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In the Matter of:

WASHINGTON COALITION FOR OPEN GOVERNMENT

VS

STATE OF WASHINGTON

SARAH AUGUSTINE

January 10, 2022

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Sarah Fitzgibbon, CCR
Vice President



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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THURSTON COUNTY

3 WASHINGTON COALITION FOR OPEN)
4 GOVERNMENT, a non-profit,)
5 nonpartisan Washington)
6 organization,) No. 21-2-02069-34
7)
8) Plaintiff,
9)
10)
11) vs.
12)
13 THE STATE OF WASHINGTON, a)
14 State government, acting through)
15 THE WASHINGTON STATE)
16 REDISTRICTING COMMISSION, a)
17 Washington State Agency, et al.,)
18)
19) Defendants.
20)
21)
22)

23 Deposition Upon Oral Examination
24 of
25 SARAH AUGUSTINE

17 Taken via Zoom

23 DATE: January 10, 2022

24 REPORTED BY: Wade J. Johnson, RPR
25 CCR No.: 2574

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON COALITION FOR OPEN)
GOVERNMENT, a non-profit,)
nonpartisan Washington)
organization,) No. 100483-4
)
Plaintiff,)
)
vs.)
)
THE STATE OF WASHINGTON, a)
State government, acting through)
THE WASHINGTON STATE)
REDISTRICTING COMMISSION, a)
Washington State Agency, et al.,)
)
Defendants.)
)

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I N D E X

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* * * *

1 REMOTE; MONDAY, JANUARY 10, 2022

2 9:04 A.M.

3 --oOo--

4
5 (Exhibit 1 marked for
6 identification.)

7
8 SARAH AUGUSTINE, deponent herein, having been
9 first duly sworn on oath, was
10 examined and testified as
11 follows:

12
13 E X A M I N A T I O N

14 BY MS. MELL:

15 Q. State your name.

16 **A. Sarah Augustine.**

17 Q. Where are you?

18 **A. I am in Yakima, Washington.**

19 Q. Is that where you live?

20 **A. I live in White Swan, Washington.**

21 Q. Where in Yakima, Washington are you situated for
22 today's deposition?

23 **A. Today, I'm at my workplace, which is Dispute
24 Resolution Center of Yakima and Kittitas Counties.**

25 Q. Is there anyone in the room with you?

1 **A. No.**

2 Q. What did you do to prepare for this deposition?

3 **A. I met with my attorneys to prepare.**

4 Q. How long?

5 **A. I believe we met for approximately 3 hours.**

6 Q. When?

7 **A. We met on Friday.**

8 Q. Any other time?

9 **A. No.**

10 Q. In person?

11 **A. By Zoom.**

12 Q. What's your residence address?

13 **A. My address is 3500 Island Road, White Swan,**

14 **Washington 98952.**

15 Q. What's your phone number?

16 **A. My cell phone number is (509) 985-6280.**

17 Q. Did you have a different phone number for purposes

18 of redistricting work?

19 **A. I did.**

20 Q. Do you know that number?

21 **A. I don't know, but if you can give me a minute, I**

22 **can look it up for you.**

23 Q. Okay.

24 **A. That number is (509) 201-2147.**

25 Q. What's your highest level of education?

1 **A. I have a master's degree.**

2 Q. What is your master's degree in?

3 **A. My master's degree is in whole systems design, with**
4 **an emphasis in group conflict transformation.**

5 Q. Where did you obtain this master's degree?

6 **A. Antioch University, Seattle.**

7 Q. What year?

8 **A. 2006.**

9 Q. Do you have an undergraduate degree?

10 **A. I do.**

11 Q. What is that?

12 **A. I have a BA in sociology and psychology. It's a**
13 **double major.**

14 Q. From what school?

15 **A. University of New Mexico.**

16 Q. When did you obtain that degree?

17 **A. 1996.**

18 Q. Have you been a redistricting commissioner prior to
19 2021?

20 **A. No.**

21 Q. What was your experience with redistricting prior
22 to 2021?

23 **A. I had no experience.**

24 Q. Are you affiliated with any partisan political
25 party?

1 **A. No.**

2 Q. Are you a registered voter?

3 **A. Yes.**

4 Q. Where are you registered?

5 **A. I'm registered in Yakima County.**

6 Q. And for the purposes of the primary, which party do
7 you vote?

8 MR. PEKELIS: Object to form.

9 **A. In my area, I vote for the candidate that I think
10 is most appropriate.**

11 Q. Have you been required to vote along partisan lines
12 at any point in your voting history?

13 **A. No. Actually, let me ask for clarification. Can
14 you clarify your question?**

15 Q. Yes.

16 For purposes of voting in an election, has there
17 been a vote taken from you at any time where you had to
18 select a candidate of a partisan party?

19 MR. PEKELIS: Object to form.

20 **A. I'm sorry to say that I'm probably not very well
21 schooled in this specific question. So I would say I
22 remember needing to choose a party in a primary election in
23 order to vote for the general election. So, in that way,
24 yes. But I can't tell you when that was. I don't remember
25 if that's the way it is in Washington State. It may have**

1 **been New Mexico when I was voting there. I don't remember.**

2 Q. Okay. You picked up on what I was asking about.
3 That is what I was asking about.

4 And so do you remember what party you selected?

5 **A. Yes, Democratic Party.**

6 Q. Other than that selection have you been involved in
7 Democratic politics at all?

8 **A. No.**

9 Q. Have you served in a government position before?

10 **A. I don't believe so.**

11 Q. Have you worked for government?

12 **A. Let me tell you about the position that I hold now,
13 and you can help me determine whether yes or no. I serve as
14 the chair of the Office of Civil Legal Aid Oversight
15 Committee. That's a volunteer position. And the oversight
16 committee is an advisory committee only.**

17 Q. Is it a paid position?

18 **A. No.**

19 Q. Is it an appointed position?

20 **A. It is.**

21 Q. Who appointed you?

22 **A. The Supreme Court.**

23 Q. How did they identify you for purposes of
24 appointment?

25 **A. I applied for the position.**

1 Q. Why did you apply for the position?

2 A. I'm part of Resolution Washington, which is the
3 statewide association of mediation centers. And I was on a
4 listserv for the statewide association. And mediators in
5 general -- our statewide association has an interest in
6 participating in civil legal aid bodies. So I applied as a
7 representative of the statewide association.

8 Q. And who do you report to in that appointed
9 position?

10 A. I don't believe I report to anyone.

11 Q. Who do you do work for?

12 A. The Office of Civil Legal Aid.

13 Q. Does the Office of Civil Legal Oversight Committee
14 meet?

15 A. Yes.

16 Q. Does it follow open public government laws?

17 A. It does.

18 Q. How long have you been doing that service?

19 A. I believe I started my first term in 2017.

20 Q. So what do you understand open government laws to
21 require?

22 MR. PEKELIS: Object to form. Calls for a
23 legal conclusion.

24 A. In the context of the Office of Civil Legal Aid
25 meetings, my understanding is that those are open to the

1 public. Because the oversight committee does not take
2 action, that is to say, we don't have any -- we are simply an
3 advisory committee, my understanding is that those meetings
4 are conducted in an open public meeting.

5 Q. On November 15th, 2021, you were chair of the
6 Washington State Redistricting Commission, correct?

7 A. Yes.

8 Q. And on that date, you held a regular meeting. Is
9 that correct?

10 A. Yes.

11 Q. And during that regular meeting, there was a time
12 period for action items. Is my understanding correct on
13 that?

14 A. Yes.

15 Q. How did you know to move the meeting into the
16 action item portion of the meeting?

17 A. I followed the agenda that had been published.

18 Q. But how did you know when to move into the action
19 item?

20 A. I simply followed the agenda.

21 Q. The agenda wasn't time-specific, was it?

22 A. I'm sorry?

23 Q. The agenda was not time-specific, was it?

24 A. No. I moved into the action as soon as the
25 discussion had concluded.

1 Q. Did you move continuously from the discussion into
2 action items without any breaks?

3 MR. PEKELIS: Object to form.

4 **A. Can you repeat the question, please.**

5 Q. Was there a break in between the discussion portion
6 of the meeting before the action portion of the meeting?

7 **A. I don't remember. I mean, I can try and recall. I**
8 **think we took a 5-minute break.**

9 Q. Okay. So why did you take a 5-minute break?

10 **A. We took a break because my staff were saying that**
11 **there was a Zoom issue. We were having trouble getting**
12 **everybody on Zoom. That had been going on throughout the**
13 **meeting.**

14 Q. What do you mean, your staff had been saying that
15 you were having trouble getting people on Zoom? Who were you
16 having trouble getting on?

17 **A. My understanding at this time is that there were**
18 **audio issues and there were Zoom issues with various**
19 **commissioners.**

20 Q. But you came up with that at this time. I want to
21 know what you recall specifically at the time you were in the
22 meeting.

23 At the time you had chaired the meeting, did you
24 intentionally take a 5-minute break between the discussion
25 time and the action time so that you could confer with the

1 commissioners?

2 MR. PEKELIS: Object to form.

3 A. No.

4 Q. You had no communication with any commissioners in
5 between the action time and the -- or in between the
6 discussion period and the action period?

7 A. I don't believe so. If there was, it was very
8 chaotic. The communication was very chaotic. And if there
9 was communication, it was related to getting people on Zoom
10 or audio. So, I think, if I recall, there were phone calls
11 and also text messages trying to -- going back and forth. I
12 don't remember personally being involved in those. It's
13 possible that -- I don't remember, honestly.

14 Q. What time was it?

15 A. What time was it?

16 Q. What time did you end the discussion?

17 A. I don't recall that.

18 Q. Why not?

19 A. I'm sorry?

20 Q. Why not?

21 MR. PEKELIS: Object to form.

22 A. It was a very chaotic time.

23 Q. Was it your job to make sure that you met the
24 jurisdictional requirements by acting by midnight?

25 A. No.

1 MR. PEKELIS: Object to form. Calls for a
2 legal conclusion.

3 Q. So you took no responsibility for making sure the
4 commissioners took action prior to midnight?

5 **A. No.**

6 Q. Did you have any communications with Laurie Jenkins
7 at any time prior to taking action?

8 MR. PEKELIS: Object to form.

9 Q. Can you answer the question.

10 **A. I said no.**

11 Q. I didn't hear you, sorry.

12 **A. I'm sorry, yeah.**

13 Q. Do you know Laurie Jenkins?

14 **A. Not personally.**

15 Q. Do you know who she is?

16 **A. I do.**

17 Q. Who is she?

18 **A. Laurie Jenkins is the speaker of the house.**

19 Q. Was she in communication with you or any of the
20 commissioners on November 15th?

21 MR. PEKELIS: Form. Foundation.

22 **A. I do not know.**

23 Q. You don't recall whether or not you had any
24 communication with her?

25 **A. I did not have communication with her on**

1 **November 15.**

2 Q. Did any commissioner tell you they had been in
3 communication with Laurie Jenkins on the 15th?

4 **A. No.**

5 Q. Did you have any knowledge of who the commissioners
6 were communicating with on November 15th?

7 **A. No.**

8 Q. Why not?

9 **A. I don't know how to answer that question.**

10 Q. Did you feel responsible at all for ensuring that
11 the commissioners were not violating open public meeting laws
12 on the activities that they were undertaking with respect to
13 redistricting?

14 MR. PEKELIS: Object to form.

15 **A. I felt responsible for conducting myself in a way**
16 **that was professional and in compliance with all of my**
17 **duties.**

18 Q. And would you agree --

19 Oh, I'm sorry.

20 **A. I acknowledge that I don't have control over what**
21 **other people do.**

22 Q. What do you think your job responsibilities and
23 duties are as a chair of a redistricting commission?

24 **A. I can try to give you the duties that I can think**
25 **of at this moment, and that's what I can tell you. At the**

1 time of the meeting, I saw it as my responsibility to
2 facilitate the meeting and to provide the support necessary
3 to the commissioners and their caucus staff so that they
4 could participate fully.

5 I believe it was my responsibility to follow the
6 guidelines for facilitating a public meeting, to organize a
7 meeting process that was clear. Those are the
8 responsibilities I can think of at the time.

9 Q. So I understand you felt like it was your
10 responsibility to make sure that you provided support to the
11 Commission and caucus staff so that they could participate
12 fully. Did I understand that correctly?

13 A. Right.

14 Q. You did not similarly state that you felt it was
15 your duty to support the public in participating fully. Is
16 that correct?

17 A. You are correct that I didn't say -- I did not just
18 now say that, yes.

19 Q. Having an opportunity to consider whether or not
20 that was one of your duties and responsibilities, what do you
21 say at this point?

22 MR. PEKELIS: Object to form.

23 A. I took very seriously throughout the entire process
24 full engagement of the public, yes.

25 Q. Okay. So, if you took it very seriously, what did

1 you do to implement your seriousness?

2 MR. PEKELIS: Object to form.

3 A. I'm sorry, I don't know how to answer that.

4 Q. Can you think of anything that you did to ensure
5 that the process was open?

6 A. I worked hard for the commissioners to be on camera
7 and to share fully, as fully as I could, on camera.

8 Q. I didn't hear one of those words. And to be
9 something fully on camera. I didn't hear what that word was.

10 A. To share fully, as fully as they felt they could,
11 on camera.

12 Q. To share what?

13 A. The proposals that they were working on.

14 Q. So is it correct that they worked on their
15 proposals outside the public meeting?

16 MR. PEKELIS: Object to form.

17 A. I don't know.

18 Q. Why don't you know?

19 A. They were not sharing with me what they were doing
20 outside what they were sharing with the public in the public
21 meeting.

22 Q. So is it your testimony that your only
23 communication with the commissioners was in the public
24 meeting?

25 A. No.

1 Q. Okay. So you had some opportunity to know what
2 they were doing, correct?

3 A. No. I would not say that, no.

4 Q. Okay. So then help explain what you did relative
5 to what the commissioners did.

6 A. Every half-hour, I was calling or asking them to
7 get on camera.

8 Q. Where were you?

9 A. I was in the hall. I was in the hall next to the
10 ice machine at a hotel.

11 Q. That sounds horrible.

12 Why were you in the hall next to an ice machine in
13 a hotel?

14 A. I was very careful not to be -- I was working hard
15 to not be in violation of the Open Public Meetings Act. And
16 where other folks from the Commission were doing what they
17 were doing, I was trying to conduct a meeting, and the
18 quietest place that I could find was in the hall.

19 Q. So what hotel are you talking about?

20 A. I'm sorry to say that I can't recall. I was
21 instructed not to have any notes with me here today, so I
22 don't have any notes. I can't tell you that.

23 Q. Do you have notes that would refresh your
24 recollection as to what you were doing those days?

25 A. I have -- I probably have the address of the hotel

1 in my phone.

2 Q. Do you have notes beyond the address of the hotel
3 about what you were doing those days?

4 A. I do have notes. I believe all of those were
5 submitted. I scanned and submitted my notebooks.

6 MS. MELL: I have not seen any notes produced.
7 Counsel, do you want to address that? I'm obviously going to
8 need her notes to take her deposition, and they have not been
9 produced.

10 MR. PEKELIS: I don't believe any discovery
11 deadlines have past in this case. I'm not sure what
12 relevance that would have. You're referring to your public
13 records request of the Commission. I can't speak directly to
14 that. Those public records requests were handled by the
15 Commission staff itself. If you would like to discuss it
16 outside -- off the record -- I'd be happy to, but I'm not
17 sure what more I can say.

18 MS. MELL: Well, the representations from your
19 side of the process has been that we would move forward with
20 these depositions with the records having been effectively
21 produced through the public disclosure request. And so now
22 I'm hearing that -- I see Sarah Augustine is nodding her head
23 affirmatively -- I understand now that you have withheld some
24 notes that are specifically relevant to this case.

25 So whether you intend to produce them via

1 public records request or via discovery, I obviously need
2 them to take her deposition.

3 MR. PEKELIS: Counsel, you have not pointed
4 out, No. 1, what public records request you're even talking
5 about, to which such notes might be responsive.

6 MS. MELL: Honestly, Counsel --

7 MR. PEKELIS: Second, you're the one who is
8 aware of whatever you have received in the public records
9 request that you submitted from the Commission. And now if
10 there are notes that you think should be responsive to that,
11 we can address that off-line, but I can't possibly see you're
12 stopping this deposition.

13 MS. MELL: Are you going to make her notes
14 available right now so I can continue with the dep?

15 MR. PEKELIS: I don't have those notes.

16 Q. Sarah Augustine, do you have those notes with you?

17 A. **I don't. However, they were scanned and sent, per**
18 **your public records request. Those were scanned before**
19 **Christmas.**

20 Q. Okay.

21 A. **Submitted before Christmas, so far as I know. Not**
22 **by me, by our staff.**

23 Q. Okay. So who would be the person who has your
24 scanned copies?

25 A. **Do you mean in my office?**

1 Q. Well, I don't know who you're talking about
2 scanning them. You're saying they were scanned. Are you
3 talking about Ms. McLean has them?

4 **A. Ms. McLean has them, yes.**

5 MS. MELL: So, Counsel --

6 **THE WITNESS: And you have them, I assume,**
7 **because they were given to you. They were for your records**
8 **request.**

9 Q. Okay. I don't see any handwritten notes in what I
10 have been provided. Let me just double-check here. So,
11 actually, I'll have my office search that again and get back
12 to me, and we'll mark those as an exhibit if I've got them.

13 If not, I'll have to check with Ms. McLean and see
14 if she can get those to me right away because I don't think
15 that I have those. I have a file specific to you that says,
16 "Augustine official emails, Sarah official phone texts, texts
17 on personal devices," and I don't see any notes, handwritten
18 notes.

19 But they are handwritten notes? Is that what your
20 testimony is?

21 **A. (Nods head.)**

22 Q. And when did you take those notes?

23 **A. I believe the notes are from November -- they are**
24 **for November 13, 14, and 15.**

25 Q. But not the 16th?

1 **A. I don't have notes from the 16th, no.**

2 Q. Why don't you have notes from the 16th?

3 **A. I wasn't meeting with the Commission on the 16th,**
4 **and I didn't have any -- I wasn't in meetings on the 16th, so**
5 **I wouldn't have had notes.**

6 Q. Were you at the hotel on the 16th?

7 **A. No.**

8 Q. When did you leave the hotel?

9 **A. I left the hotel at 4:00 a.m. on the 16th.**

10 Q. Okay. Why did you select that time to leave?

11 **A. Because I was very tired, and I still had to drive**
12 **an hour to Olympia, to my hotel.**

13 Q. Why were you staying in a hotel in Olympia?

14 **A. Because I live in Yakima, and my staff and my**
15 **offices are in Olympia. So I was staying in a hotel near my**
16 **staff and offices in Olympia.**

17 Q. When you say your staff and offices are in Olympia,
18 are you talking about the Redistricting Commission?

19 **A. Yes.**

20 Q. So why were you at a hotel in Federal Way?

21 **A. I was at a hotel in Federal Way to provide space to**
22 **the house dyad, who asked for help in negotiation.**

23 Q. And you can't right now remember what hotel it was
24 a hotel in Federal Way?

25 **A. We were in more than one hotel between the 13th,**

1 14th, and 15th.

2 Q. When you say we, who are you talking about?

3 A. I'm talking about myself, Commissioner Graves, and
4 Commissioner Sims.

5 Q. Graves, Sims, and you stayed in one hotel or three
6 separate hotels?

7 A. We weren't staying in hotels. We blocked space,
8 hotel space in Federal Way, because it was a convenient
9 location to conduct negotiations.

10 Q. I'm sorry, I didn't I mean to interrupt you. Did
11 you have to finish?

12 A. To the best of my knowledge, Commissioner Graves
13 and Commissioner Sims were not staying in hotels, they were
14 staying in their own homes. I was staying in a hotel because
15 I live in Yakima, and, to drive back and forth through the
16 negotiation process where they requested my help, would have
17 meant I would have been driving 6 hours a day.

18 Q. Sure.

19 But you had two different locations that you
20 centered your work, both in Federal Way and in Olympia?

21 A. I don't understand that.

22 Q. I'm trying to understand, when you decided to go to
23 Olympia, what was that for? And then when did you decide to
24 be in Federal Way, and what was that for?

25 MR. PEKELIS: Object to form.

1 Q. So let's break it down.

2 A. I scheduled a trip to Olympia because it was the
3 last --

4 No, please.

5 Q. Yeah, I'm sorry, I just want to break down the
6 questions because the record got very convoluted right there.
7 So let's start with: When did you go to Olympia
8 and why?

9 A. I went to Olympia on the 12th of November.

10 Q. And when you went to Olympia on the 12th of
11 November, did you stay in Olympia that night?

12 A. I did.

13 Q. Why were you in Olympia on November 12th, staying
14 in a hotel?

15 A. Throughout the Redistricting Commission, I went to
16 Olympia to meet with the nonpartisan staff many times. And
17 on this particular occasion, we were preparing to receive and
18 transmit the final redistricting plans, that is, assuming
19 that there would be plans.

20 Q. So on the 12th, what did you do?

21 A. I would have to look back to my calendar, but I
22 believe I had a full day of meetings in Yakima, and all I did
23 on the 12th was drive over and check into my hotel.

24 Q. Okay. So then when were you in Federal Way?

25 A. I went to Federal Way on the 13th.

1 Q. Why did you go to Federal Way on the 13th?

2 A. Paul Graves called me on the evening of the 12th
3 and told me that he and Commissioner Sims were having trouble
4 moving forward in their negotiation, and he asked for my
5 help. So I asked Lisa, the executive director, to instruct
6 her staff to book some space so that we could hold a
7 negotiation -- or, actually, more like a mediation -- between
8 Commissioner Graves and Commissioner Sims on Saturday, the
9 13th.

10 Q. So Sims and Graves did not stay at the hotel, but
11 you did?

12 A. No.

13 Q. You didn't stay at that hotel either?

14 A. No. We only had rooms. We had like a conference
15 space for a block of hours. I can't tell you the block of
16 hours, but it was -- I don't know how long we were there, but
17 I think we left by early evening.

18 Q. Okay. So, on the 13th, you go and meet Sims and
19 Graves at the hotel in that conference space?

20 A. Yes.

21 Q. Did you take anyone else with you?

22 A. No.

23 Q. So who is Sims?

24 A. April Sims is the commissioner for the Democratic
25 House Caucus.

1 Q. So she has a partisan position as a representative
2 of the Democratic House Caucus?

3 MR. PEKELIS: Object to form.

4 **A. That's right.**

5 Q. And who is Paul Graves?

6 **A. Paul Graves is a commissioner who is appointed by**
7 **the House Republican Caucus.**

8 Q. So he had a partisan appointment, as well?

9 MR. PEKELIS: Object to form.

10 Actually, strike that.

11 **A. Yes.**

12 Q. And you understood your role on that day was to
13 mediate agreement on a redistricting plan to submit to the
14 legislature?

15 **A. No.**

16 Q. I understood you to say that you were asked to act
17 in a mediator role. Did I misunderstand that?

18 **A. No. I was asked to act in a mediator role.**

19 Q. So did you take on the role of mediator?

20 **A. I did, but not in the project that you described.**

21 Q. How did I describe the project in a way that was
22 distinct from what you were mediating?

23 **A. My role on that day was to provide them the support**
24 **that they needed to communicate with each other and continue**
25 **negotiations on a legislative district map.**

1 Q. Was the mediated discussion on that day limited to
2 the legislative district map?

3 **A. Yep.**

4 Q. Was it your understanding that the lack of
5 consensus was as to the legislative district map?

6 MR. PEKELIS: Object to form.

7 **A. No.**

8 Q. Was there a lack of consensus as to topics other
9 than the legislative district map?

10 MR. PEKELIS: Object to form. Foundation.

11 **A. I don't know how to answer that because your**
12 **question is not related to what we were actually talking**
13 **about. So, I guess, yes, it was other than the legislative**
14 **district map.**

15 Q. Had there been consensus already on the
16 congressional district map?

17 MR. PEKELIS: Foundation.

18 **A. I have no idea.**

19 Q. So, when you met with Sims and Graves in Federal
20 Way, you didn't know what the status of the congressional
21 district maps were?

22 **A. That's right.**

23 Q. Did you know whether or not there had been any
24 metrics discussed about that?

25 **A. About the congressional district map?**

1 Q. Correct.

2 A. I was not included in negotiation regarding the
3 congressional district map.

4 Q. Why were you excluded from negotiations on the
5 congressional district maps?

6 You're a commissioner, correct?

7 A. Which question would you like me to answer first?

8 Q. You're a commissioner, correct?

9 A. Yes.

10 Q. Why would you have been excluded from negotiations
11 on the congressional district maps?

12 A. That is a question for the voting commissioner.

13 Q. So did you come to an agreement with the voting
14 congressional district -- strike that.

15 Did you come to an agreement with the voting
16 commissioners as to what your role would be?

17 A. No.

18 Q. So then how come you know that I should ask the
19 voting commissioners why you were excluded from the
20 congressional district map process?

21 A. Respectfully, Ms. Mell, I can't tell you what other
22 people think or what their intentions are. I don't know
23 that. I can only explain to you what I know myself.

24 Q. Well, as a commissioner and a chair, why wouldn't
25 you have necessarily involved yourself?

1 MR. PEKELIS: Object to form.

2 A. As the chair, I checked in with the voting
3 commissioners regularly, I offered support to them, and I
4 made suggestions.

5 Q. Okay. So you were involved in congressional
6 district map process?

7 A. I was not involved in the negotiation process.

8 Q. Okay. Is there a difference between a negotiation
9 process and you providing support to them?

10 A. Yes. Providing support, from my point of view,
11 includes a host of other things.

12 Q. Okay. Explain to me what providing support was.

13 A. Ensuring that they were connected with the
14 nonpartisan staff for technical support; ensuring that they
15 were connected to nonpartisan staff for legal support;
16 ensuring that they had tools that they needed to communicate
17 with each other in a very tense and partisan environment and,
18 might I add, a conflicted environment.

19 Q. What did that conflicted environment look like to
20 you?

21 A. It looked like an environment of mistrust based
22 upon partisan positions.

23 Q. And how did you see that play out?

24 A. There were various events that occurred throughout,
25 between February and November, that strained relationships.

1 Q. Tell me what those were.

2 A. One was -- one that I can speak to directly --
3 would be in an open public meeting having a party official
4 testify -- sorry, testify is probably the wrong word --
5 publicly speak, calling for the removal of Commissioner Joe
6 Fain. That certainly did not contribute to building a
7 foundation of trust between the commissioners.

8 Q. Okay. So who was that? Podolski or whatever her
9 name is? Tina? Something like that?

10 A. I don't remember her name. I apologize for that,
11 but the chair of the Democratic Party is what I recall.

12 Q. So the chair of the democratic party did what?

13 A. Publicly testified -- or maybe testified is not the
14 right word -- but in an open public meeting calling for his
15 -- for him to be removed.

16 Q. I didn't hear the very first part. All I heard was
17 public meeting. Did you say testified in a public meeting?

18 A. Yeah. I mean, testified -- is that the right word?
19 She spoke in a public meeting.

20 Q. Spoke. Spoke. Okay. I just didn't hear the word.
21 Okay. Spoke in a public meeting, asking for Fain
22 to be removed?

23 A. Yes.

24 Q. Okay. And what was done about that?

25 A. I mean, I don't know how to answer that. You have

1 to be more specific.

2 Q. Did you take action on that?

3 A. I'm sorry?

4 Q. Did the Commission take action on her public
5 testimony?

6 A. How could we take action? Anyone who wanted to
7 speak at a public meeting was invited to do so. I don't know
8 what you mean by take action.

9 Q. Did you do anything after she spoke on that
10 subject?

11 A. No.

12 Q. Was there anything else that occurred that you
13 think led to the conflicted environment?

14 A. Yes.

15 Q. What was that?

16 A. The Barreto report was released in the press before
17 it was discussed in any forum, any Commission forum.

18 Q. And what is the Barreto report?

19 A. It was a report that was commissioned by the
20 Democratic Senate Caucus, claiming that the draft maps to
21 that date were in violation of a voting rights -- the Voting
22 Rights Act.

23 Q. Did the Commission do anything about that?

24 A. I don't know how to answer that.

25 Q. Well, how did you find out that it was a release?

1 **A. It was in the press. I read about it in the press,**
2 **like everyone else.**

3 Q. Okay. And so was there any conversation you had
4 with the commissioners about it?

5 **A. I believe it was discussed multiple times in**
6 **meetings.**

7 Q. Okay.

8 **A. Special meetings. I think it was much discussed.**

9 Q. Okay. Were there discussions outside the public
10 about that?

11 MR. PEKELIS: Object to form. Foundation.

12 **A. Not with me.**

13 Q. So, in between meetings, how would you
14 communicate -- in between public meetings -- how would you
15 communicate with the commissioners?

16 **A. I communicated with them via email, text message,**
17 **and phone call.**

18 Q. Did you use instant messaging?

19 **A. I don't believe so.**

20 Q. So, on the 13th, were you standing in the hallway
21 of the hotel?

22 **A. The 13th?**

23 Q. Yes.

24 **A. The 13th of November, I was either driving over the**
25 **Cascades, checking into my hotel, or in my hotel room in**

1 **Olympia.**

2 Q. So the first day you were in Federal Way was the
3 14th, not the 13th?

4 **A. The 14th, I was in Federal Way.**

5 Q. So, on the 14th, were you in the meetings rooms
6 with the two commissioners, or were you in the hallway?

7 **A. No, I was in the meeting room with the two**
8 **commissioners.**

9 Q. Okay. In the meeting room with the two
10 commissioners, how long were you all there?

11 **A. I think we were there for 6 hours. I could consult**
12 **my phone. I think it was something like that, 6 hours.**

13 Q. Who else was in the room?

14 **A. Commissioner Sims and Commissioner Fain.**

15 Q. Were there any staff people in the room?

16 **A. I don't remember. Yes. There were, I believe.**

17 Q. Who were they?

18 **A. Anton Grose and Osta -- I don't remember Osta's**
19 **last name at the moment.**

20 Q. And who is Osta?

21 **A. Osta is the caucus staff that was assigned to**
22 **Commissioner Sims by the Democratic House Caucus.**

23 Q. And who is Anton?

24 **A. Anton is the caucus staff that was assigned to**
25 **Commissioner Graves by the senate -- I'm sorry -- by the**

1 **Republican House Caucus.**

2 Q. Were there any nonpartisan staff in the room?

3 **A. No.**

4 Q. Why were partisan staff in the room?

5 **A. I don't know.**

6 Q. Did you invite them?

7 **A. No.**

8 Q. Did you make sure that they had an ability to
9 communicate with one another?

10 MR. PEKELIS: Object to form.

11 **A. I don't understand the question.**

12 Q. Well, you said one of the things that you did as a
13 support person was to make sure people were able to
14 communicate with one another.

15 **A. Yes. I was there to help Commissioner Graves and
16 Commissioner Sims communicate, yes.**

17 Q. Did you also help their caucus support people do
18 that, too?

19 **A. No.**

20 Q. Do you know how the caucus staff were communicating
21 and with whom?

22 **A. No.**

23 Q. Did you observe the caucus staff working on
24 computers?

25 **A. I don't remember. They had computers there.**

1 Q. Did they have phones?

2 **A. I suppose. Everyone has phones.**

3 Q. Did you see them using their phones?

4 **A. No.**

5 Q. Did you have a phone?

6 **A. Yes.**

7 Q. Did you have a computer?

8 **A. No.**

9 Q. Did you have more than one phone?

10 **A. No.**

11 Q. Did you just have your personal phone?

12 **A. No.**

13 Q. Did you just have your work phone?

14 **A. Yes.**

15 Q. Did you make calls to any of the commissioners who
16 weren't there during the time you were in the room?

17 **A. No.**

18 Q. Did you go outside the room and make calls to any
19 of the other commissioners?

20 **A. No.**

21 Q. Do you know whether or not the caucus staff were
22 communicating with other caucus staff assigned to the other
23 commissioners?

24 **A. I don't know.**

25 Q. Did you hear either Commissioner Sims or Fain

1 communicate with any other commissioner?

2 **A. Commissioner Fain was not in the room.**

3 Q. So who was in the room?

4 **A. Commissioner Graves and Commissioner Sims.**

5 Q. Oh, Graves and Sims, sorry.

6 Okay. So did you hear Commissioner Sims
7 communicating with any other commissioner while in the room?

8 **A. No.**

9 Q. Did you hear Commissioner Graves communicate with
10 any other commissioner while in the room?

11 **A. No.**

12 Q. But they both were communicating with you, correct?

13 **A. Yes.**

14 Q. And the purpose of the communications was to
15 negotiate a legislative district. Is that correct?

16 MR. PEKELIS: Object to form.

17 **A. No.**

18 Q. What was the -- I though you said that that's what
19 you were mediating.

20 **A. I was mediating their inability to go on
21 communicating with each other. They were at an impasse.**

22 Q. And they were at impasse on the legislative
23 district, correct?

24 **A. They were.**

25 Q. Okay. So you were there to mediate the impasse on

1 the legislative district, correct?

2 **A. Yes.**

3 Q. All right. And you were there to mediate the
4 impasse, not just between Sims and Graves, because they were
5 on the same page, correct?

6 **A. No.**

7 MR. PEKELIS: Object to form.

8 **A. They were not on the same page.**

9 Q. Okay.

10 **A. That's why I was there.**

11 Q. Okay. So you were mediating the differences
12 between Sims and Graves?

13 **A. Yes.**

14 Q. Okay. And what were the positions of Fain and
15 Walkinshaw?

16 MR. PEKELIS: Foundation.

17 **A. I don't know. They were not part of negotiating**
18 **the legislative district map, to my knowledge. To my**
19 **knowledge, no.**

20 Q. Did you, at some point in time, know whether or not
21 Fain and Walkinshaw agreed to the legislative district?

22 **A. No.**

23 Q. Did you know prior to moving to the action items on
24 November 15th whether or not there was consensus on a
25 legislative district?

1 MR. PEKELIS: Object to form.

2 A. No.

3 Q. What did you think -- when you convened the action
4 part of the meeting, why did you invite a motion on the
5 legislative district map, if you didn't know whether or not
6 there was consensus?

7 MR. PEKELIS: Object to form.

8 A. We achieved consensus through voting in an open,
9 public meeting. I was calling for them to share with me
10 whether they were ready to move on to that place. They were
11 bringing forward proposals, in my understanding. I
12 understood they were bringing forward proposals.

13 Q. And how did you come to that understanding?

14 A. We had been discussing it in public meetings for
15 many weeks.

16 Q. Had you been discussing it outside of the public
17 meetings, as well?

18 A. Not to my knowledge.

19 Q. And what do you call the meeting you had on the
20 14th?

21 A. Okay. So, yes, you are right. You are correct.
22 We had a meeting on the 14th for Commissioner Graves and
23 Commissioner Sims to get through an impasse.

24 Q. What was the impasse?

25 A. I was told on that day that they were getting close

1 to a proposal for the legislative district map, a proposal
2 that they would then bring to the Commission at a regular
3 meeting. However, that proposal and the agreements they had
4 made around that proposal were in jeopardy because there was
5 a perceived violation of trust.

6 Q. What were the agreements made around that proposal?

7 MR. PEKELIS: Object to form.

8 A. I do not know.

9 Q. Well, substantively, if you don't know what the
10 agreements were made around the proposal, how were you going
11 to mediate it? Didn't you need to know where the conflict
12 was and where the agreement was?

13 A. I'll do my best to answer your question. I feel
14 like you have a couple of questions there. Do you want to
15 give me which one you want me to answer first?

16 Q. Well, as a mediator, it was your role to achieve
17 consensus, right, break the deadlock?

18 A. I was there on that day to help them rebuild the
19 trust they needed so they could go forward in their
20 negotiation.

21 Q. Okay. But you weren't there to help them rebuild
22 trust in liking one another, you were there to rebuild trust
23 around the legislative congressional districts, correct?

24 MR. PEKELIS: Object to form.

25 A. I was there to help them communicate and say what

1 they needed to say to each other so they could move forward.

2 Q. Okay. So, if you were there to help them
3 communicate, as the mediator, did you spend any time trying
4 to identify what they were communicating about?

5 A. Yes.

6 Q. Okay. So what did you discover in terms of where
7 the conflict was?

8 A. The Secretary of State had been appointed to the
9 Biden Administration, and the governor made an appointment
10 of, I believe the representative of the 44th, the sitting
11 representative of the 44th. And when that occurred,
12 Commissioner Graves felt that that was a violation of trust
13 with Commissioner Sims.

14 Q. So explain to me how the conversation went, who
15 said what about that.

16 MR. PEKELIS: Object to form.

17 A. I think I told you what I can tell you about that.
18 I mean, it was much discussed over many hours. So I don't
19 know what more I can tell you about it.

20 There was a belief -- one person felt that that
21 appointment had been a violation of trust. The other person
22 felt they didn't have knowledge of it and it wasn't their
23 responsibility. So we talked about that.

24 Q. Okay. So how long did you talk about that?

25 A. All day. So however long we were together. I

1 think we were together approximately 6 hours.

2 Q. Okay. During that 6 hours, did you have any
3 communications with one another about the legislative
4 district?

5 MR. PEKELIS: Object to form.

6 A. Which district?

7 Q. Any legislative district. Did you talk about
8 legislative districts in that 6 hours?

9 A. Yeah, I'm sure. Most likely, we were talking about
10 legislative districts. They were --

11 Q. Okay. So what do you recall being said about the
12 legislative districts in that 6 hours?

13 A. They referred to the joint proposal that they were
14 working on that they felt was nearly complete to bring
15 forward to the full commission and that that proposal that
16 they had tentative agreements about was in jeopardy due to
17 this suspicion that this appointment was being made in bad
18 faith.

19 Q. You don't remember the name of who was appointed?

20 A. I would have to look back in my notes. I don't
21 remember. I could look it up. It's Google-able.

22 MS. MELL: Okay. So let's see if we can get
23 those marked. It looks like they were in the court
24 reporter's box.

25 Did you get those received, Mr. Court

1 Reporter?

2 THE REPORTER: I haven't seen anything yet,
3 but I could check at a break.

4 MR. PEKELIS: Joan, we've been going a little
5 over an hour. Would now or soon be a convenient time for a
6 break?

7 MS. MELL: Yeah, let's go ahead and figure out
8 how to get those notes all marked.

9 MR. PEKELIS: Well, what I can report is that
10 Ms. Augustine's notes that she referred to have been uploaded
11 to the Google Drive, to which you have access. That public
12 records responses have been made by the Commission. So you
13 should have access to Ms. Augustine's handwritten notes now,
14 that we were speaking about, about a half hour ago.

15 MS. MELL: Yeah, and I believe they're with
16 the court reporter. So I have to figure out why he can't see
17 them.

18 MR. PEKELIS: Okay.

19 MS. MELL: Let's just take a quick 10-minute
20 break.

21 MR. PEKELIS: Okay.

22 (A brief recess was taken.)

23 Q. (By Ms. Mell) So, on the 14th, there were 6 hours
24 of meeting time with you and two of the commissioners,
25 correct?

1 A. No.

2 I'm sorry. When we were in the breakout room, I
3 was -- it was pointed out that I had misspoken the schedule.
4 So I arrived in Olympia on the 12th, and then I met with
5 Commissioner Graves and Commissioner Sims on the 13th, which
6 is a Saturday.

7 Q. Okay.

8 A. For 6 hours on the 13th, approximately 6 hours. I
9 don't know exactly the time. I think it was about 6 hours.

10 Q. Okay. How did that meeting end?

11 A. At the conclusion of the meeting, both parties just
12 voiced being exhausted and wanting to stop.

13 Q. Okay. Did anyone reach agreement on anything?

14 A. So keep in mind they were working together on a
15 proposal to present to the Commission. And so I think the
16 agreement that they came to was that they were willing to
17 keep talking to each other.

18 Q. And when were they going to keep talking to each
19 other?

20 A. Then we agreed to meet again on Sunday, the 14th.

21 Q. Okay. So what happened then?

22 A. On 14th, we arranged a different -- by we, I mean
23 Lisa and her staff -- arranged a different venue because the
24 space on the 13th was no longer available.

25 Q. Okay.

1 **A. So they arranged another venue, and we met at a**
2 **different hotel in Federal Way, Commissioner Graves,**
3 **Commissioner Sims, and myself.**

4 Q. Did you have any communications with any of the
5 other Commissioners between the 13th and the 14th?

6 **A. I don't remember, but I don't believe so.**

7 Q. Did Commissioner Walkinshaw or Commissioner --
8 actually, what did you just say? You said Sims and Fain?

9 **A. I'm sorry?**

10 Q. You said Sims and Graves, right?

11 **A. I was working exclusively with Sims and Graves.**

12 Q. Sorry, I keep writing that wrong.

13 So Fain and Walkinshaw -- was there any
14 communication with Fain and Walkinshaw between the 13th and
15 the 14th?

16 MR. PEKELIS: Object to form.

17 **A. I don't know.**

18 Q. Did you have any communications with them?

19 **A. I don't remember, but I don't believe so.**

20 Q. All right. So why was it Sims and Graves?

21 **A. Commissioner Graves called me and asked for help**
22 **because him and Commissioner Sims were in a deadlock for the**
23 **reason I described earlier.**

24 Q. Did he explain how long they had been in deadlock?

25 **A. No.**

1 Q. What did you know about the negotiations at the
2 point in time he called you and told you about a deadlock?

3 A. I knew that the bipartisan house dyad was
4 negotiating a proposal for the legislative district map, and
5 the senate dyad was negotiating a congressional district map.

6 Q. So the house was working on legislative, and the
7 senate delegation was working on congressional?

8 A. That's what I knew.

9 Q. Who made that decision?

10 A. Once again, I would have to look back in the
11 record, but it was discussed at a meeting several weeks
12 prior. Sometime between the time when the draft maps were
13 released, sometime after that and the beginning of the
14 negotiation schedule, it was discussed in a meeting that they
15 would do it that way, there would be a house dyad and a
16 senate dyad.

17 Q. What purpose did dyads serve?

18 A. From my point of view, you have four people doing a
19 complex task in a very abbreviated timeline. It made sense
20 that they would work on those tasks in an efficient way,
21 which is to say they would work together to develop proposals
22 that they could then bring to the full commission.

23 Q. Okay. So why do they work in dyads, as opposed to
24 just publicly meeting?

25 A. From my point of view, to accomplish this task

1 would take hundreds of hours, and we did not arrange to hold
2 public meetings for hundreds of hours.

3 Q. Why dyads?

4 MR. PEKELIS: Objection. Asked and answered.

5 A. With a commission of four voting commissioners, it
6 made sense, with some very complex, difficult, technical
7 work, that, to be efficient, they would break that work up
8 among them.

9 Q. Was there any significance to only having two
10 members in the room at a time negotiating?

11 A. I mean, I don't know how to answer that question.

12 The negotiation, from my point of view, did not
13 occur in rooms. I mean, I don't -- I'm not privy to that.
14 So I don't know what you mean by that.

15 Q. Well, did you have a belief that, if two
16 commissioners met and negotiated, it wasn't a meeting?

17 A. There was a complex task to accomplish. And for
18 the commissioners to break into dyads so that they could
19 negotiate, because they were bipartisan dyads -- the
20 negotiation is between -- it's a bipartisan process -- they
21 can negotiate proposals to bring to the full commission, was
22 a reasonable, felt like a reasonable strategy for
23 accomplishing very complex work in an abbreviated timeline.

24 MS. MELL: Move to strike.

25 Q. Did you believe there was some significance to

1 meeting in twos rather than three?

2 MR. PEKELIS: Object to form.

3 **A. I believe that meeting in twos was the most**
4 **efficient way to accomplish the work.**

5 Q. In your mind, did meeting in twos have some
6 significance to open public meeting law?

7 MR. PEKELIS: Objection. Calls for a legal
8 conclusion.

9 **A. I don't know.**

10 Q. Do you know what a meeting is for purposes of open
11 government?

12 MR. PEKELIS: Same objection.

13 **A. I was not privy to the negotiation that was going**
14 **on within these dyads. So I don't know how to answer your**
15 **question because I don't know how they were negotiating or**
16 **what that looked like. And I can't answer for them. So I**
17 **hope that you will direct these questions to the voting**
18 **commissioners.**

19 Q. Well, you were the chair, so I want to know what
20 you did to ensure open government.

21 So was the fact that the commissioners were meeting
22 in twos designed to ensure that open government standards
23 were met?

24 MR. PEKELIS: Same objection.

25 **A. The strategy for how to achieve a very complex task**

1 in an abbreviated timeline was only discussed in a public
2 meeting where comment was -- where the public was able to
3 comment.

4 Q. Have you had any conversations with anyone where
5 anyone has talked to you about working in twos as opposed to
6 a majority of the Commission?

7 A. No.

8 Q. So do you have any idea of how many commissioners
9 it takes to have a meeting?

10 A. I do.

11 Q. How many commissioners does it take to have a
12 meeting?

13 MR. PEKELIS: Objection, to the extent it
14 calls for a legal conclusion.

15 A. My understanding is that three voting commissioners
16 make a quorum.

17 Q. Is there some significance to having three voting
18 commissioners communicating for purposes of open government?

19 MR. PEKELIS: Same objection.

20 A. I'm sorry, I don't understand the question.

21 Q. What do you know about open government requirements
22 with regard to the number of commissioners who can be
23 communicating in any given time?

24 MR. PEKELIS: Same objection.

25 A. I understand that, when there are three voting

1 commissioners together, it's considered a public meeting,
2 that it must be a public meeting.

3 Q. Okay. So, during your tenure as chair of the
4 Redistricting Commission, did you do anything to ensure that
5 three voting members of the Commission were communicating in
6 public, as opposed to privately?

7 A. I worked hard to encourage the voting commissioners
8 to communicate as robustly as possible in public meetings.
9 The meetings that I'm aware of that pertain to commissioners
10 occurred in the meetings that I facilitated. Those are the
11 meetings I'm aware of. I did my best as chair to conduct
12 those in keeping with the Open Public Meetings Act.

13 Q. So did you do anything to make sure the
14 commissioners weren't talking amongst one another on the
15 12th, 13th, 14th, 15th, or 16th, outside of the public?

16 A. No.

17 Q. Do you know if the commissions were talking amongst
18 each other, either digitally or in person, on the 12th, 13th,
19 14th, 15th, and/or 16th outside of the public?

20 A. Yes.

21 Q. Did you at any time communicate the position of one
22 commissioner to another commissioner during the 12th, 13th,
23 14th, 15th, or 16th outside of the public?

24 MR. PEKELIS: Object to form.

25 A. No.

1 Q. So there was never a point in time when you spoke
2 to Fain about statements or positions Graves was taking?

3 A. No.

4 Q. Did you ever talk with or communicate or share
5 Sims's position on redistricting with anyone outside the
6 public meeting?

7 A. No.

8 Q. How did you know what the commissioners were doing?

9 A. I did not know what the commissioners were doing.

10 Q. At what point in time -- strike that.

11 When did you first take a position in the hallway?

12 A. I took a position in the hallway, I believe, at
13 approximately 7:00 p.m. on the 15th.

14 Q. And when you say the hallway, who else was in the
15 hallway?

16 A. Daniel Pailthorp was in the hallway with me.

17 Q. Did you have computers?

18 A. I had a computer.

19 Q. And he did not?

20 A. No.

21 Q. What was his job?

22 A. Daniel Pailthorp is on the independent Commission
23 staff, and he was there to assist me because I was conducting
24 this meeting away from the office or my regular place that I
25 conducted the meeting. So Daniel helped me with making sure

1 I had an Internet signal. He was staffing me. So providing
2 food. He was serving as staff for me.

3 Q. So when you ended the -- well, strike that.

4 Whose agenda was it? Did you create the agenda
5 order of business?

6 A. I did.

7 Q. Well, why would you put discussion items before
8 there's a motion?

9 A. That is how I have always, to my memory, conducted
10 our meeting agendas. First we discuss the item, and then we
11 vote on the items.

12 Q. So, when did you -- who made the decision that
13 there were items to vote on?

14 A. For many weeks leading up to the 15th, we as a
15 commission had discussed the process for concluding our work
16 together. So we had discussion about the agenda, about what
17 items would need to be on the agenda, assumed that the
18 commissioners would complete their work. We all understood
19 there was a chance they might not complete their work, but
20 assuming the best, that they would complete their work. We
21 discussed all of that well in advance.

22 Q. When you concluded the discussion segment and took
23 a break on November 15th before moving into the action items,
24 was there a congressional district identified in any map?

25 MR. PEKELIS: Object to form.

1 **A. So I think what you said just now was, was there a**
2 **congressional district in a map?**

3 Q. Was there any identifiable congressional district
4 at the time you concluded the discussion portion of your
5 meeting on November 15th?

6 MR. PEKELIS: Object to form. Foundation.

7 **A. I don't know.**

8 Q. Have you seen a map of a congressional district
9 when you concluded the discussion section on November 15th?

10 **A. I had seen the draft maps that were provided to the**
11 **public and posted on our website.**

12 Q. Had you seen anything during the discussion
13 section?

14 **A. I did not see a proposal on a congressional**
15 **district map, no.**

16 Q. Did you see a proposal on a legislative district
17 map during the discussion section?

18 **A. No.**

19 Q. Were there any written documents before the
20 Commission when they were engaged in a public discussion?

21 MR. PEKELIS: Object to form. Foundation.

22 **A. No.**

23 Q. Did you have any documents you were working from
24 while conducting the discussion portion of the meeting?

25 **A. Yes.**

1 Q. What were you working from?

2 A. The agenda.

3 Q. Anything other than the agenda?

4 A. No.

5 Q. Who was monitoring the time?

6 A. I was responsible to monitor the time, and my staff
7 members, Daniel Pailthorp and Lisa McLean, were giving me --
8 were texting and calling periodically to urge me about time.
9 Really, the meeting was being staffed out of the Olympia
10 office. So our tech support were marking time on my behalf.

11 Q. How were they marking time?

12 A. I don't understand your question.

13 Q. How were they keeping track of time? You said they
14 were marking time. How?

15 A. I think they were looking at a clock and checking
16 in every 30 minutes.

17 Q. And then after -- so the time then that you --
18 Strike that.

19 So you end the discussion section. You go into the
20 break. What did you do on that break?

21 A. I received a text from Commissioner Sims asking if
22 we would take a vote. So I believe I called her or texted
23 her and said, "It is time for a vote."

24 Q. What did you think that there would be a vote on?

25 A. I believed there would be a vote on the proposal

1 **that the commissioners had been working on.**

2 Q. Did you understand that there weren't any proposals
3 that had been articulated into any maps?

4 **A. No.**

5 Q. Did you know when you convened the action portion
6 of the meeting that there was nothing in writing for them to
7 consider?

8 **A. No.**

9 Q. Was there anything in writing considered during the
10 action portion of the meeting?

11 MR. PEKELIS: Foundation.

12 **A. Can you repeat the question, please.**

13 Q. Was there anything in writing during the action
14 portion of the meeting?

15 **A. I assumed that the proposals that the commissioners
16 had been working on were prepared, and I assumed that when we
17 transmitted the transmittal letter, which had been prepared
18 in advance, and a resolution which had been prepared in
19 advance, the maps would accompany them.**

20 Q. They didn't. Is that correct?

21 **A. That's correct.**

22 Q. When were the maps prepared?

23 **A. I believe one plan was submitted to the Commission
24 independent staff in the early hours of the morning of the
25 16th. That was the congressional district map, was submitted**

1 in the early hours on the 16th. And the legislative district
2 map was submitted to the independent staff in the afternoon,
3 the late afternoon of the 16th.

4 Q. And do you understand that the map is what defines
5 the district boundaries?

6 A. Yes.

7 Q. Do you understand that without a map there are no
8 identifiable district boundaries?

9 A. Yes.

10 Q. So, when you prepared your declaration to the
11 Supreme Court, what did you rely on for purposes of
12 testifying to the Supreme Court that there was an agreement
13 among the commissioners at the time of the vote?

14 MR. PEKELIS: Object to form.

15 A. The commissioners brought forward and seconded
16 resolution. Based on that, I carried forward.

17 Q. So you based your testimony to the Supreme Court on
18 what happened in the public meeting?

19 A. Yes.

20 Q. And there was nothing in writing to back up that,
21 what occurred in the public meeting?

22 A. So there was a resolution, and there was a
23 transmittal letter, and those were in writing.

24 Q. And those were incomplete at that time, correct?

25 A. They were complete when they were submitted.

1 Q. When the commissioners voted on the transmittal
2 letter, it was not finished, correct?

3 **A. It needed to be signed by the commissioners.**

4 Q. Did the content need to be completed with respect
5 to the legislative congressional districts identified in it?

6 **A. No, it was complete.**

7 Q. Okay. So there was no substance to the transmittal
8 letter. Is that correct?

9 MR. PEKELIS: Object to form.

10 **A. I'm sorry, can you repeat the question.**

11 Q. There was no substance to the transmittal letter,
12 in terms of identification of the congressional or
13 legislative districts, correct?

14 **A. Yes.**

15 Q. And with regard to the resolution, there was no
16 identified congressional or legislative districts in the
17 resolution that was voted on, correct?

18 **A. Yes.**

19 Q. When the resolution was voted on, was it in writing
20 before all of the commissioners?

21 **A. The resolution?**

22 Q. Yes.

23 **A. Yes.**

24 Q. Was it completed?

25 **A. It was not signed. It was circulated for signature**

1 **during the meeting.**

2 Q. Was the content of the resolution with respect to
3 the identification of the congressional and legislative
4 district maps incomplete when voted on?

5 **A. I don't know how to answer that question.**

6 Q. Was there were there any blanks or information that
7 was filled in on the resolution after it was voted on?

8 **A. I don't believe so.**

9 Q. There were no words changed or no identifiers
10 changed?

11 **A. I don't believe so. I believe the only thing that
12 had to change was the signature.**

13 Q. So do you believe that there was a specific
14 designation of congressional or legislative districts in the
15 resolution?

16 **A. I don't know how to answer that question.**

17 Q. Does the resolution contain identifiers of the
18 legislative and congressional districts that were viewable at
19 the time the commissioners voted on it?

20 **A. No.**

21 Q. Was there legislative and congressional district
22 identifiers added to the resolution after it was voted on?

23 **A. No. I don't believe so.**

24 Q. Was the resolution signed by any of the
25 commissioners before it was moved?

1 A. Yes. I believe I signed it in advance. Once
2 again, this was something we had discussed doing to smooth
3 the process along. So we had talked about that,
4 understanding it was a time-sensitive transmission, and I
5 believe I signed it in advance because I and Lisa McLean
6 composed it.

7 Q. Did you say there was an agreement to execute it as
8 it came through the palms of the commissioners?

9 A. I'm sorry?

10 Q. You said there was an agreement that you had
11 discussed signing it as it was transmitted among the
12 commissioners as opposed to when it was moved in the public
13 meeting. Is that correct?

14 A. I think we had discussed it in the prior regular
15 meetings. That would have been the October regular meeting,
16 but I think we also discussed it in the September regular
17 meeting. It had been reviewed by the commissioners and I
18 think amended, if I'm not mistaken. Or maybe it was a
19 special meeting, I don't remember, but we had -- we had
20 prepared those documents in advance.

21 Q. Okay. Was it communicated between the discussion
22 portion of the meeting and the action portion of the meeting
23 outside the public that the resolution should be signed, was
24 prepared for signature?

25 MR. PEKELIS: Object to form.

1 **A. Not to my knowledge.**

2 Q. Do you know whether or not any of the voting
3 commissioners executed the resolution prior to being moved?

4 **A. I'm sorry, I don't know what that means.**

5 Q. Did any of the voting commissioners sign the
6 resolution before there was a motion to approve it in the
7 action portion of the meeting?

8 **A. Not to my knowledge. And I believe those
9 signatures are time stamped.**

10 Q. Do you know what time there was a motion on the
11 resolution?

12 **A. I don't.**

13 Q. Do you know whether or not the legislative
14 district --

15 Well, what was the motion on the legislative
16 district?

17 MR. PEKELIS: Object to form.

18 **A. I believe there was a motion to adopt the
19 legislative district plan.**

20 Q. Did you understand when that motion was made that
21 there was no legislative district plan?

22 MR. PEKELIS: Object to form.

23 **A. No.**

24 Q. I didn't hear you.

25 **A. No.**

1 Q. Did you believe that there was a legislative
2 district plan at the time the motion was made?

3 A. Yes.

4 Q. Why did you believe that there was a legislative
5 district plan at the time the motion was made?

6 A. Because one of the voting commissioners made a
7 motion and another voting commissioner seconded it.

8 Q. Did you later learn that there wasn't a legislative
9 district plan at the time the motion was made?

10 A. No.

11 Q. Do you know that, at the time the motion was made,
12 there was no legislative district identified?

13 MR. PEKELIS: Object to form.

14 A. I'm sorry, can you repeat the question?

15 Q. Yes.

16 You had previously told me you knew at the time of
17 the motion that the legislative district maps were not
18 completed identifying the boundaries, correct?

19 A. That's right.

20 Q. How is the legislative district map distinct from
21 the plan?

22 A. The plan has multiple elements in it. And from my
23 understanding, they had agreed upon a plan and ran out of
24 time in developing the maps. Because the maps that reflected
25 their plan, the plan that they voted on, took longer than

1 they assumed it would take to make.

2 Q. So what had they agreed upon?

3 MR. PEKELIS: Objection. Foundation.

4 A. They had agreed upon a plan for how the legislative
5 district map would be and how the congressional district map
6 would be.

7 Q. What was the plan for the legislative district that
8 was agreed upon at the time the motion was made?

9 MR. PEKELIS: Foundation.

10 A. I don't know.

11 Q. Okay. So then how do you know that there was an
12 agreement?

13 A. I know there was agreement because one commissioner
14 called for a vote and another commissioner seconded it.

15 Q. Is there any way to identify what the agreement was
16 at the time the motion was made?

17 MR. PEKELIS: Object to form.

18 A. I don't know.

19 Q. So you can't testify -- you have no personal
20 knowledge -- as to whether there was an agreement at the time
21 the vote was taken over any legislative or congressional
22 district, correct?

23 A. I believe there was agreement.

24 Q. On what?

25 A. I believe there was agreement on a proposal that

1 had been negotiated. If we're talking just the legislative
2 district plan, there was a proposal that had been negotiated
3 over many weeks. And I believe that the parties that were
4 negotiating understood what made it up, and that's what I
5 believe they were voting on.

6 Q. Why do you have a belief that the commissioners
7 understood what they were voting on?

8 A. Because they called for a vote, and they voted.

9 Q. You were the one that called for the vote, correct?

10 A. Well, what I did was I called for resolutions,
11 which is my function as the chair, and they brought forward
12 resolutions.

13 Q. Did any commissioner bring forward a specific
14 resolution and put it in front of the other commissioners
15 during the motion?

16 A. Not that I recall.

17 Q. Was there any --

18 Well, why didn't you open up any of the motions on
19 the 15th to discussion?

20 A. I don't know. Honestly, it was late. I was very
21 tired. It was a chaotic setting. That's --

22 Q. Is it correct that you didn't open up any of the
23 motions for discussion because you understood there was
24 already an agreement and you were trying to get the motions
25 voted on prior to midnight?

1 MR. PEKELIS: Object to form.

2 A. No.

3 Q. How did you ascertain whether or not there was
4 agreement on -- what there was an agreement on?

5 A. I assumed that there was agreement on the proposals
6 that the dyads had been working on. That was my assumption
7 at the time.

8 Q. Did you just assume that because Sims had said it's
9 time for a vote?

10 A. I assumed it because there were commissioners --
11 that the dyad pairs had been working strenuously in
12 negotiation for weeks and days. They're down to the wire.
13 So I assumed that they were ready to carry those proposals
14 forward.

15 Q. In terms of the components of a plan, what do you
16 believe there was an agreement on, if there was no agreement
17 as to the maps?

18 MR. PEKELIS: Foundation.

19 A. What I understood was that the dyads, the
20 bipartisan dyads, had requested time to confer with their
21 party counterpoints, counterpart, in some kind of caucus.
22 And that's what they requested in the early part of the
23 meeting on the 15th. So I assumed at that time they were
24 conferring about their various proposals.

25 Q. Why were they meeting in caucus rather than on the

1 record?

2 **A. I don't know.**

3 Q. Why did you allow them to meet in caucus rather
4 than conduct their deliberations on the record?

5 **A. I believed it was allowable.**

6 Q. Why did you believe it was allowable?

7 **A. I won't answer that, based on privilege.**

8 Q. Does that mean that you relied upon legal advice?

9 MR. PEKELIS: Objection. Calls for a
10 violation of attorney-client privilege, and I instruct the
11 witness not to answer.

12 Q. Ms. Augustine, are you refusing to answer that
13 question based on advice of counsel?

14 MR. PEKELIS: I instruct the witness not to
15 answer. Attorney-client privilege.

16 Q. Ms. Augustine, are you going to refuse to answer
17 that question based on the advice of counsel?

18 MR. PEKELIS: Again, I instruct the witness
19 not to answer.

20 MS. MELL: Mr. Pekelis, I am entitled to voir
21 dire the witness as to whether or not she intends to follow
22 your instruction, and I need a response. It's not
23 privileged. It's not protected.

24 **A. Yes.**

25 Q. With regard to -- is it your position that whether

1 or not you relied on counsel to know whether or not the dyads
2 or caucuses complied with OPMA?

3 MR. PEKELIS: Will you read back the question,
4 please.

5 MS. MELL: I will rephrase the question. I'll
6 just ask it again.

7 Q. Is it your position that, as chair, you relied upon
8 the advice of counsel to know whether or not the dyads or
9 caucuses complied with OPMA?

10 MR. PEKELIS: Attorney-client privilege.

11 Instruct the witness not to answer.

12 Q. Ms. Augustine, are you refusing to answer that
13 question?

14 **A. Yes.**

15 Q. And is your basis because you believe whether or
16 not you relied on the advice of counsel is privileged?

17 MR. PEKELIS: I instruct the witness not to
18 answer. Attorney-client privilege.

19 MS. MELL: All right. I believe you're
20 overstepping the privilege. Whether or not somebody relied
21 on counsel is discoverable. There's nothing privileged about
22 that. Do you want to rethink that?

23 MR. PEKELIS: I think you're asking her
24 whether she took an action or refrained from taking an action
25 on the basis of advice of counsel, and I believe that is

1 privileged.

2 MS. MELL: I disagree. I think that, if
3 somebody relied upon counsel, it has certain implications
4 that are not privilege, and we are entitled to know that.
5 You can let her answer it, and you can retain the right to
6 argue about the privilege, or you can instruct her not to
7 answer, then I'll seek sanctions, sanctions for having to
8 bring her back on that issue and to litigate it.

9 MR. PEKELIS: I believe that the question
10 seeks, directly seeks, the advice that the witness sought or
11 received from counsel, and, therefore, it directly implicates
12 privileged conversations with the Commission's counsel, and,
13 therefore, I stand by the objection and my instructions that
14 the witness should not answer the question.

15 Q. Ms. Augustine, did you have any independent
16 knowledge about whether or not dyads or caucuses complied
17 with OPMA, other than from legal counsel?

18 MR. PEKELIS: Objection. Calls for a legal
19 conclusion.

20 MS. MELL: Her personal knowledge does not
21 call for a legal conclusion.

22 MR. PEKELIS: Mr. Johnson, could you read the
23 question back, please.

24 MS. MELL: I'll just ask it again.

25 Q. What personal knowledge did you have whether or not

1 dyads or caucuses complied with OPMA?

2 MR. PEKELIS: That does call for a legal
3 conclusion. Objection.

4 MS. MELL: It absolutely does not. What is
5 her personal knowledge about whether or not dyads or caucuses
6 comply with OPMA government standards? That's not a legal
7 conclusion.

8 MR. PEKELIS: What knowledge you have about
9 compliance with a statute? Sure, it calls for a legal
10 conclusion.

11 MS. MELL: Well, no, it doesn't. It can be
12 specifically related to what her training and experience is.

13 MR. PEKELIS: I'm not instructing the witness
14 not to answer. I'm making my objection for the record.

15 MS. MELL: All right. That's fine. Did you
16 instruct her she can go ahead and answer?

17 MR. PEKELIS: Ms. Augustine, you can answer
18 the question. My objection stands.

19 **THE WITNESS: Yes. Repeat it, please.**

20 Q. What was your knowledge about whether or not dyads
21 or caucuses met with open government standards?

22 MR. PEKELIS: Same objection.

23 **A. We had never been in a caucus before in an open**
24 **public meeting. It was new to me. And I would say I**
25 **believed we were in compliance.**

1 Q. But you had never convened a meeting and worked in
2 caucuses before?

3 **A. No.**

4 Q. Was counsel consulted during the course of the
5 meeting on the 15th?

6 **A. Yes.**

7 Q. At what point in time?

8 **A. At multiple times.**

9 Q. And who was that?

10 **A. That was the AGO counsel that was assigned to the**
11 **Commission.**

12 Q. And were you the one responsible for making those
13 contacts?

14 **A. I don't remember.**

15 Q. Do you know a name?

16 **A. Of counsel?**

17 Q. Yes.

18 **A. Tara Heinz and Emma Grunberg.**

19 Q. How did you communicate with them?

20 **A. By phone.**

21 Q. Were they with you at the hotel?

22 **A. No.**

23 Q. Where were the commissioners during the 15th during
24 the meeting?

25 MR. PEKELIS: Object to form.

1 **A. I don't know.**

2 Q. At 7:00, were all of the commissioners at the same
3 location when the meeting commenced?

4 **A. I don't know.**

5 Q. Were any of the commissioners staying at the hotel?

6 **A. Staying at the hotel? No, not to my knowledge.**

7 Q. Was there an announcement as to the meeting
8 occurring -- strike that.

9 Was there an announcement that the commissioners
10 would be in a hotel in Federal Way during the meeting?

11 **A. No.**

12 Q. Do you know if any of the commissioners were in the
13 hotel where you were during the meeting?

14 **A. Yes.**

15 Q. How many commissioners were at that hotel?

16 **A. I know that three commissioners were there on the
17 15th at some time.**

18 Q. Who were those commissioners?

19 **A. Commissioner Graves, Commissioner Sims, and
20 Commissioner Fain.**

21 Q. Did you communicate with Graves, Sims, and Fain at
22 the hotel from 7:00 on the 15th to 4:00 in the morning, when
23 you left, on the 16th?

24 MR. PEKELIS: Object to form.

25 **A. Yes.**

1 Q. When were you communicating with Graves, Sims, and
2 Fain?

3 A. I had a brief communication with Sims by text
4 message between the discussion and the vote. I had a
5 conversation with all four of them between, say, 12:30 a.m.
6 and 4:00 a.m. on the 16th.

7 Q. Were all of the commissioners convening at the
8 hotel on the 16th?

9 A. I don't know what you mean by convening.

10 Q. Were you all there in the same room?

11 A. Yes.

12 Q. At what time did that start?

13 A. Maybe 12:30.

14 Q. What were you discussing at 12:30?

15 MR. PEKELIS: Object to form.

16 A. Commissioners were -- well, I should just speak for
17 myself. I felt a sense of relief that the meeting was over
18 and chatted with Commissioner Sims about my grandchildren and
19 her children.

20 I talked with Commissioner Fain about fantasy
21 football, I believe, some football thing. I talked with
22 Commissioner Fain also about his vacation plans for the
23 holidays.

24 I talked with Commissioner Walkinshaw, I think, a
25 little bit about the holidays. And I think that's -- and

1 let's see --

2 And Commissioner Graves definitely talked about his
3 wife and children, the children's book that his wife wrote,
4 yeah.

5 Q. When did you text with, I think you said it was
6 Fain, between the discussion and the action?

7 A. It was Commissioner Sims.

8 Q. Sims. What did you text with her?

9 A. I don't remember exactly what those texts say, but
10 those have all been submitted through your records request.

11 Q. What do you recall the purpose of the communication
12 to be?

13 A. Sims texted to ask if we were going to call for a
14 vote.

15 Q. And what did you say?

16 A. I don't remember saying anything, but maybe I did.
17 If I did, I would have said, this is the time, that the
18 discussion was over.

19 Q. Do you remember meeting with commissioners to
20 discuss -- well, did you remember meeting with the
21 commissioners to discuss the status of the maps on the 16th?

22 A. The status of the maps?

23 Q. Correct.

24 A. No.

25 Q. Do you recall, on the 16th, there being work done

1 on the maps?

2 **A. Yes.**

3 Q. What do you recall?

4 **A. The caucus staff were working together mapping.**

5 Q. Did you observe the caucus staff communicating with
6 the commissioners?

7 **A. No.**

8 Q. Were the caucus staff working on the mapping with
9 commissioners present?

10 **A. We were in a ballroom. And what I remember is that**
11 **the caucus staff were in one corner working with their**
12 **mapping software, and the commissioners were chatting and**
13 **milling around in the other area.**

14 Q. Were the commissioners discussing whether or not
15 maps would be published?

16 **A. I don't know. I can only speak to what they spoke**
17 **to me about.**

18 Q. Did you hear any commissioner say anything about
19 the maps when they were all convened together?

20 **A. I don't believe so.**

21 Q. Did you hear any commissioner say anything about
22 transmittals to the Supreme Court?

23 **A. No.**

24 Q. Did you hear any of the commissioners say anything
25 about whether or not there was a need to comply with OPMA

1 during the course of the meeting on the 16th?

2 **A. Yes.**

3 Q. What did you hear?

4 **A. I remember that there was discussion of whether it**
5 **was appropriate for us to all be in the same room and, since**
6 **we were chatting about our personal lives, that it wasn't**
7 **related to commission business. It's the first time the four**
8 **of us had ever seen each other face-to-face at once.**

9 Q. Who said what exactly?

10 **A. I'm sorry, I don't recall.**

11 Q. Do you have any notes from that time period?

12 **A. No.**

13 MR. PEKELIS: Ms. Mell, we've been going about
14 another hour. Are you nearing a point where we might be able
15 to take another break or perhaps the end of your questions?

16 MS. MELL: I'm getting close, and I want to be
17 attentive. We've got another deposition starting here in a
18 bit.

19 MR. PEKELIS: So how much longer?

20 MS. MELL: I'll just keep going.

21 Q. Did you answer that question?

22 **A. Sorry, did you ask a question?**

23 MR. PEKELIS: I don't think there is a
24 question pending, Ms. Mell.

25 Q. I must not have heard your answer.

1 MR. PEKELIS: Could we ask Mr. Johnson to read
2 back the last question and answer.

3 (The previous question and answer
4 was read back.)

5 MR. PEKELIS: Ms. Mell, how much longer would
6 you say you have?

7 MS. MELL: I don't know. I just want to keep
8 going. I think that we have a hard stop at one because we
9 have another dep -- or noon.

10 MR. PEKELIS: We have a hard stop at noon?

11 MS. MELL: I believe we have a hard stop at
12 noon because I believe Ms. O'Neil is on then.

13 MR. PEKELIS: Ms. O'Neil?

14 Can we just take a 5-minute break off the
15 record, and then we can discuss what's next.

16 MS. MELL: What is the question? I don't want
17 to take a break for very long because we're running out of
18 time.

19 MR. PEKELIS: Just five minutes then.

20 MS. MELL: Are you leaving the meeting?

21 MR. PEKELIS: I do plan to leave, yes.

22 MS. MELL: Okay. Wait a minute. It looks
23 like it said one your time. Yeah, one.

24 MR. PEKELIS: Mr. Johnson, are we off the
25 record?

1 THE REPORTER: You guys have to tell me that.

2 MS. MELL: I just want to keep moving because
3 I think we have the next dep, but it now looks to me like it
4 starts at one, your time. Is that your understanding?

5 MR. PEKELIS: It is.

6 MS. MELL: Okay. All right. So I guess we
7 can go off the record for five minutes.

8 MR. PEKELIS: Thanks, so much.

9 (A brief recess was taken.)

10 Q. (By Ms. Mell) Ms. Augustine, when did you all
11 convene in the meeting room at the hotel on the 16th?

12 A. **So I'm not sure I know what you mean by convene.**

13 Q. When were you all sitting together on the 16th?

14 A. **It was after the conclusion of the meeting, and I**
15 **want to say it was maybe beginning around 12:30, is what I**
16 **recall.**

17 Q. Were you staying at the hotel?

18 A. **No.**

19 Q. Were any of the commissioners staying at the hotel?

20 A. **Not that I know. Not to my knowledge.**

21 Q. So how long did you stay with the other
22 commissioners?

23 A. **I stayed in that ballroom until approximately**
24 **4:00 a.m.**

25 Q. So how many hours?

1 **A. Three and a half hours.**

2 Q. In that 3 1/2 hours, is it your testimony that you
3 discussed family and social circumstances and you didn't
4 discuss any business?

5 **A. That's right.**

6 Q. Why did you stay with the commissioners for 3 1/2
7 hours just to discuss family and social matters?

8 **A. I believed at that time that the mapping was**
9 **moments away, and so I was waiting for the transmittal of**
10 **those maps to independent staff.**

11 Q. So is it correct that you were waiting for business
12 to be conducted?

13 **A. I was just -- I was waiting there to ensure that**
14 **those maps were transmitted in accordance with our plan,**
15 **which had been planned and discussed heavily over the prior**
16 **meetings.**

17 Q. Okay. So what did you do to ensure that the maps
18 were transmitted in accordance with the plans during that --

19 **A. Nothing. Nothing. Honestly, I was waiting for**
20 **caucus staff to say, "Okay, we hit send, that was it," so I**
21 **could communicate to the independent staff, they should be**
22 **there.**

23 Q. They should be where?

24 **A. We're talking about through virtual space, so. If**
25 **the caucus staff hit send, I assumed it would show up in the**

1 computers of the independent staff who were waiting. They
2 were in the Olympia office waiting for the maps to be
3 transmitted.

4 Q. Why were they waiting for the maps to be
5 transmitted to them?

6 A. Because we believed that they were moments away.

7 Q. What needed to be done with them?

8 A. Once they were transmitted to the independent
9 staff, that would be transmitted with the transmittal letter
10 and the resolution to the legislature.

11 Q. Were there any transmittals to the legislature or
12 the Supreme Court without maps?

13 A. Yes, there were. The transmittal letter and the
14 resolution were submitted to the legislature at the
15 conclusion of the meeting.

16 Q. Without maps?

17 A. Yes.

18 Q. Who made the decision to do that?

19 A. It was an administrative task, and we had practiced
20 doing that for weeks. I think -- yeah. I don't know that
21 was a decision made. That decision had already been made in
22 the prior meeting.

23 Q. What decision?

24 A. To the process for transmittal.

25 Q. And who made that decision?

1 **A. The Commission made that decision.**

2 Q. Prior to the 16th?

3 **A. The transmittal process was much discussed in the**
4 **previous regular meeting, I think in the two prior previous**
5 **meetings. That would have been the September meeting, the**
6 **October meeting, and, perhaps, even in special meetings that**
7 **were called. I don't recall, but it was discussed, that**
8 **transmittal process. So, when the meeting concluded, those**
9 **documents that were in hand were transmitted.**

10 Q. But there were no maps at that time, correct?

11 **A. That's right.**

12 Q. So it hadn't been anticipated that there would be
13 no maps when a vote was taken prior to the meeting, was
14 there?

15 **A. That's right.**

16 Q. When was that decided?

17 **A. I don't think it was decided. I don't recall**
18 **having a discussion about it.**

19 Q. Was there ever a conversation about the need to
20 have a map to know what the legislative or congressional
21 district would be?

22 **A. Do you mean during the meeting on the 15th.**

23 Q. Anytime.

24 **A. I don't recall.**

25 Q. Was there any document transmitted to the

1 legislature or to the Supreme Court that identified district
2 boundaries for the legislative district or the congressional
3 district, on the 15th?

4 **A. You're asking many questions in one question.**
5 **Could you maybe one at a time. I'm not sure.**

6 Q. Was there any document transmitted to the Supreme
7 Court or to the legislature on the 15th that identified
8 legislative districts or congressional districts?

9 **A. No.**

10 Q. What documents exist to identify legislative
11 districts?

12 **A. What documents exist now?**

13 Q. Right. Well, at any time. What documents are
14 necessary to identify a legislative district?

15 **A. A legislative district?**

16 Q. Correct.

17 **A. There's a legal description and also a map.**

18 Q. So was a legal description conveyed to the
19 legislature or to the Supreme Court on the 15th?

20 **A. No.**

21 Q. There was no legal description communicated to the
22 legislature or to the Supreme Court for either district,
23 congressional or legislative, correct, on the 15th?

24 **A. There are more than two districts. So I don't**
25 **understand your question.**

1 Q. Was there any document identifying district
2 boundaries for either the legislative districts or the
3 congressional districts on the 15th?

4 A. No.

5 Q. What portion of the plan existed on the 15th at the
6 time of the vote?

7 MR. PEKELIS: Foundation.

8 A. I don't know. I believed, at the time of the vote,
9 that it all existed.

10 Q. All right. So you were under the mistaken belief
11 that maps existed at the time of the vote?

12 A. I believed that the mapping staff were moments away
13 from submitting those maps at the time of the vote, yes.

14 Q. So you knew the maps were not completed at the time
15 of the vote?

16 A. I didn't know, honestly.

17 Q. With regard to your notes in Exhibit 1, you have a
18 number of pages that have numeric designations, for instance,
19 2969, the Bates number on the bottom, right-hand corner.

20 A. I wonder if you would be willing to project that
21 because I don't have that document in front of me here.

22 Q. Can you open it from the chat room?

23 A. Oh, it's in the chat. I'm in the chat. Is there a
24 document in the chat?

25 Q. Correct.

1 **A. I'm sorry, I don't see anything in the chat.**

2 MR. PEKELIS: I don't see it either. It may
3 have disappeared because we went into a breakout room and
4 then came back.

5 MS. MELL: Okay. Let me put it back in there.
6 Just a second.

7 Q. Tell me about the dyads. What did that mean?

8 **A. What I recall is the Commission strategy was to --**
9 **was for bipartisan dyads to work together to develop and**
10 **negotiate proposals to bring to the Commission. So the**
11 **senate dyad would work on a proposal on the congressional**
12 **district plan, and the house dyad would work to develop a**
13 **proposal, negotiate a proposal, to bring for the legislative**
14 **district plan.**

15 Q. What's the difference between the dyads and
16 caucusing or the caucus?

17 **A. So the dyads, from my point of view, were developed**
18 **as a designation for how the work would be broken up, who**
19 **would do what, how the work would be assigned. The caucus,**
20 **that was a new term to me when I heard it on the evening of**
21 **the 15th.**

22 Q. What does it mean?

23 **A. That there was a request that the partisan**
24 **commissioners would be able to confer with each other.**

25 Q. Okay. So who made that request?

1 **A. I don't remember, but I believe it was Joe Fain.**

2 Q. And what did it mean?

3 **A. From my point of view, it meant that these dyads**
4 **had been working on proposals, and they wanted to confer**
5 **together with their -- with the other member of their party.**

6 Q. Okay. So the caucus was partisan?

7 **A. That's what I understood.**

8 Q. But dyads were nonpartisan?

9 **A. Right.**

10 Q. All right. So --

11 **A. Nonpartisan. Sorry, bipartisan.**

12 Q. Bipartisan.

13 Okay. So the first caucus meeting was on the 15th?

14 **A. The first caucus meeting I ever heard of occurred**
15 **on the 15th.**

16 Q. After the meeting started?

17 **A. Yes.**

18 Q. Do you understand then that the two Democrat
19 commissioners were speaking and then the two Republican
20 commissioners were speaking?

21 **A. That's what I understood, yes.**

22 Q. And where were they doing their conversations?

23 **A. I don't know.**

24 Q. And do you know if the Rs and the Ds were
25 communicating with one another?

1 **A. I'm sorry, you mean -- I understood that the**
2 **Democrats were meeting together and the Republicans were**
3 **meeting together.**

4 Q. And they were communicating among each other to try
5 to reach consensus?

6 **A. Not to my knowledge. My understanding was the**
7 **Democrats were meeting together and the Republicans were**
8 **meeting together.**

9 Q. Was there an express communication among the
10 commissioners when meeting in dyads to only meet in groups of
11 two and not have three commissioners communicating?

12 MR. PEKELIS: Object to form. Foundation.

13 **A. What I understand was that, in order to accomplish**
14 **a very complex and technically difficult task --**

15 MS. MELL: Move to strike.

16 Q. That's not my question. Let me strike that
17 question.

18 Is it your understanding -- well, strike that.

19 Was it ever communicated that, when the dyads
20 convened, that there should be no more than two commissioners
21 communicating in dyads?

22 MR. PEKELIS: Object to form and foundation.

23 **A. You're asking me if --**

24 Q. What was communicated? What was communicated?

25 MR. PEKELIS: Same objections.

1 **A. What was communicated was that there was a really**
2 **big job to do and not very much time to do it in, and, if we**
3 **were going to get it done, we would need to, for efficiency's**
4 **sake, assign work. And that work --**

5 MR. PEKELIS: Ms. Mell, please let the witness
6 complete her answer.

7 MS. MELL: That's okay. She's not answering
8 the question. Move to strike the answer. And move to strike
9 the question.

10 Q. Ms. Augustine, was it ever communicated that the
11 dyads should be restricted to two people, two commissioners,
12 two voting commissioners, at any given time?

13 MR. PEKELIS: Object to form and foundation.

14 **A. I don't recall. What I recall is --**

15 Q. If you don't recall, that's a complete answer.

16 **A. Okay.**

17 Q. Is there anything that would refresh your
18 recollection?

19 **A. I don't know.**

20 Q. Is it your understanding that the dyad was a
21 concept created on the public record?

22 **A. Yes.**

23 Q. And with regard to the caucuses, the first time the
24 caucus was brought up was before the meeting on the 15th?

25 **A. The first time I heard of it was at the meeting on**

1 the 15th.

2 Q. Was it in the public portion of the meeting or
3 prior to the meeting started?

4 A. I believe it was in the public portion. That was
5 the first I had heard of it.

6 Q. All right. So, if none of them communicated to you
7 about caucusing in the public forum, how did you learn to
8 caucus and break for caucus?

9 A. I heard about the request from Lisa McLean. That's
10 what I recall.

11 Q. And did you break the public meeting for caucus at
12 Lisa McLean's direction?

13 A. What I remember is having a conversation with Lisa,
14 where she said, "There's a request to caucus." And so we
15 conferred. And so we allowed that time -- I allowed that
16 time for caucus.

17 Q. And was, every time that the Commission off screen,
18 were they in caucus?

19 A. As far as I knew. That was my understanding and, I
20 believed, our agreement.

21 Q. And did anyone monitor communications among the
22 commissioners while in caucus?

23 A. No.

24 Q. Did you have any communications with them about
25 decisions made in caucus?

1 **A. Not that I recall.**

2 Q. Can you see your notes now in the chat room?

3 **A. Yes.**

4 Q. Can you tell me what the numeric designations are,
5 for instance, on the fifth page. It's Bates number 2969.

6 **A. So this is talking about party performance and the
7 various districts.**

8 Q. Is that what all these numeric designations are,
9 like on 2970, 2971, 2972?

10 **A. Yeah.**

11 Q. So are these your notes deliberating over where the
12 caucus boundary should be -- where the district boundary
13 should be?

14 MR. PEKELIS: Object to form.

15 **A. I never participated in any deliberation.**

16 Q. What were you writing these numbers down for?

17 **A. As a trained mediator, I take extensive notes when
18 people are talking so that I can make sure I understand what
19 they're saying.**

20 Q. So you were present when they were deliberating the
21 districts because that's what these numbers reflect, right?

22 **A. I was certainly present when they were -- when they
23 were engaging in communication about on the 14th about the
24 loss of faith, yeah.**

25 Q. Well, you are specifically taking --

1 Well, strike that.

2 Exhibit 1 are notes from when?

3 **A. These notes -- I mean, they're not dated, but**
4 **they're throughout this time period, the 13th, the 14th, and**
5 **the 15th.**

6 Q. So, throughout this timeframe, you were in a room
7 or a location with the commissioners, real time or digital
8 time, jotting down their communications about districts,
9 correct?

10 **A. Yeah, Graves and Sims.**

11 Q. Okay. And so there's no information about what any
12 of the other commissioners thought about these?

13 **A. I was not in communication with the others. They**
14 **had their own negotiation, I was not privy to.**

15 Q. Were these numbers reflecting partisan politics?

16 MR. PEKELIS: Object to form.

17 **A. Can you rephrase the question. I don't understand**
18 **what you mean by that.**

19 Q. Do these numbers reflect partisan statistics from
20 various districts?

21 **A. These numbers reflect party performance.**

22 Q. And when you say party performance, what do you
23 mean?

24 **A. I mean, based on election data, how the parties had**
25 **performed in prior elections.**

1 Q. In specific districts?

2 A. Yes.

3 Q. Where were these statistics coming from?

4 MR. PEKELIS: Objection. Foundation.

5 A. To my knowledge, the Sims and Graves dyad was
6 using, I think it was the treasurer race, the most recent
7 treasurer race. I think it says in the notes here -- let me
8 look -- I think they were using the treasurer race. Oh,
9 yeah, "Treasurer data," it says on 2965.

10 Q. All right. And so your notes reflect that Paul
11 Graves and April Sims reached agreement on the 44th?

12 A. No.

13 Q. Does that mean they didn't reach agreement on the
14 44th?

15 A. Graves and Sims did not reach agreement on the 44th
16 at any time, that I was aware of. I assume that, ultimately,
17 they -- I mean, not at any time I was involved in their
18 conversation.

19 Q. Are these numbers metrics?

20 A. Can you give me a page number.

21 Q. 2969 or 2970. Are these numbers at any time
22 referred to as metrics?

23 MR. PEKELIS: Object to form.

24 A. I don't know.

25 Q. Was there ever a time where you heard discussion

1 about metrics?

2 A. The word "metric" used?

3 Q. Yes.

4 A. I don't remember. I don't remember that being a
5 substantive part of the conversation, but I don't know.

6 Q. What did you say during the course of this
7 conversation to facilitate some sort of communication between
8 Sims and Graves?

9 A. I was asking questions to make sure I understood
10 what their shared proposal was, prior to their agreement
11 being compromised as a result of this appointment to the
12 Secretary of State's office.

13 Q. What was their shared agreement?

14 A. I don't know. These notes reflect what I
15 understood that to be.

16 Q. Are all of these notes numeric designations of
17 partisan performance?

18 A. Well, no. For example, it says, "Tulalip. Current
19 Marysville to stay in the 38th." So that's not about
20 partisan performance. There's also a lunch menu on here.

21 Q. But the numeric designations, those are partisan
22 performance?

23 MR. PEKELIS: Object to form.

24 Q. Is that correct?

25 A. I believe so.

1 Q. And on the page 2969, where it references, "Current
2 Marysville to stay in the 38th," the numbers on the right
3 reflect the partisan performance of that 38th District,
4 correct?

5 A. I don't think so. I think these are numbers of
6 districts.

7 Q. And what is it the D, LD, S, LR, SR mean?

8 A. I think LD is lean democratic, LR is lean
9 Republican, SR is safe Republican. I don't remember what D
10 stands for. It has something to do with democratic. So what
11 these are talking about is how many districts of each one or
12 the districts.

13 Q. What does safe mean?

14 MR. PEKELIS: Objection. Foundation.

15 A. I really think these questions are really more
16 appropriate for the voting commissioners. As you can tell,
17 this is not my purview.

18 Q. Well, they're your notes. I am just wanting to
19 know what you thought you were writing down.

20 A. So, from my point of view -- forgive me -- they
21 know what they mean by saying safe. It's not important that
22 I understand what they mean by safe. I'm writing down, hey,
23 this is what their interests are, and I am trying to help
24 them move through the gridlock that they're in so that they
25 can get their interests met.

1 So I don't know what safe means, honestly. Whether
2 it's lean democratic or lean Republican, these are the kinds
3 of things that the voting commissioners could tell you. I
4 don't know how those are defined.

5 Q. Did you write your declaration to the Supreme
6 Court?

7 A. I did.

8 Q. How did you decide what times to put on the
9 chronology?

10 A. I wrote my declaration to be in compliance with the
11 request of the Supreme Court order.

12 Q. That's not what I asked.

13 I asked how you figured out what times you put on
14 it.

15 A. I put the times that I believe the Supreme Court
16 requested.

17 Q. And how did you identify those times?

18 A. The Supreme Court -- I don't have their declaration
19 in front of me -- or their order in front of me -- but what I
20 remember is that they asked for the times of the votes. They
21 asked for -- I don't remember.

22 Q. I'm asking how you knew what times to put. Where
23 did you come up with the times?

24 A. Yeah. We have an official record that's kept by a
25 court recorder that's timestamped.

1 Q. Do you know how it was timestamped?

2 A. I don't. I know that there were also -- it could
3 be that -- I honestly take that back and say I'm not exactly
4 sure. But it could also be when the emails were submitted to
5 Lisa. So the electronic tool that was used for signature has
6 a timestamp on it, too.

7 Q. Do you know whether or not the -- strike that.

8 Did you rely on TVW to televise your meetings or
9 publicize your meetings?

10 A. TVW broadcast our meetings. We advertise our
11 meetings in a variety of ways.

12 Q. Did you rely on TVW to broadcast your meetings to
13 the public, or did you allow the public to attend in Zoom?

14 A. The public was encouraged to sign up for comment
15 and attend via Zoom.

16 Q. On the 15th, did you invite the public to make
17 comments and attend via Zoom?

18 A. I don't remember.

19 Q. Do you remember allowing the public to be present
20 in Zoom on the 15th or 16th?

21 A. I don't remember.

22 Q. Do you remember reviewing TVW footage to verify
23 whether or not the time stamps you conveyed to the Supreme
24 Court were accurate?

25 A. No. And I don't -- yeah, I believe -- I don't -- I

1 don't remember. I would have to reflect on where those time
2 stamps came from, but I believe they came from the record and
3 probably from signature.

4 Q. Was anybody actually timing the meeting?

5 A. From my point of view, the independent staff were
6 doing that, and, by that, I mean our tech support.

7 Q. Do you know that the motion on the legislative
8 districts came on the 15th and the affirmative votes were
9 reflected on the 16th on the TVW footage?

10 A. No.

11 Q. Do you know whether or not there was any
12 alternative to viewing the meeting on the 15th and the 16th,
13 other than through TVW?

14 A. I assume it was also streamed on YouTube because,
15 typically, our meetings are streamed on YouTube. I am not
16 sure.

17 Q. Are meetings streamed live on YouTube?

18 A. I'm not sure.

19 Q. So do you know if the public had access to the
20 meeting on the 15th and the 16th?

21 MR. PEKELIS: Object to form.

22 A. I assume our meeting on the 15th was conducted in
23 the way that all of our meetings were conducted, but I did
24 not verify that, so I couldn't speak to it directly.

25 Q. Okay. Do you have any personal knowledge as to

1 whether or not the public could participate in the meeting on
2 the 15th or the 16th?

3 **A. Yes.**

4 Q. And what's your personal knowledge?

5 **A. Reading about it in the press on Tuesday morning.**

6 Q. Do you have any personal knowledge that relates to
7 decisions you made?

8 MR. PEKELIS: Object to form.

9 **A. I'm sorry, I don't understand the question.**

10 Q. Do you have any personal knowledge about whether or
11 not the public was able to access the meeting on the 15th and
12 the 16th, other than what you read in the media?

13 **A. I assumed, based on the detailed nature of what I**
14 **read in the media, that I assumed that those meetings were**
15 **broadcast in the way that they had been historically.**

16 Q. Prior to submitting a declaration to the Supreme
17 Court, did you identify whether or not the Commission had
18 reached an agreement prior to finalizing the boundaries of
19 the three districts referenced?

20 MR. PEKELIS: Object to form.

21 **A. I'm sorry, I don't understand the question.**

22 Q. Prior to submitting, under oath, the declaration to
23 the Supreme Court, did you speak to anyone about whether or
24 not the Commission had actually reached an agreement and on
25 what at the time they voted?

1 **A. The commissioners, including myself, participated**
2 **in a press avail on, I believe it was Thursday. And in that**
3 **press conference, I heard all of the commissioners describe**
4 **what they had voted on.**

5 Q. What did you hear that they had voted on?

6 **A. I heard in that press conference that they had**
7 **voted on a framework and that the technical aspect of**
8 **completing the maps did not occur by the statutory deadline**
9 **and that is why they were moving on -- the jurisdiction would**
10 **move on to the Supreme Court.**

11 Q. So was it your understanding, at that press
12 conference, that the commissioners agreed that they did not
13 complete their work by midnight?

14 MR. PEKELIS: Object to form.

15 **A. Yes.**

16 Q. Was it your understanding that the commissioners
17 agreed, at the time of the press conference, that they had
18 not reached a final agreement on congressional or district
19 maps at the time of the vote?

20 MR. PEKELIS: Object to form.

21 **A. What I understood at the press conference is that**
22 **they agreed that we had -- that the Commission had lost its**
23 **statutory authority.**

24 Q. And were the commissioners collectively together at
25 the time of the press conference?

1 **A. Yes. Collectively, via Zoom, though in the virtual**
2 **space.**

3 Q. Was that press conference televised or made
4 publicly available?

5 **A. I don't know.**

6 Q. Who decided to hold a press conference?

7 **A. The press conference had been scheduled before our**
8 **regular meeting, and it was scheduled for Tuesday. And as a**
9 **result of the late night Monday, it was rescheduled to**
10 **Thursday. So it was scheduled by our communications**
11 **director, Jamie Nixon.**

12 Q. Did the commissioners agree to that schedule?

13 **A. Yes.**

14 Q. Did they agree to that schedule in a public
15 meeting?

16 **A. I don't know.**

17 Q. Who made the final decision that the maps were
18 completed for transmittal?

19 **A. My understanding is that the commissioners assigned**
20 **caucus staff to complete mapping, to complete the mapping.**

21 Q. Did the commissioners all approve --

22 **A. I'm sorry, what? Do you want me to finish**
23 **answering?**

24 Q. If you're still going, yeah.

25 **A. Yeah, I'm still going.**

1 Q. Okay.

2 A. The commissioners instructed the caucus staff to
3 then submit the maps to the independent staff so that they
4 could be posted. So, once the caucus staff -- from my point
5 of view, the caucus staff were empowered to submit those
6 maps. Once the maps were submitted, they were uploaded by
7 the independent staff, and the independent staff posted them
8 on the website. That was the process.

9 Q. Okay. And was that process decided on the 16th?

10 A. That process was decided in the September and
11 October meeting, either the regular or the special meetings
12 of the Commission.

13 Q. In the September and October meetings, there was a
14 decision to transmit the maps after the vote?

15 A. There was a decision made for the process for
16 transmittal. And so we carried out that process even though
17 we missed the vote. We just followed the same process.

18 Q. So was there a decision made to follow that process
19 on the 16th, even though you had missed the deadline?

20 A. There was no discussion of it. I assumed that's
21 what we would do, and so that's what we did.

22 Q. So did the caucus decide when the maps were
23 finalized?

24 A. What do you mean by the caucus?

25 Q. Well, whoever you're talking about, the caucus

1 staff.

2 A. The caucus staff, yes. Keep in mind, please, that
3 there are four caucuses. So there were two caucus staff
4 assigned to each map. There was a Republican caucus staff
5 and a Democrat caucus staff, and together they completed the
6 maps.

7 Q. You mean there was two house caucus, two senate
8 caucus, Rs and Ds?

9 A. There are four caucuses. There was one staff
10 assigned by each of the four caucuses.

11 Q. So did the commissioners approve the final maps?

12 A. I assume --

13 MR. PEKELIS: Object to form.

14 A. I assume that the maps that the caucus staff
15 submitted were with the authority of the commissioners that
16 they work for.

17 Q. Okay. So did you assume that based on your
18 observation of how the work was performed?

19 A. I assumed it based on how the work had been going
20 along for --

21 THE REPORTER: You're kind of breaking up
22 there.

23 A. I assumed that the caucus staff were there mapping
24 for the commissioner they supported.

25 Q. Commissioner Walkinshaw communicated to you that

1 the Supreme Court received maps that he didn't approve.

2 Do you recall that communication?

3 **A. I recall getting a text from him saying -- no, I**
4 **don't. I don't recall what you're saying, no.**

5 Q. What do you recall about Walkinshaw's
6 communications with you about those maps?

7 **A. I recall him saying that he had not seen the final**
8 **legislative district map and he was concerned.**

9 Q. What did you do about that?

10 **A. There was nothing I could do about it, nothing.**

11 Q. Did you know that prior to communicating to the
12 Supreme Court?

13 **A. No.**

14 Q. So you had already communicated your declaration to
15 the Supreme Court when you heard from Walkinshaw that he had
16 not seen the map?

17 **A. Yes.**

18 Q. And you had prepared your declaration to that
19 effect?

20 **A. I don't understand.**

21 Q. Didn't you draft your declaration after Walkinshaw
22 told you he had never seen the final map?

23 **A. He said that. And then at the press avail, he said**
24 **that he had -- in fact, I had a conversation with him**
25 **Thursday morning, and he said, "The maps reflect what we**

1 **agreed upon."**

2 Q. Was there any discussion about whether or not the
3 maps didn't reflect what he had agreed upon?

4 **A. No.**

5 Q. Was there a period of time where Walkinshaw and
6 Fain were in disagreement over the boundaries?

7 MR. PEKELIS: Objection. Foundation.

8 **A. I have no idea.**

9 Q. You said that you had a conversation with
10 Walkinshaw about not seeing the maps, and he told you that
11 the maps reflected what they agreed upon.

12 What did you think that he was referring to?

13 **A. I did not have a conversation with him. I received**
14 **a text message from him.**

15 Q. I thought you said you had a conversation with him
16 on a Thursday.

17 **A. Oh, on Thursday. What he said on Thursday was, "I**
18 **believe that the maps support what we voted on." Basically,**
19 **what I received was, disregard the previous text.**

20 Q. So are you of the impression that Walkinshaw at one
21 point was concerned about whether the maps conformed with
22 what he wanted and then ultimately decided that they did?

23 MR. PEKELIS: Object to form.

24 **A. I couldn't say. I think that's a question for**
25 **Commissioner Walkinshaw.**

1 Q. How did you take his communication to you?

2 A. It sounded like he was concerned, and then he was
3 no longer concerned.

4 Q. Have you reviewed all the communications among to
5 commissioners from the 15th and 16th?

6 A. No.

7 Q. Have you conducted any kind of audit of the
8 communications to apply open government principles to those
9 communications?

10 A. I'm sorry?

11 MR. PEKELIS: Object to form.

12 Q. Have you conducted any kind of audit of the
13 communications of the commissioners to ascertain whether or
14 not they were in conformance with open government standards?

15 A. No.

16 Q. What kind of open government training have you had?

17 A. I followed the AGO website, self-guided training.

18 Q. What do you mean, you followed the AGO website?

19 A. I was instructed that there was a training
20 available on the Attorney General's Office website. I was
21 given a link to that site. I went to that site and followed
22 the self-guided training.

23 Q. What day did you do that?

24 A. I did it over a series of weeks in February and
25 March.

1 Q. From what computer?

2 A. From my redistricting computer, I suppose.

3 Q. And how much time did you spend?

4 A. Probably less than 10 hours.

5 Q. What do you recall about the training?

6 A. It's a very extensive training, so I could use help
7 with some more specific questions.

8 Q. Well, do you remember learning anything?

9 A. Yes.

10 Q. What do you remember learning from the training?

11 A. I remember learning that all decisions needed to be
12 made at an open, public meeting.

13 Q. Anything else?

14 A. That the public had the right to attend meetings.

15 And there was discussion ensuring that we could do that,
16 given a COVID environment.

17 Q. Do you remember learning anything about serial
18 meetings?

19 A. Yes.

20 Q. What do you remember?

21 A. I remember that commissioners could not agree about
22 something in a serial fashion, either by email or by phone
23 call or whatever, where they were forming an agreement in a
24 series without being in an open, public meeting.

25 Q. Was it your understanding that an agreement was the

1 only course of conduct, subject to open government
2 principles?

3 **A. No. Some commission business.**

4 Q. So any commission business?

5 **A. I'm not going to designate my answer to any
6 commission business because, clearly, that would not be the
7 case, but certainly actions.**

8 Q. How about deliberations?

9 **A. How do you want me to answer that? I am not sure I
10 understand what your question is.**

11 Q. Did you understand that the commissioners had to
12 deliberate publicly?

13 **A. Yes.**

14 Q. Did you understand that the commissioners had to
15 negotiate publicly?

16 **A. Yes.**

17 Q. Did the commissioners negotiate publicly on
18 November 15th?

19 **A. From my point of view, on November 15, there was a
20 very chaotic meeting, and it's not clear to me that they
21 presented their ideas clearly.**

22 Q. In public?

23 **A. Right.**

24 Q. So is there a question in your mind whether or not
25 the commissioners complied with the Open Public Meeting Act

1 based on their conduct on the 15th?

2 MR. PEKELIS: Objection. Calls for a legal
3 conclusion.

4 **A. I don't know.**

5 Q. Are you concerned about their conduct on the 15th
6 relative to the Open Public Meeting Act?

7 MR. PEKELIS: Same objection.

8 **A. I don't know.**

9 Q. Did you at any point in time communicate with the
10 commissioners on the 15th the need to come into the public
11 meeting and disclose what they had been negotiating?

12 **A. Yes.**

13 Q. When did you do that?

14 **A. Throughout the meeting, I was calling them and
15 asking them to get on camera.**

16 Q. And what do you recall about any of those
17 conversations?

18 **A. I remember calling them and asking them to get on
19 camera.**

20 Q. Who do you remember talking to?

21 **A. I remember talking to Commissioner Sims. I
22 remember talking to Commissioner Fain. And I assumed that
23 they were in their caucus, their caucuses, so I was calling
24 the two of them to say, please get on camera and talk about
25 what you're doing.**

1 Q. Why were you doing that?

2 A. To ensure the public had an opportunity to hear
3 about their proposals.

4 Q. Did they get on camera and talk about what they
5 were doing?

6 A. They did, intermittently.

7 Q. Did they do it less than what you required of them
8 or asked of them? I guess I should say, did they come out
9 and speak less than what you had asked them to do?

10 A. I don't recall giving them specific parameters with
11 timelines.

12 Q. Was it your impression that they were telling the
13 public less than what they were doing?

14 MR. PEKELIS: Object to form. Foundation.

15 A. It was my impression that there was -- that there
16 was a chaotic -- that there was chaos among tired people.
17 That was my impression.

18 Q. Okay. In addition to the chaos, did they say less
19 in public than what you understood they were doing?

20 A. I don't know.

21 MR. PEKELIS: Object to form and foundation.

22 Q. Did you say --

23 A. I don't know what they were doing.

24 Q. Why did you not make it your job to know what they
25 were doing?

1 MR. PEKELIS: Objection. Argumentative.

2 A. I was facilitating a meeting and trying to check in
3 with the public every 30 minutes. I did not know where
4 people were meeting. I was not privileged to what was going
5 on, and I did not tear around the hotel trying to find out.
6 So I don't know, I guess is the best way I can answer that.

7 Q. My question is: Did you feel like it was your duty
8 and responsibility to ensure the Commission complied with
9 OPMA?

10 A. Yes.

11 Q. Did you feel it was your duty and responsibility to
12 ensure the Commission complied with commission regulations?

13 A. Yes.

14 Q. Did you understand that the commission regulations
15 or rules, the Washington Administrative Code adopted by the
16 Commission, required them to act publicly?

17 MR. PEKELIS: Objection. Calls for a legal
18 conclusion.

19 A. I understood that we were to comply with OPMA, yes.

20 Q. Open what?

21 A. The Open Public Meeting Act.

22 Q. Did you understand that the regulations required
23 more openness than the Open Public Meeting Act?

24 MR. PEKELIS: Same objection.

25 A. I don't know.

1 Q. Had you read the rules prior to becoming a
2 commissioner?

3 **A. Prior to becoming a commissioner? No.**

4 Q. Did you read the Washington Administrative Code
5 provisions specific to the Commission while acting as chair
6 or at any time as chair?

7 **A. I don't remember.**

8 Q. Do you know whether or not the -- well, strike
9 that. When's the last time you read the rules?

10 **A. I don't know.**

11 Q. Do you recall any of the provisions from the rules
12 with regard to transparency?

13 **A. I don't.**

14 Q. Do you believe the Commission was transparent?

15 MR. PEKELIS: Objection, to the extent it
16 calls for a legal conclusion.

17 **A. I don't know.**

18 Q. Do you believe there's anything that you should
19 have done as the chair to ensure better transparency?

20 **A. Given the context, no.**

21 Q. When you say given the context, what are you
22 saying?

23 **A. I'm saying there was a very chaotic meeting among
24 very tired people, and I believe I did my job to the best of
25 my ability, given the conditions.**

1 Q. Why was it chaotic?

2 A. The fact that there were conversations happening in
3 that location in Federal Way was impromptu, it was not
4 scheduled or planned. The Commission had spent nearly a year
5 working very hard on behalf of the people of Washington, and
6 they were running out of their statutory authority. And
7 there were technical issues that we faced that we did not
8 anticipate, not the least of which is trying to maneuver very
9 complex, difficult mapping software. And all of those things
10 together, with Internet outage, led to a chaotic environment.

11 Q. Who was responsible for controlling the chaos?

12 A. I'm not sure I know.

13 Q. What kind of Internet outage did you have?

14 A. My Internet was being run specifically through my
15 hotspot. I'm not sure how the other commissioners were
16 getting access to Internet. I heard, at least from Joe Fain
17 and I think -- I'll just speak for Jo Fain because I know
18 from the record of the meeting he lost Internet multiple
19 times throughout the course of that meeting.

20 Q. Why didn't you guys just go into one room and
21 televise from there?

22 A. Great question. I don't know.

23 Q. Who was in control of how you were meeting?

24 A. From my point of view, each adult has the ability
25 to control their own behavior, and so it's very difficult for

1 one human being to control another. Each commissioner was in
2 control of themselves and their conduct. It's a commission
3 of five. Each person was determining how they were going to
4 conduct themselves.

5 Q. Well, who made the plans to hold the meeting via
6 Zoom at the hotel?

7 A. The meeting via Zoom was planned weeks in advance
8 by the independent staff, just like all of our meetings were
9 held by Zoom, as a result of the COVID environment. I do not
10 believe the commissioners called into zoom meetings from the
11 same location at every single meeting.

12 There was never a plan that -- of where
13 commissioners would be physically when they called into the
14 meeting. All of our meetings were via Zoom. So there wasn't
15 a plan to do it that way. It happened that way because of
16 the lateness of the hour.

17 Q. You mean it happened at the hotel because of the
18 lateness of the hour?

19 A. Yes.

20 Q. Okay. So there was not an advanced plan to have
21 the lot available for the commissioners?

22 A. No.

23 Q. Did you at any time suggest everyone convene in one
24 room?

25 A. Yes.

1 Q. When?

2 A. Multiple times over months of time.

3 Q. And how was the decision made not to convene in one
4 room?

5 A. Various commissioners had reasons why they didn't
6 want to. Paul Graves -- I think his third child was born two
7 weeks before this meeting. He did not want to have to
8 travel.

9 Mostly, people didn't want to have to travel to
10 Olympia to do the meetings. I asked that this final meeting
11 be held in Olympia because it was convenient. And most of
12 the scheduling was done by independent staff over weeks of
13 time. There was never a place agreed upon that everyone
14 would meet together face-to-face, although that was
15 requested.

16 Q. Do you know that the rules require to meet in
17 Olympia?

18 MR. PEKELIS: Objection, to the extent it
19 calls for a legal conclusion.

20 A. No.

21 Q. Was there ever a motion to meet other than in
22 Olympia?

23 A. I don't understand.

24 Q. Was there ever a motion by the Commission to
25 convene their meetings outside Olympia?

1 **A. Not that I'm aware of, because we have been living**
2 **in a COVID environment where virtually all meetings have been**
3 **through Zoom for two years.**

4 Q. Did you print out training materials?

5 **A. No.**

6 Q. Do you have any documentation that would establish
7 when you performed any training work and what training work
8 you performed?

9 **A. No.**

10 Q. Would your computer's metadata document when you
11 went to the attorney general's website?

12 MR. PEKELIS: Objection. Foundation.

13 **A. I have no idea.**

14 Q. I didn't hear you, Ms. Augustine.

15 **A. I have no way of knowing that.**

16 Q. Have you searched for any metadata that would
17 document your participation in training?

18 **A. With respect, I don't know what metadata is.**

19 Q. Have you searched or had anyone examine your
20 computer to ascertain whether or not they could locate
21 confirmation that you attended training?

22 **A. No.**

23 Q. Did anybody tell you that you completed sufficient
24 training to comply with OPMA?

25 **A. No.**

1 Q. Do you believe that you trained sufficiently in
2 OPMA?

3 MR. PEKELIS: Objection. It calls for a legal
4 conclusion.

5 You can answer.

6 A. I don't know.

7 Q. Did you, as a commissioner, try to schedule
8 training that would comply with OPMA?

9 A. No.

10 Q. Did anyone at the Commission verify that you
11 completed training?

12 A. No. A question I have though is: Who would that
13 be?

14 Q. I don't know. The director?

15 A. The director was hired by me. So, when I did the
16 training, she was not even a director yet. I hired all the
17 staff.

18 Q. Okay. And so how did you make the decision to hire
19 Ms. McLean? Did you do that on your own?

20 A. I worked with the HR office of the legislature. We
21 put together a screening committee criteria. We posted a
22 recruitment -- I guess it would be like a job description.
23 We conducted interviews. We conducted three layers of
24 interviews. I think myself and HR did the first. The second
25 was conducted by myself and the staff from the senate, the

1 head staff from the senate and the house. And the third
2 interview was with all commissioners.

3 Q. Okay. Did you make a decision on executive
4 director in any follow-up meeting?

5 A. We did.

6 Q. And how about the staff?

7 A. The staff were directly hired by Lisa McLean, in
8 compliance with our WACs.

9 Q. So did you hire Lisa McLean prior to the other
10 commissioners approving her publicly?

11 A. I just explained to you the process by which we
12 hired Ms. McLean. They voted. I wasn't even in her final
13 interview. The final interview was with the voting
14 commissioners.

15 Q. At a public meeting?

16 A. Yes.

17 Q. Did they take a vote on hiring her?

18 A. They did.

19 Q. Can you think of any decision that was made on the
20 16th by the commissioners, the voting commissioners?

21 MR. PEKELIS: Object to form.

22 A. Not in my presence or to my knowledge.

23 Q. Can you think of any deliberations that occurred
24 among the voting commissioners on the 16th?

25 MR. PEKELIS: Object to form.

1 **A. Not in my presence.**

2 Q. Were they ever outside of your presence on the
3 16th?

4 **A. Certainly.**

5 Q. Pardon?

6 **A. Certainly.**

7 Q. So when were they outside of your presence on the
8 16th?

9 **A. I know various ones of them had to go to the
10 bathroom or call their spouses. I never --**

11 Q. Were you done?

12 **A. Yes.**

13 **I didn't enforce any kind of mandate that they had
14 to stay in that room.**

15 Q. Did any of them share communications that they had
16 with other voting commissioners?

17 **A. No.**

18 MR. PEKELIS: Object to form. Foundation.

19 Q. Did any of them share any communications that they
20 had from outside sources?

21 MR. PEKELIS: Can you read back the question
22 for me, Mr. Johnson.

23 Q. (By Ms. Mell) Did any of them share any
24 communications they had with outside sources?

25 **A. No.**

1 Q. Did you do anything to ensure that third-party
2 input to the redistricting process was recorded and
3 publicized?

4 A. We had held, I believe, 17 public input meetings,
5 and all of those meetings were public. And at every public
6 meeting prior to the 15th, there was an opportunity for
7 public comment. And so I think we worked really hard to
8 ensure that the public was engaged. We had an outreach plan
9 and staff committed to doing outreach to the public in terms
10 of input.

11 Q. Did you make sure that communications to the
12 commissioners were publicized?

13 A. No.

14 Q. Did you understand that the redistricting process
15 is not to be politicized?

16 MR. PEKELIS: Object to form.

17 A. I don't understand the question.

18 Q. Do you know that there's a limitation on how
19 political redistricting should be, in statute?

20 MR. PEKELIS: Object to form.

21 A. I don't know what you mean by political.

22 Q. Along partisan lines.

23 MR. PEKELIS: Same objection.

24 A. So I'd just appreciate a more specific question.

25 Q. Do you understand that there's a statutory and

1 constitutional reference to how partisan redistricting should
2 be?

3 MR. PEKELIS: Objection. Calls for a legal
4 conclusion.

5 A. I'm sorry, I just don't understand the question.

6 I have read the statute, I understand what the
7 provisions of the statute are, and I'm not sure what you're
8 asking of me.

9 Q. Do you remember any of the provisions of the
10 statute pertaining to partisan politics in redistricting?

11 MR. PEKELIS: Same objection.

12 A. I don't understand. I mean, I guess I don't
13 understand what you're asking. Yes, I recognize that it's a
14 bipartisan process and that there are features of the statute
15 that explain the priorities of the Commission, yes.

16 Q. Do you understand that the Commission's plan should
17 not be drawn purposely to favor or discriminate against any
18 political party or group?

19 A. Yes.

20 Q. What did you do to ensure that?

21 A. I held a nonpartisan staff to have a high standard
22 of nonpartisanship. I held the largest outreach public
23 outreach effort for any commission, ever. And included a
24 tribal consultation policy and engaged in tribal consultation
25 for the first time any committee had ever done that, to

1 include the largest number of people, including the most
2 marginalized, in the process.

3 Q. Is it correct that the negotiations you directly
4 observed on the 15th were all about partisan priorities?

5 MR. PEKELIS: Object to form.

6 A. I understand that the notes that I took at that
7 time reflect a discussion between two commissioners about
8 their interests regarding party performance.

9 Q. Did you ever observe any negotiations where the
10 subject matter of the district maps was something other than
11 party performance?

12 A. Yes.

13 Q. When?

14 A. Throughout these -- the 13th, 14th, and 15th, which
15 is the only negotiation I was directly a part of.

16 Q. Well, what did you observe with regard to
17 negotiations over districts that weren't based on party
18 performance?

19 A. The number of majority-minority districts and where
20 those districts would be; where to cross the Cascades in
21 terms of drawing boundaries; tribal consultation and how that
22 should be addressed; communities of interest and how
23 communities of interest should be reflected, given public
24 testimony. That would include consolidating cities
25 throughout various geographies.

1 Q. Anything else?

2 A. **There may be others. That's what I can recall at**
3 **this time.**

4 Q. And what do you mean by number of majority-minority
5 districts?

6 A. **Creating districts where ethnic minorities would be**
7 **in the majority. There was also extensive discussion about**
8 **compliance with the Voting Rights Act.**

9 Q. When did those discussions occur?

10 A. **The only negotiation I was part of was on the 13th,**
11 **the 14th, and the 15th.**

12 Q. And the only portion of the negotiations on the
13 13th, 14th, and 15th that were public was approximately
14 30 minutes on the 15th after 7:00 and at close to midnight?

15 A. **The negotiations I was part of were one dyad**
16 **working on a proposal together.**

17 Q. Okay.

18 A. **And I don't think their conversation was part of**
19 **the meeting on the 15th.**

20 Q. Okay. So would you agree that the only public
21 portion of the negotiations that was -- strike that.

22 Would you agree that there was approximately
23 30 minutes of redistricting activity made public on the 15th?

24 A. **I believe that's what the record reflects.**

25 Q. Okay. So there were negotiations ongoing between

1 the 13th, 14th, and 15th that were not public?

2 **A. That was the ongoing work of the dyad that was**
3 **working together on creating preliminary agreements for a**
4 **proposal to the legislative district plan.**

5 Q. But on the 15th, that converted into caucus work?

6 MR. PEKELIS: Object to form.

7 **A. I wouldn't say it converted into caucus work.**

8 Q. Well, the dyads weren't maintained, it was now
9 caucus groups, right?

10 **A. That's what I understood, yes.**

11 Q. Okay. So when in the negotiations on the 13th,
12 14th, and 15th were the majority and minority districts
13 decided?

14 MR. PEKELIS: Object to form. Foundation.

15 **A. I don't know about decided. I don't even know that**
16 **anything was decided. I'm telling you what I heard. You**
17 **asked me what I heard, and I am telling you, these are other**
18 **considerations that I heard.**

19 Q. Actually, I asked you what you did to ensure it
20 wasn't political. And you said there were conversations that
21 you participated in specifically delineating some of these
22 things. So I was wanting to know --

23 **A. Ms. Mell, you asked me what I had done to ensure**
24 **compliance with my duties, and I explained to you the**
25 **extensive outreach.**

1 Q. Are you trying to answer something? I didn't hear
2 you. Did we lose you?

3 **A. I was frozen for a moment.**

4 Q. I think you were. I didn't see any movement there.
5 Okay. So what conversations were you participating
6 in about the majority and minority districts?

7 **A. What I recollect is that you asked me if, on the
8 13th, the 14th, and the 15th, that there were any other
9 discussions, other than partisan performance, and I said yes,
10 and I listed those.**

11 Q. Right.

12 So now we're going to go through each and ask what
13 you heard and when.

14 So what discussions did you participate in about
15 the majority and minority districts on the 13th, 14th, and
16 15th?

17 **A. I know that minority-majority districts were
18 important to Commissioner Sims, and she voiced that multiple
19 times as a priority for her.**

20 Q. So what did you hear them decide?

21 **A. As I said previously, they made no decisions.
22 Primarily, the things they were talking about was repairing
23 their relationship, to the extent they would be willing to
24 work through the -- (inaudible).**

25 Q. Okay. So what did you hear them discuss about

1 majority-minority districts?

2 A. As I said, April Sims voiced that it was a priority
3 for her and justified some of the things that she was asking
4 for as a result of that.

5 Q. What did you hear her ask for, and who did she ask?

6 A. As I said, the only group that I was ever a part of
7 was April Sims and Paul Graves.

8 Q. Okay. So what did you hear April Sims ask for with
9 regard to majority-minority districts?

10 A. I don't recall. That is a really good question for
11 April Sims because I'm sure she has, in detail, her
12 understanding of what happened there.

13 Q. Do you see any of April's communications about
14 majority-minority districts in those three days of
15 negotiations reflected in your notes.

16 A. I'm trying to open the notes. I have them open,
17 but, for some reason, they're not -- they just keep closing.

18 I know that on RC 002969, she's talking about
19 complying with Tulalip consultation, in terms of where they
20 would be in relationship to Marysville and what district.

21 Unfortunately, that's the only page I can see at
22 this moment. If you or one of your staff would be willing to
23 share screen, it would be much easier for me.

24 Q. From what you see on 2969, what did you say that
25 that reflects?

1 **A. Compliance with consultation with the Tulalip**
2 **Tribe.**

3 Q. And that's what the notation up in the top left
4 means, "Tulalip. Current Marysville to stay in the 38th"?

5 **A. Yeah.**

6 Q. So what were you conveying or noting there?

7 **A. That that was a priority for Sims.**

8 Q. That what was? That the Tulalip stay in the 38th?

9 **A. That's what it appears to be.**

10 Q. Okay.

11 **A. So, on page RC 002966, on the right-hand side, it**
12 **says, "Sims. Agreement on VRA, Voting Rights Act, CVAP,**
13 **Hispanic, Republican performing." So that is talking about**
14 **making sure that there's compliance with Voting Rights Act by**
15 **creating a CVAP district in Central Washington.**

16 Q. What does CVAP stand for?

17 **A. Let me think about it for a minute. Voting age**
18 **population. Citizen Voting Age Population.**

19 Q. And so explain your notations. "Agreement on VRA
20 C-V-A-P H-I-S-P, dash, are performing." What does that mean?

21 **A. That means that the Voting Rights Act -- to me,**
22 **this says they agree that the Voting Rights Act is a**
23 **priority, and they're working on a CVAP Hispanic district.**
24 **It could be Republican performing.**

25 Q. Meaning the district votes Republican?

1 A. Meaning that these are all elements that they were
2 talking about.

3 Q. But "R performing" means the district votes
4 Republican?

5 A. I didn't say that. I don't know. All I was doing
6 was writing down what I heard. And I was not one of the
7 parties negotiating.

8 You asked me to describe to you where in my notes
9 they talk about things other than party performance, and I am
10 telling you.

11 Q. What about where to cross the Cascades, what was
12 your observations of the deliberations over where to cross
13 the Cascades?

14 A. I don't know that it's reflected in these notes. I
15 don't remember them talking about it.

16 Q. What do you remember?

17 A. I remember trying to decide -- them trying to
18 decide -- where they would cross the Cascades. So that is to
19 say -- that is to say, it's impossible, given the math of the
20 population and how we live in the state, that you could have
21 -- that you wouldn't have to cross the Cascades somewhere.

22 There was a lot of public comment. From my memory,
23 this is what was discussed. There was public comment about
24 not having a big, long district that would be inconvenient
25 that would have to cross the Cascades. So there was

1 discussion about that and an acknowledgement that there was
2 no way to not do that -- because I think there was something
3 like in excess of 60,000 people -- in order to comply with
4 making sure that all of the legislative districts were of
5 similar size.

6 So that was discussed. Like where is that going to
7 happen? Where are we going to put that -- draw that
8 population from -- or how are we going to draw that?

9 Q. Do you recall there being a decision on where to
10 cross the Cascades?

11 A. No.

12 Q. Do you recall there being a decision on any of
13 these points that you said you observed discussed?

14 A. No. As I said, I was part of a very small portion
15 of overall negotiation with only one dyad. So, no.

16 Q. Did you ever meet with the caucuses?

17 A. No.

18 Q. What do you recall about tribal consultation?

19 A. I attended every tribal consultation.

20 Q. What does that mean?

21 A. We created a tribal consultation policy. And in
22 compliance with that policy, federally recognized Indian
23 tribes were able to request consultation with the Commission.
24 And in every event, I attended that consultation.

25 Q. Were those events public?

1 **A. No.**

2 Q. Who attended those consultations?

3 **A. Members of tribal government and, typically, myself**
4 **and one commissioner.**

5 Q. And did you specifically limit it to one commission
6 so there weren't a majority of the voting commissioners in
7 attendance at those tribal consultations?

8 **A. We conducted tribal consultation according to the**
9 **convenience of the commissioners, all of whom have full-time**
10 **jobs.**

11 Q. So were all of the commissioners invited to every
12 consultation?

13 **A. Yes.**

14 Q. And did you make the consultations public?

15 **A. No.**

16 Q. Was there ever an instance when a voting
17 commissioner indicated they wanted to come and were asked not
18 to come because there was already a commissioner going?

19 **A. No. There was at least one consultation where**
20 **there were two commissioners, if I recall correctly.**

21 Q. And who were they?

22 **A. Graves and Sims.**

23 Q. And you?

24 **A. And me.**

25 Q. Did you understand that you had the ability to make

1 decisions for the Commission?

2 **A. Yes, to a limited degree.**

3 Q. And what was the scope of your decision-making
4 authority?

5 **A. I had the ability to set agendas, to convene**
6 **meetings, and that the agenda that I set would not -- would**
7 **not be -- could not be opposed without three votes to oppose**
8 **it.**

9 Q. And where did you come up with that agreement?

10 **A. I don't believe that's an agreement. I believe**
11 **that's in the WAC.**

12 Q. Why didn't you have public comment on the 15th?

13 **A. I don't know. I don't recall.**

14 Q. But you set the agenda without public comment?

15 **A. I did.**

16 Q. And the commissioners didn't oppose that?

17 **A. That's right.**

18 Q. Did you have any discussion about that publicly?

19 **A. No.**

20 Q. What do you recall about communities of interest in
21 your negotiations on the 13th, 14th, and 15th?

22 **A. There was much discussion about communities of**
23 **interest that were related to specific geographies. I**
24 **couldn't recall or recount for you all of them because there**
25 **are many. There are 49 districts across the state, and there**

1 are communities of interest within all of them, and public
2 testimony from all of them. So I would have trouble
3 recalling what was said about each district in these
4 conversations. I don't recall.

5 Q. Do you recall discussions about communities of
6 interest pertaining to the physical maps?

7 A. I don't understand the question.

8 Q. Are communities of interest affected by where the
9 district boundaries are designated on a map?

10 A. Yes.

11 Q. And without the map, you don't know where or how
12 the communities of interest are affected, correct?

13 A. Throughout this process on the 13th, 14th, and
14 15th, caucus staff were there mapping. There were draft maps
15 along the way.

16 Q. And those maps were essential to identifying how
17 communities of interest were affected, correct?

18 A. I don't know how to answer that. Essential to
19 whom? I mean, I wasn't a decision-maker. That would be a
20 question to ask the voting commissioners.

21 Q. Well, could you tell whether or not a community of
22 interest was affected without the map?

23 A. There were maps in all of these conversations and
24 mapping going on.

25 Q. Right.

1 But without a final map, would you be able to tell
2 how the communities of interests were affected?

3 **A. It would have been improper for there to even be**
4 **consideration of a final map during this informal**
5 **conversation when two people are trying to put together a**
6 **proposal.**

7 Q. I don't understand what you just said.

8 What do you mean?

9 **A. I mean -- so I would say I don't understand what**
10 **you said then, because I thought I answered you directly.**

11 Q. You said that it was improper.

12 What was improper?

13 **A. There was no final map. It was an informal**
14 **conversation between a working dyad.**

15 Q. Okay.

16 **A. There were drafts. There were drafts. They were**
17 **referring to maps as they went along.**

18 Q. And were the maps essential to having the
19 conversations about communities of interest?

20 **A. Yes.**

21 Q. What do you recall about consolidating? I think I
22 wrote down cities. Is that right?

23 **A. I remember there being quite a lot of discussion**
24 **around Bremerton.**

25 Q. What were the discussions?

1 **A. I'm sorry, I can't recall.**

2 **Again, I'm not a decision-maker. Those questions**
3 **should be directed towards voting commissioners.**

4 Q. Do you recall anything anyone said about Bremerton?

5 **A. It was discussion about how to -- where the lines**
6 **should be to comply with the communities of interest in**
7 **Bremerton.**

8 MS. MELL: It looks like we have a new person
9 here that I'm not familiar with. Who is Henry Brudney?

10 MR. BRUDNEY: Joan, my name is Henry. I'm
11 counsel for Ali O'Neil, and I thought the deposition was to
12 start at 1:00 p.m. I apologize for interrupting.

13 MS. MELL: I'm just glad to know that you're
14 here because I was getting worried that we were at the time
15 for you to be appearing. So I think we need to shut it down
16 and put you on.

17 Is Ali ready to go?

18 MR. BRUDNEY: Yeah.

19 MS. MELL: Okay. We'll end this Augustine
20 deposition, and we'll turn to Ali.

21 MR. PEKELIS: Before we conclude this
22 deposition, I just want to make a statement.

23 Before the last break, Ms. Mell asked several
24 questions regarding whether the witness had consulted with
25 counsel for the Attorney General's Office regarding certain

1 decisions or procedures of the Commission. I objected on the
2 grounds of attorney-client privilege and instructed the
3 witness not to answer.

4 Ms. Mell took the position that privilege
5 should not preclude the witness from -- preclude Ms. Mell --
6 from asking about whether the witness relied on advice of
7 counsel in taking a particular action.

8 And I continue to respectfully disagree.
9 Specifically, my concern is that, in allowing the witness to
10 answer such a question, it could inadvertently result in a
11 waiver of attorney-client privilege. So I stand by those
12 instructions and my objection.

13 MS. MELL: Is it your position that, in order
14 to protect the privilege, that you need to have her answer
15 questions that aren't privileged? You need to protect her
16 from answering questions that aren't privileged?

17 MR. PEKELIS: My position is that the
18 questions did call for attorney-client privileged, protected
19 information.

20 MS. MELL: Okay. I just wasn't sure what you
21 meant by implied waiver.

22 All right. Let's move on.

23 Thank you, Ms. Augustine.

24 MR. WEST: I have --

25 **THE WITNESS: Augustine. My name is**

1 **Augustine.**

2 **Zach, I wonder if you could give me a call.**

3 MR. PEKELIS: Ms. Augustine, if you could just
4 wait. It sounds like Mr. West is trying to say something.

5 MR. WEST: I wonder if I could ask three or
6 four questions very quickly.

7 MR. PEKELIS: I have no objection to it.

8 MS. MELL: Arthur, I think that we need to
9 come back. But if you really feel the need to do it, you
10 could. We've got another witness waiting.

11 MR. WEST: If we're going to come back to this
12 witness, then I don't have to ask any questions today.

13 MS. MELL: I think you have the right to
14 depose her anytime you want to.

15 MR. PEKELIS: I disagree.

16 If Mr. West wants to examine this witness, I
17 would encourage him to do so right now.

18 MR. WEST: Okay. I have just very short
19 questions.

20

21 E X A M I N A T I O N

22 BY MR. WEST:

23 Q. On the 15th, who authorized the closure of the
24 meeting?

25 **A. I closed the meeting.**

1 Q. Okay. Who authorized the meeting, portions of the
2 meeting, not to be public?

3 **A. Sorry, I don't understand.**

4 Q. During the meeting, there were 31 minutes that was
5 televised and transmitted.

6 Who authorized the other portions of the meeting to
7 not be televised and transmitted?

8 **A. I did.**

9 Q. Okay. On what basis?

10 **A. Commissioners requested being able to talk in**
11 **caucuses, and I worked with the independent staff and sought**
12 **advice.**

13 MR. PEKELIS: I have to stop you right there,
14 Ms. Augustine. I instruct you not to say anything with
15 respect to what advice you sought from counsel.

16 **THE WITNESS: Okay. Based on my conversations**
17 **with independent staff, I went forward with allowing**
18 **caucuses.**

19 Q. (By Mr. West) Am I correct in assuming that there
20 were two dyads, one composed of Mr. Graves and Ms. Sims and
21 one composed of Mr. Walkinshaw and Mr. Fain?

22 **A. At what time period?**

23 Q. Were there more than two dyads?

24 **A. So the working dyads, the dyads that were assigned**
25 **the work of coming up with proposals, were Graves and Sims**

1 was working on the congressional district map -- I mean, was
2 working on the legislative district map -- and Fain and
3 Walkinshaw were working on the congressional district map.

4 Q. Okay. Were there other dyads besides those two?

5 A. No.

6 Q. When they went into caucuses, were they still in
7 the dyads?

8 A. No.

9 Q. What was that process, and who was involved in
10 that?

11 A. The two Democrats were meeting together, and the
12 two Republicans were meeting together.

13 Q. Okay. So there's two types of meetings then, one
14 bipartisan in the dyads and one partisan that would be broken
15 up by party, correct?

16 A. I don't know what you mean by meetings. So far as
17 I'm aware, on the meeting on the 15th, it was just the
18 partisan caucus groups, two in each.

19 Q. Okay. But when they broke for the caucuses --

20 A. It was Democrats and Republicans.

21 Q. Okay. So, during that portion, the two Democrats
22 and the two Republicans would then meet together, correct?

23 A. Yes.

24 Q. And would they be discussing matters that the dyads
25 had proposed at that point?

1 **A. I don't know what they were discussing.**

2 Q. Okay. Thank you.

3 So after this chaotic and tiring event that lasted
4 from 7:00 until 12:30, you went to a meeting room and stayed
5 until four in the morning. Is that correct?

6 **A. Yes.**

7 MR. PEKELIS: Object to form.

8 Q. And during that period, your testimony is that the
9 Commission only talked about family matters for 3 1/2 hours?

10 **A. It wasn't -- yes.**

11 Q. Okay.

12 **A. It was not Commission business anyway. It**
13 **definitely was not Commission business.**

14 Q. Was there at any point where the maps were
15 discussed?

16 **A. Not with me and not that I saw and not in my**
17 **hearing.**

18 Q. Very good.

19 Oh, on the 16th, are you aware of any
20 communications among the commissioners involving the Fain
21 additions to any statement?

22 **A. To the what again?**

23 Q. Are you aware of any conversations or actions
24 between the commissioners about any statements that would be
25 issued? Was there any consensus form as to any statements to

1 be issued?

2 **A. Not that I was a part of.**

3 Q. Okay. Were you aware of any of that?

4 **A. No.**

5 MR. WEST: Okay. Thank you.

6 I'm done.

7 **THE WITNESS: Thank you.**

8 THE REPORTER: Are we off the record?

9 MS. MELL: Yep.

10 (Signature reserved.)

11 (Deposition concluded at 1:11 p.m.)

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A F F I D A V I T

I, SARAH AUGUSTINE, hereby declare under penalty of perjury that I have read the foregoing deposition and that the testimony contained herein is a true and correct transcript of my testimony, noting the corrections attached.

Signature:

Date: _____

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11 Case Name: WCOG vs. State of Washington
12 Deposition of: SARAH AUGUSTINE
13 Date Taken: January 10, 2022
14 Court Reporter: Wade J. Johnson, RPR

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