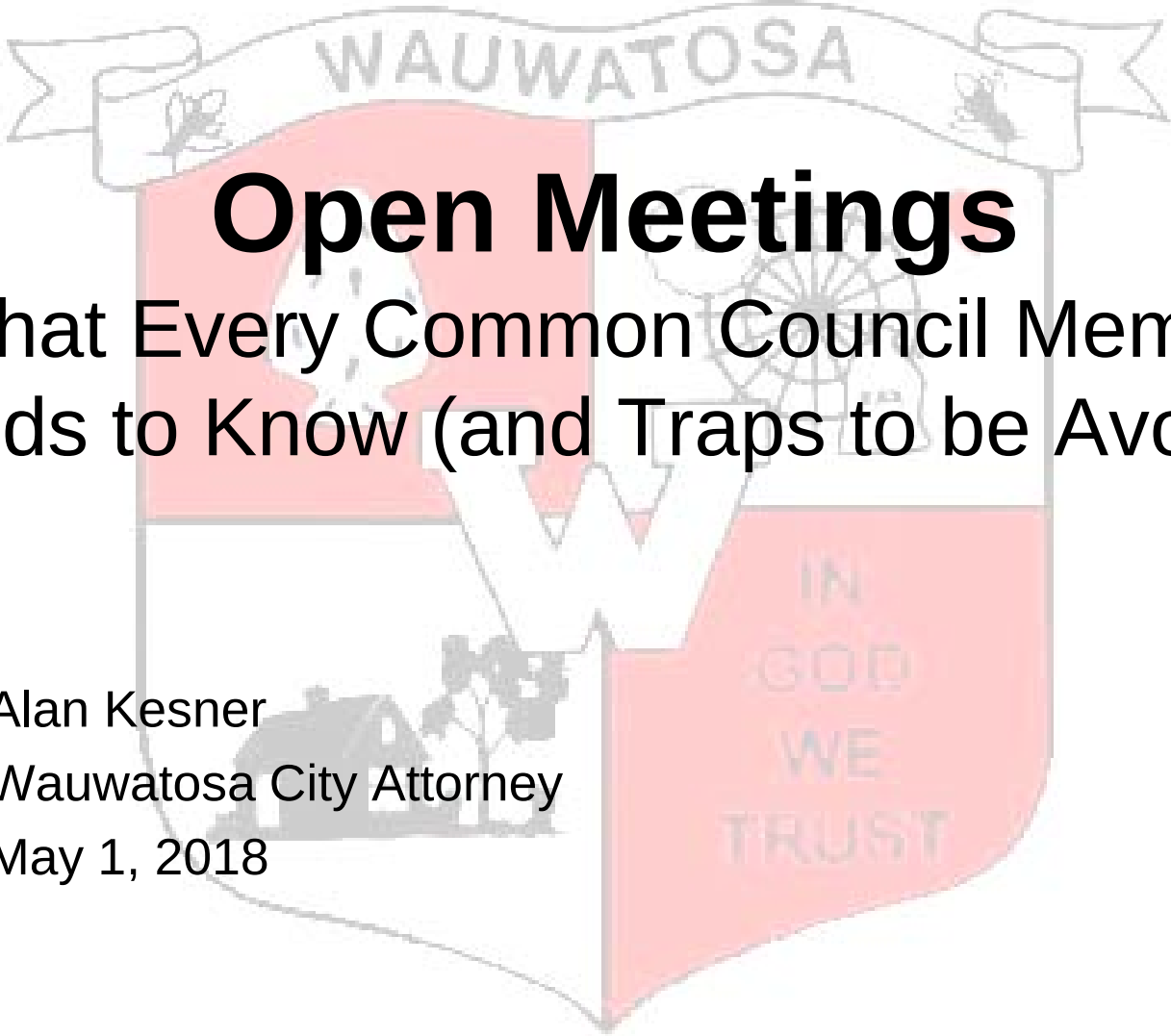


The background of the slide features a large, faint watermark of the Wauwatosa City Seal. The seal is a shield divided into four quadrants. The top-left quadrant is red with a white silhouette of a Native American figure. The top-right quadrant is white with a red silhouette of a sunburst. The bottom-left quadrant is white with a red silhouette of a house and trees. The bottom-right quadrant is red with the words "IN GOD WE TRUST" in white. A banner across the top of the shield reads "WAUWATOSA".

Open Meetings

What Every Common Council Member
Needs to Know (and Traps to be Avoided)

Alan Kesner
Wauwatosa City Attorney
May 1, 2018

Policy Considerations

- “Sunshine Law”
- Decisions made in public
- Based on public information

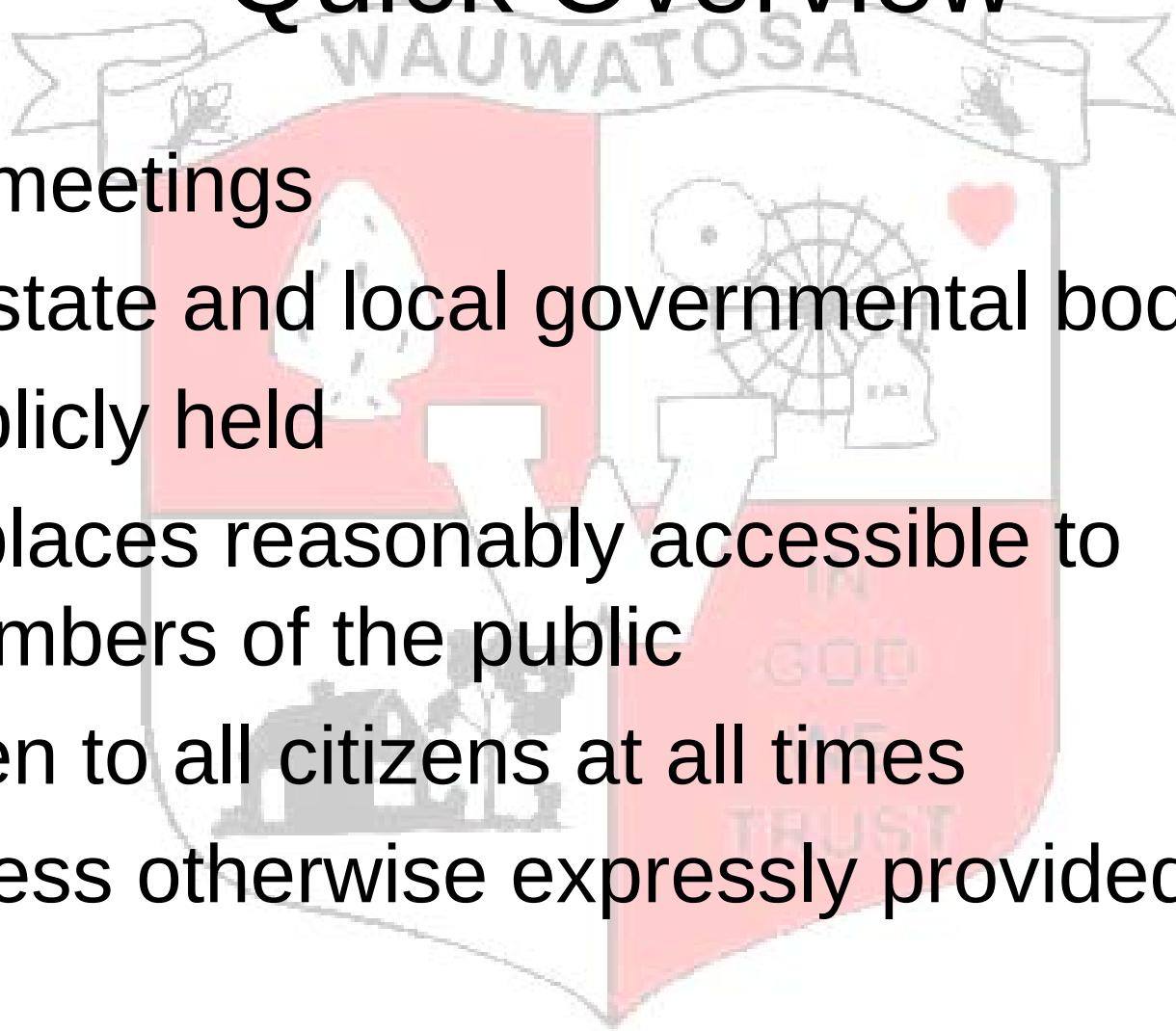


Sec 19.81(1)

- “a representative government of the American type is dependent upon an informed electorate”
- “the public is entitled to the fullest and most complete information regarding the affairs of government”
- “as is compatible with the conduct of governmental business”

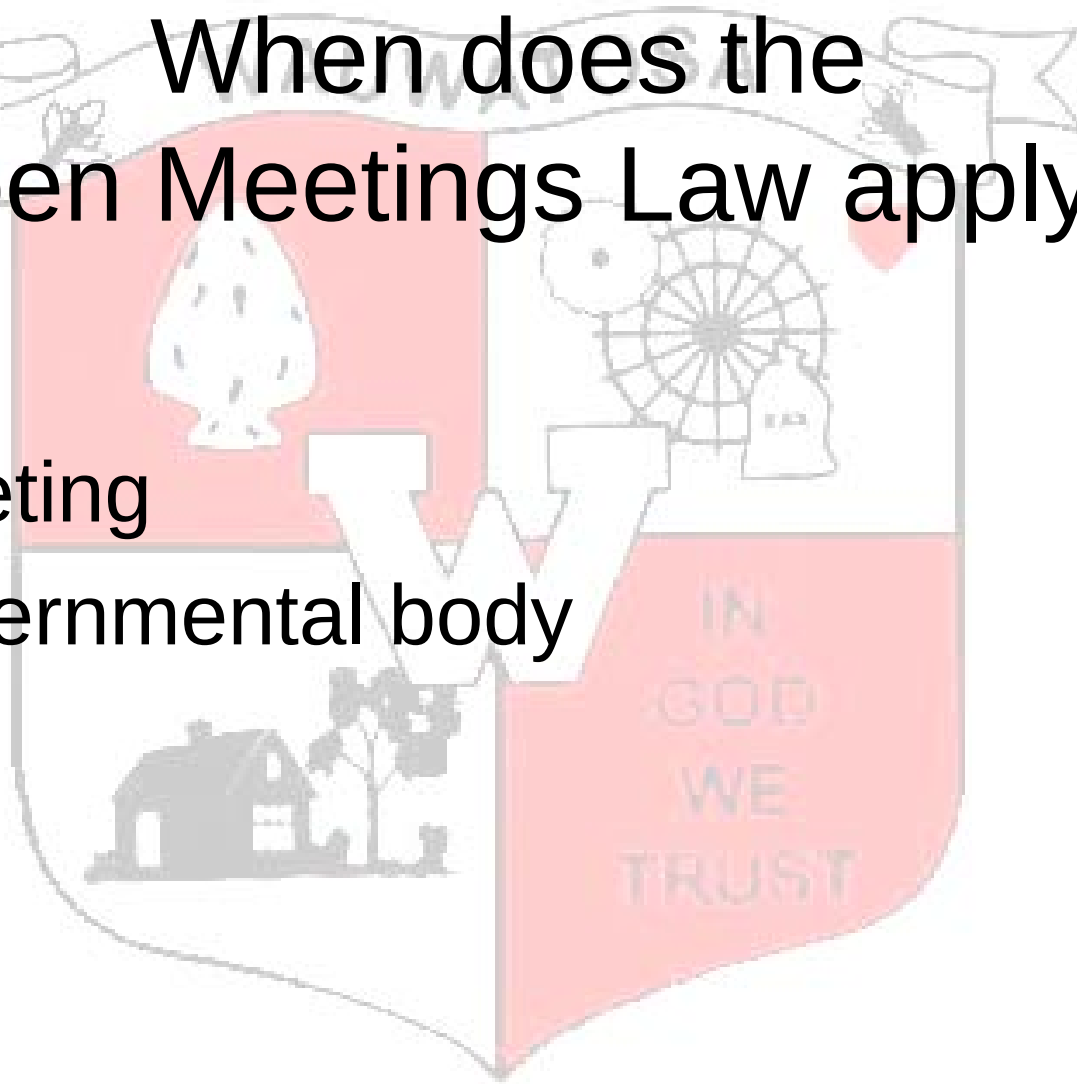
Quick Overview

- all meetings
- all state and local governmental bodies
- publicly held
- in places reasonably accessible to members of the public
- open to all citizens at all times
- unless otherwise expressly provided by law



When does the Open Meetings Law apply?

- A meeting
- A governmental body



What is required if the Open Meetings Law applies?

- A proper agenda
- Posted in public places
- Advance notice
- A publicly accessible meeting place
- Discussion and voting in the open
- Record of votes taken

What is a “Meeting”?

A “meeting” is defined as:

[T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter. . . .

Wis. Stat. § 19.82(2).

The open meetings law applies . . .

whenever a gathering of members of a governmental body satisfies two requirements:

1. there is a **purpose** to engage in governmental business
2. the **number** of members present is sufficient to determine the governmental body's course of action.

When is a body “gathered to conduct governmental business”?

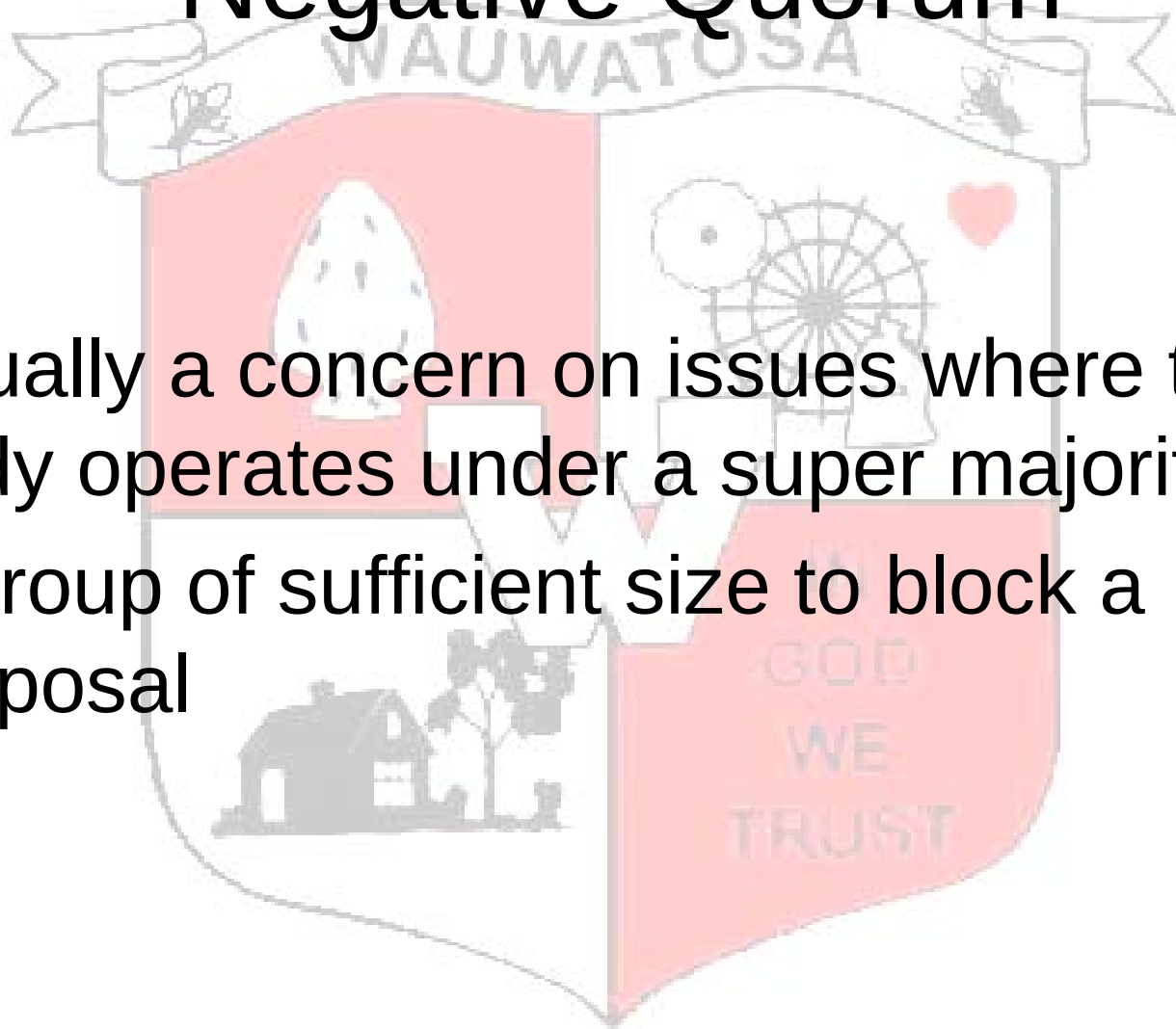
- any formal or informal discussion, decision or information gathering, on matters within the governmental body’s realm of authority
- members gather to simply hear information on a matter within the body’s realm of authority
- need not actually discuss the matter or otherwise interact with one another to be engaged in governmental business

“Walking quorum”

- A series of gatherings among individuals or separate groups of members of a governmental body, each less than quorum size, who agree, tacitly or explicitly, to act uniformly in sufficient number to reach a decision
- I told a friend, and she told two friends, and so on, and so on . . .
- Includes telephone and conference calls

Negative Quorum

- Usually a concern on issues where the body operates under a super majority rule
- A group of sufficient size to block a proposal



Digital Meetings

- E-Mail is a Public Record
- Also includes text messaging, social media, other electronic communications
- Electronic discussions can be a “Meeting”
 - Interactive discussions are like a meeting and should only occur under the procedures for meetings (advance notice, agendas, open real-time public access and minutes)
 - Avoid the use of “Reply All”

Whispering in Meetings

Milwaukee County Corporation Counsel:

- refrain from debate, deliberation or discussion away from the public view
- “communication through whispering, side discussion or note passing which would involve a quorum or negative quorum of the Board or any of its committees and would involve issues which are the business of the Board would potentially generate a complaint which would validly object to a violation of the tenets cited above”

Closed Meetings

Meeting may convene into closed session *only if*:

- Noted on agenda
- Specific motion made, must note
 - (1) business being considered, and
 - (2) specific subsection of statute
- Majority vote
- May only consider item(s) specified
- May only vote in closed session if voting in open session would frustrate the purpose of the closed session
- May only reconvene in open session if noted in motion closing meeting

Closed Meetings

Common exemptions under sec. 19.85(1):

- (g) - Conferring with legal counsel regarding litigation strategy
- (b), (c) or (f) - Certain personnel matters
- (e) - Competitive or bargaining reasons
- Other specified reasons
- NOT for final ratification of a collective bargaining agreement

Overlapping Meetings

- Members of Body “A” attend a meeting of Body “B” (remember the “numbers” test)
- The meeting involves a subject over which “A” has some authority
- The gathering is not a “meeting” of Body “A,” only if the membership of “A” did not pre-plan (or “know of”) their attendance or if all of the members of “A” present are also members of “B”

What Are Penalties?

- “Any member ... who knowingly attends a meeting . . .
- shall forfeit *without reimbursement*
- not less than \$25 nor more than \$300
- for each such violation.”

Who Enforces the Open Meetings Law?

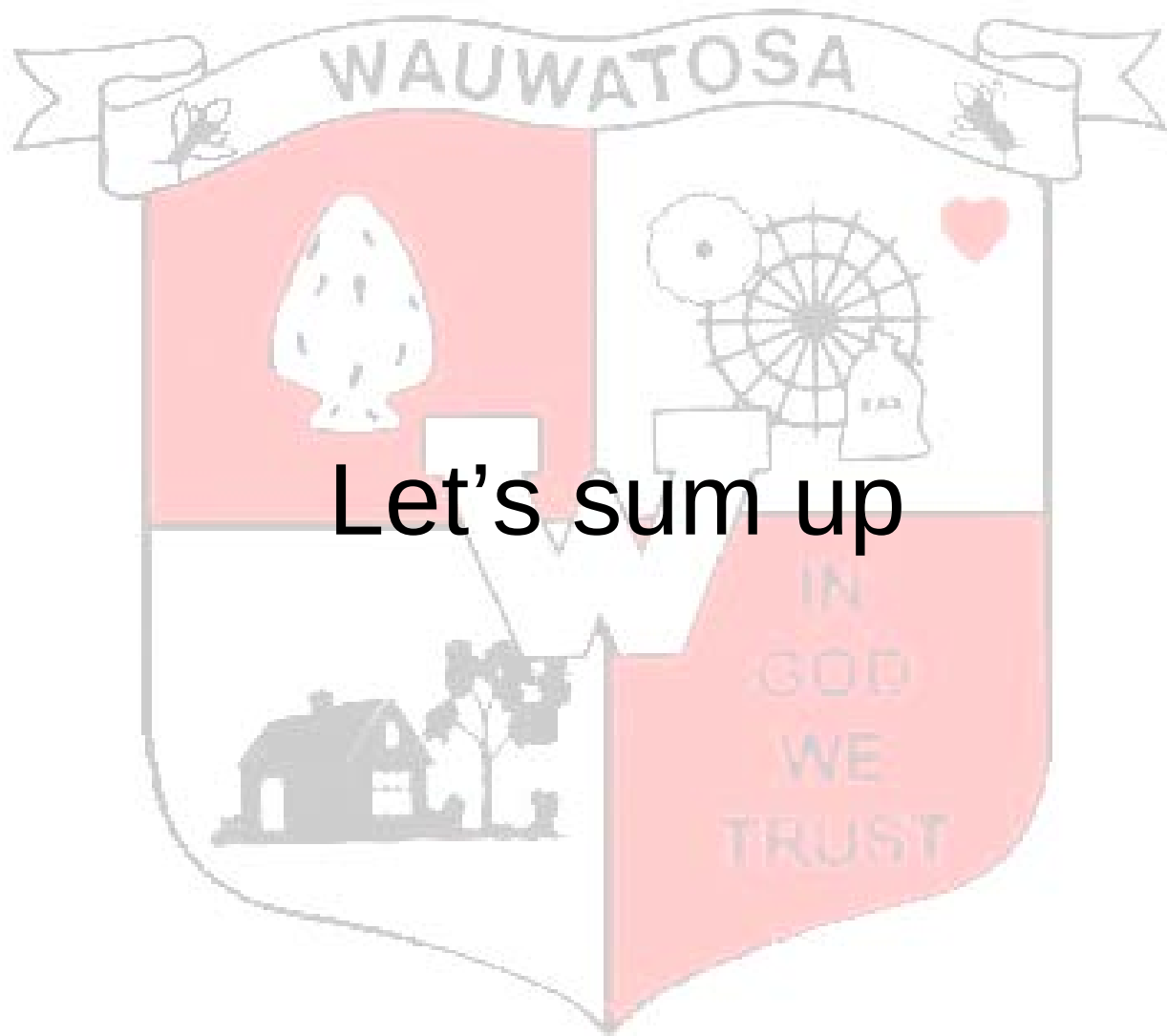
- Milwaukee County Corporation Counsel
- Wisconsin Department of Justice
(Attorney General)



Other issues (we just don't have time to discuss EVERYTHING):

- “Governmental Body”
- Agendas, timing and posting
- Meeting locations
- Minutes of meetings





Let's sum up