
Confidentiality of information, where applied, will be observed in reporting any action taken in closed session.



Confidentiality

All matters discussed in closed session will remain confidential.

"A person **may not disclose confidential information** that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, **unless** the legislative body authorizes disclosure of that confidential information." [Government Code 54963(a)]



Violating Confidentiality

"Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) **Injunctive relief** to prevent the disclosure of confidential information prohibited by this section.

(2) **Disciplinary action** against an employee who has willfully disclosed confidential information in violation of this section.

(3) **Referral** of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grand jury." [Government Code 54963(c)]



Closed Session Do's and Don'ts

Discuss only appropriately agendized matters

Agendize only those matters that are exempt from being open to the public

Do not discuss closed session matters outside of the closed session

Keep all confidential matters confidential



Board Member Accountability

Board members need to hold themselves accountable for complying with the Brown Act

The Board as a body needs to hold every member accountable for staying within the boundaries of the Brown Act



Serial Meetings Prohibited

Government Code 54952.2 states:
A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use **a series of communications of any kind**, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.



Digital and Social Media

Email, text messaging, and social media tools (Facebook, Twitter, Instagram, and others) and video conferencing programs like Zoom and WebEx are now common in personal and professional life.

The “digital trap” for school board members is that an email “reply to all,” a retweet, or even clicking a “like” button could morph into a serial meeting violation of the the Brown Act.



Open Meeting Issues

School Board meetings must be open to the public.

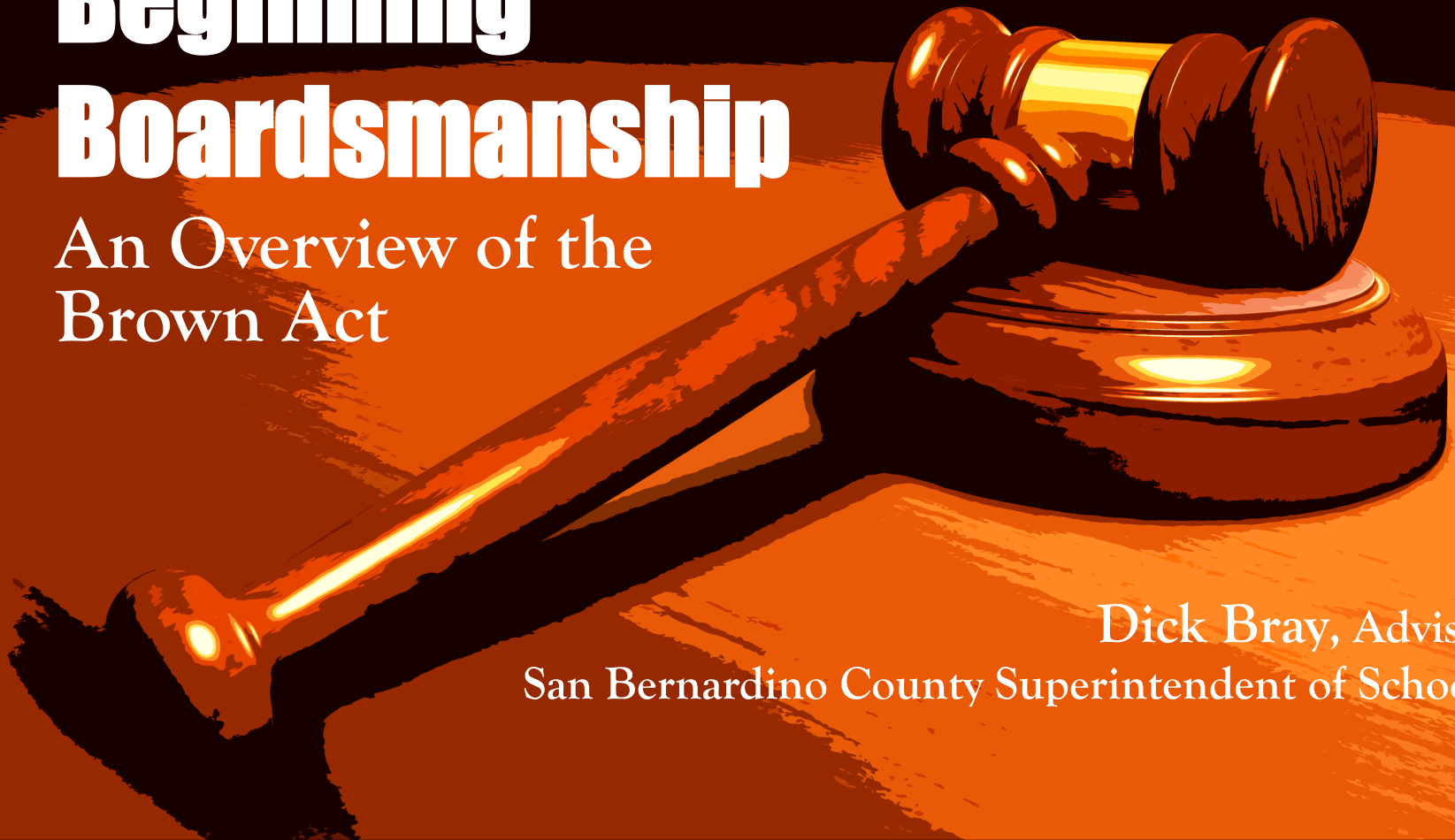
Fair notice must be given in advance so that members of the public may attend and comment on agenda items and related matters.

Electronic communications that circumvent this access, whether intentional or not, violates of the Brown Act.



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