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In the Matter of:

WASHINGTON COALITION FOR OPEN GOVERNMENT

VS

STATE OF WASHINGTON

JOE FAIN

January 12, 2022

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WASHINGTON COALITION FOR OPEN GOVERNMENT vs STATE OF WASHINGTON
Fain, Joe - January 12, 2022

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

WASHINGTON COALITION FOR OPEN)
GOVERNMENT, a non-profit,)
nonpartisan Washington)
organization,)
)
Plaintiff,) No. 21-2-02069-34
)
v.)
)
THE STATE OF WASHINGTON, a state)
government, acting through THE)
WASHINGTON STATE REDISTRICTING)
COMMISSION, a Washington State)
Agency, et al.,)
)
Defendants.)

VIDEOCONFERENCE DEPOSITION OF JOE FAIN

January 12, 2022

Taken Remotely via Zoom

Reporter: John M.S. Botelho, CCR, RPR

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EXAMINATION INDEX

EXAMINATION BY:	PAGE NO.
Ms. Mell	7
Mr. West	220

EXHIBIT INDEX

EXHIBIT NO.	DESCRIPTION	PAGE NO.
Exhibit No. 41	2 pages of e-mail communications.	230
Exhibit No. 42	3-page communication from Joe Fain to Washington State Redistricting Commission dated 11/13/21.	230
Exhibit No. 43	3-page Letter_PlanSubmittal_Draft 08.12.21 - No Body.	230
Exhibit No. 43a	1-page messaging screenshot. Labeled RC001993.	230
Exhibit No. 44	4-page Final Resolution Letter_11.15.21.	230
Exhibit No. 44a	1-page messaging screenshot. Labeled RC001994.	230
Exhibit No. 45	1-page 11/15 regular meeting time stamp.	230
Exhibit No. 45a	1-page messaging screenshot. Labeled RC001995.	230
Exhibit No. 46	1-page messaging screenshot. Labeled RC001996.	230
Exhibit No. 47	1-page messaging screenshot. Labeled RC001997.	230
Exhibit No. 48	1-page messaging screenshot. Labeled RC001998.	230

	EXHIBIT INDEX (Continuing)		
	EXHIBIT NO.	DESCRIPTION	PAGE NO.
1			
2			
3	Exhibit No. 49	1-page messaging screenshot. Labeled RC001999.	230
4			
5	Exhibit No. 50	1-page messaging screenshot. Labeled RC002001.	230
6	Exhibit No. 51	1-page messaging screenshot. Labeled RC002000.	230
7			
8	Exhibit No. 52	1-page messaging screenshot. Labeled RC002002.	230
9	Exhibit No. 53	1-page messaging screenshot. Labeled RC002003.	230
10			
11	Exhibit No. 54	1-page messaging screenshot. Labeled RC002004.	230
12	Exhibit No. 55	1-page messaging screenshot. Labeled RC002005.	230
13			
14	Exhibit No. 56	1-page messaging screenshot. Labeled RC002006.	230
15	Exhibit No. 57	1-page messaging screenshot. Labeled RC002007.	230
16			
17	Exhibit No. 58	1-page messaging screenshot. Labeled RC002008.	230
18	Exhibit No. 59	1-page messaging screenshot. Labeled RC002009.	230
19			
20	Exhibit No. 60	1-page messaging screenshot. Labeled RC002011.	230
21	Exhibit No. 61	1-page messaging screenshot. Labeled RC002010.	230
22			
23	Exhibit No. 62	1-page messaging screenshot. Labeled RC002012.	230
24	Exhibit No. 63	1-page messaging screenshot. Labeled RC002013.	230
25			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
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EXHIBIT INDEX (Continuing)

EXHIBIT NO.	DESCRIPTION	PAGE NO.
Exhibit No. 64	1-page messaging screenshot. Labeled RC002015.	230
Exhibit No. 65	1-page messaging screenshot. Labeled RC002014.	230

1 BE IT REMEMBERED that on Wednesday,
2 January 12, 2022, at 9:05 a.m. Pacific time, before
3 JOHN M.S. BOTELHO, Certified Court Reporter, appeared
4 JOE FAIN, via videoconference, the witness herein;
5 WHEREUPON, the following
6 proceedings were had, to wit:

7
8 <<<<<< >>>>>>

9
10 JOE FAIN, having been first duly sworn
11 by the Certified Court
12 Reporter, deposed and
13 testified as follows:

14
15 EXAMINATION

09:05:316 BY MS. MELL:

09:05:317 Q State your name.

09:05:318 A **Joe Fain.**

09:05:319 Q What is your address?

09:05:320 A **705 Southwest Colewood Lane, C-o-l-e-w-o-o-d Lane,**
09:05:421 **Normandy Park, 98166.**

09:05:522 Q (Videoconference technical difficulties.)

09:05:523 A **I apologize. I coughed in the middle of that.**

09:06:024 **What was that?**

09:06:025 Q Your phone number?

09:06:021 **A** (206) 409-9418.

09:06:062 Q Is that the phone number you used to conduct
09:06:113 commission business?

09:06:124 **A** That number as well as the -- and I actually don't
09:06:195 know this phone number -- the softphone program that
09:06:246 was provided by the State.

09:06:267 Q What is a softphone program?

09:06:308 **A** It's a -- doesn't have a physical phone. It's just a
09:06:349 program with a phone number assigned to it.

09:06:370 Q And so you use your personal technology to access the
09:06:411 telecommunications system?

09:06:412 **A** That's correct.

09:06:413 Q Okay.

09:06:414 **A** Or we're able to look at things that came in through
09:06:515 e-mail from that system.

09:06:516 Q How is that different than just looking at an e-mail?

09:07:017 **A** I'm not certain if it was an attached file or not.
09:07:018 That system did not have a lot of traffic on it.

09:07:119 Q Okay. Did you use instant messaging to communicate
09:07:120 about redistricting work?

09:07:121 **A** No.

09:07:202 Q Do you know if your staff did?

09:07:223 **A** No.

09:07:224 Q Is it correct that all of the legislative district
09:07:325 changed in 2021 with the work that you performed?

09:07:431 **A I'm sorry. I don't understand the question.**

09:07:462 Q Did all of the legislative district boundaries change
09:07:503 with the work that you performed?

09:07:524 **A I'm not entirely certain.**

09:08:075 Q Have you reviewed what the commission transmitted to
09:08:166 the supreme court or to the legislature in terms of
09:08:207 documents that would reflect legislative boundaries
09:08:228 to know whether or not the legislative boundaries of
09:08:289 districts changed?

09:08:310 **A I reviewed those documents when they were presented.**

09:08:351 Q Do you know what legislative district boundaries
09:08:412 changed?

09:08:413 **A I know many district boundaries changed.**

09:08:484 Q What other district boundaries you can think of?

09:08:525 **A Most of the district boundaries changed, in my
09:09:016 recollection.**

09:09:017 Q Is that legislative and congressional district
09:09:048 boundaries?

09:09:019 **A Yes.**

09:09:020 Q If there was an agreement to leave the political
09:09:221 metric status quo or zero percentage change in the
09:09:222 political metric, how many different iterations of
09:09:323 the district boundaries were possible?

09:09:324 MR. WONG: Object to form.

09:09:325 **THE WITNESS: I don't know.**

09:09:411 Q (By Ms. Mell) How many different iterations of
09:09:442 legislative or congressional district boundaries did
09:09:473 you create?

09:09:494 **A Could you repeat the question one more time?**

09:09:555 Q How many different iterations of legislative or
09:09:586 congressional district boundaries did you create?

09:10:037 **A Me personally? A handful. I don't recall the exact
09:10:218 number.**

09:10:219 Q What were you using to drive the district boundaries
09:10:240 in your iterations?

09:10:241 MR. WONG: (Videoconference
09:10:242 technical difficulties.)

09:10:313 **THE WITNESS: I predominantly used
09:10:314 Edge, the Edge system.**

09:10:315 THE REPORTER: Mr. Wong, what did
09:10:416 you say there, if anything?

09:10:417 MR. WONG: Object to form.

18 THE REPORTER: Thank you.

19 MS. MELL: Are we transmitting
20 okay? We're just talking over?

21 (Reporter responds to
22 counsel's inquiry.)

09:10:423
09:11:024 Q (By Ms. Mell) With the Edge system, what kind of
09:11:025 input did you use to create district boundaries?

09:11:071 **A Can you define "input"?**

09:11:102 **Q Content. What did you put in to create your**
09:11:133 **boundaries?**

09:11:144 **A I'm still a little unclear about the question. I'm**
09:11:185 **sorry. Is it about how I drew it?**

09:11:216 **Q It is about how you drew it. I'm just wanting to**
09:11:257 **know what information you used to come up with the**
09:11:278 **boundaries in the Edge software program.**

09:11:319 **A The Edge software program that I used had a number of**
09:11:370 **different data sets predominantly around population**
09:11:411 **as well as others.**

09:11:502 **Q Did it have political data?**

09:11:523 **A It did.**

09:11:534 **Q Did you use that political data?**

09:11:565 **A I did.**

09:11:566 **Q Was the political data a driving force for your**
09:12:057 **consensus?**

09:12:068 **A It was one of the factors that I considered.**

09:12:099 **Q What other factors did you consider?**

09:12:120 **A Things that made geographical sense. Natural**
09:12:221 **boundaries. Traditional connected communities.**
09:12:322 **Junior taxing districts. Local governments.**
09:12:323 **Transportation corridors. Historic presence in the**
09:12:424 **district.**

09:12:525 **Q What's your highest level of education?**

09:12:541 **A I have a master's in business and a juris doctor.**

09:13:062 Q When did you get your master's?

09:13:093 **A Around 2008.**

09:13:104 Q From where?

09:13:115 **A Seattle University.**

09:13:126 Q Your JD?

09:13:157 **A Same. A joint program.**

09:13:188 Q Okay. Did you become licensed to practice in any
09:13:259 state?

09:13:210 **A Yes.**

09:13:211 Q Where are you licensed to practice?

09:13:212 **A Washington.**

09:13:213 Q Do you practice law?

09:13:314 **A Not currently.**

09:13:315 Q What is your job currently?

09:13:316 **A I'm the president and CEO of the Bellevue Chamber of
09:13:417 Commerce.**

09:13:418 Q Do you have government experience with your work?

09:13:519 **A I do.**

09:13:520 Q What experience do you have working for government?

09:14:021 **A I worked with the King County Council, with the
09:14:122 University of Washington, with King County
09:14:123 prosecutor's office, and in the Washington State
09:14:124 Legislature.**

09:14:125 Q When were you in the legislature?

09:14:201 **A 2011 through the end of 2018.**

09:14:282 Q Were you a partisan member of the legislature?

09:14:363 **A I was elected on a party -- with a party preference.**

09:14:444 Q What was the party preference?

09:14:465 **A Republican.**

09:14:486 Q And what was your district?

09:14:547 **A The 47th.**

09:14:568 Q Did you request on -- well, did you request that the
09:15:119 commission caucus at any time such that it did caucus
09:15:170 on November 15th?

09:15:191 MR. WONG: Object to form.

09:15:202 **THE WITNESS: I don't -- I don't**
09:15:213 **understand exactly what you're asking there.**

09:15:274 Q (By Ms. Mell) Do you agree that the commission
09:15:315 caucused after the business meeting, regular business
09:15:356 meeting started on November 15th, 2021?

09:15:387 MR. WONG: Object to form.

09:15:398 **THE WITNESS: Yes.**

09:15:409 Q (By Ms. Mell) Do you know who asked for a caucus?

09:15:420 **A I don't recall.**

09:15:421 Q Did you?

09:15:522 **A I don't recall.**

09:15:523 Q Do you know where the concept came from?

09:15:524 **A I don't recall.**

09:16:025 Q What did it mean?

09:16:031 A To meet with your partisan counterpart and then
09:16:202 occasionally for -- and occasionally just to sit
09:16:303 there idly.

09:16:354 Q Did you specify political metrics that you would
09:16:485 agree to with respect to either the congressional or
09:16:536 district maps?

09:16:547 A I shared framework proposals for different versions
09:17:038 of both maps.

09:17:049 Q And when you say the word "map," what do you mean?

09:17:110 A When I say the word "map," I mean a geographic
09:17:211 representation of the state with its district
09:17:312 boundaries. When I say the word "proposal" or
09:17:313 "concept," it may not take that form.

09:17:414 Q What about the word "plan"? What does that mean?

09:17:445 MR. WONG: Object to form.

09:17:516 THE WITNESS: In what context would
09:17:517 you be asking the question?

09:17:518 MS. MELL: Your redistricting work.

09:17:519 THE WITNESS: I think there's -- I
09:18:020 think there's a term-of-art question in there as well
09:18:021 as a -- kind of a vernacular in there.

09:18:122 I'm not certain if you're asking about
09:18:123 specifically the redis- -- redistricting plan as
09:18:124 called out in statute.

09:18:225 Q (By Ms. Mell) If we're talking during the course of

09:18:361 this deposition about a congressional or legislative
09:18:412 plan, that's what I'm asking.

09:18:443 So what is the meaning of the plan in that
09:18:464 context?

09:18:475 **A Again still a little unclear by the question.**

09:19:016 **The plan, as we -- in my understanding from the**
09:19:047 **statute, is both the combined congressional and**
09:19:108 **legislative map constitutes our redistricting plan.**

09:19:179 **Q** And as the statute refers to a report to the
09:19:210 legislature, what does the report encompass?

09:19:211 **MR. WONG:** Object to form.

09:19:212 **THE WITNESS:** To the best of my
09:19:313 **recollection, a physical description of the**
09:19:314 **geographical boundaries.**

09:19:515 **Q** (By Ms. Mell) On November 15th, you did not approve
09:20:006 a congressional or legislative map, correct?

09:20:017 **A That is correct.**

09:20:118 **Q** On November 15th, you did not vote for or approve a
09:20:189 congressional or legislative plan, correct?

09:20:220 **MR. WONG:** Object to form.

09:20:221 **THE WITNESS:** The -- there were no
09:20:322 **physical maps or a geographical narrative**
09:20:423 **accompanying -- that were generated at the time of**
09:20:424 **the vote.**

09:20:425 **Q** (By Ms. Mell) Was there a motion to approve a

09:20:551
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09:21:105
09:21:106
09:21:107
09:21:228
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09:21:321
09:21:312
09:21:313
09:21:414
09:21:415
09:21:416
09:21:517
09:21:518
09:21:519
09:21:520
09:21:521
09:22:022
09:22:123
09:22:224
09:22:325

legislative district plan?

A I don't know what words were used, but there was a motion to approve a legislative district. And I don't know what word was used.

(Interruption by reporter due to simultaneous speakers.)

THE WITNESS: I don't know what word was used during the -- during the meeting, during the motion.

Q (By Ms. Mell) Did you make a motion to approve a legislative redistricting plan?

A I don't believe so.

Q Did you make a motion to approve a congressional redistricting plan?

A Again, I don't know what word I used, but I did make a motion for the congressional map.

Q What was your motion?

A I would have to go back and see the transcript. I don't recall.

Q What did you intend to communicate?

A That we were to bring up the proposed framework for the congressional -- for the congressional map.

Q Why did you make up the motion with regard to congressional districts?

09:22:351 **A** I don't understand the question.

09:22:392 **Q** Why did you make the motion?

09:22:423 **A** It was very late. It was moments before the

09:23:024 statutory deadline. There was a -- there was a

09:23:145 possibility that this framework that I had discussed

09:23:226 with Commissioner Walkinshaw might be agreeable, and

09:23:337 I was very interested in getting the job that we'd

09:23:418 appointed to be -- to do done.

09:23:519 **Q** What was the form of this proposed framework?

09:23:510 **A** Are you -- sorry. I'm also a little confused. Are

09:24:111 you referring to the actual structure of the proposal

09:24:212 or the mechanism by which it was communicated?

09:24:313 **Q** All those things. All those things.

09:24:314 Do you need me to break it down more?

09:24:415 **A** It would be helpful.

09:24:416 **Q** Okay. So let's start with: What was the form of the

09:24:417 proposed framework in terms of its presentation on

09:24:418 the 15th?

09:24:509 Was it in writing, or was it oral?

09:24:520 **A** It was verbal.

09:24:521 **Q** Okay. Who spoke the words that articulated this

09:25:022 proposed framework?

09:25:123 **A** It was, I suppose, in conversation with Commissioner

09:25:224 Walkinshaw.

09:25:225 **Q** All right. So at this verbal communication of a

09:25:371 proposed framework -- actually, strike that. Let me
09:25:432 say it this way.

09:25:443 Had this verbal proposed framework been
09:25:484 communicated to anyone other than Commissioner
09:25:515 Walkinshaw at the time the vote was taken?

09:25:536 **A Again, it was very late and chaotic and rushed. I**
09:26:057 **believe I would have shared the construct with**
09:26:078 **Commissioner Graves.**

09:26:139 **Q** Is that because you were sitting in the same room
09:26:160 when you were formulating it?

09:26:191 MR. WONG: Object to form.

09:26:212 **THE WITNESS: I'm sorry. When I**
09:26:213 **was -- when I was --**

09:26:214 MS. MELL: I said "formulating it."
09:26:305 Maybe a better word is "negotiating it."

09:26:316 **THE WITNESS: No.**

09:26:317 **Q** (By Ms. Mell) Okay. At the time -- let's take this
09:26:418 step by step. I don't want to get ahead of myself.
09:26:419 I'll come back to that.

09:26:420 MS. MELL: So, John, what was the
09:27:021 last question right before he said it was very late?

09:27:022 (Pertinent question read by
09:27:023 the reporter.)

09:27:224
09:27:225 MS. MELL: So I don't know that I

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09:28:325

got an answer to that question.

Q (By Ms. Mell) Did you share this verbal proposed framework with anyone other than Commissioner Walkinshaw prior to the vote?

MR. WONG: Object; asked and answered.

(Clarification by reporter.)

MR. WONG: Are you not picking up my mike very well?

THE REPORTER: It's just Mr. Fain and you briefly overspoke each other.

MR. WONG: So, Commissioner Fain, if you can just pause for a second just so I can get my objection in. It's just for the record. It'd be appreciated. Thank you.

(Clarification by reporter.)

THE WITNESS: Now I'm wondering which question I'm supposed to ask. I apologize.

MS. MELL: Let's start this over.

Q (By Ms. Mell) Is it correct that this verbal proposed framework was shared by you with Commissioner Walkinshaw and Commissioner Graves before the vote?

09:28:381 **A** **Commissioner Walkinshaw and I discussed a framework.**
09:28:482 **And I later communicated that framework to**
09:29:033 **Commissioner Graves.**

09:29:074 **Q** **How long before the vote did you communicate the**
09:29:105 **framework to Commissioner Graves?**

09:29:126 **A** **I don't recall.**

09:29:137 **Q** **Do you know what Commissioner Sims knew about that**
09:29:218 **framework prior to the vote?**

09:29:249 **A** **No.**

09:29:250 **Q** **Do you know what any other commissioner knew about**
09:29:311 **that framework prior to the vote?**

09:29:322 **A** **I referenced the conversation I had with Commissioner**
09:29:413 **Walkinshaw with Commissioner Graves. I don't believe**
09:29:414 **I had a conversation with Commissioner Augustine.**

09:29:515 **Q** **What was the proposed framework with regard to**
09:30:116 **content?**

09:30:117 **A** **Again, my recollection is -- and, again, I can give**
09:30:218 **a -- my best recollection here would be around a**
09:30:319 **restacking of the 1st and 2nd district, static**
09:30:520 **political performance in the 8th congressional**
09:30:521 **district, relatively status quo elsewhere.**

09:30:522 **Those were elements of it.**

09:31:023 **Q** **Was this written down anywhere?**

09:31:024 **A** **No, I don't believe so.**

09:31:125 **Q** **What does restacking the 1st and 2nd mean?**

09:31:201 A I want to, you know, briefly go back to your previous
09:31:282 question, if I may.

09:31:293 Many of these, you know, proposed concepts took
09:31:384 the form of physical maps, so there may be partial
09:31:475 physical maps that contain elements of things.

09:31:526 And then what was your follow-up question?

09:31:577 Q What does restacking the 1st and 2nd mean?

09:31:598 A Under current law, the 1st and 2nd district are long
09:32:079 and skinny and stretch from the Central Puget Sound
09:32:110 up to the Canadian border. Restacking them just
09:32:161 means that the 1st -- the one district is on top of
09:32:212 the other, north -- north-south.

09:32:263 Q Instead of like this, it's like this?

09:32:284 A That's correct.

09:32:285 Q Okay. For the record, I was --

09:32:306 A For the record.

09:32:307 Q -- doing lines with my hands horizontal and vertical.

09:32:378 Okay. And so there's, is it fair to say,
09:32:419 thousands of different ways to restack in terms of
09:32:420 where the actual district boundaries come out?

09:32:421 MR. WONG: Object to form.

09:32:522 THE WITNESS: There are many
09:32:523 different permutations of how to draw stacked
09:33:024 districts.

09:33:025 Q (By Ms. Mell) Okay. So what was the restacking

09:33:101
09:33:162
09:33:163
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09:33:306
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09:34:013
09:34:014
09:34:015
09:34:106
09:34:117
09:34:118
09:34:119
09:34:220
09:34:321
09:34:322
09:34:423
09:34:424
09:34:525

construct on the proposed framework that was voted on?

A I'm sorry. I guess I don't understand the question.

Q Well, is it correct, then, that the -- that the proposed framework that required restacking of the 1st and 2nd had not been articulated in any one of those thousand different ways that had yet to be done with the mapping?

MR. WONG: Object to form.

THE WITNESS: It is true that the maps built to effectuate this framework were not drawn at this point.

Q (By Ms. Mell) Okay. And is it correct, then, that there was no agreement on where those boundaries would fall for accomplishing the element of the proposed framework of restacking Districts 1 and 2?

A It's a very long question. I apologize.

Q Okay.

A You're -- you're asking -- if you could repeat.

Q Okay. The proposed framework that was voted on was not so definite that the district boundaries to accomplish the criteria of restacking the 1st and 2nd were expressed?

A No, I don't believe so.

I'm sorry. Okay. We may be asking questions as

09:34:541 **double negatives. So --**

09:34:562 Q Yeah.

09:34:563 A **-- I apologize. I'm not trying to be unclear here.**

09:34:594 Q No, I'm glad you're following carefully enough to be cautious in that regard. Let me ask it again.

09:35:045
09:35:066 Did the proposed framework with regard to
09:35:117 restacking the 1st and 2nd districts have any
09:35:158 additional information other than the 1st and 2nd
09:35:199 would be restacked?

09:35:210 A **I don't recall. The other considerations may have
09:35:511 included partisan performance in certain districts.**

09:36:012 Q The partisan performance would overlay on how that
09:36:013 restacking mapped out?

09:36:014 A **That's a component.**

09:36:115 Q Okay. So is it correct that on the 16th, you had to
09:36:186 make decisions as to how to achieve the restacking of
09:36:217 the 1st and the 2nd while the maps were being
09:36:218 created?

09:36:219 MR. WONG: Object to form.

09:36:220 **THE WITNESS: There were maps that**
09:36:321 **were being drawn on the 16th. And the various**
09:36:422 **boundary lines -- I guess I -- I guess just answer**
09:36:523 **the -- the maps, those maps that reflect the proposal**
09:37:024 **were drafted on the 16th.**

09:37:025 Q (By Ms. Mell) But during the drafting of the maps,

09:37:131 that's when the decisions had to be made as to how to
09:37:152 restack Districts 1 and 2?

09:37:243 I guess I don't mean "how." "Where" would
09:37:264 probably be the better word.

09:37:285 Where to draw the boundary line to accomplish
09:37:316 restacking of Districts 1 and 2.

09:37:347 **A I mean, yes, the -- the drafting of those lines was**
09:37:508 **done on the 16th. The -- there have been, as I said,**
09:38:059 **previous iterations drawn of what a stacked 1st and**
09:38:110 **2nd district would look like that informed that**
09:38:111 **process, I'd imagine.**

09:38:212 **Q** Okay. Did you know exactly where the boundaries
09:38:213 would be of the restacked 1st and 2nd district when
09:38:214 you voted?

09:38:315 **A No.**

09:38:316 **Q** Static load performance. And I just wrote the number
09:38:417 "8." I think you probably had another qualifying
09:38:418 word around that, but I don't know what it was.

09:38:419 Maybe it's the 8th district, or maybe it's --

09:38:420 **A Oh, yes. Yes.**

09:38:521 **Q** Okay. So what did you -- what was the content of the
09:38:522 proposed framework relative to static load
09:38:523 performance 8?

09:39:024 **A I don't know if it was -- are you saying the word**
09:39:025 **"load"?**

09:39:031 Q That's what I wrote down. Did I misunderstand it?

09:39:072 **A I would just say static partisan performance in the**

09:39:133 **8th is -- was the framework.**

09:39:154 Q Okay. Okay. So with regard to static partisan

09:39:245 performance in the 8th, how large is the 8th

09:39:276 district?

09:39:277 **A Three-quarters of a million people, roughly.**

09:39:358 Q Where is the 8th?

09:39:389 **A The current 8th contains parts of King County out**

09:39:410 **through Chelan.**

09:39:511 Q When you say "the current 8th," what are you talking

09:39:512 about?

09:39:513 **A The one that's currently in law. The one that has**

09:40:014 **been used over the last ten years.**

09:40:015 Q Thank you. Okay.

09:40:016 So how many different iterations -- I don't want

09:40:117 to ask that way.

09:40:118 Is it correct that there are multiple boundary

09:40:219 lines that can be drawn in the 8th district to

09:40:220 maintain static partisan performance?

09:40:321 **A Yes.**

09:40:322 Q And was the boundary -- were the boundary lines of

09:40:323 the 8th district changed while maintaining static

09:40:424 partisan performance in the proposal you voted -- you

09:40:425 transmitted to the legislature?

09:40:501

MR. WONG: Object to form.

09:40:522

THE WITNESS: The proposal

09:40:583

contemplated the, you know, equalization of

09:41:034

population, which necessitated a change in the

09:41:085

boundary lines.

09:41:166

Q (By Ms. Mell) So were there multiple different ways

09:41:187

to map the proposed framework that was voted on with

09:41:258

respect to static partisan performance in the 8th?

09:41:339

A Most likely.

09:41:400

Q Okay. And that work was done on the 16th with the

09:41:421

mapping, itself, correct?

09:41:412

A Mm-hmm.

09:41:463

Q I just have to have you answer orally.

09:41:414

A Oh. Yes. I'm sorry. Yes.

09:41:505

Q I hear a "uh-hum," but --

09:41:516

A Yes.

09:41:527

Q -- but you have to have yeses and noes.

09:41:518

Okay. Thanks.

09:41:519

And then my last criteria that you describe of

09:42:020

your proposed frameworks contain status quo, or I

09:42:021

wrote down "status quo."

09:42:022

What does that mean?

09:42:023

A Limited -- limited geographic and partisan

09:42:224

performance changes.

09:42:225

Q What's "limited"?

09:42:261 **A** My interpretation of "limited" would be the least
09:42:382 amount of change in both of those metrics required to
09:42:453 achieve the population targets.

09:42:484 **Q** Is 1 percent consistent with status quo?

09:42:535 **A** I guess, 1 percent with reference to what metric?

09:43:076 **Q** Oh. I guess I should ask that.

09:43:107 What did you mean by "status quo"? What metrics
09:43:158 did you mean by "status quo"?

09:43:169 **A** Geographical boundaries and partisan performance.

09:43:210 **Q** Okay. Can geographical boundaries be translated into
09:43:371 a percentage change of 1 percent?

09:43:312 **A** I have not done -- to my knowledge, I've not done a
09:43:413 calculation like that.

09:43:464 **Q** How did you articulate geographic boundary proposals?

09:43:515 **A** Typically by drawing maps.

09:43:516 **Q** Okay. So if the status quo were to be maintained
09:44:017 with regard to partisan performance, would it have to
09:44:128 be less than a 1 percent change?

09:44:169 **MR. WONG:** Object to form.

09:44:120 **THE WITNESS:** Not necessarily.

09:44:221 **Q** (By Ms. Mell) In your mind, when you say "status
09:44:222 quo," what kind of statistic were you looking at with
09:44:223 regard to partisan performance?

09:44:324 **A** Different districts had different -- different
09:44:425 districts had different metrics or ranges, depending

09:44:561

on how competitive those districts would be.

09:45:002

Q What's the top end of the range?

09:45:073

A I don't have a top end.

09:45:154

Q So there's no number with all the districts that would be beyond the status quo?

09:45:175

09:45:196

MR. WONG: Object to form.

09:45:217

THE WITNESS: No. I'm -- I'm

09:45:228

saying that if there was a district that was a

09:45:299

uncompetitive district, meaning its partisan

09:45:310

performance was very far in one direction or very far

09:45:311

any other direction, a change in that partisan

09:45:412

performance that didn't change its nature as a

09:45:413

uncompetitive district by partisan measures, if it

09:45:514

didn't change that characteristic of the district,

09:45:515

then the number, the percentage that it moved, wasn't

09:46:016

as relevant.

09:46:017

Q (By Ms. Mell) So there's a lot of variation what the status quo means per district?

09:46:108

09:46:129

A There is variation. Correct.

09:46:120

Q Okay. So when you voted, did you know what the

09:46:221

status quo variation was for each of the districts

09:46:222

that you were approving?

09:46:323

A Again, my recollection is that the remaining

09:46:424

districts would not move out of the competitiveness

09:46:525

category that they were currently in, if that makes

09:46:531

any sense.

09:46:542

Q Nope. I guess, let's start with remaining districts.

09:47:003

Remaining relative to what?

09:47:024

A Well, we discussed the 1st, 2nd, and 8th --

09:47:095

Q Okay.

09:47:106

A -- in our previous comments.

09:47:127

Q Okay. So there are 49 districts?

09:47:198

A I thought we were discussing congressional districts

09:47:229

at this time.

09:47:240

Q Okay. How many congressional districts are there?

09:47:261

A There are ten.

09:47:282

Q Got it. Okay.

09:47:313

So that left seven remaining. That's what we're

09:47:384

talking about. Seven remaining districts?

09:47:415

A That's correct.

09:47:426

Q Okay. So with those seven remaining districts, when

09:47:457

you took a vote, did you know what the status quo

09:47:488

percentage partisan performance was that you were

09:47:519

voting on?

09:47:520

A Not a precise number.

09:48:021

Q If not precise, then what were you thinking with

09:48:122

regard to the proposed framework of status quo with

09:48:183

regard to the remaining districts?

09:48:124

A That those districts would not categorically change

09:48:225

from being either a competitive district becoming not

09:48:301 **competitive or a not-competitive district becoming**
09:48:332 **competitive.**

09:48:413 Q How many different iterations of boundaries were
09:48:454 those seven districts maybe drawn to maintain a
09:48:505 status quo that would not categorically change the
09:48:546 composition of the district?

09:48:567 MR. WONG: Object to form.

09:48:588 MS. MELL: Not the composition, but
09:48:599 the competitiveness of the district.

09:49:010 MR. WONG: Object to form.

09:49:021 **THE WITNESS: I don't know.**

09:49:022 Q (By Ms. Mell) So fair to say at least a thousand?

09:49:013 A **I couldn't venture a guess.**

09:49:104 Q Is it many?

09:49:115 A **Several, yes.**

09:49:206 Q Okay. So the work to pick one of those severals
09:49:317 occurred on the 16th, correct?

09:49:318 A **In -- in part. There have been previous maps,**
09:49:519 **including, I believe, a few public maps that may have**
09:50:120 **closely matched at least in some districts the -- the**
09:50:121 **maps that were finalized on -- on the 16th.**

09:50:222 Q Okay. So there was some work product out there, but
09:50:223 it hadn't been finalized and finally selected until
09:50:224 the 16th.

09:50:325 Is that a fair characterization?

09:50:321

A Again, the maps to reflect that proposal that was adopted on the 15th were drawn on the 16th. So...

09:51:012

09:51:083

Q But what my point is that there were decisions that had to be made on the 16th in order to get the maps to reflect the proposal, correct?

09:51:104

09:51:145

09:51:216

A Yes.

09:51:247

09:51:298

Q Okay. Who made those decisions on the 16th as to each of those elements of your proposed framework?

09:51:469

A I'm sorry. The question's a bit vague.

09:51:570

09:52:001

Q Do I need to break down the proposed framework? Is it easier if I do that? Or is it clearer if I do that? Is that where you're struggling?

09:52:022

09:52:013

A Perhaps.

09:52:064

09:52:095

Q Okay. So who made the decisions with regard to the boundaries for the congressional district in order to maintain the status quo of the seven districts other than the 1st, 2nd, and 8th?

09:52:126

09:52:177

09:52:218

A Again, I believe -- I believe I recollect that staff were in some cases -- in some cases reconciling different versions of existing maps that had been previously drawn.

09:52:319

09:52:420

09:52:521

09:52:522

Q When you say "staff," who do you mean?

09:52:523

A In this case, I believe Paul Campos was involved. I believe, is it Ali? From Senate staff.

09:53:024

09:53:125

Q Anyone else?

09:53:141 **A** On the congressional map, I don't -- I don't recall.

09:53:242 **Q** Do you know whether or not Paul and Ali were also
09:53:273 trying to integrate and draw boundaries to reflect
09:53:304 public comment, or were they just instructed to
09:53:345 maintain the status quo?

09:53:376 **MR. WONG:** Objection to form.

09:53:387 **THE WITNESS:** Well, the -- excuse
09:53:408 me.

09:53:409 The previous -- the previous iterations of the
09:53:520 maps that had been drawn as various proposals that
09:54:011 were -- that were informing their work were -- took
09:54:042 into account the voluminous amounts of public --
09:54:113 public feedback, and so there was a great amount of
09:54:144 public feedback that was contained in the final map.

09:54:215 **Q** (By Ms. Mell) Did you make any decisions on district
09:54:266 boundaries on the 16th relative to public input?

09:54:327 **A** In that I reviewed the product of reconciling
09:54:418 these -- reconciling previous proposals that included
09:54:519 substantial public input, in that way I did take into
09:54:520 account public input on the 16th.

09:55:021 **Q** Do you recall looking at -- well, strike that.

09:55:022 How many different proposed final maps did you
09:55:023 look at on the 16th?

09:55:124 **MR. WONG:** Objection to form.

09:55:125 **MS. MELL:** Congressional district

09:55:181

maps.

09:55:192

THE WITNESS: I don't recall.

09:55:573

Likely there were at least the previous version that

09:56:094

had been drafted by Paul and one that was drafted by

09:56:145

Ali.

09:56:186

Q (By Ms. Mell) How many times did you look at what

09:56:227

Paul and Ali were looking at to give input?

09:56:258

A **I don't recall.**

09:56:279

Q Multiple times?

09:56:310

A **I did not -- on whole, I did not provide much input**

09:56:411

into the process on the 16th.

09:56:452

Q Is it correct that you provided input on the process

09:56:493

on the 16th?

09:56:514

A **We had conversations over the -- over a few boundary**

09:56:515

lines, yes.

09:56:586

Q What boundary lines were those?

09:57:017

A **The amount that the 9th district would travel into**

09:57:018

Seattle.

09:57:089

Q And when you said "we" in that sentence, I assume --

09:57:120

A **I'm sorry. Go ahead.**

09:57:121

Q I assumed you meant Paul and Ali? Is that correct

09:57:122

assumption? Or were you talking more broadly?

09:57:223

A **Oh, I was having a conversation with Commissioner**

09:57:224

Walkinshaw.

09:57:225

Q Okay. So when you said, "We had conversation

09:57:371 over" -- I didn't get it all written down there. Did
09:57:402 you say the 9th?

09:57:413 **A No. Oh, I'm sorry. The 9th. Yes, I did say that.**
09:57:434 **I apologize. Yes.**

09:57:445 Q Okay. All right. So when you were having the
09:57:476 conversation over the boundaries in the 9th, the
09:57:547 conversation occurred with Commissioner Walkinshaw
09:57:578 alone, just you two, or were Paul and Ali there at
09:58:039 the same time?

09:58:010 **A Paul and Ali, I believe, were there.**

09:58:071 Q Okay. So do you remember what you said to
09:58:142 Commissioner Walkinshaw and what he said back to you?

09:58:113 **A We had -- I had thought that a portion of the 9th**
09:58:214 **district in previous proposals had included a**
09:58:315 **neighborhood, and those previous proposals did not.**

09:58:386 (Clarification by reporter.)

09:58:387

09:59:218 MS. MELL: I think you were saying
09:59:219 about where you had put the disputed part of the
09:59:220 district. I don't know what you called it either.

09:59:221 Let's start that over.

09:59:322 **THE WITNESS: Sorry. We can --**

09:59:323 MS. MELL: Let's start that whole
09:59:324 question over again.

09:59:325 All right. So let me think how I framed that

09:59:401 question that got us to that point.

09:59:482 I think I need to clean up the record. Let me
09:59:513 try it right here.

09:59:524 Q (By Ms. Mell) So you spoke to Commissioner
09:59:555 Walkinshaw in front of Paul and Ali about the 9th
10:00:016 district. Okay. I'm refreshing my recollection.

10:00:037 When you had that conversation about the 9th
10:00:068 district in front of Paul, Ali, and Commissioner
10:00:099 Walkinshaw, what did you say and what did
10:00:110 Commissioner Walkinshaw say?

10:00:121 A I brought up that a community that I thought was
10:00:212 included in the 9th district didn't appear to be on
10:00:313 the draft map and asked Commissioner Walkinshaw if
10:00:414 that was his recollection.

10:00:415 Somehow through that conversation, I was
10:00:516 convinced that that had -- that I had been mistaken
10:00:517 about where I thought those -- where I thought those
10:01:018 lines were. And we spent a few minutes determining
10:01:119 if there was a resolution and then quickly decided
10:01:220 that -- to leave it alone.

10:01:221 Q So you didn't necessarily change the mind that you
10:01:322 thought you were -- change your mind about whether or
10:01:323 not you thought you were mistaken. You just thought
10:01:324 it was time to move on?

10:01:325 MR. WONG: Objection to form.

THE WITNESS: No, I believe that I

was mistaken.

Q (By Ms. Mell) Okay. And what was the name of that district, or that area?

A **Normandy Park.**

Q Normandy Park.

What did Commissioner Walkinshaw use to base his understanding of where Normandy Park was?

A **You have to ask Commissioner Walkinshaw.**

Q What did you understand he was relying on to know where Normandy Park was?

A **Again, that's a -- can't really speculate what he was...**

Q Well, what were you mistaken about?

A **So I have believed that a previous version of the map had included Normandy Park in the 9th. Paul informed me that it did not. Paul Campos.**

Q When you're talking about a previous version of the map, what previous version?

A **One of the versions that we had been using to develop proposals with that evening.**

Q Okay.

A **That previous evening.**

Q All right. So this was a version that had not been publicly revealed?

10:03:001 **A In its entirety, no.**

10:03:062 **Q** Okay. But it is a previous version of the
10:03:093 congressional district map that was shared between
10:03:134 Commissioner Walkinshaw and yourself?

10:03:175 **A I believe so.**

10:03:246 **Q** And had it been shared with any of the other
10:03:277 commissioners?

10:03:278 **A I don't know.**

10:03:289 **Q** How many maps did you create on the 15th?

10:03:400 How many different versions of the congressional
10:03:431 district map did you create on the 15th?

10:03:452 **A I don't recall.**

10:03:523 **Q** Who did you share any version of those maps with?

10:03:514 **A Shared with Commissioner Walkinshaw, with staff, or**
10:04:015 **staff shared with me.**

10:04:116 There may have been other individuals, but I
10:04:117 don't recall.

10:04:118 **Q** Would some of those other individuals have been
10:04:219 Graves?

10:04:220 **A I -- I may have -- I don't recall if our talk on the**
10:04:321 **congressional map was just verbal or if I actually**
10:04:422 **shared a physical map. So I don't recall.**

10:04:523 We did discuss it. Commissioner Graves was very
10:04:524 focused on the legislative maps, so the congressional
10:04:525 maps didn't get a lot of air time that night.

10:05:041 Q I didn't mean to interrupt you. Sorry.

10:05:072 Were you done?

10:05:083 A Mm-hmm.

10:05:084 Q Okay. So this conversation where you discussed the
10:05:165 congressional maps with Commissioner Graves, where
10:05:256 were you?

10:05:257 A Sick kids are at home today.

10:05:418 I believe we had a conversation that involved
10:05:469 congressional maps in one of the rooms at the, I
10:05:510 think it was Hampton Inn in Federal Way.

10:05:511 Q Do you know how to describe the room you were in?

10:06:012 A It was a large -- this was a large hotel room with
10:06:213 kind of two work spaces.

10:06:214 Q Okay. I'm just giggling about the --

10:06:215 A The noise in the background?

10:06:216 Q No. No. I was giggling about the transcript and
10:06:317 hotel rooms and not wanting to be inappropriate. So
10:06:318 the "large" in there was, like, okay, yeah, okay.
10:06:319 You weren't holed up in a single suite.

10:06:420 But was it actually a hotel room, or was it just
10:06:421 a business room in the hotel?

10:06:422 A The -- there was on the -- at parts on the 15th,
10:07:023 there was an actual hotel suite that -- and actually
10:07:024 there were a couple of different rooms that multiple
10:07:125 staff and members were working out of.

10:07:141 Q Okay.

10:07:182 MR. WONG: Joan, we've been going
10:07:193 about an hour. I don't know if you have -- want to
10:07:224 finish your line of questioning here, but may be a
10:07:245 good time to take a break pretty soon.

10:07:266 MS. MELL: Okay. Let me just get
10:07:287 some verbiage down on how to describe rooms in the
10:07:328 hotels.

10:07:329 Q (By Ms. Mell) Have you read the past depositions?

10:07:310 A No.

10:07:311 Q You haven't seen the transcripts from the depositions
10:07:312 the last couple days?

10:07:313 A **(Videoconference technical difficulties.)**

10:07:314 THE REPORTER: What was the answer
10:07:315 there, Mr. Fain?

10:07:416 THE WITNESS: No, I have not seen
10:07:417 any depositions.

10:07:418 Q (By Ms. Mell) So one of the terms of art that we
10:07:509 came up with to describe the large conference room on
10:07:520 the first floor of the Hampton Inn was -- now I'm
10:08:021 going to forget what I was calling it.

10:08:022 It's the -- now I'm forgetting. You guys help
10:08:123 me. What have we been calling it?

10:08:124 MR. WONG: I think the one on the
10:08:125 16th, the banquet room are you referring to? I think

10:08:171

you called it the event room or something.

10:08:192

MS. MELL: The event room. The

10:08:213

event room. That's my word. "Event room."

10:08:224

MR. WONG: But are you talking

10:08:235

about the one on the 16th, or are you talking about

10:08:266

the 15th still?

10:08:277

MS. MELL: I thought the event room

10:08:298

was always the big room on the first floor, 15th and

10:08:319

16th.

10:08:310

MR. WONG: I'll let

10:08:311

Commissioner Fain answer that. There was different

10:08:312

rooms, I think, at different times.

10:08:313

MS. MELL: "Event room" is the word

10:08:314

I was trying to recall, so thank you for that. All

10:08:415

right.

10:08:416

Q (By Ms. Mell) So as I understand it, there was a

10:08:417

large conference room on the main floor that we've

10:08:418

been referring to the event room at the Hampton.

10:08:419

Do you know what room that is?

10:08:520

A I do.

10:08:521

Q How large would that room be, in your opinion?

10:08:522

A It is a -- it's a big room capable of hosting over a hundred people, I would --

10:09:123

10:09:124

Q Okay.

10:09:125

A -- imagine.

10:09:141 Q Were there chairs set up in there for you?

10:09:182 A **There were chairs in the room.**

10:09:193 Q Was there seating for approximately a hundred, or was
10:09:274 it just set up to accommodate your size?

10:09:315 A **It wasn't really set up to accommodate. There were
10:09:356 some chairs in the room that were available to grab
10:09:397 and move around.**

10:09:408 Q So how many chairs were in the room?

10:09:429 A **I don't recall.**

10:09:450 Q Okay. How many people did you have in that event
10:09:471 room at any time?

10:09:482 A **Probably as few as one and as many as ten.**

10:10:083 Q Okay. And then so to distinguish that room from the
10:10:124 room you were in, having the conversation with
10:10:165 Commissioner Graves.

10:10:186 A **Mm-hmm.**

10:10:197 Q Was the room you were talking to Graves in an actual
10:10:218 hotel suite?

10:10:219 A **Yes.**

10:10:220 Q Okay. And it was above the event room?

10:10:221 A **Yes.**

10:10:222 Q Okay. And is it your understanding that the
10:10:323 Democrats had a different hotel suite they were
10:10:324 working out of?

10:10:325 A **It was my understanding that there were multiple**

10:10:401
10:10:442
10:10:453
10:10:474
10:10:475
10:21:376
10:21:377
10:21:408
10:21:439
10:21:490
10:21:511
10:21:582
10:22:003
10:22:044
10:22:065
10:22:106
10:22:127
10:22:208
10:22:289
10:22:320
10:22:321
10:22:322
10:22:423
10:22:524
10:22:525

rooms, yes.

MS. MELL: Okay. All right. We can take a break.

(Pause in proceedings from 10:10 a.m. to 10:21 a.m.)

Q (By Ms. Mell) All right. Commissioner Fain, what discussions other than the one with Walkinshaw over the 9th did you have specific to the congressional district mapping on the 16th?

A Is your question about conversations that took place on the 15th or on the 16th?

Q On the 16th. I'm back, now we're in the room, the event center room.

And what are you saying to whom as it related to the congressional district map?

A Outside of Walkinshaw and those two staff members, I -- the only other conversation I recall was very briefly with Commissioner Graves.

Q Okay. What did you say to Commissioner Graves, and what did he say to you?

A If I recall correctly, I asked him if he wanted to take a look at the map, which he declined.

Q When he declined to take a look at the map, was it your takeaway that he was trusting your work and

10:23:011 would approve it based on the work you did or was he
10:23:052 reserving his right to approve it at a later time?

10:23:093 MR. WONG: Object to form.

10:23:104 **THE WITNESS: It was him saying**
10:23:125 **that he didn't want to look at the map.**

10:23:146 Q (By Ms. Mell) Was there going to be another
10:23:197 opportunity for him to look at the map?

10:23:218 A I don't know.

10:23:229 Q What arrangements were made, if any, with respect to
10:23:300 commissioners looking at the map once completed?

10:23:311 A I don't recall any formal arrangements.

10:23:422 Q What were the informal arrangements?

10:23:413 A I don't recall any informal arrangements.

10:23:474 Q So what was your expectation with regard to the
10:23:525 congressional district map as to the work performed
10:23:556 on the 16th?

10:23:517 A That staff, once it had been completed in the Edge
10:24:018 system, that it would be sent to commission staff for
10:24:119 whatever process they needed to go through with it.

10:24:120 Q Do you know what process they had to go through with
10:24:221 it?

10:24:222 A My understanding is that there's a program that
10:24:323 analyzes shape files and converts that information to
10:24:324 a written description.

10:24:525 Q Is that a necessary component of finalizing the

10:24:581 congressional district map?

10:24:592 MR. WONG: Object to form.

10:25:013 **THE WITNESS: I'm not entirely**
10:25:114 **familiar with what the requirements are from the**
10:25:155 **secretary of state's office, which I think is who is**
10:25:196 **the holder of the redistricting plan once all other**
10:25:257 **parties are done with it.**

10:25:288 Q (By Ms. Mell) Do you know of any way that anyone
10:25:319 would be able to ascertain the precise location of a
10:25:360 mapped boundary without a written description?

10:25:411 **A I say it's possible.**

10:25:492 Q Do you know what the historical practice has been
10:26:023 with regard to the necessity of having a written
10:26:054 description of a congressional district map?

10:26:085 **A I believe they have been included, but I don't recall**
10:26:116 **seeing one.**

10:26:177 Q So when you say it's possible without a written
10:26:288 description to identify the specific boundaries of a
10:26:329 district, how is it possible? How would you do it?

10:26:320 **A If you had access to the shape file.**

10:26:421 Q And if you had access to the shape file, would you
10:26:482 necessarily have to have a software that reads a
10:26:523 shape file or does something with a shape file?

10:26:524 **A I don't quite understand the purpose of the question.**

10:27:025 Q Well, when you open a shape file, what does it look

10:27:051

like?

10:27:052

A A shape. A geography. An overlay on a -- on a map.

10:27:133

Q Okay. So if you -- if you open a shape file, you

10:27:164

necessarily can identify down to the road or latitude

10:27:205

and longitude at the location of a district boundary?

10:27:246

A You can see a physical representation of the boundary

10:27:337

as a line.

10:27:368

Q Is it specific enough so that you know which side of

10:27:429

the line you're on if you're a voter?

10:27:410

A In most cases, yes. And depending on the software

10:28:111

that you open the shape file in, you may be able to

10:28:112

do an address search.

10:28:113

Q Is there software you were using?

10:28:214

A Edge.

10:28:215

Q Okay. Were others using different software than

10:28:316

Edge?

10:28:317

A Yes.

10:28:318

Q Who was using a different software other than Edge?

10:28:419

A I wouldn't say "other than," but perhaps "in addition

10:28:520

to" would be --

10:28:521

Q Okay.

10:28:522

A And -- and I would say most anyone who was drawing

10:28:523

maps.

10:28:524

Q How about from the commission?

10:29:025

A I am not aware of other commissioners personally

10:29:091 **drawing maps, themselves.**

10:29:112 Q But you personally drew maps using Edge?

10:29:173 A **I did.**

10:29:184 Q Can you give me a chronology of events on the 16th?

10:29:365 MR. WONG: Object to form.

10:29:366 (Clarification by reporter.)

10:29:487

10:29:498 **THE WITNESS: Could I ask you to be**

10:29:499 **a little bit more specific so that I'm...?**

10:29:510 Q (By Ms. Mell) At the time the meeting adjourned,
10:29:511 what happened thereafter?

10:30:012 A **I don't recall a point-by-point of what happened**
10:30:313 **immediately following the meeting. Generally I**
10:30:414 **either stay in my room and at one point I was down in**
10:31:015 **the event room during the time that staff was**
10:31:116 **reconciling the congressional map.**

10:31:127 Q Did you actually sleep at the hotel at any time
10:31:178 between the 12th and the 17th?

10:31:219 A **No, I don't believe so.**

10:31:320 Q Were you at the hotel overnight any of those days?

10:31:321 A **I was there -- I was there until 4:30, 5. I don't**
10:31:522 **recall the exact time on the 16th when I left. So**
10:31:523 **from when I arrived the morning of the 15th to -- to**
10:31:524 **that time on the 16th.**

10:31:525 Q Were you there the 12th, 13th, or 14th?

10:32:041 **A** I don't believe I was there the 12th or the 13th.
10:32:202 **A** And I believe I was there -- was Saturday the 14th?
10:32:293 **Q** Yes.
10:32:294 **A** I believe I was there on -- for part of Saturday.
10:32:325 **Q** No, the 13th had to have been Saturday. The 14th
10:32:356 would have been Sunday. The 15th was Monday. And
10:32:377 the 16th, Tuesday.
10:32:418 **A** Well, then maybe it was the Sun- -- maybe it was the
10:32:499 Sunday that I was there and not Saturday. I don't
10:32:520 recall clearly. I have to go back and figure if I
10:32:511 could piece that together.
10:32:512 **Q** Did you keep track of your time?
10:32:513 **A** No.
10:32:514 **Q** Do you know how many hours you were there on the
10:33:015 Saturday or Sunday?
10:33:106 **A** Not exactly, no.
10:33:117 **Q** Was it more than five hours?
10:33:118 **A** On the Saturday, or -- again, I have to go back and
10:33:219 check which day. I believe I was there on Sunday. I
10:33:220 believe I was there a majority of the day on Sunday.
10:33:221 **Q** But you didn't stay overnight into the 15th, the day
10:33:322 of the meeting?
10:33:323 **A** I don't believe so.
10:33:324 **Q** Were you staying in a different hotel down there, or
10:33:425 were you always at the Hampton?

10:33:421 **A** When I was in Federal Way, I was always at the
10:33:462 Hampton.

10:33:473 **Q** Okay. And where did you set up?

10:33:534 MR. WONG: Object to form.

10:33:555 **THE WITNESS: For what activity are**
10:33:576 **you referring?**

10:34:047 **Q** (By Ms. Mell) I don't know how to distinguish the
10:34:058 activities, so I need you to tell me where you set up
10:34:089 for whatever it is you were doing.

10:34:110 MR. WONG: Same objection.

10:34:121 **THE WITNESS: If the question is**
10:34:142 **where did I spend my time at the hotel, in several**
10:34:213 **locations on the first and second floor.**

10:34:304 **Q** (By Ms. Mell) Where did you put your things?

10:34:315 **A** In several locations on the first and second floor.

10:34:416 **Q** If you were caucusing, where were you?

10:34:517 **A** I -- if I recall, the room that I referred to earlier
10:35:018 on the second floor, not the -- not the event space,
10:35:019 but the room I referred to earlier had been occupied
10:35:120 by the chair days prior. And I don't remember,
10:35:221 again, what day. They all blend together. But she
10:35:222 had -- she -- that had been her room, and I believe
10:35:223 that there was another room next door to that, that
10:35:324 we were able to use.

10:35:325 And then on Monday, she left that room to spend

10:35:431
10:35:492
10:35:593
10:36:034
10:36:075
10:36:176
10:36:217
10:36:228
10:36:269
10:36:210
10:36:321
10:36:312
10:36:423
10:36:414
10:36:415
10:36:506
10:36:517
10:37:018
10:37:019
10:37:020
10:37:121
10:37:122
10:37:223
10:37:224
10:37:225

more -- to spend her time in the event room, which allowed us access -- "us" meaning Commissioner Graves, his staff, and myself and my staff -- access to two separate rooms on the second floor.

Q So did you have one room and Graves and his staff had the other room with a door connecting, a connecting door between the two?

A I don't recall if there was a door between the two. If there were, it was not used. So if you wanted to enter one to go into the other, you'd go into the hallway.

Q But you and Graves were in the same room when caucusing?

A At different times, Commissioner Graves and I were in the same room, yes.

Q Were the two of you ever in one of those rooms without staff, just the two of you?

A I don't recall.

Q Were any of the other commissioners in either one of those two rooms that -- the two of you?

A No, not that I recall.

Q And where were you conducting your negotiations on the congressional maps?

MR. WONG: Object to form.

THE WITNESS: I discussed the

10:37:281 congressional maps with Commissioner Walkinshaw in
10:37:322 several locations from brief conversations in the
10:37:383 hallway to a vacant part of the lobby. There's some
10:37:524 corner booths.

10:37:555 Q (By Ms. Mell) Were you ever negotiating the
10:38:006 congressional map with Walkinshaw in the event room?

10:38:037 MR. WONG: Object to form.

10:38:048 THE WITNESS: Commissioner
10:38:109 Walkinshaw and I obviously discussed the
10:38:120 congressional maps on the 16th when the map was being
10:38:181 reconciled. I don't recall any conversations that I
10:38:222 had with him in that room prior to that time.

10:38:253 Q (By Ms. Mell) So where were you during the action
10:38:314 portion of the meeting, the regular business meeting
10:38:375 scheduled for the 15th?

10:38:316 A In one of the two second-floor rooms.

10:38:417 Q Was anybody with you?

10:38:418 A At -- again, the on-camera time during that meeting
10:39:019 happened in a number of different points throughout
10:39:020 the evening. Is there a specific one that you're
10:39:021 asking about?

10:39:022 Q Yes. I haven't left the action portion.

10:39:123 A Oh. The action portion, so the last few minutes of
10:39:224 the -- Commissioner Graves may have been in the room
10:39:225 during that time, but I don't recall.

10:39:271 Q During the action portion of the meeting, did you
10:39:312 have any paper reflective of any action you were
10:39:363 taking in front of you?

10:39:374 **A I don't believe so.**

10:39:385 Q What technology were you using to attend the action
10:39:466 portion of the meeting?

10:39:477 **A A laptop.**

10:39:508 Q Personal laptop or a commission laptop?

10:39:549 **A Personal laptop.**

10:39:510 Q What kind of laptop is it?

10:39:511 **A A Macbook.**

10:40:012 Q How did you know to go to the action portion of the
10:40:113 meeting?

10:40:114 **A Possibly that Chair Augustine had told us to, either
10:40:315 by physically telling us or through a text message.
10:40:416 I don't recall.**

10:40:417 Q What were you doing when you realized you needed to
10:41:018 log in to the public portion of the Zoom meeting?

10:41:119 **A I don't recall.**

10:41:220 Q Were you in the Zoom meeting in a breakout room when
10:41:321 you were off camera?

10:41:322 **A I don't believe so.**

10:41:323 Q Did you log in and out of Zoom each time you entered
10:41:324 the meeting?

10:41:425 **A I believe so.**

10:41:531 Q What did you think at the time the meeting started
10:41:592 you were going to be doing?

10:42:013 A It was a very chaotic moment, so I think there was --
10:42:184 at least for me, it was very unclear what was going
10:42:205 to be happening next.

10:42:276 Q Did you have the sense that you would be taking a pro
10:42:317 forma vote?

10:42:328 MR. WONG: Object to form.

10:42:349 THE WITNESS: I'm not certain what
10:42:310 you mean by "a pro forma vote."

10:42:311 Q (By Ms. Mell) Was it your belief, in part or in
10:42:412 whole, that what you needed to do was vote on
10:42:413 something, even if it wasn't complete?

10:42:414 A I think you're saying that we -- that I believed we
10:42:515 had to do something? Is that the way you phrased
10:43:016 that?

10:43:017 Q I think that's fair. Or not "fair." Correct.

10:43:118 A Yeah, I didn't believe that we had to do anything.
10:43:119 But my -- I mean, there's -- we could have not done
10:43:220 anything. I'm certain it was an option. And just
10:43:321 not even attend the meeting could have been an
10:43:322 option.

10:43:323 So the question around you have to do something,
10:43:324 like -- I guess I'm real hung up on what -- what you
10:43:425 mean by that.

10:43:431 Q Was it your belief that you were going to vote on
10:43:462 something?

10:43:483 **A I believe there was a possibility that we would have**
10:43:534 **a vote.**

10:43:555 Q And what were the possibilities conditioned on?

10:43:576 **A Largely what the chair -- what the chair did next.**

10:44:087 Q Did you know what the chair was going to do next
10:44:138 before you logged in?

10:44:149 **A No.**

10:44:140 Q Did you have any idea that the chair would invite a
10:44:171 motion on the congressional district?

10:44:182 **A I knew it would be a possibility, or I believed it to**
10:44:213 **be a possibility.**

10:44:214 Q And what were you prepared to do if that happened?

10:44:315 **A I had not made up my mind about much of anything at**
10:44:316 **that point. These decisions were very much made in**
10:44:417 **the moment.**

10:44:418 Q Did you know when you were logging in, that if the
10:44:479 chair invited a motion, you'd make a motion to adopt
10:44:520 a congressional district map?

10:44:521 **A No.**

10:45:022 Q Did you know whether or not anyone was going to move
10:45:023 to adopt a legislative district map?

10:45:024 **A No.**

10:45:025 Q Had you been informed that you should vote on

10:45:101 something or make some motion to meet the deadline?

10:45:142 **A I have my -- my own reasoning for doing what I did.**

10:45:273 **I can't speak for anyone else about the decision that**

10:45:324 **founded their actions.**

10:45:335 Q Do you remember what the motion was with regard to

10:45:556 legislative districts?

10:45:577 **A I don't recall the language that was used in the**

10:46:018 **motion, no.**

10:46:029 Q What do you think you voted on?

10:46:010 **A I believe I voted on a framework proposal that --**

10:46:211 **for -- you're asking about the legislative maps**

10:46:212 **now -- a framework proposal for the legislative**

10:46:313 **redistricting map.**

10:46:314 Q Was the motion inclusive of the framework?

10:46:315 **A I don't recall the language of the motion.**

10:46:416 Q Did you know what the framework proposal was when you

10:46:417 voted?

10:46:518 **A Yes.**

10:46:519 Q How did you know?

10:46:520 **A Commissioner Graves must have communicated it to me.**

10:46:521 Q When?

10:46:522 **A At some point prior to rejoining the Zoom meeting.**

10:47:023 **But at what point, I don't know.**

10:47:024 Q It was on the 15th?

10:47:125 **A Yes.**

10:47:131 Q Was it privately?

10:47:162 A **Privately? I'm not certain if staff was present or
10:47:263 not.**

10:47:274 Q Was it off the -- off-line publicly?

10:47:325 A **Yes.**

10:47:336 MR. WONG: Object to form.

10:47:347 Q (By Ms. Mell) Do you remember it being in the
10:47:398 second-floor suite?

10:47:429 A **I don't recall.**

10:47:430 Q What were the components of the framework proposal?

10:47:411 A **Political performance changes in various legislative
10:47:512 districts and lack of performance change in various
10:48:013 other districts, among other factors.**

10:48:104 Q Okay. Can you give me all of the elements of the
10:48:145 framework proposal you voted on for the legislative
10:48:176 district maps -- map?

10:48:117 A **I can share with you what I recall it to be. I
10:48:318 probably can't at this juncture give you an
10:48:319 inclusive -- an exclusive list of things.**

10:48:420 Q Did you ever see an exclusive list of things?

10:48:421 A **See an exclusive list? No.**

10:48:422 Q Was the legislative district map framework proposal
10:48:523 ever expressed in writing?

10:48:524 A **There were elements of the framework proposal, much
10:49:025 like the congressional map, that built upon previous**

10:49:101 versions of the maps, proposals of the maps, I should
10:49:152 say, but no single document that reflected
10:49:223 everything.

10:49:244 Q Did you have a sense of what any one of those
10:49:295 documents were when you voted?

10:49:346 MR. WONG: Object to form.

10:49:357 THE WITNESS: Can you clarify?

10:49:388 Q (By Ms. Mell) I think you said there were elements
10:49:399 expressed in some documents that had been created
10:49:420 prior but not entirely inclusively.

10:49:471 So do you know what documents were the
10:49:492 controlling documents in your mind when you voted?

10:49:513 A I can't recall. Again, I would say that there were
10:49:514 just pre- -- there had been previous versions of maps
10:50:015 that were part of the overall conversation. But,
10:50:016 again, they did not reflect the entirety of the
10:50:117 proposal that was brought for a vote on the 15th.

10:50:198 Q Okay. So tell me what you do remember about the
10:50:219 elements.

10:50:320 Let me break it down so you don't have to --

10:50:321 A Yeah.

10:50:322 Q Let's start with: You did say there was an agreement
10:50:403 on political performance changes in various
10:50:424 legislative districts.

10:50:425 What legislative districts were there an

10:50:461 agreement on political performance changes?

10:50:492 **A** I can share what I recall now, but I have not -- it's
10:50:543 been several months. So I don't want to represent
10:51:004 that I'm giving an exhaustive list of what may have
10:51:075 been part of that at the time.

10:51:116 But there were several legislative districts in
10:51:167 particular that had some -- had greater conversation
10:51:218 around them than -- than others.

10:51:239 **Q** Okay. I get all those qualifiers.

10:51:290 Now what districts you recall.

10:51:311 **A** Oh, I'm sorry. The 40 -- I apologize.

10:51:352 **Q** That's okay.

10:51:313 **A** The 44th, 28th, 26th, 15th.

10:51:514 Those were some of the -- 47th. I don't know if
10:51:515 I ever said that already.

10:52:016 Those were some of the districts that had
10:52:017 received more attention in the final few weeks of the
10:52:118 process.

10:52:119 **Q** Okay. So when you vote -- when you voted to
10:52:220 approve -- when you voted on the motion with respect
10:52:221 to legislative districts on the 15th, you believed
10:52:322 you were affirming political performance changes in
10:52:323 the 44th, 28th, 26th, 15th, 47th, and possibly
10:52:424 others?

10:52:425 **A** I was giving you a list of those districts that had

10:52:451 been -- that had received more scrutiny or more
10:52:502 conversation in the -- in the previous weeks.

10:52:533 In terms of what -- in terms of what specific
10:53:054 districts were -- I believed I was voting on a
10:53:175 framework that involved a number of these districts,
10:53:276 various communities of interest, political
10:53:307 performance.

10:53:348 And at this time, I can't remember all the
10:53:439 districts that may have come up in that conversation
10:53:470 with Paul about the -- about the framework.

10:53:521 Q Okay. But I want to be sure I understood your prior
10:53:552 testimony.

10:53:513 A Yeah.

10:53:564 Q Is it correct that the framework proposal that you
10:54:015 believe that you were voting on with respect to
10:54:056 legislative district included political performance
10:54:097 changes in the 44th, 28th, 26th, 15th, and 47th,
10:54:158 possibly others?

10:54:179 A It may not be just -- it may not be political
10:54:220 performance changes. In many cases, it might be the
10:54:321 lack of political performance changes.

10:54:322 But also there was -- with regards to the 15th
10:54:323 district, there was great deal of conversation around
10:54:424 communities of interest and also -- again, I'm trying
10:55:025 to recall best I can conversations from that night.

10:55:071

I think I've answered your question, but -- but

10:55:222

if not --

10:55:233

Q I don't think --

10:55:254

A -- come back --

5

Q -- you have.

6

A -- at me --

7

Q But that's --

8

A -- again.

9

Q -- okay.

10:55:210

A I'm sorry.

10:55:211

Q I don't think you have. But I got confused at least

10:55:212

by your answer. You may have been answering the

10:55:313

question, but now I'm confused, so let's take it one

10:55:314

by one.

10:55:315

What political performance change in the 44th did

10:55:316

you believe you were approving on the 15th when you

10:55:417

voted on the motion regarding legislative districts?

10:55:418

A At this time, I don't think I can recall the exact

10:55:519

number, but it would have been a point value

10:55:520

improvement for the Democratic party in -- in the

10:56:021

44th district.

10:56:022

Q What is the point value improvement for the

10:56:103

Democratic party in the legislative district in the

10:56:104

final map that was transmitted to the legislature?

10:56:125

A I don't know that off the top of my head.

10:56:221 Q Okay. Let's go to the 28th.

10:56:282 A **Mm-hmm.**

10:56:283 Q Same question.

10:56:304 What was the political performance change in the
10:56:335 28th that you thought you were approving when you
10:56:376 voted on the legislative district motion on the 15th?

10:56:407 A **Again, I haven't reviewed the partisan performance in**
10:56:468 **the final maps since they came out, and so I can't**
10:56:539 **specifically recall all these.**

10:56:510 My belief at the -- is that it was a modest sum
10:57:011 amount of improvement for the Democratic party in the
10:57:012 28th.

10:57:013 Q And when you say "modest," can you give me a number
10:57:114 at this point?

10:57:115 A **I believe less than 1 percent.**

10:57:116 Q What do you believe you approved in terms of
10:57:217 political performance changes when you voted on the
10:57:218 15th on the motion with respect to legislative
10:57:309 districts?

10:57:320 A **The 15th district, I -- it would be a more**
10:57:421 **competitive district than the current law map but**
10:57:522 **would be -- would lean slightly Republican, and the**
10:58:023 **boundaries would be changed to make it a majority**
10:58:224 **Latinx district of voting age population.**

10:58:225 Q I didn't hear what the majority -- the majority what?

10:58:311

A Latinx.

10:58:362

Q Oh. Okay.

10:58:403

10:58:444

10:58:485

10:58:526

The 26th. What did you believe you were approving as to political performance changes in this 26th legislative district on the 15th when you voted on the motion --

10:58:547

A Again, my best --

10:58:548

(Interruption by reporter due

10:58:549

to simultaneous speakers.)

10:59:000

10:59:001

Q (Continuing by Ms. Mell) -- with regard to

10:59:012

legislative districts?

10:59:013

A Sorry. I didn't mean to talk over you.

10:59:014

Again, my best recollection is flat performance.

10:59:115

Q And what does "flat performance" mean?

10:59:116

A No significant change in partisan performance one way or the other.

10:59:317

10:59:318

Q Again, significant change in partisan performance

10:59:429

leaves how much leeway?

10:59:420

A I don't think I have a -- a metric.

10:59:521

Q In the 26th district, is a 1 percent change

10:59:522

significant?

11:00:023

A Again, I believe at the time, I would have considered

11:00:124

a 1 percent change to be a noticeable change.

11:00:225

Q Significant?

11:00:281 **A** We can go back and forth on the -- on the word
11:00:382 choice. I would just say that a 1 percent change
11:00:433 would have -- would not be something I would have
11:00:484 characterized as flat performance.

11:00:505 **Q** Okay. With regard to the 47th district, what did you
11:00:556 believe that you were voting to approve as to
11:01:017 political performance changes when the motion was
11:01:068 made on the 15th to approve legislative districts?

11:01:109 **A** Again, I believe my best memory would be it would be
11:01:180 flat in the 47th.

11:01:201 **Q** With regard to the 47th district, is a 1 percent
11:01:242 change flat performance?

11:01:263 **A** Again, both with the 26th and with the 47th, a 1
11:01:414 percent change, that's on the bubble, I suppose.
11:02:025 It's hard for me to...

11:02:056 **Q** Is it clear if it's 2 percent?

11:02:077 **A** That would be significant, in my mind.

11:02:118 **Q** So for the 47th district, the statistic somewhere
11:02:169 between 1 and 2 percent is the variation between flat
11:02:220 performance and a significant performance change?

11:02:221 **MR. WONG:** Object to form.

11:02:282 **THE WITNESS:** Again, my -- I'm
11:02:423 having difficulty assigning point values to words.

11:02:524 **MS. MELL:** Okay.

11:02:525 **THE WITNESS:** And so I -- I want to

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make sure that I'm -- that I'm clear, and that --
that just is hard. Since I hadn't have previously
done that, it's hard to --

Q (By Ms. Mell) Let's do it this way.
Was a 2 percent change in the 47th district
outside the scope of what you thought you were
approving?

A I believe so, yes.

Q Was a 1 percent change in the 47th district outside
the percent you thought you were approving?

A I believe so.

Q For the record, can you tell me what 1 percent means?

MR. WONG: Object to form.
(Clarification by reporter.)

THE WITNESS: 1 percent would be a
movement in one way or the other with regards to the
partisan performance.

Q (By Ms. Mell) And when you say "partisan
performance," can you explain what that means?

A Throughout the process, there was a number of
different comparative -- comparison metrics that were
thrown around to help people understand partisan
perform- -- be able to talk about partisan
performance.

11:04:281 **One that I predominantly used when assessing**
11:04:362 **legislative performance would have been the state**
11:04:413 **treasurer's race from 2018, I believe.**

11:04:454 Q So when we were discussing the 44th, 28th, 26th,
11:04:575 15th, and 47th and trying to describe percentages,
11:05:066 were you in your mind referencing the political
11:05:117 metric of the state treasurer's race for 2018?

11:05:158 A **It's possible.**

11:05:179 Q When you placed your vote, did you know which
11:05:270 political metric would be applicable to what you're
11:05:351 voting on?

11:05:372 A **Since we had used the treasurer's race in a number of**
11:05:513 **conversations, I likely assumed that was the ongoing**
11:06:014 **metric, though it would be important to note that**
11:06:045 **most of these metrics track with them -- track with**
11:06:116 **themselves. So while the performance of a particular**
11:06:147 **candidate might be different, the relative**
11:06:178 **performance in a district oftentimes stays the same.**

11:06:219 **So if, for instance, we're talking about a**
11:06:220 **percentage gain or a percentage loss, if these two**
11:06:221 **track closely, then it's not usually a significant**
11:06:322 **difference in any given district.**

11:06:323 Q Doesn't that depend on whether or not you use the
11:06:424 final race or a primary?

11:06:425 A **Could you -- could you be more clear about that?**

11:06:501 Q Well, isn't there the thing with the primary where
11:06:532 you have to pick a partisan side to vote versus the
11:06:563 final election where you can flip if you want to --
11:06:584 you can pick your candidate of your choice -- so the
11:07:025 nexus between whether or not they track political
11:07:076 sides would be distinct from a primary and a final
11:07:117 race?

11:07:128 A It would depend on the number of candidates and which
11:07:179 party in the primary.

11:07:190 Q Okay.

11:07:211 A But I -- but I believe my use of political data would
11:07:212 focus primarily unintended there on the -- on the
11:07:313 general election results.

11:07:314 Q Okay.

11:07:315 A For that reason and others.

11:07:416 Q Is it correct that there are many different
11:07:417 iterations of how you can draw the district
11:07:418 boundaries for the 44th to have a particular point
11:07:519 value improvement?

11:07:520 MR. WONG: Object to form.

11:07:521 THE WITNESS: It's likely that you
11:08:022 could draw it differently, yes.

11:08:023 Q (By Ms. Mell) And is your answer any different with
11:08:024 regard to the 28th, 26th, 15th, or 47th?

11:08:125 MR. WONG: Same objection.

THE WITNESS: With regards to

political performance, there would likely be
different ways that those districts could be drawn.

Q (By Ms. Mell) I'm trying to get back to my laundry
list of what the elements were of the framework
proposal Commissioner Graves explained to you with
regard to legislative districts. We went through
political performance. I remember you saying
communities of interest.

I didn't write down geographic boundaries. But
were there geographic boundaries you discussed with
Commissioner Graves with regard to the legislative
district and the framework proposal?

A And then just to take a step back for a moment
that -- that we're now at Month 11 or so of a pretty
lengthy process where there had been a number of
ideas that had shared from the public, from
commissioners, and so this position that I found
myself at, at that time, was informed by all of that.
And so I just think that's important to note that
this wasn't -- this didn't happen necessarily in just
isolation.

Q Well, let me ask you -- before you answer the
question, then, let me ask you this clarifying
question.

11:10:281 Were any of the past negotiations in public, or
11:10:322 were they all in your dyads outside the public?

11:10:383 **A** Well, a lot of the -- I mean, there were -- the
11:10:454 Democrats had issued second rounds of maps. And that
11:10:525 had definitely informed the process.

11:11:046 And then I think we all became aware in different
11:11:117 ways, whether it be statements in the press or volume
11:11:198 of certain types of public comment or other means,
11:11:269 what -- what things were important to different
11:11:310 commissioners.

11:11:311 **Q** Was the second rounds of maps from the Democrats
11:11:412 presented in a public meeting and discussed in a
11:11:483 public meeting?

11:11:514 **A** They were -- they were talked about in a public
11:11:515 meeting. They were posted to the website. And they
11:12:016 were subject to public comment, which was received
11:12:117 by -- those public comments were received by each
11:12:118 commissioner.

11:12:169 **Q** Okay. So with that understanding, then, let's go
11:12:220 back and go over the framework proposal elements.

11:12:221 I just want to make sure I have all of the
11:12:322 elements of the framework that you thought you voted
11:12:323 on.

11:12:324 I think my question is: Do you have geographical
11:12:425 boundaries?

11:12:441 Was there any expression as to geographical
11:12:472 boundaries in the framework you voted on?

11:12:503 **A I don't recall if there were any specific**
11:13:094 **geographical boundaries that were brought up in**
11:13:195 **the -- in any conversation on the 15th where**
11:13:236 **Commissioner Graves was communicating any of the**
11:13:277 **elements of -- of his -- of his progress.**

11:13:388 But I believe that there were some geographical
11:13:449 elements that would need to be satisfied in order for
11:13:510 the -- in order for the -- that were kind of
11:14:011 contained in the agreement.

11:14:052 **Q That, I was with you right up until you said**
11:14:083 **"contained in the agreement."**

11:14:084 What agreement are you talking about?

11:14:115 **A So I mean the final voted-on proposal.**

11:14:156 **Q Okay. But you didn't talk to Graves about what that**
11:14:187 **was when he told you that they had a -- he had a deal**
11:14:218 **with Sims, right?**

11:14:219 **A I don't think he characterized it like that. I think**
11:14:220 **he characterized -- he would have characterized**
11:14:321 **the -- kind of the current state of -- of where those**
11:14:322 **conversations were. I don't know if he -- again, I**
11:14:423 **don't recall the exact words that he was used.**

11:14:424 Going back to your earlier question, and just to
11:14:525 cite some examples about different geographies in the

11:14:541 state that were -- I don't know if "contested" is the
11:14:562 right word, but that were a part of the conversation:

11:15:013 There were various cities, and whether they would
11:15:034 be split or not, that were part of this conversa- --
11:15:085 that were a big part of the conversation.

11:15:106 The tribal communities in the tribal reservations
11:15:167 and whether they would be contained in their own
11:15:238 legislative district or -- or not.

11:15:309 So those -- those elements that -- that built
11:15:340 over time, over the previous 11 months, I had
11:15:401 considered being part of this -- being part of the
11:15:412 proposal that I voted on.

11:15:463 Q Okay. What cities?

11:15:504 A I won't be able to give you an exclusive list. But I
11:15:515 had believed that in order for flat political
11:16:016 performance in the 26th, that Bain- -- or Bremerton
11:16:117 would be -- likely be split, that the tribal
11:16:118 communities with the exception of the Colville would
11:16:219 be retained in their own legislative district and not
11:16:220 split into multiples.

11:16:321 A vague recollection about a community, a city
11:16:422 within the 44th district that -- that was going to be
11:16:423 moved out of the 44th district. And at the moment, I
11:16:524 can't recall what that was. But I -- again --

11:17:025 Q Where's the 44th? Is that up north --

11:17:041 **A** **Snohomish County.**

11:17:072 **Q** Snohomish County?

11:17:093 **A** **Snohomish County, yeah.**

11:17:124 **Q** Is it Lake Forest?

11:17:135 **A** **I'm sorry. Which did you say? Lake Forest?**

11:17:166 **Q** Yeah.

11:17:167 **A** **I don't believe so.**

11:17:178 **Q** Okay.

11:17:259 **A** **I don't recall.**

11:17:260 **Q** How about the 46th? Any splits in the 46th?

11:17:291 **A** **I don't recall any specific conversation around the**
11:17:312 **46th district.**

11:17:363 **Q** Can you think of any other city splits you were
11:17:414 tracking?

11:17:415 **A** **I would think that we were tracking, you know, all**
11:17:476 **city splits as a metric of -- 'cause it's one of the**
11:17:517 **criteria that is in the statute around redistricting.**
11:17:518 **So limiting city splits, I think, was a value that**
11:18:019 **was held by me and was one that was communicated as a**
11:18:120 **value that other commissioners cared about.**

11:18:121 **Q** Do you know what city splits you voted to approve?

11:18:222 **A** **At this time, I don't recall an exclusive --**
11:18:323 **exhaustive list of them.**

11:18:324 **Q** Do you remember discussing any city splits with
11:18:325 Commissioner Graves prior to the vote?

11:18:391 A I don't recall.

11:18:402 Q And there would be no way to refresh your
11:18:463 recollection about it with any document you can think
11:18:584 of?

11:18:585 Do you remember there being any other witnesses
11:19:016 present when you had this conversation with Graves?

11:19:037 A I don't recall.

11:19:058 May I take a quick second here and close this
11:19:089 window? It seems my next door neighbor decided to
11:19:120 use his blower now, and I'm having a hard time
11:19:151 hearing. Just one second, please. I'm sorry about
11:19:182 this.

11:19:183 Okay.

11:19:214 MR. WONG: This is the joy of Zoom
11:19:225 depositions.

11:19:236 THE WITNESS: Yes. It happens.

11:19:367 Q (By Ms. Mell) Do you want me to refresh your
11:19:388 recollection where we were there?

11:19:389 A Oh. We were -- yeah, we were talking about is there
11:19:420 something that would refresh my recollection on the
11:19:421 city splits.

11:19:422 I'm not certain. It was something that we were
11:19:523 tracking throughout the process. And in many cases,
11:20:024 different versions of different maps would also
11:20:025 sometimes highlight which cities were -- were split

11:20:061 in those.

11:20:062 I know that the proposals that came out both
11:20:103 initially and then the -- the subsequent ones by the
11:20:154 Democrats, I think one of their metrics that they
11:20:225 shared along with that map was -- was the number of
11:20:276 cities that were kept whole.

11:20:347 Q So as you're sitting here today, you can't tell me
11:20:378 what city -- cities you approved a split when you
11:20:449 voted?

11:20:440 MR. WONG: Object to form.

11:20:411 THE WITNESS: I don't recall right
11:20:412 now which cities were split in the final agreement.

11:20:513 Q (By Ms. Mell) Okay. I just want the record to be
11:20:514 clear. I was going to ask that as a follow-up.
11:21:015 So...

11:21:026 A Sorry.

11:21:027 Q You don't know what cities were split in the final
11:21:058 agreement, correct?

11:21:079 MR. WONG: Object to form.

11:21:020 THE WITNESS: I do not right now
11:21:121 recall what cities were split in the final map, all
11:21:122 of the cities.

11:21:123 Q (By Ms. Mell) Okay. As you sit here today, you do
11:21:224 not recall what -- when you voted, what you approved
11:21:225 in terms of city splits, correct?

11:21:291 MR. WONG: Object to form.

11:21:332 THE WITNESS: I do not recall
11:21:373 whether I had an exhaustive list of city splits in my
11:21:474 mind at the time that I voted.

11:21:515 Q (By Ms. Mell) And as we sit here today, you can't
11:21:536 think of any city split that you voted to approve
11:21:577 when the vote was taken?

11:22:008 MR. WONG: Object to form.

11:22:019 THE WITNESS: Again, to -- again,
11:22:110 I -- I -- I believe the framework, what I voted on,
11:22:211 included some city splits as would be necessary to
11:22:212 effectuate some of the partisan performance metrics.
11:22:313 There are a number of cities that I can articulate
11:22:314 now that -- that would fall under that category. I
11:22:315 would not want to attempt an exhaustive list of that.

11:22:316 Q (By Ms. Mell) Okay. So just give me what you
11:22:317 recall.

11:22:418 A For example, I believe that -- that Bremerton would
11:22:419 be an example of a city that -- that would be split.

11:22:520 There are areas that had previously been split
11:23:021 that continued to be split. I believe the city of
11:23:122 Kent. I think the city of Bellingham may be another.
11:23:223 I believe the city of Auburn is another.

11:23:224 I think there are a number of cities that had
11:23:325 historically been split and that continue to be split

11:23:381 either as -- as a necessity for achieving these
11:23:462 population equalization numbers or in some cases
11:23:493 because they had other boundaries on top of them
11:23:564 that -- that may have been prioritized over the city
11:23:595 boundary, like, for instance, a city that might
11:24:036 straddle a county.

11:24:047 Q Can you think of any other cities?

11:24:098 A I believe Wenatchee, from East Wenatchee. Again,
11:24:299 I -- this -- this could be refreshed by looking at
11:24:320 the -- at the final maps, obviously, 'cause those
11:24:381 contained the -- the final city splits.

11:24:402 But, again, when you're -- you want to try to --
11:24:413 you want to try to minimize city splits as a goal,
11:24:474 but that's also not always possible and oftentimes is
11:24:515 made impossible by the way the population grows.

11:24:586 Q When you voted on the legislative district on the
11:25:017 measure on the -- strike that.

11:25:038 When you voted on the motion on the legislative
11:25:079 districts, did you vote to approve a split of a
11:25:120 district that hadn't -- a split of a city that had
11:25:181 not previously been split?

11:25:322 A I don't recall.

11:25:323 Q Did your vote contemplate eliminating a split in any
11:25:424 particular city?

11:25:425 A I don't recall at this time.

11:26:071 Q Is there any number of different ways that you can
11:26:152 draw a legislative district boundary to either
11:26:213 incorporate into an entire district a city or split a
11:26:264 city?

11:26:265 MR. WONG: Object to form.

11:26:286 **THE WITNESS: There are multiple**
11:26:307 **ways to draw any number of district boundaries.**

11:26:378 Q (By Ms. Mell) Where did you think the district
11:26:439 boundary was relative to crossing the Cascades when
11:26:510 you voted?

11:26:511 **A I believe that the Cascades would cross in the --**
11:27:012 **I'm -- pardon me if I get the numbers back and forth**
11:27:013 **a bit -- I believe it's the 12th district. I always**
11:27:114 **get the 12th and the 13th mixed up in my head. But**
11:27:215 **the district had traditionally held Chelan and**
11:27:216 **Douglas Counties.**

11:27:217 Q Did you have any conversation with Graves about the
11:27:318 framework proposal specific to I-90?

11:27:319 **A Could you be a little bit more specific there?**
11:27:420 **What...?**

11:27:421 Q Did you have any conversation about where the
11:27:522 district boundaries would be relative to following
11:27:523 I-90?

11:27:524 **A I recall conversations with regards to where the**
11:28:025 **population that needed to move from eastern**

11:28:051 Washington would come over to western Washington. I
11:28:102 don't know --

11:28:103 Q Was there a nexus to I-90 with that?

11:28:144 A I-90 was one of the -- was one of the options.

11:28:215 Q So what were the specifics in the framework proposal
11:28:246 with regard to the movement of that population?

11:28:277 A Again, my recollection is, is that the population
11:28:328 needed to come over would come through that -- and,
11:28:359 again, I apologize -- 12th or 13th district.

11:28:370 I -- I believe it's the 12th. But the one that
11:28:421 had previously held Chelan and Douglas Counties, that
11:28:472 that would be where the population would come over.

11:28:493 Q When Graves told you about the framework proposal on
11:28:544 the 15th, do you remember communicating with him
11:28:585 about that part of the proposal?

11:29:026 A I don't -- I don't recall anything.

11:29:067 Q Do you remember hearing anything earlier where there
11:29:118 had been an agreement reached between Sims and Graves
11:29:179 on that point?

11:29:180 A I don't recall when that element was brought to my
11:29:221 attention.

11:29:282 Q Do you remember throughout the negotiations hearing
11:29:323 from Graves what progress he and Sims were having on
11:29:384 the legislative districts and their negotiations?

11:29:425 A Commissioner Graves and I discussed the number of

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11:31:320
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11:32:025

proposals that had been a part of the -- his
conversations.

Q And were you discussing that in the -- on the second
floor in the suite?

A We regularly talked about different elements of the
redistricting process and various proposals that were
out there. I don't know of what kind of specific
conversation you are referring to.

Q I'm just wondering how much of -- how much were you
talking about the legislative and congressional
district negotiations with one another outside of the
public on the 15th?

MR. WONG: Object to form.

THE WITNESS: We did have
conversations about various proposals on the 15th.

Q (By Ms. Mell) Outside of the public meeting?

A While not logged in to the public meeting.

Q Okay. Did that include Commissioner Graves
expressing where Commissioner Sims was with regard to
the negotiations?

A No. It was -- let me -- let me backtrack a moment.

When there might be a concept brought up that
relates to one of the maps, that might be a concept
that's brought up by another -- another commissioner,
but it's not -- it's not a -- I mean, it's just one

11:32:141

of many various proposals that are coming to light.

11:32:212

I guess I'm still a little unsure of what you're specifically asking.

11:32:273

11:32:274

Q I think I understand why you're struggling with the way I framed the question.

11:32:305

11:32:326

I guess, was it your understand- -- well, strike that.

11:32:357

11:32:358

Am I understanding your answer to mean that when you were talking about the proposals with Commissioner Graves, there wasn't necessarily an attribution saying, well, Commissioner Sims, this was her particular idea versus anybody else's idea? It was just this is what we're discussing in the negotiations?

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MR. WONG: Object to form.

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THE WITNESS: I mean, I -- I think that is fair characterization of some of our conversations. Again, there are -- and this was an 11-month process. There were, I think, thousands of pieces of -- of public testimony and, you know, dozens and dozens of concepts thrown about. So I -- I don't want to characterize a conversation, you know, too narrowly, I guess.

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MS. MELL: Okay.

11:33:485

MR. WONG: Joan, we've been going

11:33:501 about an hour and 15 minutes. Can we do a quick
11:33:532 break?

11:33:533 MS. MELL: Can we do it right on
11:33:554 the hour? 'Cause I've got some people I'm supposed
11:33:585 to meet with on the hour.

11:34:016 MR. WONG: Can we go off the record
11:34:027 for just a second to discuss this?

11:34:108 (Discussion off the record.)

11:34:109 (Pause in proceedings from
11:34:100 11:38 a.m. to 11:43 a.m.)

11:43:411

11:43:422 Q (By Ms. Mell) So is it correct to say that on the
11:44:203 15th, outside the publicly viewable Zoom meeting, you
11:44:414 were aware of the status of the negotiations with
11:44:415 regard to the legislative districts by your
11:44:516 conversations with Commissioner Graves?

11:44:517 A I would say that Commissioner Graves and I did
11:45:018 discuss elements of the legislative maps.

11:45:119 Q And is it correct that there was -- one -- at one of
11:45:120 those conversations -- I'm going to say privately;
11:45:221 and when I say it in that context, I mean not in the
11:45:222 Zoom meeting that the public could view -- you
11:45:323 actually discussed a framework proposal that was
11:45:324 going to come before the commission during the action
11:45:425 portion of the meeting?

11:45:421 A I think there are a couple of assumptions built into
11:45:522 that question, so I just want to make sure I unpack
11:45:563 it.

11:45:564 The first is that would be coming for a vote.
11:45:595 Again, I wasn't necessarily sure what would be coming
11:46:036 for a vote or if anything would be coming for a vote
11:46:107 with certainty.

11:46:158 And, two, the word "discussion," with regard to
11:46:189 that final -- that final -- as we were getting
11:46:210 towards the end where Commissioner Graves would have
11:46:211 shared with me -- and I don't remember entirely
11:46:312 this -- this conversation, but I would characterize
11:46:413 it more he's just relaying to me what the -- what the
11:46:414 conversation he had with Commissioner Sims, some of
11:46:415 the elements of that. So I wouldn't necessarily call
11:46:516 it a discussion.

11:46:527 Q Did you communicate back to him whether or not you
11:46:518 agreed with where they were?

11:47:029 A I don't believe so.

11:47:020 Q Did you give him any information as to whether or not
11:47:121 their negotiations were including your concepts?

11:47:122 A At this particular conversation, I don't recall
11:47:223 providing much feedback.

11:47:224 Q Okay. But you at least received information as to
11:47:325 status of the negotiations on the legislative

11:47:35 1

districts?

11:47:40 2

A Commissioner Graves did relate to me the elements of --

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of that -- that proposal that eventually did end up

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being up for vote.

11:47:58 5

Q And how do you know that there was -- strike that.

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Are you saying that there was a nexus between

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this conversation with Commissioner Graves and what

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came up for a vote?

11:48:11 9

MR. WONG: Object to form.

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THE WITNESS: I'm not certain what

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you mean by "nexus." I think --

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Q (By Ms. Mell) Is there any -- any similarity between

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what was described by Graves in your conversation and

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what you thought you were voting on?

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A I believe Commissioner Graves at some point late in

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that evening communicated to me elements of a -- of a

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proposal that -- and that that proposal was the basis

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for my -- my vote that evening.

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Q Did he tell you that Sims and him -- he and Sims had

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reached an agreement on that framework?

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MR. WONG: Object to form.

11:49:02 22

THE WITNESS: I don't recall.

11:49:02 23

Q (By Ms. Mell) When you and -- well, how much time

11:49:22 24

did you spend with Graves on the 15th in the suites

11:49:22 25

on the second floor?

11:49:261 A I'd say we were in -- were together at some point on
11:49:362 the second floor off and on throughout the day and
11:49:453 evening. In terms of a total amount of time spent in
11:49:484 a room together, it would be measured in hours.

11:49:515 Q More than five?

11:49:566 A I can't narrow it down that tightly, but several
11:50:007 hours.

11:50:018 Q Okay. And those several hours you were with
11:50:059 Commissioner Graves, did the two of you ever
11:50:090 strategize negotiation tactics?

11:50:131 MR. WONG: Object to form.

11:50:172 THE WITNESS: I think we had
11:50:183 conversations about the status of the negotiation and
11:50:214 speculation about whether or not this was -- this was
11:50:215 going to end in a -- in a success or not.

11:50:316 Q (By Ms. Mell) Did you discuss -- did you discuss any
11:50:397 methods to reach consensus?

11:50:518 A The specific instance where I would reference would
11:51:179 be the -- when it appeared that there was -- it
11:51:220 appeared that the conversation between Commissioner
11:51:321 Graves and Commissioner Sims was not going well and
11:51:322 there didn't appear to be much progress.

11:51:323 And so you asked about tactics. I had suggested
11:51:424 that they -- or I suggested to Paul that they ask
11:51:525 Commissioner Augustine to participate in some way,

11:52:031 offer a mediator's proposal.

11:52:092 Q Did she do that?

11:52:113 A Yes.

11:52:134 Q What was her mediator's proposal?

11:52:175 A I don't -- I don't know the details of the proposal,
11:52:216 itself. I wasn't party to when they were -- when the
11:52:257 commissioners were presented with it. I had merely
11:52:308 been involved in asking Commissioner Augustine
11:52:329 whether or not she would consider playing that role
11:52:350 as a means of getting talks started again.

11:52:401 Q When you spoke to her, were any other commissioners
11:52:442 present?

11:52:453 A No.

11:52:454 Q What generally do you know about the mediator's
11:52:515 proposal?

11:52:526 A That it had to do with performance of -- there was
11:53:017 some disagreement over performance in some
11:53:018 legislative districts, probably some of the
11:53:119 legislative districts that we previously mentioned,
11:53:120 and that she offered a suggestion of a type of
11:53:221 midway. And, again, I don't know the details of --
11:53:222 of what that -- of what was offered.

11:53:303 Q When you say "midway," are you talking about a
11:53:324 percentage point for those districts?

11:53:325 A Yeah, either a percentage point or that one district

11:53:411
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11:55:223
11:55:224
11:55:325

would be modified and one wouldn't with regards to
partisan performance.

Q It's your understanding that she made a mediator's
suggestion and that broke the -- the distance?

MR. WONG: Object to form.

THE WITNESS: I don't -- I -- I
don't -- I don't know what impact her proposal or her
suggestion had on the process.

Q (By Ms. Mell) Do you know that there was an impasse,
and after she made a mediator's proposal, the impasse
no longer existed?

A My recollection is that the impasse lasted well
beyond the time that she provided a proposal to
Commissioner Sims and Graves.

Q Do you know -- do you have knowledge that at some
point in time the impasse ended?

A Well, there was a vote taken where the commissioners
agreed to a framework and public session, so there
must have been something that changed in the minds of
different commissioners.

Q Were you aware that the impasse had been broken
sometime prior to the vote?

A I was aware that conversations had -- had taken
place. As I said, I -- the content of -- of the
proposal that I believe I voted on was relayed to me

11:55:381 **by Commissioner Graves sometime late in the evening.**

11:55:422 Q Was it your understanding when the proposal was
11:55:483 relayed to you by Commissioner Graves that
11:55:494 Commissioner Sims had approved it?

11:55:525 A I did not know whether or not Commissioner Sims would
11:55:566 be supporting it. It was proposal that -- that
11:56:077 satisfied a number of the issues that -- that had
11:56:108 been discussed going back many, many months from a
11:56:139 priority standpoint, but I didn't know where any
11:56:170 individual commissioner was going to come down on it.

11:56:191 Q Okay.

11:56:192 A **Myself included.**

11:56:203 Q Okay. But did you understand at the point in time it
11:56:244 was conveyed to you that it reflected the result of
11:56:285 the negotiations between Sims and Graves?

11:56:346 MR. WONG: Object to form.

11:56:357 **THE WITNESS: I believe -- yeah, I**
11:56:408 **believe that the -- I believe that the content of the**
11:56:519 **proposed -- of the proposal had been part of the**
11:57:020 **conversation that Commissioner Graves and**
11:57:021 **Commissioner Sims had had.**

11:57:022 Q (By Ms. Mell) Okay. And to the best of your
11:57:123 knowledge, Commissioner Sims, at the time the
11:57:124 framework was conveyed to you, had no -- no expressed
11:57:225 objections to it?

11:57:231 **A I did not have any conversation, the best of my**
11:57:272 **recollection, with Commissioner Sims at this juncture**
11:57:333 **in the process.**

11:57:344 **Q Was it your belief after speaking with Commissioner**
11:57:395 **Graves about the framework that Commissioner Sims had**
11:57:436 **not expressed any objections to it?**

11:57:467 **A Sorry. We got a lot of -- lot of questions going on**
11:57:528 **there.**

11:57:539 **Yeah, would you be able to repeat that question**
11:57:570 **one more time? I apologize.**

11:58:021 **Q I'll break it down.**

11:58:022 **Was it your understanding when Commissioner**
11:58:053 **Graves expressed the proposed framework, that he and**
11:58:094 **Commissioner Sims had come to terms on the framework**
11:58:175 **such that neither were objecting to the framework as**
11:58:206 **a proposal?**

11:58:217 **A I don't recall Commissioner Graves communicating any**
11:58:278 **express objection to the framework that -- from --**
11:58:319 **from Commissioner Sims.**

11:58:320 **Q Is it correct that you understood that the framework**
11:58:391 **he was describing to you was the result of their work**
11:58:422 **together and not a new proposal that Commissioner**
11:58:423 **Sims had not had the opportunity to vet?**

11:58:504 **MR. WONG: Object to form.**

11:58:525 **THE WITNESS: I believed that the**

11:58:561 proposal that was shared with me was something that
11:59:012 Commissioner Sims was aware of.

11:59:043 Q (By Ms. Mell) Do you know whether any other
11:59:124 commissioner was aware of the framework proposed?

11:59:175 A I don't.

11:59:276 Q All right. So what did you vote to approve with
11:59:377 regard to the legislative districts relative to
11:59:428 communities of interest?

11:59:449 A It was my belief that a final proposal included the
11:59:510 majority Latinx voting population district in the
12:00:011 15th, that -- that several reservations that had
12:00:122 requested to be kept entirely within one legislative
12:00:173 district would -- would be included in those
12:00:214 districts.

12:00:225 I believe that -- that there was a split of a
12:00:316 community of interest that was very disappointing to
12:00:317 me in that Chelan and Douglas County, so -- and --
12:00:518 and there may be others.

12:00:519 Those are things off the top of my head right
12:00:520 now.

12:00:521 Q So when you were talking to Graves about the proposed
12:01:022 framework, you knew that there was a disappointing
12:01:023 split of the communities of interest in Chelan and
12:01:024 Douglas County?

12:01:025 A I don't know if he -- I don't recall the conversation

12:01:161 close enough to know if whether he explicitly stated
12:01:192 it, but I knew the consequences of coming over the
12:01:223 mountains with that particular district and drawing
12:01:254 it such that it had enough population but not too
12:01:285 much population. So I don't know if it was expressly
12:01:326 stated or if it was something I inferred.

12:01:347 Q But it's not something -- it's not something that you
12:01:398 became disappointed about on the 16th when the maps
12:01:439 were actually being drawn?

12:01:410 A Well, I was -- I mean, I guess, characterize
12:01:511 disappointment and timing. I think -- I don't think
12:01:512 there's been a time that I haven't been disappointed
12:02:013 by it.

12:02:044 Q Right.

12:02:045 But until it becomes a reality, there's no need
12:02:086 to be disappointed, correct?

12:02:107 MR. WONG: Objection to form.

12:02:128 THE WITNESS: Well, I mean, I -- I
12:02:149 viewed it as a -- and, again, I viewed it as part of
12:02:190 the -- part of that final framework that came up for
12:02:221 a vote, and so I didn't have any expectation that it
12:02:282 was not going to be reflected in -- in the final
12:02:293 maps.

12:02:324 Q (By Ms. Mell) Would you agree that in taking a vote,
12:02:425 the proper way to do it to clearly express the

12:02:471 commission's collective intent would be to have the
12:02:502 maps completed?

12:02:523 MR. WONG: Object to form.

12:02:534 **THE WITNESS: I would prefer to**
12:02:595 **have had the maps completed at the time of vote.**

12:03:026 Q (By Ms. Mell) Would you agree that it's virtually
12:03:067 impossible to know what you collectively voted on
12:03:108 when there's no written proposal?

12:03:139 MR. WONG: Object to form.

12:03:110 **THE WITNESS: Approving a framework**
12:03:411 **in the manner that the commission did does create**
12:03:512 **ambiguities that I think we've discussed already.**

12:03:513 Q (By Ms. Mell) Would you agree it's not transparent?

12:04:014 MR. WONG: Object to form.

12:04:015 **THE WITNESS: I think I've stated**
12:04:016 **publicly that I do not believe that this -- that the**
12:04:117 **final hours of the commission were conducted in the**
12:04:318 **way that I wish they had been.**

12:04:319 Q (By Ms. Mell) Would you agree that they were not
12:04:320 transparent?

12:04:421 MR. WONG: Same objection.

12:04:422 **THE WITNESS: I would -- I would**
12:04:423 **have -- I would have been far more -- it would have**
12:04:524 **been more transparent for -- for participants in the**
12:05:025 **public to have physical maps reviewed in advance of a**

12:05:111

vote, yes.

12:05:112

Q (By Ms. Mell) Would you agree that it was not

12:05:143

transparent to be negotiating in caucuses outside the

12:05:174

public meeting?

12:05:215

MR. WONG: Same objection.

12:05:256

THE WITNESS: I think every

12:05:267

commission has conducted some kind of dyad process in

12:05:308

the formation of proposals and in the vetting of --

12:05:369

of issues that are going to come up in the

12:05:400

redistricting process. So in that regard, I think

12:05:411

that this was -- the many elements of this were done

12:05:412

as -- as has been historically done.

12:05:523

I'd say the key difference is that there was a

12:05:514

lot more public participation and public input

12:06:015

throughout the process than has been the case in the

12:06:026

past by many magnitudes.

12:06:057

Q (By Ms. Mell) Okay. So do you agree that the

12:06:148

negotiations off-line on the 15th were not

12:06:229

transparent?

12:06:220

MR. WONG: Object to form.

12:06:221

THE WITNESS: I don't really know

12:06:322

how to -- how to answer that question. I would say

12:06:323

that my disappointment was that there were not

12:06:424

visible physical maps that could be shared at the

12:06:425

time of the vote for -- in advance of that for the

12:06:521 public to review. That would have been a -- that
12:06:572 certainly would have been a more transparent end to
12:07:073 the commission's work.

12:07:084 Q (By Ms. Mell) Would you agree that meeting in
12:07:095 caucuses -- strike that.

12:07:126 Would you agree that leaving the public meeting
12:07:177 to negotiate in caucuses or dyads was not
12:07:238 transparent?

12:07:239 MR. WONG: Object to form.

12:07:270 MS. MELL: What's the objection to
12:07:281 form?

12:07:282 MR. WONG: I think that when you're
12:07:303 using the word "transparent," you're implying a legal
12:07:324 conclusion. So that's -- that's the objection. And
12:07:375 so every time you ask the same question, I'm just
12:07:396 making the same objection.

12:07:417 THE WITNESS: There were a lot of
12:07:508 things that were happening during the break, the
12:07:529 caucus break. And a lot of those things sometimes
12:07:520 included a whole lot of nothing. And so, you know,
12:08:021 doing -- sitting around and waiting probably is not
12:08:202 a -- probably not inappropriate to be done in -- in
12:08:223 private. Conversations between commissioners that
12:08:324 happened outside of the meeting are to be expected in
12:08:425 any process like this.

12:08:461 Q (By Ms. Mell) Why do you say that?

12:08:512 **A Maybe -- more specific?**

12:08:583 Q I mean, my question is: Was it -- was negotiating in
12:09:044 caucuses and dyads outside the public transparent?
12:09:105 And it's really a yes-or-no question.
12:09:176 Was it transparent?

12:09:197 MR. WONG: Objection.

12:09:248 **THE WITNESS: Well, again, I -- I'd**
12:09:269 **say that the -- I guess I shared the same concern**
12:09:310 **that it draws us for a bit of a conclusionary-type**
12:09:311 **statement.**

12:09:312 Q (By Ms. Mell) Okay. Are you struggling with the
12:09:313 fact that if you say "yes," it would suggest that you
12:09:414 violated OPMA?

12:09:415 **A I'm struggling with the characterization -- I'm**
12:09:516 **struggling with the broad characterization that a**
12:09:517 **conversation between two commissioners that does not**
12:09:518 **occur on camera is somehow not transparent. It is**
12:09:519 **not my belief -- and it's not my belief that that's**
12:10:020 **the case.**

12:10:021 Q Okay. So what kinds of conversations have to be on
12:10:022 camera? And I don't mean camera in that sense. I'm
12:10:123 using it in the sense --

12:10:124 **A I understand what you're meaning.**

12:10:225 Q -- that the public can view.

12:10:251 A Again, my understanding, the, you know, official
12:10:402 votes and the -- and the formation of a majority
12:10:473 position or of formation of the majority position is
12:10:554 something that occurs in the public meeting as it
12:11:015 did. It's not my understanding that elements of
12:11:036 proposals can't be discussed between commission
12:11:137 members at other times.

12:11:168 Q What is your understanding with regard to serial
12:11:259 meetings?

12:11:260 MR. WONG: Object to form.

12:11:271 THE WITNESS: What specifically --
12:11:292 what specific aspect of serial meetings are you
12:11:313 asking about?

12:11:344 Q (By Ms. Mell) I'm asking what your understanding is
12:11:385 of serial meetings relative to open government.

12:11:466 MR. WONG: Same objection.

12:11:477 THE WITNESS: You mean definition?
12:11:508 That a -- that a minority of a governing body -- the
12:12:029 different members of a minority always constituting a
12:12:080 minority of a governing body can't meet in sequence
12:12:121 with one another to come to a final decision about a
12:12:202 action before the body.

12:12:223 Q (By Ms. Mell) Is it your understanding that a
12:12:224 minority of the governing body cannot meet in
12:12:325 sequence to come to a final decision -- strike that.

12:12:361 I'm not asking that correctly.

12:12:382 My question pertains to your use of the phrase "a
12:12:453 final decision."

12:12:474 Can a minority of the governing body meet in
12:12:515 sequence to communicate about, in this instance,
12:12:576 legislative and congressional district maps outside
12:13:037 the public view?

12:13:058 MR. WONG: Object to form.

12:13:069 **THE WITNESS: It was not my -- it**
12:13:080 **was not my belief that conversations between various**
12:13:111 **commissioners constituted a breach of the Open Public**
12:13:212 **Meetings Act. Conversations that dealt with the**
12:13:213 subject matter of redistricting (Videoconference
14 technical difficulties.)

15 THE REPORTER: "Subject matter..."
16 It kind of got garbled there because you sped up.
17 Repeat that.

18 **THE WITNESS: Sorry. I'll -- I'll**
19 **say it again.**

12:13:320 It is not my belief that conversations pertaining
12:13:321 to the redistricting process that occur between
12:13:422 various commissioners at different times constitutes
12:13:423 a violation of the Open Public Meetings Act.

12:13:524 Q (By Ms. Mell) Would you characterize your
12:13:525 conversations with other commissioners on the 15th

12:14:041 off-line or not on camera were negotiations over the
12:14:112 redistricting congressional legislative district maps
12:14:183 or plans?

12:14:194 **A** I would say my conversations with Commissioner
12:14:285 Walkinshaw were -- the conversation I had with
12:14:366 Commissioner Walkinshaw dealt with the different
12:14:437 elements at play in the congressional map, where we
12:14:468 disagreed, where we were finding other issues to
12:14:559 discuss, and eventually in the formation of a -- of a
12:14:510 proposal that we could bring before the full body.

12:15:011 **Q** And how about with Graves? Same thing?

12:15:112 **A** With Graves, it was mostly -- it was just information
12:15:113 sharing.

12:15:114 **Q** And strategizing how to negotiate?

12:15:215 **A** It's a broad term, so I don't -- I mean, I was not
12:15:316 telling him to offer certain -- I wasn't providing
12:15:417 feedback to -- again, I'm trying to go back to
12:15:518 this -- to this time on the 15th and really
12:16:019 understand those conversations.

12:16:020 They were status reports and a lot of waiting is
12:16:121 really what constituted the time on the 15th. There
12:16:122 was a lot of time spent not really knowing what was
12:16:223 going on or not really knowing, you know, if this
12:16:224 process was even going to continue.

12:16:325 **Q** Was there a lot of time communicating proposals and

12:16:361 counterproposals?

12:16:392 MR. WONG: Object to form.

12:16:453 THE WITNESS: You mean
12:16:464 communicating proposals or counterproposals between
12:16:515 whom?

12:16:516 MS. MELL: The voting
12:16:537 commissioners.

12:16:568 THE WITNESS: I was having
12:16:599 conversations with Commissioner Walkinshaw about the
12:17:010 congressional maps, and there were in some cases
12:17:011 draft maps that accompanied those conversations.

12:17:012 I believe that similar conversations were going
12:17:113 between Commissioner Graves and Commissioner Sims on
12:17:114 the legislative maps, but I don't know -- I don't
12:17:115 know anything other than what was shared with me by
12:17:216 Commissioner Graves as a status update.

12:17:217 Q (By Ms. Mell) And Augustine, to the extent she was
12:17:308 mediating?

12:17:319 A I didn't talk with Commissioner Augustine really
12:17:320 about the substantive -- about the substance of -- of
12:17:321 any of the maps. I had merely asked her if -- I'd
12:17:422 asked her if she would be willing to participate by
12:17:423 seeing if they could -- seeing if her involvement,
12:17:524 and I encourage the conversation continue.

12:18:025 'Cause at that particular juncture in the

12:18:051 evening -- and I can't recall what time it was. Late
12:18:082 afternoon, early evening. At that juncture, it
12:18:123 didn't appear as though much progress was being made.

12:18:164 Q But you did also discuss how to do a mediator's
12:18:225 proposal, right? You talked with her about coming up
12:18:266 with a middle ground?

12:18:277 A I didn't talk to her about the substance of what
12:18:328 factors were in play. I don't recall. I -- my
12:18:419 recollection is I just asked her whether or not she
12:18:440 felt comfortable playing that role, and if so, then
12:18:511 she could get Commissioner Graves and Sims and ask
12:19:012 them if they would be comfortable with her
12:19:103 participating in that way.

12:19:164 Q Did you work with Commissioner Graves on preparing a
12:19:215 Republican proposal to the supreme court in the event
12:19:266 there was no majority approval of the commissioners
12:19:287 on any other proposal by midnight?

12:19:318 A Throughout the process, there was discussion about
12:19:409 what a -- what would happen if we were unable to
12:19:520 reach consensus as a commission and whether or not we
12:20:021 would have any role to play in the subsequent action
12:20:022 before the supreme court, whether we should develop a
12:20:123 proposal for the supreme court to review along with
12:20:204 some rationale that we may prepare about it. That
12:20:225 was -- but that was discussed, yeah.

12:20:271 Q And when you say, "That was discussed," who did you
12:20:302 discuss that with? Any commissioners?

12:20:323 **A I discussed that with Commissioner Graves.**

12:20:344 Q Any other commissioners?

12:20:365 **A I don't recall.**

12:20:426 Q Do you know whether or not your conversations with
12:20:467 Graves about that were shared with any other
12:20:488 commissioners?

12:20:499 **A I don't know.**

12:20:500 Q Was your staff authorized to be communicating with
12:20:511 other caucus staff about conversations like the
12:20:522 framework for a proposed legislative map or a
12:21:013 congressional district map from the negotiations in
12:21:014 the dyad?

12:21:015 **A Staff had varying -- sorry. Greg, did I talk over
12:21:116 you there?**

12:21:117 MR. WONG: Object to form.

12:21:118 You can answer.

12:21:119 **THE WITNESS: Staff had different
12:21:220 roles in this process, but I believe that the staff
12:21:221 to any individual commissioner was often involved in
12:21:322 the direct conversations on -- on the substance of --
12:21:423 of the maps. And, I guess, in most cases, they were
12:21:424 charged with drafting up the various proposals,
12:21:525 themselves.**

12:21:511 Q (By Ms. Mell) That would work where -- because each
12:21:552 of you had your own staff people. You and the
12:21:583 commissioners would talk in front of your staff, and
12:22:004 then your staff would go do the work to reflect what
12:22:045 they heard their representative commissioner saying
12:22:076 and share that to try to make sure they were -- well,
12:22:107 to create an expression of where they thought those
12:22:138 conversations were at that moment, correct?

12:22:169 **A At times, that would happen. That wouldn't happen**
12:22:110 **all the time.**

12:22:201 Q But that was happening on the 15th outside the public
12:22:242 view?

12:22:213 **A I believe that there were a number of different maps**
12:22:314 **that were drawn up on the 15th by varying staff**
12:22:315 **people. I don't recall specifically what they all**
12:22:316 **reflected.**

12:22:417 Q But -- yeah. But what I was saying wasn't limited to
12:22:418 maps.

12:22:419 There were conversations occurring between you
12:22:420 and other commissioners where your respective staff
12:22:521 were present. And you -- as I understand the
12:22:522 commissioners, the two working in a dyad would be
12:23:023 conversing and negotiating. And staff would be there
12:23:024 to help translate that into something that they could
12:23:025 communicate with one another?

12:23:161 A I think -- I think, in part, that's correct.

12:23:212 I think I'd referenced earlier that after
12:23:253 midnight, the process of drafting the agreed-to map,
12:23:384 it often involved the reconciliation of different
12:23:435 maps that previously existed, that, you know, may
12:23:486 have been drawn in a process like what you're
12:23:507 describing.

12:23:518 Q Right.

12:23:519 And that involved you and other commissioners in
12:23:540 that process, correct?

12:23:511 A That would involve the commissioners that are -- that
12:23:512 were charged as a dyad. So I believe that -- that
12:24:013 there was some map drawing as part of the
12:24:014 conversations that I've had with Commissioner
12:24:125 Walkinshaw with regards to the congressional map.

12:24:116 Again, really chaotic environment. I'm not
12:24:117 entirely sure what was drawn when or by whom.

12:24:218 Q Was it your expectation that the staff assigned to
12:24:219 you would communicate with the other staff about
12:24:220 trying to express your wishes, or was it your
12:24:321 expectation that they would not talk about what --
12:24:322 how to express your wishes?

12:24:323 A I don't think it was a hard-and-fast rule. I think
12:24:424 if something was going to be shared with other staff,
12:24:525 I believe it was usually done so at my direction. I

12:24:561 don't believe it was customary to just hit "send" on
12:25:032 every, you know, conversation that we had and every
12:25:073 map proposal that we drafted up.

12:25:094 Q But that's what makes a good staff member, right?
12:25:125 They know how to gauge what you want communicated and
12:25:146 what you don't and translate that into work product?

12:25:197 MR. WONG: Object to form.

12:25:208 **THE WITNESS: A lot of good things**
12:25:269 **make a good staff member.**

12:25:270 MS. MELL: Okay. I had a question
12:25:331 in my mind. It just went out. Just a second here.
12:25:472 I lost it. Okay.

12:25:513 **THE WITNESS: I've been there.**

12:25:524 MS. MELL: Yeah.

12:25:575 Well, I hear that my guests are downstairs, so I
12:26:016 need to take a break.

12:26:037 MR. WONG: Can we go off the record
12:26:058 real quick?

12:26:099 MS. MELL: Yeah. Sure.

12:26:100 (Discussion off the record.)

12:26:101 (Pause in proceedings from

12:26:102 12:26 p.m. to 1:14 p.m.)

13:14:523

13:14:524 Q (By Ms. Mell) Commissioner Fain, did you
13:14:525 intentionally avoid communications with other voting

13:15:041 commissioners so that you would not trigger OPMA
13:15:122 while negotiating the legislative and congressional
13:15:163 district maps privately?

13:15:264 **A I had conversations with various commissioners at**
13:15:355 **different times. The Open Public Meeting Act was**
13:15:396 **something that was on my mind during this process,**
13:15:487 **but I never believed that that precluded me from**
13:15:528 **having conversations one-on-one with other**
13:15:549 **commissioners.**

13:15:550 Q Did you arrange your communications in such a way
13:16:021 that you would not be communicating out of the public
13:16:072 forum with other voting commissioners where there
13:16:133 were three of you communicating at one time?

13:16:164 **A I specifically remember that -- that we avoided**
13:16:315 **having three voting commissioners on a Zoom or in a**
13:16:416 **in-person meeting, or encounter even, so that we**
13:16:517 **wouldn't trigger an OPMA issue.**

13:16:518 Q How about with regard to other forms of digital
13:16:599 communication, text threads, instant messaging, that
13:17:020 kind of thing?

13:17:021 Did you avoid linking text or text threads or
13:17:022 e-mail or instant messaging where the communications
13:17:123 would be with three voting commissioners at any given
13:17:224 time?

13:17:225 **A I don't -- I can't recall an instance where I was on**

13:17:271 a e-mail or a text thread with three or more voting
13:17:342 commissioners outside some of the regular business
13:17:413 communication that would come from the commission
13:17:454 about meeting times and things like that.

13:17:475 I can't recall any specific instance at this
13:17:506 time.

13:17:507 Q I think my question is a little bit different.

13:17:548 I'm trying to examine you with regard to your
13:17:589 intent.

13:17:590 Did you take active steps to set up text
13:18:041 communications with other commissioners where the
13:18:092 thread would be limited to one other commissioner but
13:18:133 not two other commissioners?

13:18:164 A Again, I don't recall a text thread that I was on
13:18:225 that involved three or more voting commissioners and
13:18:316 that I was -- I was trying to avoid situations where
13:18:527 three or more voting commissioners would be together,
13:18:518 discussing commission business outside of a public
13:19:019 meeting.

13:19:020 Q All right. And with regard to triggering events for
13:19:121 OPMA as you understood it, or O-P-M-A, if three
13:19:122 commissioners were together, was that enough to
13:19:223 trigger OPMA in your mind or was the content of the
13:19:224 communications of significance to you?

13:19:225 MR. WONG: Object to form.

13:19:301 THE WITNESS: First, I'd say I
13:19:382 don't recall any time when -- other than, you know,
13:19:443 walking past one another in a hallway -- where three
13:19:514 voting -- three or more voting commissioners were in
13:19:555 the same place at one time.

13:19:596 My understanding of the OPMA is that it would be
13:20:037 permissible for them to be in the same area but that
13:20:088 would not be permissible to be discussing commission
13:20:119 business together.

13:20:140 Q (By Ms. Mell) And one of the things that you didn't
13:20:161 say there that I think you had said in one of your
13:20:192 previous answers was acting on or taking a vote on
13:20:263 commission business.

13:20:294 So I'm trying to ascertain in your mind, is there
13:20:325 collective work that could be done among three voting
13:20:366 commissioners without taking a vote that would not
13:20:417 have given you pause or concern about the legal
13:20:448 implications under the open government or OPMA?

13:20:489 MR. WONG: Object to form.

13:20:420 THE WITNESS: I guess I'm being
13:21:021 asked to speculate, which I'm not -- not too
13:21:022 comfortable in doing. So I guess I'd ask for more of
13:21:123 a specific example or specific instance that -- that
13:21:124 I might be able to respond to.

13:21:225 Q (By Ms. Mell) Okay. So in your mind, was there a

13:21:271 concern for you about open government implications if
13:21:322 there were three or more of you in the room
13:21:393 conversing about redistricting issues if you didn't
13:21:474 reach a consensus --

13:21:505 MR. WONG: Object to form.

13:21:516 Q (Continuing by Ms. Mell) -- or take some kind of
13:21:527 vote?

13:21:538 A I would just say that we -- or that -- again,
13:21:589 speaking for myself, I avoided -- I avoided being in
13:22:010 a situation where there would be three or more voting
13:22:111 commissioners so that there, you know -- as I thought
13:22:112 that was the -- kind of the most black-and-white way
13:22:213 to ensure I was following my understanding of the
13:22:314 OPMA.

13:22:315 Q Okay. So then what about, did you apply the same
13:22:316 standard to your e-mail communications?

13:22:317 A Again, I think I asked -- answered that before. I
13:22:418 don't recall a time being on an e-mail thread, but I
13:22:519 don't -- I mean, there were quite a -- quite a few
13:22:520 e-mails sent throughout the -- throughout the process
13:22:521 to one another, and I have not had a chance to review
13:23:022 them all.

13:23:023 Q Okay. Can you see any documents in your chat room
13:23:124 right now?

13:23:125 A Not yet.

13:23:161 Q Maybe I'll just do the share screen again. I think
13:23:192 we decided that was a little bit better.

13:23:213 **A Yeah, it's easier for me.**

13:23:224 Q Okay. Just a second here. Back to share screen.
13:23:265 Share.

13:23:306 Okay. How about now? Can you see the share
13:23:347 screen?

13:23:358 **A I can. Let me change my screen size so I can see it
13:23:439 a little better.**

13:23:510 Q Actually, hold on just a second. I've got to see if
13:24:011 this one has a Bates number on it.

13:24:022 Yeah, that one does. I'm going to -- well, wait
13:24:053 a minute.

13:24:114 Well, I guess that's the way it was produced, so
13:24:185 let me just -- yeah, I guess that is the way it was
13:24:226 produced. So let's work with this one.

13:24:277 MS. MELL: Mr. Court Reporter, I'd
13:24:278 like to mark -- I believe it has been marked as
13:24:299 Exhibit 41, RC003040, and uploaded to you. It's a
13:24:320 two-page document. It's an e-mail. It's this one.
13:24:321 (Discussion off the record.)

13:25:122
13:25:123 Q (By Ms. Mell) So, Commissioner Fain, showing you
13:25:124 what's been marked as Exhibit 41, do you recognize
13:25:225 that document?

13:25:231 **A I do.**

13:25:232 Q What is it?

13:25:243 **A It is a e-mail that -- with a memo attached that I**
13:25:314 **sent to members of the commission.**

13:25:385 Q And how many members of the commission did you send
13:25:416 that to?

13:25:437 **A Appears I sent it to the chair and copy to the**
13:25:538 **remainder of the commission.**

13:25:549 Q So would you agree that this is a communication
13:26:010 between a majority of the voting commissioners?

13:26:011 **A Yes, I would.**

13:26:012 Q What were you asking -- or did you in this
13:26:123 communication ask the voting commissioners to do
13:26:154 anything?

13:26:115 **A I would want to review. I don't recall all the**
13:26:216 **details of this memo.**

13:26:217 Q All right. It was produced to me in public records
13:26:328 separately, so I'll open it here.

13:26:319 Let me see. Did I get one that's Bates-numbered?
13:26:400 Yes, I did. Okay.

13:26:421 Let's look at this one, then.

13:26:422 MS. MELL: Let's mark the memo
13:26:423 portion of the e-mail exchange as Exhibit 42.

13:26:524 Q (By Ms. Mell) Showing you what's being marked as
13:27:025 Exhibit 42, what is that?

13:27:021 **A** The memo that was attached to the e-mail that I'd
13:27:042 sent commissioners.
13:27:073 **Q** How do you want me to do this so that you can answer
13:27:144 the prior question? Do you want me to scroll through
13:27:165 this like this?
13:27:176 **A** Yeah, if you'd scroll to the bottom.
13:27:207 **Q** Scroll to the bottom.
13:27:238 **A** Yeah.
13:27:259 Thanks.
13:27:410 Okay.
13:27:411 **Q** I believe the question was: What did you ask the
13:27:502 commissioners to do relative to this communication
13:27:513 via e-mail?
13:28:014 **A** The sentence that uses the word "asks" relates to
13:28:015 maintaining overall balance of competition, something
13:28:116 that had been primary priority for me throughout this
13:28:217 entire process and something I'd spoken about
13:28:218 frequently.
13:28:309 **Q** Why did you send this e-mail with this memo?
13:28:320 **A** I had -- I did not sense that members had calibrated
13:28:521 their expectations in a way that would be productive.
13:29:022 And by that I mean I wanted to be clear about what
13:29:123 prioritizing competitive -- a competitive -- a
13:29:124 competitive map would look like and how I viewed what
13:29:225 a competitive map would look like statistically.

13:29:311 Q Did you -- well, strike that. Let's start with this.

13:29:392 Did you actually write Exhibit 42?

13:29:423 A I did.

13:29:434 Q Did you write it on November 13th, 2021?

13:29:485 A I wrote it in or around that date. I don't remember
13:29:566 when the first draft was put together, but it was not
13:29:597 something that I'd worked on over -- the memo
13:30:028 portion, itself, I think, was written around that
13:30:069 date.

13:30:070 Q Did you write this memo while in negotiations at the
13:30:111 Hampton?

13:30:112 A No. I believe it was prior to that. I don't --
13:30:113 yeah.

13:30:204 Q November 13, if that's the Saturday or Sunday.

13:30:275 Is that before you went to the Hampton is your
13:30:316 recollection or while you were there?

13:30:317 A My recollection is that I wrote this prior to going
13:30:318 to the Hampton. Again, I can't remember exactly what
13:30:419 day it was there. I believe that this was written
13:30:420 prior to that.

13:30:421 Q Do you recall writing this to help facilitate the
13:30:522 negotiations going on at the Hampton?

13:30:523 A I wrote it as a -- as a way of showing -- as a --
13:31:124 illustrating a way of viewing my priority of
13:31:225 competitive districts through a data -driven lens.

13:31:321 Q Did you use it as a means of clearly communicating
13:31:392 what kind of plans you would approve?

13:31:443 **A Sorry.**

13:31:504 **I -- I used it as a means of sharing my**
13:32:095 **priorities and how I would -- one of the data points**
13:32:126 **I would use to -- in considering proposals.**

13:32:227 Q Do you know how any of the commissioners use
13:32:258 Exhibit 42?

13:32:289 **A I don't.**

13:32:290 Q Did Commissioner Graves speak to you about the
13:32:321 content of Exhibit 42 at any time?

13:32:312 **A I think I may have shared it with him in advance of**
13:32:413 **sending it to the full commission.**

13:32:514 Q Do you remember how -- how you shared it with him?
13:32:515 Is it the kind of thing where you are -- strike that.

13:32:586 **Give me a picture of how you shared it with him.**
13:33:017 **Where were you when you shared it with him?**

13:33:018 **A I don't remember how. But I believe it was**
13:33:119 **electronically.**

13:33:120 Q So it's not the kind of thing that you were sitting
13:33:121 on the second floor, in the suite, looking at your
13:33:202 computer and talking about it?

13:33:223 **A No, I don't believe so. Again, I believe this was**
13:33:224 **largely drafted prior to that. But, again, I --**
13:33:325 **that's my recollection at the moment.**

13:33:391 Q Okay. So then if your answer is that you e-mailed it
13:33:422 to him, did you also talk to him about it or did you
13:33:463 only communicate with him on e-mail? I guess is my
13:33:484 question.

13:33:495 **A I don't recall.**

13:33:586 Q How much of what's contained in Exhibit 42 was in the
13:34:067 proposal you voted to affirm?

13:34:118 **A I don't have that analysis in front of me, so it's a
13:34:219 little hard for me to recall. I think at some point
13:34:210 I looked at a -- at a chart that mapped the final --
13:34:311 the final maps using this metric, but I don't recall
13:34:412 exactly how they matched up. It certainly was by no
13:34:413 means a perfect match.**

13:34:514 Q Did you do that work, or did a staff person do that
13:34:515 work for you?

13:34:516 **A For the final map? A staff person.**

13:35:017 Q Before you approved a final map, did you have the
13:35:108 analysis in front of you?

13:35:119 **A There were -- there were many versions of this
13:35:220 analytical tool that were developed either by me or
13:35:321 for me throughout the process. So I'm not certain
13:35:422 which version I had before me at that time. But --
13:35:423 so I don't recall.**

13:35:424 Q Is it correct that Exhibit 42 was a form of your
13:35:525 method of keeping track of what your priorities were?

13:36:031 MR. WONG: Object to form.

13:36:052 THE WITNESS: I think that I made
13:36:133 no -- I made a very high priority of making
13:36:234 competitiveness an open and well-known goal of mine
13:36:325 through this process. And then this analytical tool
13:36:406 was one of the mechanisms used to evaluate whether
13:36:447 different proposals -- how different proposals may
13:36:478 have performed along that priority.

13:36:539 Q (By Ms. Mell) Okay. Do you have any knowledge of
13:37:000 whether any commission staff received this Exhibit 42?

13:37:011 A Again, I recall Commissioner Augustine asking if she
13:37:212 could share it with her staff. And I personally
13:37:313 drafted much of it, but the charts and the final
13:37:414 formatting were done by my staff. So they would have
13:37:415 had access to it as well.

13:37:416 Q Did you permit your staff to share it with other
13:37:517 commissioners' staff?

13:38:018 A I don't know if I explicitly did that. But I believe
13:38:019 they knew it was drafted to send to the commission.
13:38:120 And so I -- if they shared it, that wouldn't surprise
13:38:121 me. But I don't have knowledge of that.

13:38:122 Q Did you use it to analyze whether or not the map
13:38:323 finally transmitted to the legislature or to the
13:38:324 supreme court integrated any of the concepts from
13:38:425 Exhibit 42?

13:38:451 MR. WONG: Object to form.

13:38:472 THE WITNESS: I asked staff to
13:38:523 prepare a chart similar to the one that's in this
13:38:584 document using the data from the final map so that I
13:39:085 could view that information after the work had been
13:39:116 done.

13:39:157 Q (By Ms. Mell) Did staff prepare you a chart that
13:39:188 looked like this that had the color codes in it?

13:39:229 A It's my recollection that they -- they did.

13:39:270 Q What is Pellicciotti?

13:39:311 Oh. I don't even know if I said that right.

13:39:362 "Pellicciotti"? I don't know.

13:39:383 A It's not a commonly properly pronounced name. So
13:39:414 "Pellicciotti."

13:39:475 Q So I badly butchered it? Is that what you're saying?

13:39:516 A It's a typically butchered name. "Pellicciotti" --

13:39:547 Q Okay.

13:39:588 A -- is my belief. And he is the current Washington
13:40:019 State treasurer.

13:40:020 Q Oh. That's even worse. And it's an existing, living
13:40:021 human being in an elected official position. Wow.
13:40:022 Bad. Bad. Okay.

13:40:103 All right. So I don't understand, then, how is
13:40:124 that -- I don't know what it means in this context,
13:40:205 then.

13:40:201
13:40:252
13:40:263
13:40:354
13:40:425
13:40:446
13:40:497
13:40:588
13:41:019
13:41:010
13:41:011
13:41:112
13:41:213
13:41:214
13:41:405
13:41:416
13:41:417
13:41:518
13:41:519
13:41:520
13:42:021
13:42:022
13:42:123
13:42:224
13:42:225

What's the reference? When it says "Draft_
Pellicciotti," what does that mean?

A The current Pellicciotti is the performance that the Democratic candidate for treasurer received in the districts that are listed there at the bottom under "Current District," and the draft either on this chart or other charts would typically be a given proposal that I might be evaluating at a given time.

Q Pellicciotti, then, being a Democrat?

A That's correct.

Q Were you taking direction from anyone on the negotiations?

A No.

Q When you did the comparison to the final map that was transmitted to the supreme court and/or to the legislature, what did the chart reflect? Integration of your concepts or not?

A I don't actually recall what the chart looks like. I'd need to be refreshed on that. I don't believe I've reviewed it since the day it was produced.

Q Do you have a generalized recollection of whether or not there was anything included?

A The -- the metric here is a tool for assessing plans after the fact, not necessarily in creating plans. So it's more of a diagnostic tool rather than a

13:42:371 formative tool. So I -- I, again, would have to look
13:42:412 and see what the chart actually reflected to see
13:42:433 whether or not it was more or less competitive than
13:42:514 the current map under these metrics.

13:42:555 Q How would I locate what your staff prepared for you?

13:43:016 A I would have only received it over e-mail at some
13:43:117 point, so it would have been -- if it exists, which
13:43:188 again I believe it was prepared for me, but, again,
13:43:249 this would have been in the early hours of the 16th
13:43:290 or -- you know, one of those -- one of those days.
13:43:311 So I'm not entirely sure, but I thought I recall them
13:43:332 producing one for me and e-mailing it to me.

13:43:513 Q Sorry. Just a minute. I'm just taking a quick
13:43:584 review to see if anything strikes me as obviously
13:44:015 being in the piles that I have.

13:44:026 A No problem.

13:44:037 Q Do you think it would have come in an Adobe form or
13:44:178 different kind of document?

13:44:189 A Sorry. I didn't -- what kind of form?

13:44:220 Q What kind of format would be used? Would it be an
13:44:221 Adobe document or something else?

13:44:222 A It could have been an Excel spreadsheet.

13:44:223 Q Okay.

13:44:224 A That's where they were originally created.

13:44:325 Q Yeah, I'm sorry. I don't see it. I don't see

13:44:451 anything that obviously would be it.

13:44:562 Did you make sure that this document was
13:45:003 published to the public?

13:45:134 **A I don't recall if I ever made this document public.**

13:45:165 **Q** Did you intend for it to be public, or did you intend
13:45:196 it to be limited to dissemination of the
13:45:227 commissioners during the course of the negotiations?

13:45:258 **A If I recall at the time, I think if -- you know, I --**
13:45:379 **it's never my intention to put my colleagues in a --**
13:45:410 **to call out my colleague, so to speak. And so I**
13:45:411 **think I recall at the time that I didn't see the need**
13:45:512 **to publish it if there was ability to get to a final**
13:46:013 **agreement, but I wanted to have a document prepared**
13:46:114 **that could articulate my position in the event that**
13:46:115 **there -- that there was failure.**

13:46:186 **Q** Is one of the reasons that you wanted there to be a
13:46:217 express written communication of your position so
13:46:218 that the dyad could negotiate knowing what you
13:46:319 wanted?

13:46:420 **A I -- I had communicated this rubric that I was using**
13:46:421 **to commissioners prior to the sharing of this**
13:46:522 **document, so it was just a way of articulating what**
13:47:023 **competitiveness but at what -- one metric, not**
13:47:024 **necessarily all the metrics, but what one metric of**
13:47:125 **measuring the competitiveness of a plan might look**

13:47:151

like.

13:47:172

Q Was it a way of memorializing in writing what you --
13:47:213 what your position would -- strike that.

13:47:284

Was it a way of memorializing the position you
13:47:325 had taken in the negotiations?

13:47:366

MR. WONG: Object to form.

13:47:377

**THE WITNESS: I would say it's a
13:47:388 way of memorializing my priority of -- of competitive
13:47:439 districts in the same way that I had written about
13:47:500 and spoken about in commission meetings and spoken
13:47:511 about publicly and had reflected in proposals I put
13:48:002 forward.**

13:48:003

Q (By Ms. Mell) Showing you again what's been marked
13:48:054 as Exhibit 41, is it correct that you e-mail your
13:48:105 fellow commissioners and communicate to them that
13:48:206 you've attached a memo "that highlights my priorities
13:48:287 and concerns as we enter the final few days of
13:48:318 negotiation" and that you "hope it can help chart a
13:48:359 path for finding compromise before Monday's
13:48:380 deadline"?

13:48:321

A Those are the words, yes.

13:48:402

Q And sitting here today, do you have any reason to
13:48:423 believe that this is an inaccurate communication?

13:48:424

**A I guess I'm not understanding what you're asking
13:48:525 there.**

13:48:571 Q I'm just asking you to actually authenticate the
13:49:002 e-mail and say that -- and acknowledge that this is
13:49:033 you communicating on that date and that time as set
13:49:074 forth in the document.

13:49:085 **A I believe that I wrote that e-mail, yes.**

13:49:126 Q Okay. And when you expressed, "I look forward to
13:49:217 discussing it with you," what did you mean?

13:49:258 **A I think most of the message that's written there is
13:49:309 just trying to strike a friendly tone at a tense
13:49:310 time. I don't believe I chose those words with any
13:49:411 specific meaning other than to make sure that my
13:49:512 priority of competitive -- competitiveness was
13:49:513 continued to be known.**

13:50:014 I think a lot of my e-mails probably end, "I look
13:50:015 forward to discussing it with you." That's a common
13:50:016 way that I would close an e-mail when there's further
13:50:117 work to be done.

13:50:128 Q Other than "good-bye"?

13:50:119 **A Don't think I've ever said "good-bye," but who knows?
13:50:220 Possibly.**

13:50:221 Q So do you know whether or not you discussed your
13:50:322 e-mail and the attached memo with Brady Walkinshaw?

13:50:323 **A I don't believe we discussed the memo specifically.
13:50:524 I don't believe so.**

13:50:525 Q Did you discuss the e-mail, then the memo, or the

13:50:591 e-mail and the memo with April Sims?

13:51:032 **A I don't believe I discussed the memo with**
13:51:083 **Commissioner Sims.**

13:51:094 Q Did you say, "I do not"?

13:51:155 **A I don't -- I don't believe so.**

13:51:176 **And, again, just to clarify, the memo contained a**
13:51:227 **rubric that had -- that was not novel at this time.**
13:51:258 **It was something that I -- that concept or something**
13:51:299 **that had been shared before. But at this juncture, I**
13:51:310 **don't believe we discussed the memo.**

13:51:311 Q And the concept you had shared with other voting
13:51:312 commissioners privately as well as publicly, correct?

13:51:313 **A Correct.**

13:51:404 Q And to the best of your knowledge, in any private
13:51:415 discussion with any other voting commissioner, it was
13:51:416 a one-and-one discussion as opposed to involving more
13:51:517 than one voting commissioner?

13:51:518 **A That is correct.**

13:51:519 Q At any time in your one-on-one conversations with
13:52:020 voting commissioners about the content and concepts
13:52:021 expressed in this e-mail or memo, did any other
13:52:022 voting commissioner communicate to you what other
13:52:123 commissioners had said to them about the concepts or
13:52:204 communication in Exhibit 41 and 42?

13:52:225 **A Not to my recollection.**

13:52:261 Q Do you recall your staff, during the negotiations on
13:52:362 the 15th off-line, off the -- off the public Zoom,
13:52:453 sharing with you what other commissioners were
13:52:484 thinking or asking for in the negotiations?

13:52:525 MR. WONG: Object to form.

13:52:536 **THE WITNESS: Not to my**
13:52:587 **recollection.**

13:52:588 Q (By Ms. Mell) Do you remember during the course of
13:53:089 your negotiating the districts, what the other two
13:53:110 commissioners thought about the status of the
13:53:111 negotiations or any of the confines of the proposals?

13:53:212 **A Sorry. That was a -- had a bit of a hard time**
13:53:313 **following that.**

13:53:314 Q When you were negotiating the districts, at any time
13:53:415 did you know what the other two voting commissioners
13:53:486 thought about the negotiations?

13:53:517 **A I guess I'm -- I guess I'm looking for a little bit**
13:54:018 **more specificity in the question.**

13:54:019 Q What are you tripping up on?

13:54:020 THE REPORTER: What was that, Joan?

13:54:021 MS. MELL: I'm asking him what is
13:54:122 it that he's tripping up on, meaning:

13:54:123 Q (By Ms. Mell) Where am I being ambiguous?

13:54:124 **A Is this a holistic sense of -- of the negotiations as**
13:54:225 **a whole that you're asking about, at which point I**

13:54:231 really can't speak to the mind set of the other
13:54:272 participants, or is it specific to some element that
13:54:323 we might be discussing at any given time?

13:54:354 Q Well, timing-wise, in my mind, I was asking the
13:54:405 question as to the 15th or anything post the memo.
13:54:436 So I suppose the 14th and 15th --

13:54:477 A Mm-hmm.

13:54:498 Q -- timing-wise.

13:54:519 And beyond that, I'm asking: With respect to the
13:55:020 negotiations you were engaged in with one other
13:55:051 commissioner, at any time did you know -- I guess it
13:55:112 would have been just what Commissioner Sims thought
13:55:193 about your negotiations.

13:55:214 A I don't have any insight into what Commissioner Sims
13:55:285 thought about anything during this time.

13:55:316 Q So you were negotiating with Walkinshaw, correct?

13:55:387 A That's correct.

13:55:398 Q And you know that Graves knew what you were
13:55:419 negotiating about and his thought about it because
13:55:420 you were talking to Graves, correct?

13:55:481 MR. WONG: Object to form.

13:55:522 THE WITNESS: I don't know all of
13:55:523 his feedback on it. Again, it was more of a
13:55:524 communication about what was going on, less of --

13:56:025 MS. MELL: Okay.

THE WITNESS: -- a discussion.

So...

Q (By Ms. Mell) But you knew Graves' reaction to your negotiations with Walkinshaw?

A I didn't receive a lot of reaction from Commissioner Graves on the congressional maps during these, to my recollection, during these times. His focus was predominantly on the legislative maps.

Q Well, I don't think I asked you to quantify it. I just asked if you had any sense of his -- sense that he understood where your negotiations were with Walkinshaw.

A I -- what he understood I don't know.

What I communicated to him was the issues and -- and elements that were still being -- that were being discussed with Commissioner Walkinshaw on the congressional map.

Q So I guess -- so okay.

So then with regard to your negotiations with Walkinshaw, did you similarly have communications with April Sims such that you know she knew something about your negotiations with Walkinshaw?

MR. WONG: Object to form.

THE WITNESS: I don't recall having very many conversations with Commissioner Sims or

13:57:281 **very much conversation with Commissioner Sims in**
13:57:332 **these final few days. So --**

13:57:363 Q (By Ms. Mell) Did you have any -- I'm sorry.

13:57:394 A **Go ahead. What was your question?**

13:57:405 Q So did you have any communications with Sims such
13:57:436 that you knew what her -- what information she had
13:57:477 about your negotiations with Walkinshaw?

13:57:508 A **I can't recall anything specific at the moment.**

13:58:109 Q Did your staff say anything to you that would lead
13:58:210 you to believe that Commissioner Sims understood what
13:58:301 was happening or had information about what was
13:58:312 happening in the negotiations between you and
13:58:313 Walkinshaw?

13:58:414 A **Not to my recollection.**

13:58:445 Q I heard "not," and then I didn't hear what was after
13:58:486 that.

13:58:417 A **Not in my recollection.**

13:58:508 Q Can you give me a list of decisions made -- decisions
13:59:119 that you made on the 16th after the public meeting
13:59:120 concluded?

13:59:201 MR. WONG: Object to form.

13:59:222 **THE WITNESS: I can't provide a**
13:59:323 **exclusive list of actions taken that -- in the early**
13:59:324 **hours of the morning. So probably would help to be**
13:59:425 **more specific about what you're asking about.**

13:59:531 Q (By Ms. Mell) I don't need an exclusive list. I
13:59:562 need to know what you recall about the 16th after the
13:59:593 public meeting ended with respect to any decision you
14:00:044 made.

14:00:155 **A Again, I'm not certain what in this case constitutes**
14:00:186 **a decision or not. We had referenced previously the**
14:00:217 **conversation that Commissioner Walkinshaw and I had**
14:00:248 **over the 9th congressional district and not**
14:00:319 **proceeding with any change to -- to the framework.**
14:00:310 **If you consider that a decision or not. I think**
14:00:411 **that's -- that's subjective.**

14:00:502 Q Let's break it down. Let's go piece by piece.
14:00:513 So when the public meeting -- I'll strike that.
14:00:514 Was it your decision to end the public meeting?

14:01:015 **A I don't believe so.**

14:01:016 Q Did you -- was there a motion to affirm?

14:01:107 I mean, was there a motion to adjourn that you
14:01:118 affirmed?

14:01:119 **A I don't recall.**

14:01:120 Q Do you know what your standard practice was with
14:01:221 regular business meetings? Would there be a motion
14:01:222 to adjourn?

14:01:223 **A My recollection is that the chair would just adjourn**
14:01:324 **the meeting.**

14:01:325 Q Okay.

14:01:341 **A But I don't -- I don't recall in this instance.**

14:01:372 **Q** Okay. So when the chair adjourned the meeting, you
14:01:413 made a decision to do something, correct?

14:01:464 **MR. WONG:** Object to form.

14:01:475 **THE WITNESS:** I did something
14:01:516 following the meeting.

14:01:557 **Q** (By Ms. Mell) And did you do that on your own
14:01:578 accord?

14:01:589 **A** Talking a little bit in -- we're a little vague right
14:02:040 here. I want to -- I guess I'm -- and I -- I'd said
14:02:121 that I -- you know, I think I went outside and got
14:02:172 some very, very cold fresh air. Those are decisions
14:02:213 I made immediately following the adjournment of the
14:02:244 meeting that I can recall.

14:02:295 **Q** And what did you do after getting some refreshing
14:02:326 cold air?

14:02:317 **A** I don't know what immediately followed then.

14:02:418 **Q** What followed after you were outside?

14:02:519 **A** At one point I was in the event space that we
14:03:020 referred to before.

14:03:021 **Q** Do you think you went from being outside to get fresh
14:03:022 air to the event room?

14:03:123 **A** I don't recall.

14:03:124 **Q** Do you know why you went to the event room?

14:03:125 **A** There -- I think there was the -- the map

14:03:361 reconciliation process, and I knew that there would
14:03:432 be individuals and -- and my staff would probably be
14:03:463 there, so I think it was a natural place to -- to go.
14:03:534 Q When you got to the event room, who was in the event
14:03:565 room?
14:03:576 A There were various people in and out of the event
14:04:027 room throughout the early hours of that day. I don't
14:04:058 know who was there at that exact time.
14:04:079 Q When you arrived in the event room, were there any
14:04:110 other voting commissioners there?
14:04:111 A I don't recall.
14:04:112 Q Was the chair there?
14:04:113 A I believe she was there.
14:04:214 Q Did you say anything to her?
14:04:315 A I did talk with the chair as well as other
14:04:516 individuals from the time that the meeting ended to
14:04:517 the time that I left in the early hours of the
14:05:018 morning. So, yes, I did have conversations, and the
14:05:019 chair being one of them.
14:05:020 Q What time did you leave the event room?
14:05:121 A Sometime around 5, 5:30. I -- I don't know exactly,
14:05:122 but it was sometime in that ballpark.
14:05:223 Q A.m.?
14:05:224 A A.m., yes.
14:05:225 Q Do you know approximately when you got there?

14:05:331 A When I got to the event room or when I got to the
14:05:362 hotel?

14:05:363 Q The event room.

14:05:384 A I don't recall. Again, sometime -- sometime after
14:05:455 midnight, obviously.

14:05:476 Q Before 1?

14:05:497 A I would imagine, yes.

14:05:518 Q Did you have pass cards to make your way around the
14:06:029 hotel?

14:06:020 A Yes.

14:06:031 Q So you had to use a card to get into the event room?

14:06:032 A I don't -- I don't recall if the event room -- yeah,
14:06:213 the event room did have a lock on it. I remember
14:06:214 throughout the evening there was one or two times
14:06:215 that I -- that it was closed, I believe. And I don't
14:06:216 think my key card opened it, or at least I never
14:06:317 tried to open it with my key card. There were other
14:06:318 times when the event room door was just open.

14:06:409 Q So if you needed to get into the event room and the
14:06:420 door was closed, did you just ping your staffer
14:06:421 inside the room or knock on the door?

14:06:422 A I think I just -- I mean, I don't know if I had a
14:06:523 time that I needed to be in the event room when it
14:07:024 was closed. If it was closed and I came by, I
14:07:025 probably just kept going.

14:07:101 Q Okay. Did you have an opportunity to observe what
14:07:152 Chair Augustine was doing in the event room?
14:07:183 **A I spoke with her from time to time throughout -- and,**
14:07:284 **again, are we referring to after midnight or**
14:07:325 **throughout the day?**
14:07:326 Q No, from the -- I just want to focus in this line of
14:07:357 questioning on the, I'm just going to call it a 12:30
14:07:428 to 5:30 time frame --
14:07:449 **A Okay.**
14:07:440 Q -- if that sounds like a fair approximation of when
14:07:461 you were in there.
14:07:472 **A In the ballpark.**
14:07:483 Q Okay.
14:07:494 **A I spoke with her a couple of times during that**
14:07:515 **window.**
14:07:566 Q When you spoke with Chair Augustine, was your
14:08:007 conversation limited to how your family was doing?
14:08:018 **A No.**
14:08:169 Q What do you recall the topic of your conversations
14:08:120 with Chair Augustine during that 12:30 to 5:30 time
14:08:221 frame?
14:08:222 **A I mean, we had a -- probably talked about a number of**
14:08:523 **topics, including the status of -- of where the**
14:09:024 **redistricting process sat at that moment.**
14:09:025 Q In each of your conversations with Chair Augustine,

14:09:161 was anybody else within earshot?

14:09:202 **A I don't recall.**

14:09:273 Q As you're sitting here recalling communications with
14:09:294 Chair Augustine, are you thinking about times when
14:09:335 the two of you were speaking with one another without
14:09:396 anyone else present?

14:09:397 **A Sorry. I'm a little confused as to the question.**

14:09:428 Q Try to get inside your head as to what you're talking
14:09:459 about, so I'm trying to create a picture in my mind
14:09:490 of what picture's in your mind. And I don't know
14:09:521 what's in your mind. So I wasn't there. I'm trying
14:09:542 to figure that out.

14:09:563 So in your communications with Chair Augustine,
14:10:014 was there any other person who was obviously an
14:10:075 active participant in that conversation?

14:10:096 **A I don't recall.**

14:10:117 Q And do you recall whether or not there was any other
14:10:178 person who may have been a passive participant in the
14:10:219 conversation, meaning within earshot?

14:10:220 **A I don't recall.**

14:10:221 Q In any of your communications with Chair Augustine,
14:10:302 did you have a conversation --

14:10:323 In your communications with Chair Augustine,
14:10:424 was -- were there communications about next steps?

14:10:525 **A Yes.**

14:10:511 Q What next steps did you discuss?

14:10:562 A **The context around this moment in time immediately**
14:11:063 **following the meeting was certainly colored by the**
14:11:224 **attorney general's or the deputy attorney general's**
14:11:265 **e-mail with regards to jurisdiction of the**
14:11:316 **redistricting process.**

14:11:327 Q And you're talking about the e-mail saying
14:11:348 jurisdiction's in the hands of the supreme court?

14:11:369 A **That is correct.**

14:11:370 Q Do you know what time that communication -- that you
14:11:411 received that communication?

14:11:412 A **To the best of my recollection, 12:01.**

14:11:473 Q So did you talk to Chair Augustine about her lack of
14:12:004 jurisdiction -- strike that. That's a bad way of
14:12:035 saying it.

14:12:046 Did you talk to Chair Augustine about the AG's
14:12:077 e-mail indicating jurisdiction was with the supreme
14:12:118 court?

14:12:119 MR. WONG: Object to the extent the
14:12:120 answer calls for any sharing of any attorney-client
14:12:121 privilege.

14:12:122 I instruct you not to answer. If you can answer
14:12:203 that question without sharing any privileged
14:12:224 information, you can do so.

14:12:425 Q (By Ms. Mell) Did you say something, or are you

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14:14:125

still thinking?

A Well, given the advice that I'm receiving from counsel, I'm trying to determine -- trying to determine the extent of privilege in this case, not wanting to -- I'm sorry. I don't know how to proceed.

Q Okay. So one thing I could offer at this point is that the attorney has made the objection and is asserting that you should answer to the extent it won't waive the attorney-client privilege.

I'm amenable to not making an argument that it has been waived based on your answer and allowing the court to work through that process just so that we can get the answer on the record and then move on.

MR. WONG: I think that's okay to the extent it's not actually conveying any privilege -- any -- the content, the substance of anything the attorney general said.

Does that make sense? I don't want him sharing, you know, any --

MS. MELL: "She said this to me. She said this to me."

MR. WONG: Yeah, that kind of stuff. And so I understand what you're saying, and I'm just trying to make sure that we're protecting

14:14:171 the substance of the communication.

14:14:202 **THE WITNESS:** And if I may, I have
14:14:213 a question. Because the protective nature of that
14:14:294 particular e-mail was something that was in question,
14:14:315 and so I haven't received official guidance on
14:14:346 whether or not that's considered protected.

14:14:387 MS. MELL: I mean, I can share that
14:14:398 I know I've seen an e-mail that says that your
14:14:439 jurisdiction has ended. And I believe that was from
14:14:460 an assistant attorney general. So don't worry about
14:14:491 that contact. I've seen it.

14:14:502 MR. WONG: I think that that has
14:14:523 been out publicly, the fact that that message was
14:14:544 sent at that time. But I don't know to the extent
14:14:585 there's anything further beyond that that was
14:15:006 communicated that would be protected.

14:15:017 **THE WITNESS:** All right. I will --
14:15:048 I believe I -- I -- I believe I can proceed.

14:15:129 MR. WONG: Want to try asking the
14:15:130 question again, Joan, so --

14:15:121 MS. MELL: I think we're at the
14:15:202 point of, yes, let me ask the question again.

14:15:223 Q (By Ms. Mell) What was the content of your
14:15:244 conversation with Chair Augustine about the attorney
14:15:295 general's e-mail communication that the supreme court

14:15:331 now had jurisdiction?

14:15:342 MR. WONG: I'll make the same
14:15:363 objection and same direction to the witness.

14:15:384 You can answer to the extent you can without
14:15:415 disclosing any privileged information.

14:15:426 THE WITNESS: So what I tell, what
14:15:477 I -- what I may or may not have said to Chair
14:15:518 Augustine at this time -- is it my attorney's
14:15:569 contention that that would be privileged information
14:15:600 so long as it -- if it does not include additional
14:16:021 information that may have been received from counsel?

14:16:072 MS. MELL: What you told Chair
14:16:093 Augustine would not be privilege.

14:16:104 MR. WONG: As long as it's not
14:16:115 conveying what the attorney general told you.

14:16:146 THE WITNESS: Okay. Well, we have
14:16:167 an e-mail. Everybody's seen the e-mail. It
14:16:198 identifies -- it just said that the jurisdiction had
14:16:229 passed.

14:16:230 My comment to Chair Augustine was that I was -- I
14:16:271 was operating under that -- that belief base and that
14:16:282 the -- that the commission had not -- that the
14:16:323 commission had not finished the work before the
14:16:374 midnight deadline and that we no longer had
14:16:425 jurisdiction.

14:16:521 Q (By Ms. Mell) What did she say in response to your
14:16:552 comment that you had not finished the work of the
14:16:573 commission?

14:16:584 **A I don't recall.**

14:17:055 Q And do I need to go through that whole litany of was
14:17:106 anyone else present, or just do your answers apply
14:17:127 similarly?

14:17:128 **A I don't remember who or who wasn't. There was --**
14:17:159 **again, to set the scene so that it's -- so that I'm**
14:17:110 **not being unclear, there were times when there were**
14:17:211 **many people in the room. "Many" being, you know, of**
14:17:212 **the dozen or so participants in -- in this. But at**
14:17:213 **any given time, I couldn't tell you who was where or**
14:17:314 **anything like that.**

14:17:315 Q And was any of what was happening in that room
14:17:416 recorded or conveyed publicly?

14:17:417 **A The maps were drawn and reconciled in that room, and**
14:17:518 **those maps were released publicly.**

14:17:519 Q How about the conversations?

14:17:520 **A I don't -- I don't have any knowledge of that.**

14:18:121 Q Did you make the comment that now that the supreme
14:18:122 court had jurisdiction, OPMA did not apply or you
14:18:223 didn't need to worry about OPMA?

14:18:224 MR. WONG: Object to form.

14:18:225 **THE WITNESS: I don't recall -- if**

14:18:331 that was said or if that was something that I had
14:18:372 said, I don't recall.

14:18:383 Q (By Ms. Mell) Do you have any recollection about any
14:18:414 comment made about OPMA during that time frame, that
14:18:465 12:30 to 5:30 time frame?

14:18:496 A Since jurisdiction had been transferred and we no
14:18:557 longer had it, I did not, you know -- and there were
14:18:598 no more decisions before us, I didn't believe that --
14:19:039 that it applied at that time and I don't recall if I
14:19:080 communicated that to everyone.

14:19:141 Q So from your perspective, since the supreme court had
14:19:182 jurisdiction, any of the decision-making in that time
14:19:273 frame would not implicate OPMA?

14:19:314 MR. WONG: Object to form.

14:19:325 THE WITNESS: I viewed the next
14:19:406 step in the process, so to speak, once the commission
14:19:417 lost jurisdiction, as completing a -- a plan that
14:19:518 could be given to the supreme court as a data point
14:20:019 in their deliberations since they then had
14:20:080 jurisdiction.

14:20:121 Q (By Ms. Mell) Is it correct, then, that with the
14:20:222 shift in jurisdiction to the supreme court, you felt
14:20:283 liberated to have conversations and discussions
14:20:324 privately, meaning not in a televised meeting or a
14:20:325 publicized meeting, to achieve your objectives with

14:20:421 regard to communications to the supreme court?

14:20:442 MR. WONG: Object to form.

14:20:453 THE WITNESS: I don't recall it
14:20:484 triggering any -- any change. It was just a belief
14:20:565 that I had, being that there were no more actionable
14:21:026 items before the commission and that we received
14:21:067 counsel that -- and that we'd been told that we were
14:21:098 no longer -- that we no longer had jurisdiction.

14:21:129 Q (By Ms. Mell) Okay. And when you say "no more
14:21:190 actionable items," what do you mean?

14:21:211 A That there were no further -- there was no authority
14:21:312 to make decisions about the substance of -- of the
14:21:413 maps in a manner which would -- in a manner that is
14:21:514 described in statute in the constitution for the
14:21:515 Redistricting Commissions to operate. That that time
14:22:016 had passed; therefore, none of those issues were
14:22:017 still before the -- none of that power still rested
14:22:018 in the Redistricting Commission.

14:22:019 Q So is it your understanding that the work performed
14:22:120 on the 16th -- well, strike that.

14:22:121 All right. So I'm going to try to parse what you
14:22:222 just said to make sure I understand it.

14:22:223 It was your perception during the hours of 12:30
14:22:324 and 5:30 on the 16th that any of the decisions you
14:22:425 did make didn't implicate OPMA because they were

14:22:481 being made without jurisdictional authority defined
14:22:552 either the supreme court or the legislature?

14:22:573 MR. WONG: Object to form.

14:23:004 **THE WITNESS: I didn't believe that**
14:23:035 **the commission had any formal authority at this**
14:23:086 **point. And therefore, absent formal authority, I**
14:23:147 **didn't think that there was anything triggering those**
14:23:248 **rules. Again, I don't -- yeah.**

14:23:269 Q (By Ms. Mell) Okay. And so then there's one last
14:23:280 piece I want to follow up, and I hope I don't lose
14:23:311 this thought here. Let me think this through.

14:23:312 Were you of the impression, then, as you were
14:23:383 completing your mapping work and creating a final map
14:23:414 that the supreme court, with its jurisdiction --
14:23:495 strike that.

14:23:496 Was it your understanding that the work that you
14:23:517 were performing to create and finalize maps could be
14:24:018 transmitted and accepted or rejected by the supreme
14:24:079 court in its discretion, that your transmittal and
14:24:120 final maps would not be deemed within the formal
14:24:121 authority of the commission?

14:24:222 MR. WONG: Object to form.

14:24:223 **THE WITNESS: I believe that the**
14:24:224 **supreme court had total authority over the map**
14:24:325 **drawing process at that juncture.**

14:24:331 MS. MELL: Okay.

14:24:342 THE WITNESS: And what they choose
14:24:363 to do with it is -- was their -- is solely their
14:24:394 authority.

14:24:405 Q (By Ms. Mell) Has your opinion on that particular
14:24:436 point with regard to the supreme court's sole
14:24:467 authority over the map drawing at that point changed
14:24:508 since the 16th?

14:24:549 A The supreme court issued an order stating that the
14:25:010 commission substantively complied with its deadline.
14:25:111 So I suppose, retroactively, the court changed the --
14:25:312 the court's interpretation definitely changed the --
14:25:313 the outcome of the -- of the redistricting process.

14:25:414 Q Is it your understanding that the supreme court did
14:25:515 not comment on compliance with OPMA?

14:26:116 A It's been well over a month since I read the supreme
14:26:117 court's order, so I don't want to -- I don't want to
14:26:218 put words in their mouth.

14:26:219 My understanding is that their order was that the
14:26:320 commission had -- had substantially completed their
14:26:421 work and still had juris- -- and they declined -- the
14:26:522 court declined jurisdiction. But I believe there was
14:26:523 a element in their decision with regards to other
14:27:024 substantive issues that they're not opining on
14:27:025 issues, any number of litigable matters in the

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14:28:121
14:28:182
14:28:203
14:28:254
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14:28:316
14:28:417
14:28:518
14:28:589
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redistricting, and my -- my impression that they weren't commenting on those factors.

Q So would you agree that the supreme court has not indicated to you that the actions of the commission were consistent with open government standards?

A **I just don't feel comfortable speculating on a legal conclusion like that.**

Q Okay. Let me ask it differently.

Do you feel like the supreme court has communicated to you that open government standards were met in your actions?

A **I don't recall any communications specifically referencing those -- that issue.**

Q Do you think that you met open government standards?

MR. WONG: Object to form.

THE WITNESS: In terms of -- and, again, I -- I do not believe that I violated the Open Public Meetings Act, if that's the question.

Q (By Ms. Mell) Do you believe that you violated commission rules specific to open government?

MR. WONG: Object to form.

THE WITNESS: Very particular rules specifically that you're referencing?

Q (By Ms. Mell) Taking action on a -- or acting on a congressional or district plan privately.

14:29:271 MR. WONG: Same objection.

14:29:282 THE WITNESS: I don't agree with
14:29:303 the characterization that it was acted upon
14:29:334 privately.

14:29:355 Q (By Ms. Mell) Did you take a secret vote?

14:29:386 A No.

14:29:397 Q Did you take a sham vote?

14:29:428 MR. WONG: Object to form.

14:29:439 THE WITNESS: I didn't hear what
14:29:410 that said.

14:29:411 Q (By Ms. Mell) Did you take a sham vote?

14:29:412 MR. WONG: Same objection.

14:29:513 THE WITNESS: We took a vote on a
14:29:514 framework agreement that was later translated into
14:29:515 maps at a time where the -- it was my belief that the
14:30:016 commission no longer had jurisdiction.

14:30:017 Q (By Ms. Mell) What is a secret vote to you?

14:30:118 MR. WONG: Object to form.

14:30:119 MS. MELL: I should say "mean" in
14:30:120 there.

14:30:121 Q (By Ms. Mell) What does "secret vote" mean to you?

14:30:222 A Again, not wanting to comment or speculate to a legal
14:30:323 standard, I will tell you that I avoided, you know,
14:30:424 the formation of a -- of a position in which the
14:30:525 voting members each knew the position of the other

14:31:011

voting members prior to a vote in public.

14:31:082

Q Was there ever a point in time, to the best of your knowledge, when at least three voting commissioners knew your position prior to a vote in public on any redistricting plan?

14:31:133

14:31:164

14:31:225

14:31:266

A Not that I can recall.

14:31:367

MR. WONG: Joan, we've been going about another hour and ten here. Do you mind taking a short break?

14:31:378

14:31:399

14:31:400

MS. MELL: I don't. I usually go for two hours before I take a break, so --

14:31:411

14:31:442

MR. WONG: You have more stamina than I do, then.

14:31:453

14:31:464

MS. MELL: That's fine. We'll take a break.

14:31:475

14:31:526

(Pause in proceedings from 2:31 p.m. to 2:42 p.m.)

14:31:527

14:42:578

14:42:579

Q (By Ms. Mell) Training. What was your OPMA training, if any?

14:43:020

14:43:021

A The -- a deputy attorney general held a presentation during one of the early commission meetings on the OPMA.

14:43:122

14:43:123

14:43:124

Q Is that your complete training with respect to OPMA?

14:43:225

A I was trying to remember if I had received any OPMA

14:43:361 training, you know, years earlier when I was with the
14:43:442 King County Council, but I couldn't remember having
14:43:493 done so.

14:43:494 Q Are you of the opinion that your training with
14:43:515 respect to OPMA complied with the statute?

14:43:546 MR. WONG: Object to form.

14:43:567 THE WITNESS: At the time, I
14:44:038 believe that it -- that it was sufficient.

14:44:109 Q (By Ms. Mell) When you say -- give me the time
14:44:120 you're talking about when you say --

14:44:131 A At the time -- at the time of receiving the -- the
14:44:162 training, I didn't -- or soon -- I did not believe
14:44:193 that I -- let me rephrase.

14:44:214 Throughout the majority of the redistricting
14:44:275 process, I was -- I did not believe that I was under
14:44:326 some unfulfilled obligation to do additional
14:44:417 training.

14:44:418 Q Do you recall the assistant attorney general who gave
14:44:449 the presentation to the commission indicating his
14:44:480 presentation did not comply with -- was not
14:44:521 sufficient to comply with the training requirements
14:44:522 of OPMA?

14:44:523 A Again, during the majority of the time on the
14:45:024 commission, that was not my recollection. Recently
14:45:025 I've -- I had re-reviewed that and was aware that

14:45:141

that was set now.

14:45:172

Q Okay. Suffice it to say, since that was -- since you -- strike that.

14:45:213

14:45:224

What were your thoughts on training when you became a commissioner relative to open government?

14:45:255

14:45:326

A **Can you be more specific about what you're necessarily asking?**

14:45:367

14:45:378

Q Did you have any knowledge that there was an expectation that you receive OPMA training when you became a commissioner?

14:45:429

14:45:490

14:45:501

A **I -- let me phrase it that way. I mistakenly believed that the requirement for training was applied to local governments and that it -- and -- and I didn't -- I didn't recall that that obligation was on state volunteer commissions as well. So if that answers.**

14:46:012

14:46:013

14:46:124

14:46:175

14:46:216

14:46:297

Q Did you ask for meetings to be held in Federal Way?

14:46:318

A **Not to my recollection.**

14:46:369

Q Do you know that the commission's rules mandate meetings be held in Olympia?

14:46:400

14:46:421

MR. WONG: Object to form.

14:46:422

THE WITNESS: I'm not aware of

14:46:423

that.

14:46:424

Q (By Ms. Mell) Are you aware that there's any

14:46:525

reference in the commission's rules as to where the

14:46:541 meetings should be convened?

14:46:562 **A I don't recall.**

14:46:573 **Q Did you ever read the commission rules as a
14:47:014 commissioner?**

14:47:015 **A There was a brief period of time when there was a
14:47:176 rule-making process, and I reviewed them at some time
14:47:217 during that time, but I don't recall all the
14:47:238 specifics of what was included in them.**

14:47:269 **Q Suffice it to say, you didn't write the rules?**

14:47:280 **A I did not uniquely draft -- draft the rules. And,
14:47:311 again, contextually, pretty odd time for a commission
14:47:412 to be meeting given the many different things going
14:47:413 on that were changing the way that this commission
14:47:514 needed to function compared to previous commissions.**

14:48:015 **Q Are you talking about COVID?**

14:48:016 **THE REPORTER: "Previous," what?**

14:48:017 **THE WITNESS: Previous commissions
14:48:018 had to act rel- -- you know, COVID being one of the
14:48:019 bigger ones, but also the delay in the -- in
14:48:020 receiving data from the Census Bureau.**

14:48:121 **Q (By Ms. Mell) Did you and your fellow commissioners
14:48:122 and staff wear face masks throughout the negotiations
14:48:223 in November while at the Hampton?**

14:48:224 **A I recall wearing a face mask at some times. I'm -- I
14:48:425 don't recall all the time. I believe the hotel lobby**

14:48:571

still operated under the face mask -- had a "face mask" sign up. I don't recall.

14:49:072

14:49:093

Q Is it correct that you -- the work done between 12:30 and 5:30 in the event room was maskless?

14:49:134

14:49:185

MR. WONG: Object to form.

14:49:196

THE WITNESS: Again, I -- I don't

14:49:267

recall.

14:49:268

Q (By Ms. Mell) Were your conversations with

14:49:349

Commissioner Graves maskless?

14:49:410

A I believe so.

14:49:411

Q Were your conversations with Commissioner Walkinshaw

14:49:482

maskless?

14:49:513

A I don't recall each and every conversation, whether

14:49:514

it was maskless or not. Wouldn't want to guess.

14:50:015

Q Did you stay more than six feet away from any other

14:50:186

person during those negotiations?

14:50:217

MR. WONG: Object to form.

14:50:218

THE WITNESS: Again, I don't

14:50:319

have -- I don't have a recollection of how much

14:50:320

distance was between individuals other than, in

14:50:421

general, we were all keeping more distance between

14:50:482

ourselves, even in casual conversation, these days.

14:50:523

Q (By Ms. Mell) How about when working with staff or

14:51:024

the maps?

14:51:025

A Again, are we talking about the -- those two days in

14:51:071 **Federal Way or beyond that?**

14:51:092 Q No, those days in Federal Way.

14:51:123 **A Again, I recall times when individuals were wearing
14:51:184 masks and times when they were not.**

14:51:215 Q I was asking the distance requirement.

14:51:236 Between 12:30 and 5:30 on the 16th, when you were
14:51:277 working with staff and Commissioner Walkinshaw on
14:51:308 finalizing the maps, were you at all times six feet
14:51:359 away from them?

14:51:370 MR. WONG: Object to form.

14:51:391 **THE WITNESS: I -- I can't say with
14:51:412 all assurance that we were always six feet apart from
14:51:513 one another.**

14:52:074 Q (By Ms. Mell) Did you have --

14:52:075 **A --**

14:52:096 Q -- any markers?

17 THE REPORTER: Sorry, Joe. "From
18 one another," what?

19 **THE WITNESS: I think that was the
20 end of what I said.**

21 Q (By Ms. Mell) And then my question was: Did you
14:52:102 have any markers?

14:52:103 **A Not in all of the spaces that we occupied during that
14:52:204 time.**

14:52:225 Q Do you recall any markers in any of the space?

14:52:241 **A** There may have been markers in the check-in area by
14:52:322 the lobby.

14:52:453 **Q** Did we complete the exchange of information between
14:52:474 you and Chair Augustine with respect to the point in
14:52:525 time when you had the conversation over the supreme
14:52:556 court having jurisdiction?

14:52:577 Is there anything else you recall that we haven't
14:52:598 already discussed about that point, that
14:53:019 conversation?

14:53:020 **A** Again, I'm sure there were multiple conversations
14:53:081 throughout the evening on a variety of topics, so
14:53:112 I -- I can't -- I don't want to say that that was the
14:53:113 entirety of the conversation.

14:53:194 **Q** As you sit here today, can you think of any other
14:53:215 subjects you communicated on with Chair Augustine
14:53:256 between 12:30 and 5:30 on the 16th?

14:53:317 **A** Again, I don't recall the timing, but I believe there
14:53:318 was a draft of a -- of a statement that would be
14:53:419 released by the commission floating around at some
14:53:420 time around there.

14:53:421 **Q** That you discussed with Chair Augustine?

14:53:422 **A** I don't know how much of that was discussed
14:53:523 one-on-one and how much of that was conversed over
14:53:524 e-mail. I actually don't remember.

14:54:025 **Q** Do you know whether or not the commissioners

14:54:031

collectively weighed in on that?

14:54:072

A I don't know what their input would have been if they had their own conversations with Chair Augustine.

14:54:113

14:54:144

Q What was your input to Chair Augustine?

14:54:175

A That we be definitive in that we did not meet the deadline and that the jurisdiction had been

14:54:276

14:54:317

transferred to the court. But because we had reached an agreement in principle, that we would continue --

14:54:368

14:54:419

that we had continued our work to draft maps that we would then be submitting to the court for their

14:54:410

14:54:511

consideration amongst the other various individuals and organizations that would also likely be

14:54:512

14:54:513

submitting their own suggestions to the court.

14:55:014

Q Did you approve the statement that was actually transmitted to the supreme court?

14:55:015

14:55:116

A I don't recall if I -- oh. I'm sorry. The statement that was given to the supreme court? Is that what you're asking about? Chair Augustine's?

14:55:117

14:55:118

14:55:219

No, I did not have a role -- I did not have a role in approving that.

14:55:220

14:55:221

Q Was it communicated -- was the statement communicated to you for purposes of approving it?

14:55:322

14:55:323

A No.

14:55:324

Q Was a statement, a public statement communicated to you for purposes of approval?

14:55:425

14:55:491 A There -- I believe there was a draft of a public
14:55:522 statement that might have been circulating on the --
14:55:553 would have been whatever that Tuesday morning is.
14:55:574 And, again, I -- I don't recall as to the timing.

14:56:065 Q Did you approve the form that was submitted to the --
14:56:106 I'm confusing them and conflating them. I'm sorry.
14:56:127 Did you approve the form of the press statement
14:56:158 or public statement that was publicized?

14:56:189 A I don't recall.

14:56:190 Q Any other conversations with Chair Augustine that you
14:56:301 recall for the 12:30 to 5:30 time frame?

14:56:312 A I can't recall -- I can't recall the content of any
14:56:513 of the other conversations right now. I'm sure there
14:57:024 were some conversations of a personal nature as well.

14:57:045 Q Between 12:30 and 5:30, did you make a decision about
14:57:486 publication of the maps?

14:57:527 A I guess I'll just say my position was I wanted the
14:58:128 maps to become public when they were -- when
14:58:159 commission staff had completed their work.

14:58:180 Q How did you know when commission staff completed
14:58:221 their work?

14:58:222 A I was gone by the time that occurred. So I don't
14:58:323 remember exactly what form it took. I might have
14:58:324 received an e-mail from Lisa later in the day with
14:58:325 files attached. I don't recall.

14:58:401 Q Was it your position that the commission staff would
14:58:452 have completed its work after you approved the
14:58:473 version of the map presented to you by staff?

14:58:514 MR. WONG: Object to form.

14:58:525 THE WITNESS: I don't think I
14:58:556 anticipated additional involvement at that stage.

14:59:007 Q (By Ms. Mell) To be clear, you did not anticipate
14:59:088 any further involvement at what stage?

14:59:099 A Once the commission staff had the shape files, I
14:59:110 didn't -- I didn't anticipate being reached out to
14:59:211 for further feedback.

14:59:212 Q So explain to me your involvement in getting to the
14:59:303 shape files. Were you making choices -- strike that.

14:59:314 When the staff at -- how did you know when the
14:59:415 staff's shape files were complete?

14:59:416 A With regards to the congressional map, I was present
15:00:017 for much of the time that -- either present in the
15:00:118 room, in the large event space, or present in with
15:00:119 staff while they were creating the shape file.

15:00:220 That -- I don't recall what time they completed
15:00:321 their work, but to the best of my recollection, I was
15:00:322 still present when caucus staff completed the
15:00:423 congressional shape file.

15:00:424 I was not present when staff completed the
15:00:525 legislative shape file.

15:00:561 Q Had you looked at any configuration of the
15:01:062 legislative map between 12:30 and 5:30?

15:01:153 A During their drafting of a few of the districts, I
15:01:244 came over, but there wasn't really anything for me
15:01:295 to -- to do. So I was only there for a moment, then
15:01:366 let them be.

15:01:387 Q When you were with the staff drafting the legislative
15:01:428 maps, were you formulating an opinion that the
15:01:499 mapping was consistent with what you thought you
15:01:510 voted on?

15:02:011 A I think I was leaving that up to staff largely. I
15:02:212 don't -- I don't fully remember what information I
15:02:313 even had access to while that process was going on.
15:02:314 A couple of staffers hunched over a -- over a
15:02:415 computer are not always the most interactive way to
15:02:416 learn about stuff.

15:02:417 Q As a matter of fact, it's a lot of pressure for the
15:02:518 staff and probably not very productive, right?

15:02:519 Hovering. Hovering is never productive with
15:03:020 support staff.

15:03:021 So when you left, did you leave with the
15:03:122 understanding that you would have an opportunity to
15:03:123 review the final legislative map at some point, and
15:03:224 if inconsistent with what you thought you had voted
15:03:225 on, you could withdraw your vote?

15:03:271 A I don't recall that, no. I should say, I don't
15:03:332 recall that being the case, no.

15:03:363 Q When you left, did you have any expectation that you
15:03:394 would see a legislative map and look at it to
15:03:455 ascertain whether or not it reflected what you
15:03:476 thought you voted on?

15:03:487 A I don't recall that being the case.

15:03:548 Q Did you -- when you left, was Commissioner Walkinshaw
15:03:599 still there?

15:04:010 A I don't recall.

15:04:111 And let me get the context of my leaving. My --
15:04:112 I had a pretty large event that I had to host
15:04:213 virtually that morning. And so just to give you a
15:04:214 sense of my attention had to quickly pivot to a lot
15:04:215 of stuff that I had to get ready before 7, 7 a.m. or
15:04:326 so.

15:04:327 Q Okay. Were you of the mind set that it didn't really
15:04:408 matter at that point?

15:04:419 MR. WONG: Object to form.

15:04:420 THE WITNESS: I was in the mind set
15:04:521 that I believed that what would be drafted would
15:04:522 conform with the -- the framework that we had voted
15:05:023 on, but it was still also of the mind set that this
15:05:124 would be presented to the court as, you know, a --
15:05:125 basically a citizen's recommendation from a

15:05:241 commission that didn't have jurisdiction any longer
15:05:272 but that -- but I still, you know, believed that it --
15:05:293 that it was important.

15:05:334 Q (By Ms. Mell) Who was doing the mapping?

15:05:375 A Can you refresh me on the -- the name of Commissioner
15:05:546 Sims' staff person?

15:05:557 Q Sims' staff person? No.

15:06:018 Campos? No?

15:06:039 A Commission -- so Campos was doing drafting on the --
15:06:100 on the congressional map along with, I believe Ali
15:06:111 from Brady's staff. And I think Anton was doing
15:06:212 drafting on the legislative map along with --

15:06:213 Q Osta?

15:06:214 A Osta, yeah.

15:06:275 Q Okay. So how did the staff know what the framework
15:06:316 was?

15:06:317 A The staff had probably been involved in as many
15:06:518 conversations about the maps as the -- as the members
15:06:519 had. So, I mean, I think that's -- there was just a
15:07:020 level of understanding 'cause they had been present
15:07:121 for -- for that.

15:07:122 In terms of any other specific direction, I'm --
15:07:123 can't think of anything specific off the top of my
15:07:124 head.

15:07:125 Q Were you commissioners there so that you could answer

15:07:251

staff questions?

15:07:262

A There were commissioners present on and on -- on and off throughout those early morning hours.

15:07:323

15:07:384

Q But was one of the purposes for the commissioners to stay for hours after the meeting to ensure that the maps were created?

15:07:445

15:07:486

15:07:517

A I can only speak for myself. I wanted to stay through the creation -- through the creation of the congressional map to ensure that there weren't any disagreements between the maps that were being reconciled to create, you know, these final maps.

15:08:028

15:08:059

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15:08:212

That's what led to the conversation over the 9th congressional district that I referenced earlier, but that was not a -- that wasn't a difference between various different versions or anything. That was my misunderstanding.

15:08:213

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15:08:317

Q But there were differences between the staff proposals that had to be reconciled that happened in those hours, correct?

15:08:418

15:08:419

15:08:420

MR. WONG: Object to form.

15:08:421

THE WITNESS: I believe there were in the legislative maps, and I don't have a lot of details about that.

15:08:522

15:08:523

15:09:024

I'm trying to recall if there were anything, what might have been there in the -- in the congressional

15:09:025

15:09:111 maps, and nothing is -- I don't recall. I don't
15:09:182 recall.

15:09:193 Q (By Ms. Mell) Do you have any reason to believe that
15:09:244 Ali O'Neil's account of the events during that time
15:09:275 frame would be incorrect?

15:09:286 MR. WONG: Object to form.

15:09:297 THE WITNESS: I would want to -- I
15:09:368 wouldn't want to make a generalized representation
15:09:439 about her statements.

15:09:440 Q (By Ms. Mell) Have you read her statement?

15:09:441 A Yes. But it's been -- yes, I have. I think I -- I
15:09:492 think I -- I think I've reviewed it recently as well,
15:09:513 but...

15:10:024 Q I believe it's been marked as Exhibit 2. I'll pull
15:10:055 it up here and have you take a look at it.

15:10:446 It seems to have disappeared from that file
15:10:467 folder. Just a second here.

15:11:048 I'm going to try to drag this into the right
15:11:079 place so you can see it. I'm going to put it in the
15:11:100 chat room just in case you want to look at it more
15:11:121 carefully. I can also scroll through it.

15:11:122 A Okay.

15:11:423 MR. WONG: Joe, are you able to see
15:11:424 it on your screen, or are you waiting for her to
15:11:425 share screen?

15:11:471 **THE WITNESS: I'm waiting for her**
15:11:482 **to share screen.**

15:12:093 MS. MELL: Here we go.

15:12:104 Q (By Ms. Mell) You good?

15:12:115 A **Yep.**

15:12:126 Q Okay. Just tell me your pace, if you want to just
15:12:157 say "'kay, 'kay" or whatever, however you want to
15:12:208 communicate, "scroll, scroll, scroll."

15:12:309 A **Is there a specific question that you have about any**
15:12:320 **of the statements?**

15:12:331 Q I'm wanting to know if you disagree with her
15:12:372 representations in this memo in any regard.

15:12:413 A **I -- probably more helpful to be able to highlight a**
15:12:514 **specific contention and then discuss that. I don't**
15:12:515 **want to --**

15:12:566 Q You don't want to just go through? Okay.

15:13:017 A **Well, I don't want to be in a situation where I don't**
15:13:048 **object to something that's said because I missed it**
15:13:079 **as I'm trying to read through here and that's**
15:13:020 **interpreted as me --**

15:13:021 Q Okay.

15:13:022 A **-- agreeing to it, so...**

15:13:123 Q Okay. I don't think there's any dispute that you
15:13:124 agree there were no congressional or legislative maps
15:13:125 voted on at the eleventh-hour vote on Monday,

15:13:211

November 15th?

15:13:212

A That's correct.

15:13:213

Q Undisputed.

15:13:224

You don't dispute that they were not finalized at the time of the vote?

15:13:265

15:13:286

A That's correct.

15:13:287

Q Is it correct that the vote was simply an agreement on political metrics in the maps with perhaps one or two geographic specifics?

15:13:338

15:13:369

15:13:310

A I don't know about the use of the term "one or two," but as I've characterized it before, the vote was an agreement on a framework that involved communities of interests, political metrics, and some geographic boundaries.

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15:13:515

So I don't wish -- I don't want to quibble about it, but that's -- I want to make sure how I phrased it.

15:13:516

15:14:017

15:14:018

Q Do you believe it is correct that her team was told that the new maps would be drawn to fit the agreement on political metrics prior to the vote?

15:14:089

15:14:120

15:14:121

MR. WONG: Object to form.

15:14:122

THE WITNESS: Can you highlight what area you're referring to?

15:14:123

15:14:224

MS. MELL: She says, "My

15:14:225

understanding what our team was told is that the new

15:14:241 maps would be drawn to fit the agreement on political
15:14:272 metrics."

15:14:313 **THE WITNESS: I can't comment on**
15:14:324 **what her understanding was. I can tell you that the**
15:14:355 **framework agreement did involve political metrics.**

15:14:426 Q (By Ms. Mell) Did you communicate to staff that
15:14:447 there was an agreement on political metrics that
15:14:518 would be mapped out after the vote?

15:14:539 A I think we've kind of asked and answered that one.
15:14:510 We've established that the mapping took place after
15:14:511 the vote and that components of that involve
15:15:012 political metrics.

15:15:023 Q Do you agree that all commissioners would be able to
15:15:044 review and give final sign-off on those maps prior to
15:15:115 any transmittal?

15:15:116 A That was not my understanding.

15:15:117 Q Did you hear anyone discuss that?

15:15:218 A I don't recall.

15:15:229 Q Do you have any recollection of Commissioner
15:15:320 Walkinshaw taking the position that he -- his vote
15:15:321 was conditional on review of the final maps?

15:15:322 A I don't recall hearing him say that.

15:15:323 Q Was your vote conditioned on being able to give final
15:15:424 approval on maps?

15:15:425 A I don't -- I don't recall making that a condition,

15:15:511 and that's not what happened. Best of my
15:15:542 recollection.

15:15:553 Q Did you ever tell staff that the commissioners would
15:16:064 have the opportunity to review and provide final
15:16:095 approval of the maps before they were transmitted?

15:16:116 A I don't recall.

15:16:137 Q Were you involved in any -- strike that.

15:16:218 Is it correct that before there was any public
15:16:279 communication of the maps, that the commissioners
15:16:290 would have an opportunity to review them?

15:16:311 A Again, I don't -- I don't recall. I don't -- I don't
15:16:412 believe I've reviewed the maps from the commission
15:16:413 staff prior to them being made public. But, again, I
15:16:514 don't recall specifically.

15:16:515 Q And you certainly weren't upset about that, because
15:16:586 you didn't believe that that was an agreement?

15:17:017 A I don't recall that being an agreement.

15:17:018 Q Do you remember a conversation about taking down the
15:17:099 congressional map from the website?

15:17:120 A Are you referencing something in writing here?

15:17:121 Q No. No. I'm looking at you.

15:17:222 A Oh. I don't -- I don't think I remember anything
15:17:223 like that.

15:17:324 Is there more context that you have for that?

15:17:325 Q Well, I've heard testimony that there was a

15:17:361 discussion between the 12:30 and -- certainly between
15:17:392 the 12:30 and later time frame that the congressional
15:17:453 map had been published and the commissioners didn't
15:17:484 want that publication at that point in time. And
15:17:515 they asked to have it taken down.

15:17:556 **A I -- again, operating on very little sleep and with a**
15:18:027 **big event coming up ahead of me, I -- I don't recall**
15:18:068 **that at this time.**

15:18:219 **Q** That next paragraph, she seems to be timing when
15:18:310 draft legislative maps were made available.

15:18:341 Do you have any knowledge that her statement
15:18:372 there would be incorrect?

15:18:383 **A Are you referring to the paragraph starting, "While**
15:18:414 **Commissioner Walkinshaw"?**

15:18:435 **Q** Correct.

15:18:456 **MR. WONG:** Object to form.

15:18:467 **THE WITNESS:** Okay. Can you repeat
15:18:518 **your question again?**

15:18:519 **Q** (By Ms. Mell) Did you share maps with any staff,
15:19:020 legislative maps with staff prior to 10:48 on Monday,
15:19:201 since the time of the meeting?

15:19:222 **A Yeah, I don't recall.**

15:19:303 **Q** Did you tell staff or did you hear conversations in
15:19:324 the presence of staff that there would be a
15:19:325 substantive mapping discussion about certain

15:19:401
15:19:412
15:19:443
15:19:454
15:19:545
15:20:016
15:20:037
15:20:168
15:20:239
15:20:250
15:20:311
15:20:342
15:20:373
15:20:414
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15:21:017
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15:21:019
15:21:120
15:21:121
15:21:122
15:21:123
15:21:224
15:21:225

potentially competing priorities and how those priorities would play out in the actual drawing of the lines?

A I don't recall. I don't -- I'm trying to read that here.

I don't recall. I don't recall anything like that occurring in the congressional map drafting.

Q Did you ever hear Commissioner Sims tell staff or you that she wanted to finalize the negotiations around partisanship numbers before moving to any mapping?

A I don't recall Commissioner Sims saying that.

Q Do you remember that to be a strategy that was being deployed during those days, 15th and 16th?

A So there's strategy, and then there's -- and then there's efficiency. And so, you know, to have conversations over things didn't always require them to be painstakingly mapped. That's just background that I can provide.

Again, I don't -- I don't know if Commissioner Sims said that or what she was necessarily refer- -- what she was trying to accomplish if she did say that.

Q And you don't remember having to break an impasse in the negotiations because you weren't negotiating on partisanship numbers?

15:21:331 MR. WONG: Object to form.

15:21:352 THE WITNESS: Yeah, I'm actually
15:21:363 confused by the question.

15:21:414 Q (By Ms. Mell) Was there an impasse in the
15:21:435 negotiations at any time because you weren't
15:21:466 negotiating around partisanship numbers?

15:21:497 A Again, is this referencing a particular part of her
15:21:538 statement here so that I can...?

15:21:569 Q Well, not really. I'm creating --

15:21:510 A Oh, okay.

15:22:011 Q -- based --

15:22:012 A Oh, I apologize.

15:22:013 Q -- on what I understand her to be saying.

15:22:014 But the statement here is, "Commissioner Sims
15:22:015 told us repeatedly throughout the final days that she
15:22:016 wanted to finalize the negotiations around
15:22:117 partisanship numbers before moving to any mapping."

15:22:118 Was it your observation that there were
15:22:119 negotiations around partisanship numbers before
15:22:120 moving to any mapping?

15:22:221 A There was both -- again, there was both mapping work
15:22:322 regularly being done and discussion over partisan
15:22:423 performance regularly happening throughout this --
15:22:424 throughout this entire process.

15:22:425 Q Was there a point in time where there was an impasse

15:22:531 reached because the negotiations around partisanship
15:22:582 numbers had not been finalized?

15:23:023 **A The time that I referenced previously where I**
15:23:064 **suggested that Chair Augustine consider a mediator's**
15:23:125 **proposal could fit that description.**

15:23:266 **Q Do you have any personal knowledge about whether or**
15:23:287 **not the SDC team -- I'm assuming that's Senate**
15:23:348 **Democratic Caucus team -- were forced to compromise**
15:23:379 **on stated priorities and at this -- and at times**
15:23:410 **disregard what was shared with the commission during**
15:23:411 **the months of gathering public input when finalizing**
15:23:412 **the maps?**

15:23:413 **A The commission received thousands of pieces of input,**
15:23:514 **many of which were contradictory with one another.**
15:24:015 **So by definition, the final maps would have to --**
15:24:116 **would have to favor some input over others in order**
15:24:117 **to -- in order to complete the work. So I guess I'm**
15:24:218 **a little confused at that statement.**

15:24:219 **Q Sounds like you -- it sounds like you agree that it**
15:24:220 **happened, but you're not necessarily certain that**
15:24:321 **that was to be unexpected?**

15:24:322 **MR. WONG: Object to form.**

15:24:323 **THE WITNESS: I would say that**
15:24:424 **every -- again, not speaking for other participants.**
15:24:525 **Because I as a participant in the process went into**

15:24:561 the process assuming that I wasn't going to get
15:24:592 everything I wanted and that folks who came to
15:25:043 testify before the commission were going to have
15:25:064 people who disagreed with them, and by definition,
15:25:115 they wouldn't all get what they wanted either, which
15:25:146 I think is the nature of governing in this case. So
15:25:177 I'm -- I don't see much in that statement that's
15:25:218 surprising.

15:25:229 Q (By Ms. Mell) Did Ali O'Neil repeatedly voice her
15:25:260 concerns about the difficulty of translating the
15:25:281 partisanship numbers that were being discussed into
15:25:312 actual maps?

15:25:313 A I don't -- I don't recall hearing her do so. But,
15:25:344 again, I wasn't with her the entire time.

15:25:415 Q Would you agree that the lack of communication and
15:25:446 transparency contributed to the chaotic events that
15:25:517 transpired?

15:25:518 MR. WONG: Object to form.

15:25:519 THE WITNESS: I would say that it
15:25:520 would have been preferable that the -- that draft
15:26:021 maps be presented publicly prior to the vote, as I've
15:26:022 stated before, and that that would -- where that had
15:26:123 been possible, that would have been beneficial.

15:26:224 Q (By Ms. Mell) Were you aware that there were offers
15:26:325 exchanged via text message and in-person meetings?

15:26:421 A Is there a specific passage that you're referring to
15:26:442 there?

15:26:553 There have been various concepts and proposals
15:26:594 that have been shared at each stage of this process,
15:27:025 and sometimes those included maps. So...

15:27:106 Q Would you agree that proposals were being exchanged
15:27:177 in person and via text message on both of the maps
15:27:238 among the voting commissioners?

15:27:259 MR. WONG: Object to form.

15:27:270 THE WITNESS: Say there were
15:27:311 conversations about various concepts and frameworks
15:27:322 that -- including the relative performance of
15:27:413 different districts being one of the factors that
15:27:474 were communicated between commissioners in those
15:27:515 dyads.

15:27:516 Q (By Ms. Mell) And among -- and between dyads,
15:27:527 correct?

15:27:518 A I don't know what would -- what -- I can't speak to
15:28:019 what may or may not have been shared between
15:28:020 Commissioner Sims and Commissioner Walkinshaw as I've
15:28:021 stated previously. Commissioner Graves -- I was kept
15:28:122 informed as to elements of the -- of the conversation
15:28:223 he had with Commissioner Sims, which is what allowed
15:28:224 me to take a final vote on a proposal.

15:28:225 Q Do you agree that Commissioner Augustine -- the

15:28:331 proposal you had as mediator with Commissioner
15:28:372 Augustine would be that she would convey the
15:28:413 negotiation terms between the commissioners?

15:28:454 MR. WONG: Object to form.

15:28:475 **THE WITNESS:** No, I don't -- I
15:28:506 don't -- I don't -- wouldn't characterize that -- I
15:28:547 wouldn't say that characterization is accurate. As
15:28:568 I've said previously, I had approached Commissioner
15:28:599 Augustine to see if she would be willing to offer
15:29:010 mediator proposal on one of the items that seemed to
15:29:011 me part of the conversation that had led to limited
15:29:112 progress if she had agreed to do so.

15:29:213 At that point, I believe she met with
15:29:214 Commissioner Graves and Commissioner Sims, but I
15:29:215 wasn't involved in that --

15:29:216 Q (By Ms. Mell) And Graves --

15:29:217 THE REPORTER: "I wasn't
15:29:218 involved..."? Sorry?

15:29:219 **THE WITNESS:** I wasn't involved
15:29:320 with that beyond that point -- sorry -- is how I
15:29:321 finished.

15:29:322 Q (By Ms. Mell) So in terms of your understanding of
15:29:423 Augustine's mediation tactics, was she mediating
15:29:424 between an R and a D and then the R and the D were
15:29:525 coming back to the other R and the D, or was she

15:29:541 mediating between caucus designations, mediating
15:30:002 between the Rs and the Ds?

15:30:033 MR. WONG: Object to form.

15:30:044 THE WITNESS: I wouldn't -- I read
15:30:095 this to -- I read this paragraph as containing the
15:30:186 number of words around and, you know, and act as a
15:30:227 go-between and to convey an active role as a
15:30:258 mediator. And that's now how I would characterize
15:30:289 Commissioner Augustine's role. I believe her role
15:30:310 was isolated to that one instance and -- and did not
15:30:411 extend beyond that.

15:30:442 Q (By Ms. Mell) But you would -- you would fairly
15:30:473 characterize her as a go-between with regard to that
15:30:514 impasse? The go-between was to do a mediator's
15:30:575 proposal and communicate that between the two?

15:31:016 A I wouldn't want to use -- I wouldn't want to use a
15:31:047 term of art that I haven't already used and what I've
15:31:118 used now is that -- which are the words that I used
15:31:129 when discussing it with Commissioner Augustine, which
15:31:120 was would she be comfortable reviewing where they are
15:31:221 at and -- and offering some third-party suggestion
15:31:322 or medi- -- I've had to call it a mediator or a
15:31:323 chair's --

15:31:324 Q Proposal?

15:31:325 A -- chair's proposal. And she agreed to that, and

15:31:391

then my involvement in that ended there.

15:31:432

Q Okay. And I just want to understand what you know

15:31:453

about who she was doing the mediator's proposal with.

15:31:494

Who was Chair Augustine doing the mediator's

15:31:565

proposal with? Who was she communicating her

15:31:596

proposal to?

15:32:007

A **I believe she communicated it to Commissioners Sims**

15:32:038

and Graves.

15:32:069

Q And then did she communicate it back to you?

15:32:100

A **I don't recall her talking to me about it, no.**

15:32:121

Q Do you remember Graves talking to you about it?

15:32:162

A **I believe he mentioned it, yes.**

15:32:223

Q Okay. And you don't know what Sims and Walkinshaw

15:32:274

talked about?

15:32:285

A **I don't.**

15:32:296

Q Okay. So that's pretty consistent with -- her last

15:32:407

bullet on Page 2 is consistent with what you're

15:32:418

saying, correct?

15:32:419

A **No.**

15:32:420

Q Did you say "yes" or -- did you say "no"?

15:32:421

A **Yeah, the -- what it reads here is Commissioner**

15:32:522

Augustine conveyed a proposal on behalf of the

15:32:523

Republicans on partisan metrics to Commissioner Sims,

15:32:524

but it was rejected.

15:33:025

I don't -- this was -- again, my understanding,

15:33:061 this is -- was not a proposal that was created by the
15:33:132 Republicans, that this was purely her having looked
15:33:153 at the current state of the conversation between
15:33:174 Commissioner Sims and Commissioner Graves, that this
15:33:225 was her independent suggestion, but it was not a
15:33:246 proposal that she was presenting on our behalf.

15:33:287 Q Got it. Okay. Thank you.

15:33:308 How about the first bullet? "Although
15:33:389 Commissioner Fain did send a congressional map
15:33:400 proposal at around this same time, he indicated to
15:33:411 Commissioner Walkinshaw that he was not interested in
15:33:422 discussing the congressional maps if the legislative
15:33:433 maps were not also progressing."

15:33:514 A I communicated to Commissioner Walkinshaw that I
15:33:515 viewed a legislative plan as both the legislative and
15:34:016 congressional map and that -- that I felt at the time
15:34:017 our responsibility was to do both or neither.

15:34:118 Q Was there ever a point in time when you thought you
15:34:169 would be going to take a vote on one and not the
15:34:200 other?

15:34:221 A Early in the process, I don't think I fully
15:34:222 considered what the definition of a plan was. And I
15:34:323 think that was an open question.

15:34:424 All I can say is that at this time I communicated
15:34:425 to Commissioner Walkinshaw that -- that I viewed a

15:34:501 plan as being both a congressional and legislative
15:34:532 map.

15:34:533 Q Did you change your mind on that at any time prior to
15:34:574 your vote?

15:35:035 A Sorry. I'm a little, again, unclear about the
15:35:146 question.

15:35:147 I changed my mind about what exactly?

15:35:178 Q Whether or not the statutory requirement that you
15:35:219 adopt a plan meant both a congressional and a
15:35:230 legislative district.

15:35:271 A Again, my recollection is later in the process, I
15:35:312 settled on the belief that -- that both were required
15:35:333 and that I wasn't prepared to do one without the
15:35:414 other.

15:35:435 Q And I think what I'm asking is, did you maintain that
15:35:516 position through the time of the vote?

15:35:527 A I -- again, I -- I don't necessarily -- so I don't
15:36:118 necessarily know how to answer that question
15:36:319 because -- I would say, in part, that position was a
15:36:320 little -- on my part, again, just speaking for
15:36:321 myself -- is a little bit of bluster.

15:36:322 Not because I didn't think that it was -- not
15:36:423 because I didn't think that it was a position that I
15:36:424 should hold but so that it was -- I wanted to make
15:36:425 sure no one could play games by, you know, taking

15:36:581 care of -- of one map that might be important to some
15:37:042 interests and not another map.

15:37:053 And so in terms of during the vote, itself, you
15:37:114 know, I have -- I can't speculate about if the -- one
15:37:185 of the maps had not been approved, how I would have
15:37:216 treated the second map. I can't go back and -- and
15:37:277 relive a hypothetical.

15:37:318 Q I think my -- what I'm having trouble understanding
15:37:359 is the -- the action portion of the meeting.

15:37:440 So do you recall that Chair Augustine invited a
15:37:511 motion on a congressional district?

15:38:012 A I do, yes.

15:38:013 Q She didn't invite a vote on a plan, correct?

15:38:014 A That's correct.

15:38:015 Q Do you know why she bifurcated the motion and didn't
15:38:126 just invite a motion on the plan?

15:38:117 A I don't have any recollection at that time.

15:38:208 Q Do you remember any conversation about how the action
15:38:269 items should move through the process?

15:38:220 A I don't recall.

15:38:301 Q Whether they should be individualized or consolidated
15:38:322 into a plan?

15:38:323 A I don't recall.

15:38:404 Again, this was a very chaotic time, and there
15:38:525 was certainly nothing scripted about how the voting

15:38:551

process took place.

15:38:582

Q Do you recall a strategy being deployed to break the impasse in the late hours of the 15th?

15:39:023

15:39:064

A I don't recall that.

15:39:245

Q Do you have a recollection of why you were at the --

15:39:266

do you have any recollection about any events that

15:39:297

preceded moving into the action item that would

15:39:348

explain the timing of moving into the action item of

15:39:409

the agenda?

15:39:410

A Again, I -- I don't recall the chronology as how

15:39:511

things came together at that time.

15:39:512

Q Do you recall any last-minute deals or negotiations,

15:40:013

compromises?

15:40:024

A Again, I -- as I previously said, Commissioner Graves

15:40:075

had relayed to me the substance of the con- -- the

15:40:116

last conversation that he had with Commissioner Sims

15:40:177

and --

15:40:188

Q Did you --

15:40:199

A Go ahead.

15:40:200

Q And then did you do the same with respect to the

15:40:221

congressional district plan you'd been negotiating?

15:40:222

You shared that with Graves?

15:40:303

A I believe so.

15:40:304

Q And at the time that conversation occurred, was it

15:40:405

moments before midnight?

15:40:421 A I don't remember what time that was.

15:40:442 Q Did you feel a sense of urgency at the time you were
15:40:483 communicating with Graves?

15:40:504 A I can say I felt a sense of urgency throughout the
15:40:585 entire evening and a sense of exhaustion and urgency
15:41:056 as the time approached midnight.

15:41:077 Q Was there an agreement on when a plan needed to be
15:41:158 submitted in order to take a vote or a proposal even
15:41:189 needed to be submitted before taking a vote -- in
15:41:210 order to take a vote?

15:41:211 A Can you re-ask the question for me? I want to make
15:41:212 sure I understand what you're saying.

15:41:213 Q Did you have an understanding that there was a
15:41:314 deadline set to complete your negotiations by 5:00 on
15:41:315 the 15th?

15:41:316 A I don't know of any specific time. I know that there
15:41:417 was some conversation from staff that -- that they
15:41:518 needed a certain amount of time in order to go
15:41:519 through that process that I described earlier to put
15:42:020 a shape file into a final -- into the final format
15:42:021 that some of commission staff believed it needed to
15:42:122 be in.

15:42:123 Q Did you ever participate in any conversations about
15:42:124 changing that time?

15:42:125 A I don't -- I don't know if it was -- I don't think it

15:42:281 was a time that was -- it was not a time that I read
15:42:352 or any other individual said. I think it was just
15:42:373 something that staff had said was the amount of time
15:42:404 that they would need to be able to do certain
15:42:425 mechanical or certain technical things. And with any
15:42:526 map. Not just -- not like a -- any map that was
15:42:557 going to be in a -- in a position to be considered by
15:43:018 the commission.

15:43:059 Q Is it correct that between 6:30 and 7:30 p.m.,
15:43:100 several offers were being traded back and forth
15:43:131 between Commissioner Graves and Commissioner Sims
15:43:152 that were relayed to Ali O'Neil and Commissioner
15:43:213 Walkinshaw in person?

15:43:224 MR. WONG: Object to form.

15:43:245 THE WITNESS: I can't comment about
15:43:256 conversations that I was not a part of.

15:43:287 Q (By Ms. Mell) Do you remember a point in time where
15:43:418 you heard Commissioner Sims -- heard that
15:43:489 Commissioner Sims was unwilling to accept any of the
15:43:520 proposals offered by the Republicans just before 7 or
15:44:021 so?

15:44:022 A No, I don't recall that. Again, I don't --

15:44:023 Q Did you --

15:44:024 A Go ahead.

15:44:025 Q Did you attend a meeting scheduled by Justin Bennett

15:44:101 or an invite to a meeting? Did you accept an invite
15:44:122 to a meeting by Justin Bennett?

15:44:153 **A I don't recall -- I don't recall that meeting invite.**
15:44:204 **I'm not saying I didn't receive it. I just don't**
15:44:235 **recall it.**

15:44:236 **Q Was there --**

15:44:257 **A What was that?**

15:44:268 **Q Was there a final map verification meeting?**

15:44:309 **A I don't know. Again, the -- wasn't -- I didn't**
15:44:310 **participate in any meeting like that, and I don't**
15:44:311 **believe I talked with Justin Bennett at any point**
15:44:412 **during the process.**

15:44:413 **Q If Ali O'Neil witnessed one commissioner pass by two**
15:45:014 **other commissioners who were discussing something in**
15:45:015 **the hallway, do you have any reason to believe that**
15:45:016 **one of those three was you?**

15:45:117 **A Again, I don't -- I don't know what she is alleging**
15:45:118 **there. Walking through the hallway doesn't seem...**

15:45:219 **Q Certainly you were in the hallway, talking with --**

15:45:220 **A Yeah.**

15:45:221 **Q -- other commissioners at times. I think you've said**
15:45:322 **that, right?**

15:45:323 **A That's correct. Yeah. And if a -- again, in a**
15:45:324 **situation, again, not referencing what she may or may**
15:45:325 **not be referencing there, so I don't know what she**

15:45:411 did or did not see. But if -- I do recall being in
15:45:442 the hallway where I was talking with a commissioner
15:45:463 and if another commissioner came within earshot or
15:45:524 that that commissioner immediately turned around or,
15:45:575 you know, the conversation was stopped until that
15:45:596 commissioner had gotten where they needed to go so
15:46:047 that we would continue to avoid having three voting
15:46:088 commissioners in any conversation.

15:46:099 Q Did you ever get instruction to join the public
15:46:210 meeting more frequently and give more detailed
15:46:261 updates on what you were discussing?

15:46:212 A I'm waiting for my counsel on that one.

15:46:413 MS. MELL: Oh.

15:46:414 MR. WONG: Yeah, I mean, I'll
15:46:445 object to the extent it asks for attorney-client
15:46:476 privilege. If you were instructed by anybody other
15:46:497 than counsel on something, then you can certainly
15:46:518 answer.

15:47:019 THE WITNESS: Yeah, I guess I'm
15:47:020 still at a -- I still have a question as to the
15:47:021 application of attorney-client privilege in this
15:47:022 circumstance.

15:47:103 MS. MELL: Let me see if we can
15:47:124 figure out how to walk through it.

15:47:205 Q (By Ms. Mell) Did you receive instruction from

15:47:211 anyone other than legal counsel to join the public
15:47:242 meeting more frequently and give more detailed
15:47:273 updates on what you were discussing?

15:47:294 MR. WONG: You can answer that
15:47:315 question.

15:47:316 **THE WITNESS: If my knowledge**
15:47:367 **was -- okay.**

15:47:538 Yeah, I would -- I would still see -- I would
15:47:569 still see this communication as attorney-client
15:47:600 privilege, myself. And so, but again, I may be
15:48:021 misinterpreting things.

15:48:032 MR. WONG: So, Joe, I think the
15:48:043 question is a yes-or-no question that was asked is --

15:48:044 **THE WITNESS: Okay.**

15:48:045 MR. WONG: -- how I --

15:48:046 **THE WITNESS: Okay.**

15:48:047 THE REPORTER: "Is how I," what?

15:48:118 MR. WONG: A yes-or-no question as
15:48:119 I heard it asked. And certainly Ms. Mell can correct
15:48:150 me if that's incorrect. But I think she was framing
15:48:171 it very carefully, and I heard it as a yes-or-no
15:48:202 question.

15:48:203 **THE WITNESS: Okay.**

15:48:214 MR. WONG: That's something you
15:48:225 could answer. If you want to read it back, John,

15:48:241 perhaps that may be helpful.

15:48:242 (Pertinent question read by
15:48:243 the reporter.)

15:49:104
15:49:105 **THE WITNESS: Yes.**

15:49:116 Q (By Ms. Mell) Who was that?

15:49:147 MR. WONG: You can answer this
15:49:158 question too as to who it was.

15:49:179 **THE WITNESS: Commissioner
15:49:180 Augustine.**

15:49:191 Q (By Ms. Mell) How did you respond to her
15:49:212 instruction?

15:49:213 A I had been -- I had been in my -- in the public
15:49:414 sessions, already attempting to communicate about the
15:49:515 issues that seem to be a part of -- about the overall
15:50:116 redistricting -- the redistricting issues that
15:50:117 were -- that seem to be pertinent, and so there's
15:50:218 a -- I think a number of times on different meetings,
15:50:219 I don't remember exactly where I either refer to
15:50:220 different parts of the state or asked questions about
15:50:321 different elements of the -- of the negotiation.

15:50:322 Q So I heard your answer to be that you felt like you
15:50:423 had already been sharing.

15:50:424 So did you do anything differently after your
15:50:525 conversation with Chair Augustine?

15:50:531 A I think I just continued to have open conversations
15:51:112 in the -- in the live meeting on some of the
15:51:183 substantive issues that were part of the process.

15:51:234 Q Did you ever share with the public that there had
15:51:435 been a framework reached -- a proposed framework
15:51:496 reached?

15:51:537 A Sorry. Could you repeat the question?

15:51:558 Q Did you ever communicate to the public that there had
15:51:579 been a proposed framework reached prior to the action
15:52:010 portion of the meeting?

15:52:021 A No, I don't believe so. I don't believe there was
15:52:112 a -- there wasn't an agreement -- there wasn't an
15:52:113 agreement reached prior to the meeting because there
15:52:214 hadn't been communication between the members. I
15:52:215 didn't know what the members would be on the
15:52:216 proposal.

15:52:217 Q But there was a framework in existence prior to the
15:52:318 action portion of the agenda for both the
15:52:319 congressional and legislative districts, correct?

15:52:320 A There was a framework that was communicated to me,
15:52:421 yes, but I don't know who -- I don't know which of
15:52:422 the commissioners, what their level of support for
15:52:423 various -- there was a lot of frameworks that were
15:52:524 generated during these -- during this lengthy
15:52:525 11-month process or ten-month process, and I didn't

15:52:581 know if this was a framework that had enough support
15:53:042 to be adopted.

15:53:063 Q Right.

15:53:074 But you knew it was the -- it was the agreement
15:53:095 between Graves and Sims. And as to you, it would be
15:53:196 between you and Walkinshaw.

15:53:207 You had a framework that you two -- the two
15:53:238 collective dyads had reached frameworks that they
15:53:269 agreed upon prior to the action item of the meeting?

15:53:290 MR. WONG: Object to form.

15:53:311 THE WITNESS: I would distinguish
15:53:402 between bringing forward a framework and actually --
15:53:413 and actually being in a position where you're
15:53:504 prepared to cast a vote. I think that all -- I
15:53:515 think -- I can only, again, speak for me. I know I
15:53:586 was continually conflicted on both maps at all times
15:54:017 during this process, and -- and I would be -- and I
15:54:018 did not know where other commissioners were, even
15:54:109 with regard to the legislative map and Commissioners
15:54:120 Sims and Graves.

15:54:221 Q (By Ms. Mell) In terms of -- well, how to parse
15:54:322 through that again, to be very specific.

15:54:323 It was communicated to you that there was an
15:54:324 agreement between Sims and Graves on a proposed
15:54:425 framework prior to the action item, correct?

15:54:501 A The framework -- a framework was presented after
15:54:552 their final conversation. And I do not know -- I did
15:55:013 not know what that meant in terms of whether or not
15:55:084 that was -- that represented a vote by Commissioner
15:55:145 Sims or if that was the latest iteration of the
15:55:206 conversation.

15:55:237 This was a very, very -- I think we were using
15:55:298 the word "messy," the word "chaotic." You're --
15:55:359 you're out of time, and you kind of -- and I think
15:55:410 the chair asked for motions. And so this is the --
15:55:411 this is the framework that -- that's in front of us,
15:55:502 and so this is what we're going to bring up.

15:55:523 Q But there were no express frameworks on the record
15:55:564 ever, right?

15:55:575 A No.

15:55:586 Q Okay. So there was some communication about what you
15:56:017 were voting on prior to the vote, correct, that was
15:56:068 off the record?

15:56:079 A As I said, Commissioner Graves communicated what
15:56:120 that -- what the details of the last conversation
15:56:221 that he'd had with Commissioner Sims.

15:56:222 Q And vice versa, you communicated to Graves the
15:56:323 details on the last conversation that you'd had with
15:56:324 Walkinshaw?

15:56:325 A Correct.

15:56:401 Q Okay. And to the best of your knowledge, you and
15:56:492 Graves had a common understanding of frameworks going
15:56:593 into the action portion of the meeting?

15:57:034 **A To the best of my knowledge, I had -- I understood
15:57:105 what the proposed framework was.**

15:57:136 Q And was it your expectation that the same kind of
15:57:207 conversation had happened between the Democrats as
15:57:248 occurred between you and Graves?

15:57:259 **A I had no expectation about any communications that I
15:57:210 wasn't a party to.**

15:57:321 Q Do you have reason to believe that the same kind of
15:57:312 conversation occurred between Sims and Walkinshaw?

15:57:413 **A Again, I don't mean to be difficult, but I don't want
15:57:514 to speculate on something that I wasn't witness to.**

15:57:515 **I did witness them have a conversation in and
15:58:016 around this late time period but not one that I was
15:58:017 able to hear or was a party to.**

15:58:118 Q Okay. So where did you observe that conversation
15:58:119 occur?

15:58:120 **A I believe there's a reference to it in her document
15:58:221 where she said she believes it was Senator Fain or --
15:58:222 "Senator," excuse me -- Commissioner Fain that
15:58:323 communicated down from the second floor. So I -- it
15:58:424 would have been later than that.**

15:58:425 Q Keep going.

15:58:551 A Yeah, it's, like, second-to-the-last bullet point
15:58:572 there. Again, in my recollection, Commissioners --
15:59:043 and, of course, there's a record of this, but I
15:59:064 haven't reviewed it.

15:59:075 But I believe Commissioner Augustine, myself, and
15:59:106 Commissioner Graves were on the meeting Zoom line,
15:59:147 the public meeting, but neither Commissioner
15:59:198 Grave- -- or Commissioner Sims or Commissioner
15:59:249 Walkinshaw were -- and I looked down -- above the
15:59:320 room, we looked down and saw that they were talking
15:59:341 in the lobby. And I didn't know if they knew that we
15:59:402 were -- excuse me. I didn't know if they knew we
15:59:423 were on, so I informed them that we were on the Zoom
15:59:464 call at that time.

15:59:485 Q So is it correct that there -- there was -- there
15:59:576 were communications about voting in concept or on
16:00:047 frameworks without maps prior to moving into the
16:00:088 action items portion of the agenda?

16:00:129 MR. WONG: Object to form.

16:00:120 THE WITNESS: I'm not quite certain
16:00:181 of the question that you're asking.

16:00:202 Q (By Ms. Mell) Did you have any communications with
16:00:223 anyone about voting on frameworks without maps prior
16:00:304 to moving into the action portion of the agenda?

16:00:325 A I don't recall. We -- I didn't know if -- if the

16:00:411 chair was -- what -- how the chair was going to
16:00:452 proceed once we were all on the call. And, you know,
16:00:513 obviously we did not have actual maps in front of us.

16:01:034 Q So you did know, moving into the action portion of
16:01:065 the agenda, that if you were taking a vote on
16:01:086 anything, it would be in concept, not with actual
16:01:107 maps?

16:01:118 A Yes. In the framework. We use a number of different
16:01:219 words. I don't want to use a lot of words to
16:01:220 describe it. It was a --

11 Q It was the extent --

12 A -- framework proposal.

13 Q -- of it?

14 THE REPORTER: "It was a," what?

15 Sorry, Mr. Fain?

16:01:216 THE WITNESS: It was a frame -- the
16:01:217 framework proposal that -- that we voted on.

16:01:328 Q (By Ms. Mell) Well, now that you made me go way
16:01:419 beyond the last bullet I was on.

16:01:420 A Sorry.

16:01:421 Q So we'll see if we can get through this.

16:01:422 I think we're kind of getting laboriously into
16:01:423 this. Let's try to have the bullet points that
16:01:524 are -- that you would know something about. So I'm
16:01:525 just going to quickly look for your name and see if I

16:01:561 got -- I think we were around 7, right? Yeah, we
16:02:082 were right there.

16:02:093 And did the calendar invite.

16:02:224 Do you remember at some point Commission- -- this
16:02:285 sparks something in my mind, so don't look for it in
16:02:306 the document.

16:02:317 Do you remember Commissioner Graves asking you to
16:02:368 communicate his strategic position to Commissioner
16:02:479 Walkinshaw?

16:02:410 **A With regards to anything in particular?**

16:02:501 **Q** I believe it was as to the maps at the time.

16:02:512 **A Anything specific about the maps?**

16:03:013 **Q** I can't be more specific in -- at this moment.

16:03:114 **A Okay.**

16:03:205 **Q** I can ask it a different way. Let me see if it
16:03:246 refreshes your recollection this way.

16:03:267 Do you recall text communications with Graves
16:03:308 asking you to communicate to Walkinshaw, messaging,
16:03:379 carry a message to Walkinshaw?

16:03:420 **A That may have happened. I would like to -- if you**
16:03:421 **have a text, it'd be helpful to be able to -- to see**
16:03:522 **it so I can comment on it.**

16:03:523 And also, would it be permissible to have a 45-
16:03:524 second break?

16:03:525 **Q** Sure.

16:03:571 **A Is that all right? Apologize.**

16:03:592 MS. MELL: Well, let's take a
16:04:013 five-minute one.

16:04:014 **THE WITNESS: No, I don't -- I**
16:04:015 **don't need a full five minutes. I would want to keep**
16:04:016 **going, but...**

16:04:037 MS. MELL: Okay.

16:04:038 (Pause in proceedings from
16:04:039 4:04 p.m. to 4:06 p.m.)

16:06:270

16:06:271 MR. WONG: At the break, Ms. Mell
16:06:292 and I were discussing the text messages that she
16:06:313 received in response to a Public Records Act request.
16:06:334 And for purposes of this deposition, we have
16:06:425 stipulated that the text messages that were
16:06:456 identified in folders, the folder titled "Fain Texts
16:06:517 from Personal Devices 11-15 to 11-16," we will not be
16:06:568 disputing authentication of those at this -- that
16:07:009 time. And if any issue arises, we agree to confer on
16:07:020 it and discuss.

16:07:021 And, Ms. Mell, does that reflect your
16:07:022 understanding?

16:07:023 MS. MELL: It does. And I
16:07:024 appreciate that stipulation.

16:07:105 MR. WONG: Thank you. Hopefully

16:07:111 that will --

16:07:122 MS. MELL: And then I would just
16:07:133 simply add: To the extent as I'm going through
16:07:164 these, like, there was the exhibit from Graves
16:07:185 yesterday that -- well, we might come across it here.
16:07:236 Let's just see how it goes.

16:07:257 But generally to the extent that we're using the
16:07:278 titles and documents from the public records request
16:07:309 as labeled, the stipulation would be that they are
16:07:330 what they were represented to be by the commission.

16:07:371 MR. WONG: Agree.

16:07:382 And, Mr. Fain, just direction for you. If for
16:07:413 some reason Ms. Mell is referring to a conversation
16:07:434 and it appears incorrect for some reason, it's not
16:07:475 with who it appears to be from based on the label or
16:07:506 Ms. Mell's questions, just please point it out. But
16:07:527 we don't have any reason to believe that will be the
16:07:588 case.

16:07:589 **THE WITNESS: Okay.**

16:07:590 MR. WONG: Thank you.

16:07:591 MS. MELL: All right.

16:07:592 MR. WONG: That may expedite this
16:08:013 some.

16:08:014 MS. MELL: Yeah. And so -- and
16:08:025 this is getting tedious enough that I want to go

16:08:04 1 through it quickly.

16:08:07 2 And to the extent, Commissioner Fain, that you
16:08:09 3 have a specific recollection about content in here
16:08:12 4 that's attributable to you that you can affirm or
16:08:15 5 reject as true and correct and direct me to that, I'm
16:08:20 6 happy to expedite it in that manner. Otherwise, I
16:08:22 7 just got to scroll through it and look for your name
16:08:25 8 and ask you the question.

16:08:26 9 **THE WITNESS: That's probably most**
16:08:28 10 **thorough.**

16:08:29 11 MS. MELL: Okay.

16:08:29 12 Q (By Ms. Mell) Do you have any reason to believe that
16:08:41 13 that 8:45 time frame is inaccurate with regard to
16:08:51 14 when the final proposed frameworks were being
16:08:51 15 communicated?

16:09:01 16 A I don't have any recollection of what time anything
16:09:01 17 happened, so I can't really speak to the -- can't
16:09:11 18 really speak to the times.

16:09:11 19 Q This directive here, "At this point staff was asked
16:09:20 20 to start mapping based on the partisanship numbers in
16:09:20 21 the agreement."

16:09:20 22 Was there a point in time when you directed staff
16:09:22 23 to start mapping based on partisanship numbers in an
16:09:32 24 agreement?

16:09:32 25 A Again, I don't recall -- I don't recall when the ma- --

16:09:451 the mapping activity occurred other than that which
16:09:482 occurred in the event space after midnight.

16:09:573 And throughout this entire day, staff members
16:10:034 were feverishly mapping one thing or another, so
16:10:065 can't give a -- can't give a clear sense of when they
16:10:116 were mapping what.

16:10:127 Q Okay. "Between 9 and 9:30 p.m., Commissioner
16:10:168 Walkinshaw told me he was going to meet with
16:10:179 Commissioner Fain to discuss the congressional map
16:10:210 proposals. Shortly thereafter, they came to the
16:10:241 hotel lobby where I and Paul Campos, Senate
16:10:282 Republican Caucus, were present."

16:10:303 Did that occur?

16:10:314 A Again, I don't know what -- at what time, but there
16:10:345 was a time that evening where the staff members and
16:10:376 individuals referenced there were present in the
16:10:407 lobby. I believe I referenced that earlier in our
16:10:438 conversation.

16:10:439 Q Were you looking at a map on Ms. O'Neil's laptop,
16:10:490 giving instructions on how to make changes to the
16:10:521 map?

16:10:522 A I think we were looking at maps on multiple laptops.
16:10:583 And I can't recall all the details of what -- what
16:11:024 was being discussed.

16:11:025 Q Okay. Do you know whether or not your staff, around

16:11:191 10:45, received an updated congressional map
16:11:222 proposal?

16:11:233 **A I don't recall.**

16:11:294 Q So in this first bullet on Page -- whatever page I'm
16:11:525 on -- 5, it says, "On multiple occasions Commissioner
16:11:586 Augustine was communicating to the commissioners that
16:12:007 they needed to be prepared to take a vote before the
16:12:028 commission lost jurisdiction at midnight."

16:12:059 Is that a correct statement from your
16:12:090 perspective?

16:12:111 **A I don't recall any specific direction from
16:12:132 Commissioner Augustine. I can share that she
16:12:213 communicated the desire that she had that the
16:12:314 commission complete its work in time.**

16:12:405 Q Do you remember a suggestion that the commissioners
16:12:476 should vote on the transmittal letter without any
16:12:517 maps ready to approve?

16:12:518 **A Again, I don't recall any of those -- any
16:12:519 conversation along that. The final -- again, I don't
16:13:020 recall a conversation about it.**

16:13:021 Q Did you execute a resolution with placeholder blank
16:13:122 lines in it?

16:13:123 **A I don't recall if there were placeholder blank lines.
16:13:224 I hadn't reviewed that resolution for several weeks
16:13:225 at minimum back to, I think, the time that it was**

16:13:291 **drafted and first sent to us, so...**

16:13:402 Q I can't tell which exhibit number this has been
16:13:433 marked as. But just showing you what's been labeled
16:13:524 here "Letter_PlanSubmittal_Draft 08.12.21 - No Body -
16:14:015 Signed.pdf (SECURED)" refresh your recollection as to
16:14:056 whether or not you executed a blank resolution or
16:14:137 transmittal letter for purposes of whatever, I guess?
16:14:208 I don't even know what purpose you would do it for.

16:14:239 A **So, well, if you look at the dates here.**

16:14:260 Q Do you need to see these ones bigger?

16:14:291 A **No. No. I think I can provide some context to this**
16:14:322 **document, which is I think this was the -- this**
16:14:353 **particular document, at least based upon the dates**
16:14:384 **that I see there, would be the test authorization**
16:14:415 **document that staff had asked each of the**
16:14:446 **commissioners to electronically sign to make sure**
16:14:477 **that we were signing documents correctly.**

16:14:528 **So based on the signature dates there, my -- my**
16:14:579 **best recollection would be that that is what this**
16:15:020 **document is.**

16:15:021 Q Okay. And so then do you remember -- do you remember
16:15:082 whether or not the tran- -- not the transmittal
16:15:093 letter but the resolution, itself, required file
16:15:124 paths to identify the final plan?

16:15:125 A **Again, I haven't -- I hadn't reviewed that document**

16:15:231 for several weeks up to the time of the final
16:15:272 commission meeting, and I don't think I've looked at
16:15:293 it since.

16:15:324 Q Do you have a recollection of as to whether -- what
16:15:365 form the transmittal letter was in when you signed
16:15:406 it?

16:15:417 A Can you be more specific about what form?

16:15:458 Q Was the form that you signed exactly the same as what
16:15:529 was transmitted?

16:15:510 A I didn't review the document, again, at the time that
16:15:511 I electronically signed it. There was a Internet
16:16:012 outage, and Zoom went -- our Zoom connection went
16:16:103 down. And it was 11:59 or midnight, and I just -- it
16:16:174 was a -- it was chaos.

16:16:215 Q Do you remember signing the final resolution before
16:16:306 it was moved?

16:16:317 A I don't recall doing it before it was moved, but if
16:16:318 you have time stamps that say otherwise.

16:16:419 Q Well, the time stamp I'm looking at on this document
16:16:420 says November 15th, 2021, 23:59.

16:16:521 A Okay.

16:16:522 MR. WONG: Are you sharing a
16:16:523 document on your screen, Joan? I'm not seeing one.

16:16:524 MS. MELL: I'm looking at it in my
16:16:525 hands because I think it's back in a exhibit that has

16:17:031

not yet been marked. Hold on.

16:17:442

Mr. Court Reporter, can we mark this as whatever

16:17:483

number we're up to exhibit, this document that says

16:17:564

"Final Resolution Letter_11.15.21 - signed"?

16:20:555

(Discussion off the record.)

16:21:286

16:21:287

Q (By Ms. Mell) So do you know when the resolution was moved?

16:21:348

16:21:369

A I -- I don't. I -- no.

16:21:480

Q Are you aware of a timeline of any kind that reflects the commission's position on the timing of the motions?

16:21:511

16:21:512

16:21:513

A I'm sorry. I didn't quite follow the question.

16:22:014

Q Have you approved a timeline of the motions?

16:22:015

A Have I approved the timeline of the motions?

16:22:116

Q Correct.

16:22:117

A Sorry. Still don't follow what you're -- what you're asking.

16:22:118

16:22:119

Q Have you approved any representation of the timeline of the 15th and 16th?

16:22:220

16:22:221

A I have not.

16:22:222

Q Okay. Did you ever authorize Chair Augustine to speak on behalf of the commission to the supreme court?

16:22:323

16:22:324

16:22:325

A I don't believe a question of authorization came

16:22:421

before the commission.

16:22:432

Q Did you as a commissioner have the opportunity to make any decisions about the communication from the supreme court requesting a timeline?

16:22:513

16:22:534

16:22:585

A **No. My recollection was that the -- she as the chair was the one that was being charged with responding, not the commission as a whole.**

16:23:056

16:23:087

16:23:098

Q And was that based on anything other than legal advice?

16:23:159

16:23:170

A **I mean, I think that was what the order was, what the order said.**

16:23:211

16:23:212

Q It was directed to her?

16:23:213

A **My -- my best recollection of the order from the supreme court was that the chair was to -- was to provide this --**

16:23:314

16:23:315

16:23:316

Q Okay.

16:23:317

A **-- yeah.**

16:23:318

THE REPORTER: "Was to provide,"

16:23:319

what?

16:23:420

THE WITNESS: Was to provide a

16:23:421

timeline as well as a statement.

16:23:422

Q (By Ms. Mell) So opening up Exhibit 45, I will represent to you that that's the timeline that's been provided to me in the public records requests. So I'm going to scroll down to see.

16:23:523

16:23:524

16:23:525

16:24:141 Looks like the representation in the timeline at
16:24:182 Exhibit 45 is that the chair asks Maria to send the
16:24:233 resolution at 11:59:50 p.m.

16:24:254 Do you see that there?

16:24:265 **A I'm sorry. Which -- what line are you referring to**
16:24:336 **again?**

16:24:337 **Yes, I see that.**

16:24:348 Q Do you have any reason to believe that that is
16:24:379 incorrect?

16:24:380 **A I don't.**

16:24:391 Q Do you remember the motion, or the -- there being a
16:24:442 motion on the resolution prior to midnight?

16:24:413 **A Again, I don't recall -- I don't -- I don't recall**
16:24:514 **the specific mechanics of the meeting. I'm relying**
16:25:015 **on the document that you have here.**

16:25:016 Q Okay. So showing you what's been marked as -- I
16:25:117 didn't mark that one. Shoot. Or else the label
16:25:188 didn't change. Let me close this and get it open
16:25:219 again. There we go. Okay.

16:25:220 Showing you what's been marked as Exhibit 44, do
16:25:321 you recognize that document to be the final
16:25:322 resolution?

16:25:323 **A Based on the time stamps below, I assume it's the**
16:25:424 **final one.**

16:25:425 Q Okay. And do you see your signature on that

16:25:451

document?

16:25:462

A I do.

16:25:463

Q Do you have any reason to believe that the date and

16:25:494

time below your signature is incorrect?

16:25:545

A I don't.

16:25:556

Q Based on the time reflected there, did you execute

16:26:007

the resolution prior to it being moved?

16:26:088

A Again, can you go and see what the --

16:26:119

Q Should we do a side-by?

16:26:110

A Yeah, that might be helpful. I don't have...

16:26:171

Q Where did the -- that's the memo. Where did it go?

16:26:222

There we go.

16:26:213

Let me see if I can get them so we can lookie-loo

16:26:304

at exactly what it says.

16:26:315

Sorry. Tired. Fat fingers.

16:26:316

A I understand.

16:26:317

Q Then you. Okay.

16:26:408

Can you see them there?

16:26:419

A Mm-hmm.

16:26:420

Q Okay. Motion to approve is at 11:59:57.

16:26:521

A Okay.

16:26:522

Q I guess we don't know because the date/time isn't

16:27:023

specific enough, right?

16:27:024

A Yeah, I would probably -- yeah, it doesn't seem to

16:27:225

include a milliseconds, and also I wouldn't want to

16:27:251 vouch for the -- whatever chronometer was being used
16:27:282 to create either one of those stamps when we're
16:27:323 talking about a matter of possibly milliseconds but
16:27:364 certainly seconds.

16:27:385 Q Okay. With regard to Exhibit -- oh, strike that.

16:27:496 Did you have anything to do with the preparation
16:27:527 of this timeline in Exhibit 45?

16:27:548 A No.

16:27:559 Q And you don't know where these times came from?

16:27:510 A I don't have actual knowledge of where those came
16:28:011 from.

16:28:012 Q And you don't have any independent knowledge as to
16:28:013 what the correct times are for any of these noted
16:28:114 events?

16:28:115 A I don't.

16:28:116 Q And do you have any way to ascertain what the correct
16:28:117 times are, to the best of your knowledge?

16:28:118 A Again, I think the time stamp on the document that
16:28:219 you're showing there would be one way, and another
16:28:320 would be to use the time index on the TVW recording.
16:28:421 Those would be the two places that I would look if I
16:28:422 needed to verify. I don't...

16:28:423 Q Okay. So scrolling back through the resolution, do
16:28:524 you see the file? Is this a file path, in your
16:28:525 opinion?

16:28:581 **A** **Appears to be a file path.**

16:29:022 **Q** So when you signed the resolution, do you believe
16:29:113 that these -- these file path numbers were in it?

16:29:164 **A** **Again, I haven't reviewed this resolution since**
16:29:245 **several weeks before it was adopted, so I did not**
16:29:326 **recall what was actually contained within the**
16:29:357 **language.**

16:29:368 **Can you repeat the question for me?**

16:29:399 **Q** Do you know if, when you signed the resolution, these
16:29:440 file paths were in there?

16:29:461 **A** **I don't believe any additional files were sent at the**
16:29:512 **time of signing.**

16:29:513 **Q** Okay. So am I to understand that the files didn't
16:30:014 exist at the time of the signing of the resolution?

16:30:015 **A** **The -- if those files are meant to represent the map**
16:30:126 **files, then that mapping work was done after the time**
16:30:187 **of the signing.**

16:30:208 **Q** And how would I ascertain -- well, strike that.

16:30:259 Do you have an understanding of how the file path
16:30:320 would read to reflect the final map?

16:30:421 **A** **I have -- I don't have any knowledge about the naming**
16:30:482 **conventions that staff used in -- in dividing this.**
16:30:523 **There was a -- yeah, I don't -- I don't recall any**
16:31:024 **discussion about naming conventions outside of short**
16:31:125 **bit of public testimony that we received one day from**

16:31:151 **an interested member of the public.**

16:31:182 Q There was a -- what did you say? There was a what?

16:31:223 A **Said I don't have any recollection of any discussion**

16:31:264 **about naming conventions for the -- for these files**

16:31:305 **other than a bit of public testimony from a random**

16:31:376 **member of the public who -- who came during public**

16:31:447 **testimony once and shared his thoughts about cyber**

16:31:488 **security and -- and naming conventions.**

16:31:529 Q Okay. Do you know whether or not the metadata on the

16:32:100 maps that were finally transmitted would accurately

16:32:151 reflect the final iteration in terms of date and

16:32:212 time?

16:32:213 A **Sorry. I don't quite understand your question.**

16:32:254 Q So if the maps that were finally transmitted contain

16:32:305 in the metadata a date and time, do you know how that

16:32:366 date and time in the metadata on the maps that were

16:32:407 transmitted correlate to when the maps were

16:32:448 finalized?

16:32:489 A **I can't speak to what metadata might accompany a file**

16:32:520 **that I wasn't a party to creating.**

16:32:521 Q Okay. So you were not party to any discussions about

16:32:522 how to label or -- label the files in final form or

16:33:023 whether or not the metadata links to any time clock

16:33:124 that is contemporaneous to the date and time?

16:33:225 A **I don't recall any discussion or presentation during**

16:33:311 the -- during a commission meeting. There may have
16:33:352 been some reference to file names when -- several
16:33:443 weeks before the last day of the commission when
16:33:474 these documents were -- had been -- had been drafted.

16:33:535 Again, they were -- I think everyone was under
16:33:576 the -- I won't speak for everyone. I was under the
16:34:017 impression and the expectation that we would have
16:34:048 these files ready to transmit as part of the -- as
16:34:129 part of the final vote. That was my expectation
16:34:170 leading up to the final few days of this -- of this
16:34:211 process.

16:34:252 Q Okay. All right. Turning back to the memo timeline
16:34:283 from Ms. O'Neil. Let's see. Just trying to refresh
16:34:314 my recollection on the last bullet point we were on.
16:34:415 I think we had left off here with regard to voting on
16:34:496 something before midnight.

16:34:517 Did you ask -- did you ask to seek out any AG's
16:35:018 advice on the legalities of a vote without a map?

16:35:129 MR. WONG: I'll object and instruct
16:35:180 Mr. Fain not to answer to the extent it pertains to
16:35:181 the substance of any communications between you and
16:35:222 the attorney general's office in regard to legal
16:35:283 advice sought or provided.

16:35:284 You can answer to the extent if you -- as to
16:35:325 "yes" or "no" whether you did contact the attorney

16:35:351 general's office at this exact moment.

16:35:372 MS. MELL: Or seek it out. I think
16:35:393 I would modify the direction that way.

16:35:454 **THE WITNESS: I don't recall. I**
16:35:475 **don't believe I contacted the attorneys general --**
16:35:506 **attorney general's office at this time. And I don't**
16:35:537 **have recollection of asking someone to do so on my**
16:36:008 **behalf.**

16:36:029 Q (By Ms. Mell) Were you present at any time you would
16:36:140 have heard the content of what's conveyed in this
16:36:181 bullet point, Ali O'Neil voicing her concerns about
16:36:212 voting without a map?

16:36:213 **A No.**

16:36:414 Q Boy, there's a word I haven't heard.

16:36:515 Okay. Let's keep going here.

16:37:016 MR. WONG: That's one for your
16:37:047 stipulated facts.

16:37:018 MS. MELL: I know. I know. I'm
16:37:079 just trying to envision what kind of font we put that
16:37:120 in and what kind of bold and highlights.

16:37:121 Let me see here. Okay. I see your name in this
16:37:122 one. I see your name here.

16:37:223 Q (By Ms. Mell) I guess you wouldn't have any personal
16:37:224 knowledge on the validity of this, but I'm assuming
16:37:225 you probably don't dispute it; is that correct?

16:37:311 **A** **No personal knowledge.**

16:37:352 **If I may, what time are we at about right now?**

16:37:383 **Q** **Oh, the real time? Real time I have is --**

16:37:404 **A** **Oh, no, no. I'm sorry. Time in the -- in the -- on
16:37:455 the document. I wanted to --**

16:37:466 **Q** **Oh, I don't have anything other than this bullet
16:37:497 comes right before 12:38.**

16:37:498 **A** **Oh. Okay.**

16:37:499 **(Interruption by reporter due
16:38:010 to simultaneous speakers.)**

16:38:011

16:38:012 **THE WITNESS: I don't have any
16:38:013 knowledge of what she was doing that time. I don't
16:38:114 really know what time that is.**

16:38:405 **MS. MELL: Talked about that.**

16:38:416 **Q** **(By Ms. Mell) Would you agree that the AutoBound
16:38:417 Edge upload and processing would take several hours?**

16:38:518 **A** **Yes, I believe that process takes quite a while.**

16:39:019 **Q** **And we talked about that bullet. I think that that
16:39:020 all reflects what you said.**

16:39:121 **How about this sentence in the first bullet on
16:39:122 Page 7? "Commissioners Fain and Walkinshaw ask staff
16:39:223 to look at different scenarios for the 7th and 9th
16:39:224 congressional district border, especially with
16:39:225 Normandy Park."**

16:39:281 I recollect that's consistent with what you said
16:39:322 earlier. Do you disagree?

16:39:323 **A Just put the context around it that that was a very**
16:39:354 **brief conversation that -- that we kind of**
16:39:395 **collectively agreed was not worth the bother. So...**

16:39:466 **Q** Would you agree that you looked at extending the
16:39:497 eastern border down along the edge of Lake Washington
16:39:528 to balance the population?

16:39:549 **A We did briefly look at what would be necessary for**
16:39:510 **that to occur and quickly concluded that it was**
16:40:021 **not -- it was not -- again, not worth the -- not**
16:40:012 **worth the effort.**

16:40:113 **Q** Do you agree at approximately this time you were
16:40:114 probably one of the two commissioners here agreeing
16:40:115 to send the congressional map file to the commission
16:40:216 staff?

16:40:217 **A I was still present at the -- at the event room at**
16:40:318 **that time. And since it was the -- my staffer that**
16:40:319 **sent the file, I was likely present for that.**

16:40:320 **Q** And you don't disagree that that occurred?

16:40:421 **A Again, I don't have clear recollection of that**
16:40:422 **happening, but -- though I believe Paul had sent the**
16:40:523 **file at some point, so...**

16:40:524 **Q** Do you remember a discussion about hurrying up and
16:40:525 finishing the maps before the reporters woke up?

16:41:021 A Where are you referencing?

16:41:112 Sorry. Am I looking for your cursor or something
16:41:143 else?

16:41:154 Q Oh. Right here.

16:41:165 A Yeah, I don't remember any specific conversation
16:41:176 around that. I know that I personally wanted the --
16:41:227 I wanted to have the maps completed quickly so
16:41:288 that -- so that they were out there.

16:41:339 Q Do you remember communications that are consistent
16:41:370 with this bullet point?

16:41:391 "At around 5:30 or 6 a.m., Commissioner Fain left
16:41:432 the Hampton Inn. Soon after this, Commissioner
16:41:473 Graves received a phone call, which I believe was
16:41:504 from Commissioner Fain."

16:41:515 A I don't recall a conversation at that time, but
16:41:586 that's not -- I don't -- I can't say that one didn't
16:42:027 occur.

16:42:038 Q Did you have a conversation with Commissioner Graves
16:42:079 about the questionable legality of what happened and
16:42:130 communicate that to the commissioners?

16:42:121 A Again, I don't recall the conversation. But, again,
16:42:222 not to say it did or did not happen. I think we were
16:42:283 operating on very little sleep at that point or no
16:42:294 sleep.

16:42:305 Q Were she says, "The vote" -- "and the vote should be

16:42:351 portrayed to the public," do you know what that
16:42:382 means?

16:42:383 **A I don't want to put words in her mouth. I know**
16:42:434 **what -- I think we had discussed earlier about what I**
16:42:465 **communicated to Chair Augustine was what I -- you**
16:42:526 **know, what I thought needed to be communicated.**

16:42:597 **Q And is that the point about that they were not**
16:43:108 **complete?**

16:43:129 **A I had communicated earlier in the evening with Chair**
16:43:110 **Augustine that my position that the commission did**
16:43:211 **not -- based on the attorney general's e-mail, the**
16:43:212 **commission had not completed its work --**

16:43:213 **Q Okay.**

16:43:214 **A -- in time and that -- that that should be**
16:43:315 **communicated.**

16:43:406 **Q Okay. So I think, then, at this stage in her**
16:43:417 **recitation, commissioners must necessarily exclude**
16:43:418 **you because you were gone by that time since the call**
16:43:519 **had come from you right around then.**

16:43:520 **So I doubt you're going to have any firsthand**
16:43:521 **knowledge about any of this stuff.**

16:44:122 **I think I asked you whether or not you agree not**
16:44:123 **to post the maps before the 10 a.m. press conference.**

16:44:124 **Did I?**

16:44:225 **A Yeah. And I don't recall any conversation around**

16:44:241

that.

16:44:252

Q Okay. There's no more scrolling.

16:44:393

16:44:424

16:44:455

16:44:486

Let's move on. I'm going to close some of this down so I can get it cleaned up. I think we might have to trip up a little bit on exhibit numbers as I move into the text messages, so bear with me here.

16:44:517

16:45:018

16:45:039

And, Mr. Court Reporter -- I don't think it's in this one. I believe we -- that's you. We dealt with those.

16:45:030

16:45:101

16:45:142

Okay. So where are we in the -- where are we in what you have that starts with this number? Does it have an exhibit already in it?

16:45:153

(Discussion off the record.)

16:46:114

16:46:265

MR. WONG: A time check here, Joan.

16:46:296

We are at 4:46 Seattle time.

16:46:307

MS. MELL: Okay.

16:46:318

16:46:319

MR. WONG: So wanting to hopefully wrap this up soon.

16:46:320

MS. MELL: Yeah.

16:46:421

16:46:422

16:46:423

16:46:524

Okay. These have all been premarked. And since we futzed with some of the numbers, can you just -- up to the duplicated numbers, which would be 43 through 45, I'm just going to put an "a" there.

16:47:025

Does that give anybody heartburn?

16:47:031 MR. WONG: As long as the court
16:47:052 reporter can follow it and we get a final set of
16:47:083 exhibits properly marked, I don't have any heartburn
16:47:104 over that.

16:47:115 MS. MELL: Okay. I think I just
16:47:126 need to go up to that number, so there we go. All
16:47:157 right.

16:47:168 Showing you what's been marked as Exhibit 43a --
16:47:239 let's move it back over here. I don't know why it's
16:47:260 doing that.

16:47:401 (Discussion off the record.)

16:47:512
16:47:513 Q (By Ms. Mell) And Adam Smith. Do you know which day
16:47:514 this text message reflects with regard to your
16:48:015 communications with Adam Smith?

16:48:126 Would that be Tuesday the 16th at 7:58?

16:48:117 **A I think that's a fair assumption. Because just**
16:48:218 **inferring based on whether or not the commission was**
16:48:219 **going to release maps, 'cause he would have -- if it**
16:48:320 **was later, he would have known that it had.**

16:48:321 Q I don't know why these aren't scrolling.

16:48:422 **A Might be the end of the text.**

16:48:423 Q Oh. Is it? Okay.

16:48:424 **A (Videoconference technical difficulties.)**

16:48:425 THE REPORTER: What was that there,

16:48:491

Mr. Fain?

16:48:502

THE WITNESS: I said that could be

16:48:513

the end of the text. She asked why it was not

16:48:534

scrolling. That was my...

16:48:555

Q (By Ms. Mell) Do you remember telling Adam Smith in

16:48:566

the follow-up phone call that you did not reach a

16:48:597

deal?

16:49:008

A I don't remember -- I don't remember if we even had a

16:49:089

phone call at this point.

16:49:120

Q With regard to Exhibit No. 45a, this appears to be a

16:49:221

text to -- is this a text to you? You're receiving

16:49:272

via text Sarah Augustine's communication to the chief

16:49:313

justice; is that correct?

16:49:314

A It appears that that is what this document is.

16:49:375

Q And do you recall whether or not this was a done deal

16:49:426

at the time or whether or not you were approving it?

16:49:417

A Again, I don't believe I had any approval authority

16:49:518

for this -- for this.

16:49:519

Q Okay. I think this just generally was procedural

16:50:220

talk with the chair about publicizing map proposals.

16:50:221

Do I have that correct?

16:50:222

A Yeah, that was in the previous month. That was about

16:50:323

a month before the final deadline.

16:50:324

Q Okay. Okay. Do you know what this means, document?

16:50:525

A Based on the time, my -- and I'm not a hundred

16:50:591 percent sure, but I am more sure than not that it is
16:51:032 the memo that we've gone over earlier.

16:51:063 Q Okay. Okay. And I don't see the time stamp. Can
16:51:134 you -- do you know when that was?

16:51:155 A It would have been sometime the morning, I believe
16:51:226 sometime in the morning of -- well, this is with
16:51:307 reference to the draft, so I'm not entirely certain
16:51:358 at what the time stamp is.

16:51:379 Q Okay. And I don't need to have this whole
16:51:400 conversation on the record, but just make note that
16:51:421 we need to make sure you don't destroy any of your
16:51:442 texts and that we ultimately get a metadata version
16:51:483 so that these times are reflected.

16:51:484 A Okay.

16:51:515 Q And am I correct that you're the one making these
16:52:026 screenshots?

16:52:017 A Yes, that's correct.

16:52:018 Q Did you delete any texts before you made screenshots?

16:52:019 A I don't believe so.

16:52:100 Q In this communication, "We were walking back together
16:52:221 he will be on in 2," what does that mean?

16:52:222 A 6:06 p.m.

16:52:323 This was after I had inquired whether or not she
16:52:424 would be willing to do a mediator's proposal. And I
16:52:525 think this is that Paul and I had walked over to grab

16:52:551 a bite to eat, but I think she was ready to meet, and
16:52:592 so Paul was headed back to meet with her.

16:53:013 Q And why didn't you go with Paul to meet with her? Is
16:53:104 that because you were assigned to the different
16:53:125 negotiations?

16:53:136 A This was a issue that she was working with between
16:53:167 April and Paul. Really didn't involve me. I had
16:53:228 just suggested that she might offer some assistance.

16:53:249 Q Okay. I don't think this one tells us anything more.

16:53:310 A I think that's a similar screenshot.

16:53:411 Q Nothing new here, it doesn't look like, either.

16:53:452 I thought there'd be something further down. Let
16:53:513 me just look here.

16:53:594 Okay. All right. So here's a text thread
16:54:025 between you, Paul, and Sarah; is that correct?

16:54:016 A Yes.

16:54:017 Q One in which you didn't participate?

16:54:118 A It doesn't appear so.

16:54:179 Q When it says, "When are you ready to come back to our
16:54:220 meeting?" what did that mean?

16:54:221 A I -- again, I assume it means the -- come back to the
16:54:322 Zoom meeting.

16:54:323 Q The public meeting?

16:54:324 A Correct.

16:54:325 Q What does -- when Sarah is saying, "Staff think that

16:54:451 if we have a shape file and a resolution that will be
16:54:482 enough," what did you do with that information?

16:54:513 **A I don't think I did anything with that information.**

16:54:594 Q It's correct that you never had a shape file on the
16:55:025 15th?

16:55:046 **A I'm sorry. What was your -- what did you just say
16:55:067 there?**

16:55:078 Q It is correct that you never had a shape file on the
16:55:109 15th for --

16:55:110 **A That's correct.**

16:55:111 Q Okay.

16:55:112 THE REPORTER: "For," what, Joan?

16:55:113 MS. MELL: I think I got halfway
16:55:114 through the word "for presentation," but I think he
16:55:215 assumed that that's what I meant.

16:55:216 Q (By Ms. Mell) Any correction there, Commissioner?

16:55:217 **A We did not have a shape file on the 15th for any
16:55:318 final maps.**

16:55:319 Q Repeat.

16:55:420 I don't know why these got repeated like that.

16:55:521 I mean, when you were doing screenshots, were you
16:55:522 sometimes overlapping just to make sure you got the
16:55:523 whole conversation and not verifying for sure that it
16:56:024 was du- -- okay.

16:56:025 **A Yeah, so they're -- usually the last conversation**

16:56:041

will be part of the first and the next.

16:56:192

Q Okay. So this is a text communication between you and Walkinshaw, giving status updates as to the negotiations.

16:56:223

16:56:284

16:56:295

Is that a fair -- or is that a correct characterization of these communications?

16:56:336

16:56:347

A I would probably correct. I would characterize that as a bit more bluster than a dispassionate update on the stage of the negotiation.

16:56:388

16:56:459

16:56:480

Q And when you're saying "blustered," sort of strategically stating things in a way to move the process along?

16:56:511

16:56:582

16:56:583

A Just to make my contention clear that I'm -- that a plan involved both congressional and legislative, in the event that that somehow put additional pressure to find resolution for commissioners.

16:57:014

16:57:085

16:57:116

16:57:187

Q Okay. So did you expect that, with that communication, that messaging would go back to April?

16:57:218

16:57:289

A That message was really intended for Brady. So I -- in my mind, it did not need to go anywhere beyond that.

16:57:320

16:57:321

16:57:402

Q Okay. Okay. And so then is this you meeting -- indicating that you met with Brady to talk about his communications with April?

16:57:523

16:57:524

16:58:025

A Part of that screen is cut off there, so I'm -- I

16:58:051 can't see the right half. I'm going to --

16:58:082 Q Which way? My right? This way?

16:58:123 A It might be something I can fix.

16:58:144 But, yeah, I got it now.

16:58:185 Mm-hmm. Okay. Can you repeat the question for
16:58:206 me?

16:58:237 Q Does this text communication with Brady indicate that
16:58:278 you were meeting up with Brady in the hotel to talk
16:58:319 about the status of the negotiations he was just
16:58:360 finishing up with April?

16:58:381 A No. I think he's just telling me why he's held up.

16:58:472 Q This, "Ok, give me a sec- I'll be down in 10,"
16:58:513 suggests to me that he's trying to meet up with you.

16:58:574 Is that an incorrect assumption?

16:58:595 A Yes, I believe I -- I asked -- he asked if you want
16:59:016 to touch base. I had responded, "Sure. Where at?"
16:59:067 He let me know why he was not ready at this exact
16:59:128 moment. I told him where I was, and then he told me
16:59:149 he'd be down soon.

16:59:180 So it was really just transitory stuff of, you
16:59:221 know, arranging to meet.

16:59:222 Q But what did you meet up and talk about?

16:59:223 A I don't recall. But this was at a time when we were
16:59:304 discussing the -- you know, we had had regular
16:59:325 conversations about the congressional maps during

16:59:361

these times.

16:59:372

Q So based on this exchange, would you expect that

16:59:473

right around 10:13 on Monday, you met with Brady to

16:59:514

discuss the congressional maps?

16:59:565

A I believe that -- I don't know what time I first met

17:00:066

with Brady on -- on Monday morning, and that doesn't

17:00:087

provide me enough information. I think it tells me

17:00:118

that they were -- that Brady and his staff were going

17:00:159

to send us over some concept proposals to look at.

17:00:210

I don't think it -- I think there was probably

17:00:211

some time passage between the, "Ok, give me a sec-

17:00:212

I'll be down in 10," and the, "We're getting u a map

17:00:313

in a few." But I -- yeah.

17:00:314

Q Okay. Like, there was a meeting in between here in

17:00:315

the long run?

17:00:416

A Yeah, I think that -- that may have occurred. We did

17:00:417

meet prior to 10:13 that evening.

17:00:418

Q And discussed redistricting?

17:00:519

A I believe so.

17:00:520

Q Okay. Why did that not open?

17:01:021

You and Brady. I don't know why this changed

17:01:122

format, but it seems to have.

17:01:123

So do these text exchanges reflect you and Brady

17:01:124

negotiating the terms?

17:01:125

A I don't know what -- I mean, this appears to be a

17:01:471 back-and-forth with regards to the congressional map.
17:01:532 I don't know what -- what specific questions do you
17:01:553 have?

17:01:564 Q My specific question is: Does -- did -- was there --
17:02:055 was there an exchange around this time of maps that
17:02:076 were reflective of the terms you guys were
17:02:107 negotiating?

17:02:118 A I mean, I think there were draft maps that went back
17:02:179 and forth frequently, and then there was the
17:02:190 conversation that we held together with our staff in
17:02:211 the lobby. So I think they sort of all -- all fit
17:02:232 together as part of the process.

17:02:323 Q I don't think that's new.

17:02:424 MR. WONG: Joan, we're a little bit
17:02:455 after 5:00 right now. You said you had a meeting.
17:02:496 And we've been going since 9 a.m. So if we could
17:02:517 wrap it up, please.

17:02:518 MS. MELL: We've got seven more to
17:02:559 go.

17:02:520 MR. WONG: Okay. Expedite it.
17:03:021 That'd be appreciated.

17:03:122 MS. MELL: These are all August,
17:03:143 August, August.

17:03:204 Looking for the one, but this was -- okay.

17:03:205 Q (By Ms. Mell) So here's you sending your letter, so

17:03:201 that is the Adobe document. I see that.

17:03:312 That's to Paul? Did you agree?

17:03:443 **A I did, yes.**

17:03:444 Q Okay. Okay. This is the one I've been looking for.

17:03:595 Okay. I think.

17:04:056 Okay. Yes, this is the one I'm looking for.

17:04:117 So can you tell from this text exchange set forth
17:04:158 in Exhibit 61 whether or not this is you, the colored
17:04:219 communications are you?

17:04:210 **A I believe it is -- I believe the blue-colored box**
17:04:211 **inside the gray box is me.**

17:04:312 Q And Paul Graves communicated to you, "And I think I
17:04:313 mentioned it yesterday, but you can absolutely tell
17:04:314 him that I'm a hard no on the congressional map
17:04:315 without a leg map."

17:04:406 That's Paul Graves asking you to tell Walkinshaw
17:04:507 that he -- that Graves is a hard "no" on the
17:04:518 congressional map without a leg map?

17:04:519 MR. WONG: Object to form.

17:05:020 **THE WITNESS: I believe that is a**
17:05:021 **text message from Paul.**

17:05:022 Q (By Ms. Mell) To that effect?

17:05:023 Did you tell Walkinshaw that Graves was a hard
17:05:124 "no" on the congressional map without a legislative
17:05:125 map?

17:05:171 **A** I think as we talked about before, I expressed my
17:05:232 position that it was a plan involved both a
17:05:323 legislative and a congressional map, or my position
17:05:364 at the time. And I actually don't recall whether or
17:05:385 not I did, in fact, tell him Paul's position.

17:05:456 **Q** Does your text message to Paul suggest that you were
17:05:527 telling Paul you had told Walkinshaw that it was both
17:05:598 your positions that you were both hard "no" on the
17:06:029 congressional map without a leg map?

17:06:010 **A** My text message, it does say that, yes.

17:06:081 **Q** Do you have any reason to believe you did not do
17:06:112 that?

17:06:113 **A** I just am stating from my recollection. I'm not
17:06:164 certain that I did. But I -- that is my text
17:06:215 message, so...

17:06:216 **Q** All right. So this now is you communicating with
17:06:317 Sims about meeting to discuss the congressional
17:06:418 district maps; is that correct?

17:06:419 **A** Sorry. I'm switching earphones.

17:07:120 **Are you able to hear me right now?**

17:07:121 **Q** Yep.

17:07:122 **A** Okay. Thanks.

17:07:223 **Yep, that's what it appears that I'm texting --**
17:07:224 **I'm sorry. This is to April Sims, is the recipient**
17:07:225 **of this.**

17:07:311

MR. WONG: Can you scroll to the

17:07:322

top of this one, Joan, just so he can see the name?

17:07:353

THE WITNESS: Yeah.

17:07:364

MR. WONG: Thank you.

17:07:385

Q (By Ms. Mell) So you invite, "Would u like a visit
17:07:486 from the congressional visit fairy?"

17:07:507

Did that mean you?

17:07:528

A I assume I was referencing myself.

17:07:559

Q Okay. And April's negotiating back and saying, if

17:08:010

you say "yes" to the legislative district proposal,

17:08:011

then she would be free to talk about congressional

17:08:012

districts?

17:08:113

A I interpret that as her making a joke there.

17:08:114

Q Meaning -- what's the joke?

17:08:115

A The joke is --

17:08:216

Q I mean, don't you think -- I'm sorry.

17:08:217

A Go ahead. I'm sorry. What were you going to say?

17:08:218

Q April Sims was serious that she wanted you to agree

17:08:319

to the legislative district proposal so that she

17:08:320

could talk to you about congressional districts,

17:08:321

correct?

17:08:322

A You would have to --

17:08:423

MR. WONG: Form.

17:08:424

THE WITNESS: Excuse me.

17:08:425

You would have to ask her what her intention was.

17:08:441
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17:10:024
17:10:025

What I read in that was that it -- I read that as being a joke.

(Clarification by reporter.)

Q (By Ms. Mell) Meaning she's ribbing you, that she would --

A Yes.

Q -- still talk to you, but she wasn't serious? Okay.

A I think, yeah, both joking. And then I don't believe we had a follow-up conversation there, so I think it was her way of -- again, how I interpreted her way of saying, "I'm focused on the LD maps," and then giving me a little poke like, "You do everything we want and, sure, I'd be happy to chat," which is like a ribbing to your point.

Q Okay. What's the, "Or you can call Brady," mean?

A I think it's exactly what it says, which is if you want to work on the congressional district maps, should continue working with Brady.

Q She would continue working with Brady, or you could call Brady?

A That I should call Brady.

Q Oh, that you should. I get it. Okay. I get it now. All right. I'm getting tired.

Okay. Let's see. Don't care about your lattes.

17:10:171

This is the same.

17:10:232

More duplication than I recall.

17:10:403

Okay.

17:10:454

A And again.

17:10:465

Q And again.

17:10:466

MS. MELL: All right. Thank you.

17:10:507

I've done what I can do in the time frame we've got

17:10:558

allotted here.

17:10:559

MR. WONG: And, Mr. West, do you

17:10:560

plan on asking any questions? If so, I'd ask that

17:10:591

they be very brief, because we are over time.

17:11:022

MR. WEST: I do plan on asking some

17:11:033

very brief questions, if that's okay.

17:11:054

MR. WONG: Let's just wrap it up

17:11:075

right now and get it done. But please do keep them

17:11:106

brief, I request.

17:11:117

MR. WEST: Okay.

17:11:128

17:11:129

17:11:120

EXAMINATION

17:11:121

BY MR. WEST:

17:11:122

Q Mr. Fain, do you recall at around 12:38 a.m. on the

17:11:123

16th, a point where all the staff and the

17:11:224

commissioners gathered in that main meeting or event

17:11:225

room on the first floor of the Hampton Inn hotel?

17:11:321 A Commissioners and staff were in and out of the event
17:11:422 room throughout the early morning hours of -- of, I
17:11:483 guess that'd be Tuesday morning. So I recall being
17:11:534 there during those hours.

17:11:545 Q Do you recall a point where all the commissioners and
17:11:586 staff gathered in the meeting room?

17:12:017 A I don't recall a -- the time when they were all
17:12:078 gathered in a -- not to -- not to parse words. I
17:12:179 want to -- there is a time when all the commissioners
17:12:210 and staff may have been in the event room. But in
17:12:211 terms of gathered around a central point in
17:12:212 conversation, if that was the insinuation, I don't
17:12:313 recall a time where that occurred.

17:12:314 Q Do you recall a time when they were all in the event
17:12:315 room?

17:12:316 A Not specifically. But, again, commissioners and
17:12:417 staff were coming in and out rather frequently, so it
17:13:118 would be --

17:13:119 Q To the extent that all --

20 THE REPORTER: Sorry. "Rather
21 frequently, so it would be," what? Mr. Fain. Sorry.

22 THE WITNESS: Oh, I'm sorry. What
23 was the...?

24 THE REPORTER: "Not specifically.
25 But, again, commissioners and staff were coming in

1 and out rather frequently..." Was there more after
2 that?

3 **THE WITNESS: I don't know what**
4 **else I would have said.**

5 THE REPORTER: Okay.

6 **THE WITNESS: Sorry.**

7 THE REPORTER: No problem.

8 Sorry, Mr. West. Go ahead.

17:13:159 Q (By Mr. West) Extent that four commissioners may
17:13:160 have been present in that room at the same time, is
17:13:211 it fair to say you wouldn't recall that?

17:13:212 **A I don't recall -- can you -- can you restate the**
17:13:313 **question? I want to make sure I'm answering it**
17:13:314 **clearly.**

17:13:315 Q To the extent that all four commissioners may have
17:13:316 been present at the same time in that event room, is
17:13:407 it fair to say that you would not recall that?

17:13:418 **A I cannot -- I will not categorically say that there**
17:13:519 **was no time, that all four commissioners were not**
17:13:520 **located somewhere in that event room at the same**
17:14:021 **time.**

17:14:022 Q Okay. So do you recall a time when they were all
17:14:023 there together?

17:14:024 **A I don't specific --**

17:14:125 Q All in the event room.

17:14:10 1 A Yeah, I don't specifically recall a time when all the
17:14:15 2 commissioners were in the room together, but I'm not --
17:14:19 3 I'm not stating that that may not have occurred. It
17:14:22 4 was a large event space.

17:14:23 5 Q Back to the original question.

17:14:25 6 To the extent that all the commissioners were
17:14:27 7 there in the room at the same time, you don't
17:14:30 8 remember that?

17:14:31 9 MR. WONG: Object to form.

17:14:31 10 THE WITNESS: Yeah, I think I've --
17:14:31 11 I've tried to answer that question the best of my
17:14:31 12 ability.

17:14:40 13 MR. WEST: Okay. Thank you.

17:14:44 14 Q (By Mr. West) Do you agree that the commissioners
17:14:46 15 agreed to send the congressional map file to
17:14:51 16 commissioner staff -- to commission staff at around
17:14:56 17 4:37 a.m.?

17:15:01 18 A Again, I don't recall the time that -- that any of
17:15:01 19 that occurred. But as I previously stated, I believe
17:15:12 20 that Paul Campos sent that to commission staff
17:15:12 21 sometime either before or shortly after I left the
17:15:22 22 hotel.

17:15:22 23 Q Okay. Do you recall what time you left the hotel?

17:15:30 24 A I think I've been asked that question before, and I
17:15:30 25 think we said sometime between 5 and 5:30, but I

17:15:361

don't --

17:15:362

Q Okay.

17:15:403

A -- recall specifically.

17:15:414

Q Do you recall the commissioners agreeing to send the congressional map files to commission staff?

17:15:445

17:15:496

A I don't recall a time where there were more than Commissioner Walkinshaw and I reviewing anything to do with the congressional maps in that time frame. I don't recall.

17:15:577

17:16:048

17:16:109

Go ahead.

17:16:110

17:16:111

Q Okay. Is your memory perfect during this period of time?

17:16:182

17:16:183

MR. WONG: Object to form.

17:16:214

17:16:215

17:16:216

THE WITNESS: It's a very late -- very late, slash, very early hour without a lot of sleep.

17:16:277

Q (By Mr. West) So to the extent that you could have been discussing that matter with more than one other commissioner, is it fair to say that you might not recall that at this point?

17:16:308

17:16:319

17:16:320

17:16:321

A The -- I have referenced one other time where I had -- where I recall referencing the congressional map with another commissioner, and that was when I asked Commissioner Graves if he wanted to take a look, which he declined.

17:16:522

17:16:523

17:17:024

17:17:025

17:17:061 And to my recollection, that was the only other
17:17:082 time that I had a conversation with another
17:17:113 commissioner other than Commissioner Walkinshaw about
17:17:144 the congressional maps --

17:17:145 Q Is it possible --

17:17:156 A -- during that time frame.

17:17:167 Q Oh. Sorry.

17:17:168 Is it possible that there were other such times
17:17:189 that you do not now recall?

17:17:200 MR. WONG: Object to form.

17:17:221 **THE WITNESS: I can only state to**
17:17:212 **what I can recall right now, and I don't recall**
17:17:213 **another time.**

17:17:324 Q (By Mr. West) Okay. Do you recall a point where the
17:17:355 commissioners were urging staff to hurry and finish
17:17:386 up the maps so they could be posted as quickly as
17:17:417 possible before the reporters woke up?

17:17:418 A I think some form of this question has been asked
17:17:419 before. And I think there was a general sense of
17:17:520 urgency to complete the mapping job so that we could
17:17:521 make the maps public.

17:18:022 Q Do you recall which commissioners were urging staff
17:18:023 to do that?

17:18:024 MR. WONG: Object to form.

17:18:025 **THE WITNESS: I don't recall.**

17:18:101 Q (By Mr. West) Do you recall any communications with
17:18:152 one or more commissioners about that?

17:18:193 A Can you specify what "that" is in the subject?

17:18:234 Q "That" being subject of finishing up the maps quickly
17:18:275 or -- and/or getting them done before the reporters
17:18:316 woke up.

17:18:327 A I don't recall anything in reference to a specific
17:18:398 time that we were trying to reach. I personally did
17:18:439 not anticipate that that process would take as long
17:18:410 as it did.

17:18:501 Q Do you recall any communications with the other
17:18:512 commissioners about finishing up the maps?

17:19:013 A Had conversations with -- I mean, I've already
17:19:014 referenced conversations with Commissioner Walkinshaw
17:19:115 with regards to the -- the work that was done after
17:19:116 midnight with regards to the congressional maps.

17:19:117 Q Do you recall any conversations involving -- serial
17:19:118 or otherwise -- involving more than one other
17:19:219 commissioner about finishing up the maps?

17:19:220 MR. WONG: Object to form.

17:19:221 THE WITNESS: Yeah, I'm a little
17:19:322 confused at what the question is. I think I've
17:19:323 previously expressed the -- previously described the
17:19:424 activities that I was involved in during this time
17:19:425 frame.

17:19:491 Q (By Mr. West) Okay. Do you recall any time during
17:19:572 that period where you discussed with -- either
17:20:013 serially or at one point with more than one other
17:20:054 commissioner finishing up the maps?

17:20:095 MR. WONG: Object to form.

17:20:106 **THE WITNESS: Yeah, I'm sorry. I**
17:20:157 **don't -- I don't fully understand the question.**

17:20:208 **I worked with Commissioner Walkinshaw on the**
17:20:259 **completion of the -- of the congressional maps during**
17:20:210 **that time.**

17:20:211 Q (By Mr. West) Do you recall any period where you had
17:20:312 any discussions with more than one commissioner
17:20:313 concerning finishing up the maps?

17:20:414 MR. WONG: Objection; asked and
17:20:425 answered.

17:20:446 Mr. West, this is going to be --

17:20:417 MR. WEST: I think he's been
17:20:478 evading this question. There's a yes-or-no question.
17:20:419 If he wants to say "yes" or "no" to that, I'd be
17:20:520 happy to hear that answer.

17:20:521 MR. WONG: I disagree, Mr. West.
17:20:522 I'm lodging my objection for the record.

17:20:523 MR. WEST: Okay.

17:20:524 MR. WONG: The witness can answer.
17:21:025 It's been asked and answered now already.

17:21:041 MR. WEST: Is that "yes" or a "no"?
17:21:052 I have not heard a "yes" or "no" to that.

17:21:063 THE WITNESS: I apologize. I think
17:21:084 I was trying to understand what you were asking.

17:21:105 I don't recall a time when I was involved with a
17:21:166 conversation with more than one other voting
17:21:247 commissioner with regards to the substance of -- of
17:21:318 the -- of the maps.

17:21:339 Q (By Mr. West) Okay. Are you sure that that didn't
17:21:360 happen?

17:21:381 MR. WONG: Object to form.

17:21:412 THE WITNESS: Again, I think I've
17:21:413 answered that question. To the best of my
17:21:414 recollection, I don't recall.

17:21:415 Q (By Mr. West) Okay. Your recollection during these
17:21:516 events, because you were so tired because it was so
17:21:517 chaotic, is admittedly not perfect?

17:22:018 A I'm not representing my recollection as being
17:22:019 perfect.

17:22:020 Q Okay. So for the record, then, your recollections of
17:22:021 this -- of these events during the 12:30 to 5:00 or
17:22:122 so when you left are imperfect?

17:22:123 Very good.

17:22:124 THE REPORTER: Sorry. Can I get an
17:22:125 answer there?

17:22:171 MR. WONG: Mr. West, can we please
17:22:302 wrap this up? This is going on longer --

17:22:343 MR. WEST: I have just a couple
4 more questions.

5 MR. WONG: Okay. Thank you.

6 THE REPORTER: So I didn't get the
7 last answer from you, Mr. Fain.

8 **THE WITNESS: I'm sorry. I'm a bit**
9 **lost here. I don't even know what we're...**

17:23:010 MR. WEST: Apparently Mr. Fain does
17:23:011 not recollect the last question.

17:23:112 Q (By Mr. West) Do you recall leaving the Hampton Inn
17:23:113 at some point in the morning?

17:23:114 **A Yes.**

17:23:205 Q Do you recall what time you left?

17:23:216 MR. WONG: Objection to form.

17:23:217 **THE WITNESS: As previously stated,**
17:23:218 **it's my recollection that I left sometime between 5**
17:23:319 **and 5:30.**

17:23:320 Q (By Mr. West) Okay. And did you make any phone
17:23:321 calls on your way home?

17:23:322 **A As we've discussed before, I don't recall making a**
17:23:423 **phone call, but I'm not -- I don't -- I can't**
17:23:524 **categorically say that I didn't.**

17:23:525 Q So it's possible you made a phone call, but you do

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17:24:300
17:24:311
17:24:412
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not recall now?

A That's possible.

Q Thank you. Very good.

Generally, do you have any medical or physical problems that would impair your memory or subject you to amnesia?

Are you in good health?

A To your first question, not to my knowledge.

To your second question, I'm in fair health.

MR. WEST: Thank you very much.

I'm done with this witness.

THE WITNESS: Thank you.

MS. MELL: I don't need to go back on the record.

(Signature reserved.)

(Deposition concluded at 5:24 p.m.)

(Exhibit Nos. 41 through 43, 43a, 44, 44a, 45, 45a, and 46 through 65 marked for identification.)

A F F I D A V I T

I, Joe Fain, 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 attached corrections.

Joe Fain

Date: _____

1 STATE OF WASHINGTON) I, John M.S. Botelho, CCR, RPR,
2) ss a certified court reporter
3 County of Pierce) in the State of Washington, do
4 hereby certify:

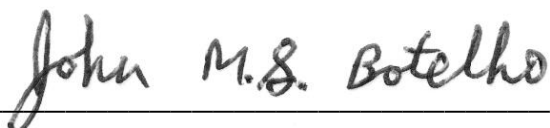
5 That the foregoing deposition of JOE FAIN was taken
6 before me and completed on January 12, 2022, and thereafter
7 was transcribed under my direction; that the deposition is a
8 full, true and complete transcript of the testimony of said
9 witness, including all questions, answers, objections,
10 motions and exceptions;

11 That the witness, before examination, was by me duly
12 sworn to testify the truth, the whole truth, and nothing but
13 the truth, and that the witness reserved the right of
14 signature;

15 That I am not a relative, employee, attorney or counsel
16 of any party to this action or relative or employee of any
17 such attorney or counsel and that I am not financially
18 interested in the said action or the outcome thereof;

19 That I am herewith securely sealing the said deposition
20 and promptly delivering the same to Gregory J. Wong.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 this 26th day of January, 2022.

23 

24 John M.S. Botelho, CCR, RPR
25 Certified Court Reporter No. 2976
(Certification expires 05/26/22.)

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Date: January 26, 2022

To: Gregory J. Wong
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Seattle, Washington 98101-3404

Case: Washington Coalition for Open Government v. State of Washington
Cause No.: 21-2-02069-34
Deposition of: Joe Fain
Date Taken: January 12, 2022

The above transcript must be read and the Correction Sheet signed within 30 days of this notice or before the trial date. If the Correction Sheet is not signed within that time period, signature will be deemed waived for all purposes.

Please contact the witness and arrange a convenient time and place for reading and signing.

After the Correction Sheet is signed, please retain the signed original Correction Sheet.

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Exhibits	0	
Fain Exhibit 41 4:8 106:19,24 117:14 119:24	08.12.21 191:4	62:8 64:5 65:24 68:5 76:14 77:12,15 79:13 81:24 87:11 90:18 94:25 95:18,21 99:11,14 120:2 121:5,6 157:1 161:13 172:3 173:15 192:20 193:20 211:5,9,17
Fain Exhibit 42 4:9 107:23,25 109:2 110:8,11 111:6,24 112:10,25	1	16th 23:15,21,24 24:8 26:10 30:17, 21,24 31:2,4,7 32:16,20,23 33:11,13 39:25 40:5,9 42:10,12,13 43:16 46:4,22,24 47:7 50:10 88:8 115:9 123:19 124:2 136:20,24 138:8 146:6 147:16 161:13 193:20 207:16 220:23
Fain Exhibit 43 4:12	1 22:16 24:2,6 27:4,5,11,18 60:15 61:21,24 62:2,11,13,19 63:9,12,16 127:6	17th 46:18
Fain Exhibit 43a 4:13 207:8		1:14 101:22
Fain Exhibit 44 4:15 195:20	10 205:23 213:12 214:12	1st 20:19,25 21:7,8,11 22:6,22 23:7, 8,17 24:9,13 29:4 31:17
Fain Exhibit 44a 4:16	10:10 42:5	
Fain Exhibit 45 4:18 194:22 195:2 197:7	10:13 214:3,17	
Fain Exhibit 45a 4:19 208:10	10:21 42:5	
Fain Exhibit 46 4:21	10:45 190:1	
Fain Exhibit 47 4:22	10:48 160:20	2
Fain Exhibit 48 4:24	11 66:15 69:10	2 22:16 24:2,6 62:16,19 63:5 155:14 168:17 209:21
Fain Exhibit 49 5:3	11-15 186:17	2008 12:3
Fain Exhibit 50 5:4	11-16 186:17	2011 13:1
Fain Exhibit 51 5:6	11-month 78:19 179:25	2018 13:1 64:3,7
Fain Exhibit 52 5:7	11:38 79:10	2021 8:25 13:16 109:4 192:20
Fain Exhibit 53 5:9	11:43 79:10	2022 7:2
Fain Exhibit 54 5:10	11:59 192:13	206 409-9418 8:1
Fain Exhibit 55 5:12	11:59:50 195:3	23:59 192:20
Fain Exhibit 56 5:13	11:59:57 196:20	26th 57:13,23 58:17 61:3,5,21 62:13 64:4 65:24 69:16
Fain Exhibit 57 5:15	12 7:2	28th 57:13,23 58:17 60:1,5,12 64:4 65:24
Fain Exhibit 58 5:16	12:01 130:12	2:31 141:17
Fain Exhibit 59 5:18	12:26 101:22	2:42 141:17
Fain Exhibit 60 5:19	12:30 128:7,20 135:5 136:23 145:3 146:6 147:16 149:11,15 151:2 160:1,2 228:21	2nd 20:19,25 21:7,8 22:6,22 23:7,8, 17 24:10,13 29:4 31:17
Fain Exhibit 61 5:21 216:8	12:38 202:7 220:22	
Fain Exhibit 62 5:22	12th 46:18,25 47:1 75:13,14 76:9,10	4
Fain Exhibit 63 5:24	13 109:14	40 57:11
Fain Exhibit 64 6:3	13th 46:25 47:1,5 75:14 76:9 109:4	41 106:19,24 117:14 119:24 230:18
Fain Exhibit 65 6:4	14th 46:25 47:2,5 121:6	42 107:23,25 109:2 110:8,11 111:6, 24 112:10,25 119:24
-	15 79:1	43 206:23 230:18
-driven 109:25	15th 13:10,16 15:15,18 17:18 31:2 37:9,11 38:22 40:6,8 42:12 46:23 47:6,21 50:15 54:24 56:17 57:13,21, 23 58:17,22 59:16 60:6,18,20 61:5	

43a 207:8 230:19	7:30 174:9	accurately 199:10
44 195:20 230:19	7:58 207:16	achieve 23:16 27:3 135:25
44a 230:19	7th 202:23	achieving 74:1
44th 57:13,23 58:17 59:15,21 64:4 65:18 69:22,23,25	<hr/> 8 <hr/>	acknowledge 118:2
45 194:22 195:2 197:7 206:24 230:19	8 24:17,23	act 94:12,23 102:5 139:18 144:18 167:6 186:13
45- 185:23	8:45 188:13	acted 140:3
45a 208:10 230:19	8th 20:20 24:19 25:3,5,8,9,11,19,23 26:8 29:4 31:17	acting 104:12 139:24
46 230:20	<hr/> 9 <hr/>	action 50:13,22,23 51:1,2,5,12 79:24 93:22 97:21 139:24 171:9,18 172:7,8 179:9,18 180:9,25 182:3 183:18,24 184:4
46th 70:10,12	9 189:7 215:16	actionable 136:5,10
47th 13:7 57:14,23 58:17 62:5,10,11, 13,18 63:5,9 64:5 65:24	98166 7:21	actions 54:4 123:23 139:4,11
49 29:7	9:05 7:2	active 103:10 129:15 167:7
4:04 186:9	9:30 189:7	activities 48:8 226:24
4:06 186:9	9th 33:17 34:2,3,6,13 35:5,7,12 36:16 42:9 124:8 154:12 202:23	activity 48:5 189:1
4:30 46:21	<hr/> A <hr/>	actual 17:11 21:20 38:23 41:17 161:2 164:12 184:3,6 197:10
4:37 223:17	a.m. 7:2 42:5 79:10 126:23,24 152:15 204:11 205:23 215:16 220:22 223:17	Adam 207:13,15 208:5
4:46 206:16	ability 116:12 223:12	add 187:3
<hr/> 5 <hr/>	absent 137:6	addition 45:19
5 46:21 126:21 190:5 223:25 229:18	absolutely 216:13	additional 23:8 133:10 142:16 150:6 198:11 212:15
5:00 173:14 215:15 228:21	accept 174:19 175:1	address 7:19 45:12
5:24 230:17	accepted 137:18	adjourn 124:17,22,23
5:30 126:21 128:8,20 135:5 136:24 145:4 146:6 147:16 149:11,15 151:2 204:11 223:25 229:19	access 8:10 44:20,21 49:2,3 112:15 151:13	adjourned 46:10 125:2
<hr/> 6 <hr/>	accommodate 41:4,5	adjournment 125:13
6 204:11	accompanied 96:11	admittedly 228:17
61 216:8	accompany 199:19	Adobe 115:17,21 216:1
65 230:20	accompanying 15:23	adopt 53:19,23 170:9
6:06 209:22	accomplish 22:22 24:5 161:21	adopted 31:2 180:2 198:5
6:30 174:9	accomplishing 22:15	advance 89:25 90:25 110:12
<hr/> 7 <hr/>	accord 125:8	advice 131:2 194:9 200:18,23
7 152:15 174:20 185:1 202:22	account 32:12,20 155:4	affirm 111:7 124:16 188:4
705 7:20	accurate 166:7	affirmed 124:18
		affirming 57:22
		afternoon 97:2
		AG's 130:16 200:17

age 60:24
agenda 172:9 179:18 183:18,24
184:5
agree 13:14 14:5 88:24 89:6,13,19
90:2,17 91:4,6 107:9 139:3 140:2
156:24 158:13 163:19 164:15 165:6,
25 186:19 187:11 202:16 203:6,13
205:22 216:2 218:18 223:14
agreeable 17:6
agreed 80:18 84:18 166:12 167:25
180:9 203:5 223:15
agreed-to 100:3
agreeing 156:22 203:14 224:4
agreement 9:20 22:14 56:22 57:1
68:11,13,14 72:12,18 76:18 81:20
116:13 140:14 148:8 157:7,12,19
158:1,5,7 159:16,17 173:7 179:12,
13 180:4,24 188:21,24
ahead 18:18 33:20 123:4 160:7
172:19 174:24 218:17 222:8 224:10
air 37:25 125:12,16,22
Ali 31:24 32:2 33:5,7,21 34:8,10
35:5,8 153:10 155:4 164:9 174:12
175:13 201:11
alleging 175:17
allotted 220:8
allowed 49:2 165:23
allowing 131:12
ambiguities 89:12
ambiguous 120:23
amenable 131:11
amnesia 230:6
amount 27:2 32:13 33:17 60:11
82:3 173:18 174:3
amounts 32:12
analysis 111:8,18
analytical 111:20 112:5
analyze 112:22
analyzes 43:23
and/or 114:15 226:5
answering 59:12 222:13
answers 104:12 134:6 143:16
anticipate 150:7,10 226:9
anticipated 150:6
Anton 153:11
apologize 7:23 19:20 22:17 23:3
34:4 57:11 76:9 86:10 162:12 186:1
228:3
Apparently 229:10
appeared 7:3 82:19,20
appears 107:7 187:14,15 198:1
208:10,14 214:25 217:23
applicable 64:10
application 176:21
applied 135:9 143:13
apply 105:15 134:6,22
appointed 17:8
appreciated 19:16 215:21
approached 166:8 173:6
approval 97:16 148:25 158:24
159:5 208:17
approve 15:15,18,25 16:3,11,14
43:1,2 57:20 62:6,8 70:21 73:6
74:19 87:6 110:2 148:14 149:5,7
190:17 196:20
approved 60:16 72:8,24 85:4
111:17 150:2 171:5 193:14,15,19
approving 28:22 59:16 60:5 61:4
63:7,10 89:10 148:20,22 208:16
approximately 41:3 126:25 203:13
approximation 128:10
April 119:1 122:21 210:7 212:18,24
213:10 217:24 218:18
April's 218:9
area 36:4 104:7 147:1 157:23
areas 73:20
argument 131:11
arises 186:19
arrange 102:10
arrangements 43:9,11,12,13
arranging 213:21
arrived 46:23 126:9
art 39:18 167:17
articulate 27:14 73:13 116:14
articulated 17:21 22:6
articulating 116:22
ascertain 44:9 104:14 152:5 197:16
198:18
asks 108:14 176:15 195:2
aspect 93:12
asserting 131:9
assessing 64:1 114:23
assigned 8:9 100:18 210:4
assigning 62:23
assistance 210:8
assistant 132:10 142:18
assume 33:19 195:23 210:21 218:8
assumed 33:21 64:13 211:15
assuming 163:7 164:1 201:24
assumption 33:22 207:17 213:14
assumptions 80:1
assurance 146:12
attached 8:17 107:3 108:1 117:16
118:22 149:25
attempt 73:15
attempting 178:14
attend 51:5 52:21 174:25
attention 57:17 76:21 152:14
attorney 130:4 131:8,18 132:10,24
133:15 141:21 142:18 200:22,25
201:6 205:11
attorney's 133:8
attorney-client 130:20 131:10
176:15,21 177:9
attorneys 201:5
attributable 188:4
attribution 78:11
Auburn 73:23
August 215:22,23

Augustine 20:14 51:14 82:25 83:8
96:17,19 112:11 128:2,16,20,25
129:4,13,21,23 130:13,16 132:24
133:8,13,20 147:4,15,21 148:3,4
149:10 163:4 165:25 166:2,9 167:19
168:4,22 171:10 178:10,25 183:5
190:6,12 193:22 205:5,10

Augustine's 148:18 166:23 167:9
208:12

authenticate 118:1

authentication 186:18

authority 136:11 137:1,5,6,21,24
138:4,7 208:17

authorization 191:14 193:25

authorize 193:22

authorized 98:10

Autobound 202:16

avoid 101:25 102:21 103:16 176:7

avoided 102:14 105:9 140:23

aware 45:25 67:6 79:14 84:21,23
87:2,4 142:25 143:22,24 164:24
193:10

B

back 16:19 18:19 21:1 34:12 42:13
47:10,18 59:4 62:1 66:4,14 67:20
68:24 75:12 80:17 85:8 95:17 106:4
166:25 168:9 171:6 174:10 177:25
190:25 192:25 197:23 200:12 207:9
209:20 210:2,19,21 212:18 215:8
218:9 223:5 230:13

back-and-forth 215:1

background 38:15 161:17

backtrack 77:21

bad 113:22 130:14

badly 113:15

Bain- 69:16

balance 108:15 203:8

ballpark 126:22 128:12

banquet 39:25

base 36:7 133:21 213:16

based 43:1 131:12 162:11 187:15
188:20,23 191:13,18 194:8 195:23

196:6 205:11 207:18 208:25 214:2

basically 152:25

basis 81:17

Bates 106:11

Bates-numbered 107:19

bear 206:6

behalf 168:22 169:6 193:23 201:8

belief 52:11 53:1 60:10 86:4 87:9
92:19 94:10,20 113:18 133:21 136:4
140:15 170:12

believed 36:15 52:14 53:12 57:21
58:4 69:15 86:25 102:7 143:12
152:21 153:2 173:21

believes 182:21

Bellevue 12:16

Bellingham 73:22

beneficial 164:23

Bennett 174:25 175:2,11

bifurcated 171:15

big 40:8,22 69:5 160:7

bigger 144:19 191:10

bit 31:9 46:9 75:13,19 92:10 103:7
106:2 120:12,17 125:9 170:21
198:25 199:5 206:5 212:8 215:14
229:8

bite 210:1

black-and-white 105:12

blank 190:21,23 191:6

blend 48:21

blower 71:10

blue-colored 216:10

bluster 170:21 212:8

blustered 212:10

body 93:18,20,22,24 94:4 95:10
191:4

bold 201:20

booths 50:4

border 21:10 202:24 203:7

BOTELHO 7:3

bother 203:5

bottom 108:6,7 114:5

boundaries 9:2,7,8,11,13,14,15,18,
23 10:2,6,9,25 11:3,8,21 14:12
15:14 21:20 22:14,21 24:12 27:9,10
30:3 31:15 32:3,16 34:6 44:18 60:23
65:18 66:10,11 67:25 68:2,4 74:3
75:7,22 157:14

boundary 23:22 24:5 25:18,22 26:5
27:14 33:14,16 44:10 45:5,6 74:5
75:2,9

box 216:10,11

Boy 201:14

Brady 118:22 212:19,23 213:7,8
214:3,6,8,21,23 219:16,19,20,21,22

Brady's 153:11

breach 94:11

break 17:14 31:10 39:5 42:3 56:20
79:2 86:11 91:18,19 101:16 124:12
141:9,11,15 161:23 172:2 185:24
186:11

breakout 51:20

Bremerton 69:16 73:18

briefly 19:12 21:1 42:19 203:9

bring 16:22 95:10 181:12

bringing 180:12

broad 92:16 95:15

broadly 33:22

broke 84:4

broken 84:21

brought 35:11 56:17 68:4 76:20
77:22,24

bubble 62:14

built 22:11 55:25 69:9 80:1

bullet 168:17 169:8 183:1 184:19,23
190:4 200:14 201:11 202:6,19,21
204:10

Bureau 144:20

business 8:3 12:1 13:15 38:21
50:14 103:2,18 104:9,13 124:21

butchered 113:15,16

C		
C-O-L-E-W-O-O-D 7:20	caucusing 48:16 49:13	chat 105:23 155:20 219:14
calculation 27:13	cautious 23:5	check 47:19 206:15
calendar 185:3	Census 144:20	check-in 147:1
calibrated 108:20	center 42:14	Chelan 25:10 75:15 76:11 87:17,23
call 80:15 116:10 128:7 167:22 183:14 184:2 204:13 205:18 208:6,9 219:16,21,22 229:23,25	central 21:9 221:11	chief 208:12
called 14:24 34:20 40:1	CEO 12:16	choice 62:2 65:4
calling 39:21,23	certainty 80:7	choices 150:13
calls 130:20 229:21	Certified 7:3,11	choose 138:2
camera 51:21 92:18,22 95:1	chair 48:20 51:14 53:6,7,10,19 107:7 124:23 125:2 126:12,15,19 128:2,16,20,25 129:4,13,21,23 130:13,16 132:24 133:7,12,20 147:4,15,21 148:3,4,18 149:10 163:4 168:4 171:10 178:25 181:10 184:1 193:22 194:5,14 195:2 205:5, 9 208:20	chose 118:10
Campos 31:23 36:17 153:8,9 189:11 223:20	chair's 167:23,25	chronology 46:4 172:10
Canadian 21:10	chairs 41:1,2,6,8	chronometer 197:1
candidate 64:17 65:4 114:4	Chamber 12:16	circulating 149:2
candidates 65:8	chance 105:21	circumstance 176:22
capable 40:22	change 9:2,21 26:4 27:2,11,18 28:11,12,14 29:24 30:5 35:21,22 55:12 59:15 60:4 61:16,18,21,24 62:2,12,14,20 63:5,9 106:8 124:9 136:4 170:3 195:18	cite 68:25
card 127:11,16,17	changed 8:25 9:9,12,13,15 25:23 60:23 84:19 138:7,11,12 170:7 214:21	cities 69:3,13 71:25 72:6,8,12,17,21, 22 73:13,24 74:7
cards 127:8	changing 144:13 173:24	citizen's 152:25
care 171:1 219:25	chaos 192:14	city 69:21 70:13,16,18,21,24 71:21 72:8,25 73:3,6,11,19,21,22,23 74:4, 5,11,13,20,24 75:3,4
cared 70:20	chaotic 18:6 52:3 100:16 164:16 171:24 181:8 228:17	clarification 19:7,17 34:16 46:6 63:14 219:3
carefully 23:4 155:21 177:21	characteristic 28:14	clarify 56:7 119:6
carry 185:19	characterization 30:25 78:17 92:15,16 140:3 166:7 212:6	clarifying 66:24
Cascades 75:9,11	characterize 78:22 80:12 88:10 94:24 166:6 167:8,13 212:7	clean 35:2
case 31:23 90:15 92:20 124:5 131:4 152:2,7 155:20 164:6 187:18	characterized 62:4 68:19,20 157:11	cleaned 206:4
cases 31:19 45:10 58:20 71:23 74:2 96:10 98:23	charged 98:24 100:12 194:6	clear 62:16 63:1 64:25 72:14 108:22 150:7 189:5 203:21 212:13
cast 180:14	chart 111:10 113:3,7 114:7,16,18 115:2 117:18	clearer 31:11
casual 145:22	charts 112:13 114:7	clock 199:23
categorically 29:24 30:5 222:18 229:24		close 71:8 88:1 118:16 195:18 206:3
category 28:25 73:14		closed 127:15,20,24
caucus 13:9,19 91:19 98:11 150:22 163:8 167:1 189:12		closely 30:20 64:21
caucused 13:15		codes 113:8
caucuses 90:3 91:5,7 92:4		cold 125:12,16
		Colewood 7:20
		colleague 116:10
		colleagues 116:9

collective 89:1 104:15 180:8
collectively 89:7 148:1 203:5
color 113:8
colored 130:3 216:8
Colville 69:18
combined 15:7
comfortable 97:10,12 104:22 139:6 167:20
comment 32:4 67:8,16 133:20 134:2,21 135:4 138:15 140:22 158:3 174:15 185:22
commenting 139:2
comments 29:6 67:17
Commerce 12:17
commission 8:3 9:5 13:9,14 43:18 45:24 51:8 79:24 89:11,17 90:7 93:6 97:20 103:3,18 104:8,13 107:4,5,8 110:13 112:10,19 117:10 133:22,23 134:3 135:16 136:6,18 137:5,21 138:10,20 139:4,20 140:16 141:22 142:19,24 144:3,11,13 147:19 149:19,20 150:1,9 153:1,9 159:12 163:10,13 164:3 173:21 174:8 187:10 190:8,14 192:2 193:23 194:1,7 200:1,3 203:15 205:10,12 207:18 223:16,20 224:5
commission's 89:1 91:3 143:19,25 193:11
Commission- 185:4
commissioner 17:6,23 18:4,8 19:3, 13,24 20:1,3,5,7,10,12,13,14 33:23 34:7,12 35:4,8,10,13 36:7,9 37:4,14, 23 38:5 40:11 41:15 42:7,19,20 49:2,14 50:1,8,24 54:20 66:6,12 67:18 68:6 70:25 76:25 77:18,19,24 78:10,11 79:16,17 80:10,14 81:2,7, 15 82:9,20,21,25 83:8 84:14 85:1,3, 4,5,10,20,21,23 86:2,4,5,12,14,17, 19,22 87:2,4 95:4,6 96:9,13,16,19 97:11,14 98:3,21 99:5 100:14 101:24 103:12 106:23 110:10 112:11 119:3,15,17,22 121:11,12,14 122:5,16,25 123:1,10 124:7 143:5, 10 144:4 145:9,11 146:7 152:8 153:5 158:19 160:14 161:8,11,19 162:14 165:20,21,23,25 166:1,8,14 167:9,19 168:21,23 169:4,9,11,14, 25 172:14,16 174:11,12,18,19 175:13 176:2,3,4,6 178:9 181:4,19, 21 182:22 183:5,6,7,8 185:7,8 188:2 189:7,9 190:5,12 194:2 204:11,12, 14,18 211:16 223:16 224:7,19,23,24 225:3 226:14,19 227:4,8,12 228:7
commissioners 37:7 43:10 45:25 49:19 66:18 67:10 70:20 83:7,11 84:17,20 91:23 92:17 94:11,22,25 96:7 97:16 98:2,4,8 99:3,20,22 100:9,11 102:1,4,9,12,15,23 103:2, 11,13,15,17,22 104:4,16 105:11 107:10,13 108:2,12 110:7 116:7,21 117:15 119:12,20,23 120:3,10,15 126:10 141:3 144:21 147:25 153:25 154:2,4 158:13 159:3,9 160:3 165:8, 14 166:3 168:7 175:14,21 176:8 179:22 180:18,19 183:2 190:6,15 191:16 202:22 203:14 204:20 205:17 212:16 220:24 221:1,5,9,16, 25 222:9,15,19 223:2,6,14 224:4 225:15,22 226:2,12
commissioners' 112:17
commissions 136:15 143:15 144:14,17
common 118:15 182:2
commonly 113:13
communicate 8:19 16:21 20:4 80:17 94:5 99:25 100:19 111:3 117:15 119:22 156:8 158:6 167:15 168:9 178:14 179:8 185:8,18 204:20
communicated 17:12 18:4 20:2 54:20 70:19 81:16 101:5 116:20 122:14 132:16 135:10 139:10 147:15 148:21,24 165:14 168:7 169:14,24 179:20 180:23 181:19,22 182:23 188:15 190:13 205:5,6,9,15 216:12
communicating 68:6 76:14 86:17 95:25 96:4 98:10 102:11,13 110:1 118:3 168:5 173:3 190:6 217:16
communication 17:25 102:19 103:3 107:9,13 108:12 116:17 117:23 119:24 121:24 130:10,11 132:1,25 159:9 164:15 177:9 179:14 181:16 194:3 208:12 209:20 212:2, 18 213:7
communications 101:25 102:10, 22 103:11,24 105:16 122:20 123:5 129:3,13,21,23,24 136:1 139:12 182:9 183:16,22 185:17 200:21 204:9 207:15 212:6,24 216:9 226:1, 11
communities 11:21 58:6,24 66:9 69:6,18 87:8,23 157:12
community 35:11 69:21 87:16
comparative 63:22
compared 144:14
comparison 63:22 114:14
competing 161:1
competition 108:15
competitive 28:1 29:25 30:1,2 60:21 108:23,24,25 109:25 115:3 117:8 118:12
competitiveness 28:24 30:9 112:4 116:23,25 118:12
complete 52:13 141:24 147:3 150:15 163:17 173:14 190:14 205:8 225:20
completed 43:10,17 89:2,5 138:20 149:19,20 150:2,20,22,24 204:7 205:12
completing 135:17 137:13
completion 227:9
compliance 138:15
complied 138:10 142:5
comply 142:20,21
component 23:14 43:25
components 55:10 158:11
composition 30:6,8
compromise 117:19 163:8
compromises 172:13
computer 110:22 151:15
con- 172:15
concept 13:23 14:13 77:22,23 119:8,11 183:16 184:6 214:9
concepts 21:3 78:21 80:21 112:24 114:17 119:20,23 165:3,11
concern 92:9 104:17 105:1
concerns 117:17 164:10 201:11
concluded 123:20 203:10 230:16
conclusion 91:14 139:7
conclusionary-type 92:10

condition 158:25	consolidated 171:21	166:11 169:3 171:18 172:16,24
conditional 158:21	constituted 94:11 95:21	173:17 176:5,8 178:25 181:2,6,20,
conditioned 53:5 158:23	constitutes 15:8 94:22 124:5	23 182:7,12,15,18 187:13 189:18
conduct 8:2	constituting 93:19	190:19,20 203:4 204:5,15,18,21
conducted 89:17 90:7	constitution 136:14	205:25 209:10 211:23,25 215:10
conducting 49:22	construct 18:7 22:1	219:10 221:12 225:2 228:6
confer 186:19	contact 132:11 200:25	conversations 33:14 42:11 50:2,11
conference 39:19 40:17 205:23	contacted 201:5	58:25 64:13 68:22 75:24 77:2,15
configuration 151:1	contained 32:14 68:11,13 69:7	78:18 79:16,20 82:13 84:23 91:23
confines 120:11	74:11 111:6 119:6 198:6	92:21 94:10,12,20,25 95:4,19 96:9,
conflating 149:6	contemplate 74:23	11,12 98:6,11,22 99:8,19 100:14
conflicted 180:16	contemplated 26:3	102:4,8 119:19 122:25 126:18
conform 152:22	contemporaneous 199:24	128:19,25 134:19 135:23 145:8,11
confused 17:10 59:11,13 129:7	content 11:2 20:16 24:21 84:24	147:10 148:3 149:10,13,14 153:18
162:3 163:18 226:22	85:18 103:23 110:11 119:20 131:17	160:23 161:16 165:11 173:23
confusing 149:6	132:23 149:12 188:3 201:10	174:16 179:1 213:25 226:13,14,17
congressional 9:17 10:2,6 14:5	contention 133:9 156:14 212:13	conversed 147:23
15:1,7,16,19 16:14,17,23,25 20:20	contested 69:1	conversing 99:23 105:3
29:8,10 31:15 32:1,25 37:3,10,21,24	context 14:16 15:4 79:21 113:24	converts 43:23
38:5,9 42:9,16 43:15 44:1,14 46:16	130:2 152:11 159:24 191:11 203:3	convey 166:2 167:7
49:23 50:1,6,10 53:11,20 55:25	contextually 144:11	conveyed 85:14,24 134:16 168:22
77:10 94:6 95:2,7 96:10 98:13	continually 180:16	201:10
100:15 102:2 122:6,17 124:8 139:25	continue 73:25 95:24 96:24 148:8	conveying 131:16 133:15
150:16,23 153:10 154:9,13,25	176:7 219:19,20	convinced 35:16
156:24 159:19 160:2 161:7 169:9,	continued 73:21 118:13 148:9	copy 107:7
12,16 170:1,9 171:11 172:21 179:19	179:1	corner 50:4
189:9 190:1 202:24 203:15 212:14	continuing 61:11 105:6	correct 8:12,24 15:16,17,19 19:22
213:25 214:4 215:1 216:14,18,24	contradictory 163:14	21:14 22:4,13 23:15 25:18 26:11
217:3,9,17 218:6,11,20 219:18	contributed 164:16	28:19 29:15 30:17 31:5 33:12,21
223:15 224:5,8,22 225:4 226:16	controlling 56:12	52:17 58:14 65:16 72:18,25 79:12,
227:9	convened 144:1	19 86:20 88:16 99:8 100:1,10
connected 11:21	conventions 198:22,24 199:4,8	111:24 114:10 117:14 119:12,13,18
connecting 49:6	conversa- 69:4	121:16,17,20 125:3 130:9 135:21
connection 192:12	conversation 17:23 20:12,14	145:3 154:19 157:2,6,7,18 159:8
consensus 11:17 82:17 97:20	33:23,25 34:6,7 35:7,15 38:4,8	160:15 165:17 168:18 171:13,14
105:4	41:14 42:18 56:15 57:7 58:2,9,23	174:9 175:23 177:19 179:19 180:25
consequences 88:2	68:5 69:2,5 70:11 71:6 75:17,21	181:17,25 183:15 188:5 190:9
consideration 148:11	77:8 78:22 80:12,14,22 81:7,13	193:16 197:13,16 201:25 208:13,21
considerations 23:10	82:20 85:20 86:1 87:25 92:17 95:5	209:15,17 210:15,24 211:4,8,10
considered 11:18 61:23 69:11	96:24 101:2 123:1 124:7 128:17	212:5,7 217:18 218:21
132:6 169:22 174:7	129:15,19,22 132:24 145:13,22	correction 211:16
consistent 27:4 139:5 151:9	147:5,9,13 154:12 159:18 165:22	correctly 42:22 94:1 191:17
168:16,17 203:1 204:9		correlate 199:17
		corridors 11:23
		coughed 7:23
		Council 12:21 142:2

counsel 131:3 133:11 136:7 176:12, 17 177:1	dates 191:9,13,18	depositions 39:9,11,17 71:15
counsel's 10:22	day 47:19,20,21 48:21 82:2 109:19 114:20 126:7 128:5 149:24 189:3 198:25 200:3 207:13	deputy 130:4 141:21
counterpart 14:1	days 39:12 46:20 48:20 115:10 117:17 123:2 145:22,25 146:2 161:13 162:15 200:10	describe 26:19 38:11 39:7,19 64:5 184:10
counterproposals 96:1,4	deadline 17:4 54:1 117:20 133:24 138:10 148:6 173:14 208:23	describing 86:21 100:7
Counties 75:16 76:11	deal 58:23 68:17 208:7,15	description 15:13 43:24 44:10,14, 18 163:5
county 12:21,22 25:9 70:1,2,3 74:6 87:17,24 142:2	deals 172:12	designations 167:1
couple 38:24 39:12 80:1 128:14 151:14 229:3	dealt 94:12 95:6 206:8	desire 190:13
court 7:3,11 9:6 97:15,22,23 106:17 112:24 114:15 130:8,18 131:13 132:25 134:22 135:11,18,22 136:1 137:2,14,19,24 138:9,11,14,22 139:3,9 147:6 148:7,10,13,15,17 152:24 193:2,24 194:4,14 206:7 207:1	decided 35:19 71:9 106:2	destroy 209:11
court's 138:6,12,17	decision 54:3 93:21,25 94:3 124:3, 6,10,14 125:3 138:23 149:15	detailed 176:10 177:2
COVID 144:15,18	decision-making 135:12	details 83:5,21 107:16 154:23 181:20,23 189:23
create 10:3,6,25 11:2 37:9,11 89:11 99:7 129:9 137:17 154:11 197:2	decisions 23:16 24:1 31:3,7,14 32:15 53:16 123:18 125:12 135:8 136:12,24 194:3	determine 131:3,4
created 23:18 56:9 115:24 154:6 169:1	declined 42:23,24 138:21,22 224:25	determining 35:18
creating 114:24 137:13 150:19 162:9 199:20	deemed 137:20	develop 36:20 97:22
creation 154:8	define 11:1	developed 111:20
criteria 22:22 26:19 70:17	defined 137:1	Devices 186:17
cross 75:11	definite 22:21	diagnostic 114:25
crossing 75:9	definition 93:17 163:15 164:4 169:22	difference 64:22 90:13 154:14
current 21:8 25:9,11 60:21 68:21 113:18 114:3,6 115:4 169:3	definitive 148:5	differences 154:17
cursor 204:2	delay 144:19	differently 65:22 139:8 178:24
customary 101:1	delete 209:18	difficult 182:13
cut 212:25	deliberations 135:19	difficulties 7:22 10:12 39:13 94:14 207:24
cyber 199:7	Democrat 114:9	difficulty 62:23 164:10
	Democratic 59:20,23 60:11 114:4 163:8	digital 102:18
	Democrats 41:23 67:4,11 72:4 182:7	direct 98:22 188:5
D	depend 64:23 65:8	directed 188:22 194:12
	depending 27:25 45:10	direction 28:10,11 100:25 114:11 133:3 153:22 187:12 190:11 201:3
data 11:10,12,14,16 65:11 109:25 110:5 113:4 135:18 144:20	deployed 161:13 172:2	directive 188:19
date 109:5,9 118:3 196:3 199:11,15, 16,24	deposed 7:12	disagree 156:11 203:2,20 227:21
date/time 196:22	deposition 15:1 186:14 230:16	disagreed 95:8 164:4
		disagreement 83:17
		disagreements 154:10
		disappeared 155:16
		disappointed 88:8,12,16

disappointing 87:16,22

disappointment 88:11 90:23

disclosing 133:5

discretion 137:19

discuss 37:23 79:7,18 82:16 95:9
97:4 98:2 118:25 130:1 156:14
158:17 186:20 189:9 214:4 217:17

discussed 17:5 20:1 29:4 38:4
49:25 50:9 66:11 67:12 76:25 79:23
85:8 89:12 93:6 97:25 98:1,3
118:21,23 119:2,10 122:16 147:8,
21,22 164:11 189:24 205:4 214:18
227:2 229:22

discussing 29:8 64:4 70:24 77:3
78:13 103:18 104:8 118:7,15 121:3
167:19 169:12 175:14 176:11 177:3
186:12 213:24 224:18

discussion 79:8 80:8,16 97:18
101:20 106:21 119:15,16 122:1
160:1,25 162:22 193:5 198:24
199:3,25 203:24 206:13 207:11

discussions 42:8 135:23 199:21
227:12

dispassionate 212:8

dispute 156:23 157:4 201:25

disputed 34:19

disputing 186:18

disregard 163:10

dissemination 116:6

distance 84:4 145:20,21 146:5

distinct 65:6

distinguish 41:13 48:7 180:11

district 8:24 9:2,11,13,14,15,17,23
10:2,6,9,25 11:24 13:6 14:6,11 16:1,
3 20:19,21 21:8,11,20 22:21 24:10,
13,19 25:6,19,23 28:8,9,13,14,18
29:25 30:1,6,9 31:15 32:15,25 33:17
34:14,20 35:6,8,12 36:4 37:3,11
42:10,16 43:15 44:1,14,19 45:5
53:11,20,23 55:16,22 58:16,23
59:21,23 60:6,20,21,24 61:5,21
62:5,11,18 63:5,9 64:18,22 65:17
66:13 69:8,19,22,23 70:12 74:16,20
75:2,3,7,8,13,15,22 76:9 77:11
83:25 87:10,13 88:3 94:6 95:2 98:13
102:3 114:6 124:8 139:25 154:13
170:10 171:11 172:21 202:24

217:18 218:10,19 219:18

districts 9:9 11:22 16:25 21:24
22:16 23:7,11 24:2,6 27:24,25 28:1,
4,21,24 29:2,7,8,10,14,16,23,24
30:4,20 31:16 54:6 55:12,13 56:24,
25 57:6,10,16,21,25 58:4,5,9 59:17
60:19 61:12 62:8 66:3,7 74:19 76:24
79:15 81:1 83:18,19,24 87:7,14
109:25 114:5 117:9 120:9,14 151:3
165:13 179:19 218:12,20

dividing 198:22

doctor 12:1

document 56:2 71:3 106:20,25
113:4 115:18,21 116:2,4,13,22
118:4 182:20 185:6 191:12,13,15,
20,25 192:10,19,23 193:3 195:15,21
196:1 197:18 202:5 208:14,24 216:1

documents 9:7,10 56:5,9,11,12
105:23 187:8 191:17 200:4

door 48:23 49:6,7,8 71:9 127:18,20,
21

double 23:1

doubt 205:20

Douglas 75:16 76:11 87:17,24

downstairs 101:15

dozen 134:12

dozens 78:21

draft 35:13 96:11 109:6 114:1,6
144:10 147:18 148:9 149:1 160:10
164:20 209:7 215:8

drafted 23:24 33:4 101:3 110:24
112:13,19 152:21 191:1 200:4

drafting 23:25 24:7 98:24 100:3
151:3,7 153:9,12 161:7

drag 155:18

draw 21:23 24:5 32:3 65:17,22 75:2,
7

drawing 27:15 45:22 46:1 88:3
100:13 137:25 138:7 161:2

drawn 22:12 23:21 24:9 25:19 30:4
31:2,21 32:10 66:3 88:9 99:14
100:6,17 134:17 157:19 158:1

draws 92:10

drew 11:5,6 46:2

drive 10:9

driving 11:16

Ds 167:2

du- 211:24

due 16:5 61:8 202:9

duly 7:10

duplicated 206:23

duplication 220:2

dyad 90:7 98:14 99:22 100:12
116:18

dyads 67:2 91:7 92:4 165:15,16
180:8

E

e-mail 8:15,16 102:22 103:1 105:16,
18 106:20 107:3,23 108:1,13,19
111:3 115:6 117:14 118:2,5,16,22,
25 119:1,21 130:5,7,17 132:4,8,25
133:17 147:24 149:24 205:11

e-mailed 111:1

e-mailing 115:12

e-mails 105:20 118:14

earlier 48:17,19 68:24 76:17 100:2
142:1 154:13 173:19 189:17 203:2
205:4,9 209:2

early 97:2 115:9 123:23 126:7,17
141:22 154:3 169:21 221:2 224:15

earphones 217:19

earshot 129:1,19 176:3

easier 31:11 106:3

East 74:8

eastern 75:25 203:7

eat 210:1

edge 10:14,24 11:8,9 43:17 45:14,
16,18 46:2 202:17 203:7

education 11:25

effect 216:22

effectuate 22:11 73:12

efficiency 161:15

effort 203:12

elected 13:3 113:21	203:17 212:15 220:24 221:1,10,14 222:16,20,25 223:4	expected 91:24
election 65:3,13		expedite 187:22 188:6 215:20
electronically 110:19 191:16 192:11	events 46:4 103:20 155:4 164:16 172:6 197:14 228:16,21	experience 12:18,20
element 22:15 76:20 121:2 138:23	eventually 81:3 95:9	explain 63:20 150:12 172:8
elements 20:22 21:5 31:8 55:14,24 56:8,19 66:5 67:20,22 68:7,9 69:9 77:5 79:18 80:15 81:2,16 90:11 93:5 95:7 122:15 165:22 178:21	Everybody's 133:17	explained 66:6
eleventh-hour 156:25	exact 10:7 46:22 59:18 68:23 126:8 201:1 213:17	explicitly 88:1 112:18
eliminating 74:23	EXAMINATION 7:15 220:20	express 86:18 88:25 100:20,22 116:17 181:13
else's 78:12	examine 103:8	expressed 22:23 55:23 56:9 85:24 86:6,13 118:6 119:21 217:1 226:23
encompass 15:10	examples 68:25	expressing 77:19
encounter 102:16	Excel 115:22	expression 68:1 99:7
encourage 96:24	exception 69:18	expressly 88:5
end 13:1 28:2,3 80:10 81:3 82:15 91:2 118:14 124:14 146:20 207:22 208:3	exchange 107:23 147:3 214:2 215:5 216:7	extend 167:11
ended 84:16 124:3 126:16 132:9 168:1	exchanged 164:25 165:6	extending 203:6
engaged 121:10	exchanges 214:23	extent 96:17 130:19 131:4,9,16 132:14 133:4 176:15 184:11 187:3,7 188:2 200:20,24 221:19 222:9,15 223:6 224:17
ensure 105:13 154:5,9	exclude 205:17	
enter 49:10 117:17	exclusive 55:19,20,21 69:14 70:22 123:23 124:1	<hr/> F <hr/>
entered 51:23	excuse 32:7 182:22 183:12 218:24	face 144:22,24 145:1
entire 75:3 108:17 162:24 164:14 173:5 189:3	execute 190:21 196:6	facilitate 109:21
entirety 37:1 56:16 147:13	executed 191:6	fact 92:13 114:24 132:13 151:17 217:5
environment 100:16	exhaustion 173:5	factors 11:18,19 55:13 97:8 139:2 165:13
envision 201:19	exhaustive 57:4 70:23 73:3,15	facts 201:17
equalization 26:3 74:2	exhibit 106:19,24 107:23,25 109:2 110:8,11 111:6,24 112:10,25 117:14 119:24 155:14 187:4 191:2 192:25 193:3 194:22 195:2,20 197:5,7 206:5,12 207:8 208:10 216:8 230:18	failure 116:15
established 158:10	exhibits 207:3	Fain 7:4,10,18 19:11,13 39:15 40:11 42:7 101:24 106:23 169:9 182:21,22 184:15 186:16 187:12 188:2 189:9 200:20 202:22 204:11,14 208:1 220:22 221:21 229:7,10
evading 227:18	exist 198:14	fair 21:18 30:12,25 52:17 78:17 128:10 207:17 212:5 222:11,17 224:19 230:9
evaluate 112:6	existed 84:11 100:5	fairly 167:12
evaluating 114:8	existence 179:17	fairy 218:6
evening 36:21,23 50:20 81:16,18 82:3 85:1 97:1,2 127:14 147:11 173:5 189:15 205:9 214:17	existing 31:20 113:20	fall 22:15 73:14
event 40:1,2,3,7,13,18 41:10,20 42:14 46:15 48:18 49:1 50:6 97:15 116:14 125:19,22,24 126:4,6,9,20 127:1,3,11,12,13,18,19,23 128:2 145:4 150:18 152:12 160:7 189:2	exists 115:7	familiar 44:4
	expect 212:17 214:2	
	expectation 43:14 88:21 100:18,21 143:9 152:3 182:6,9 200:7,9	
	expectations 108:21	

family 128:17	19 227:4,13	forma 52:7,10
Fat 196:15	firsthand 205:20	formal 43:11 137:5,6,20
favor 163:16	fit 157:19 158:1 163:5 215:11	format 115:20 173:20 214:22
Federal 38:10 48:1 143:17 146:1,2	five-minute 186:3	formation 90:8 93:2,3 95:9 140:24
feedback 32:13,14 80:23 95:17 121:23 150:11	fix 213:3	formative 115:1
feel 139:6,9 173:2	flat 61:14,15 62:4,10,12,19 69:15	formatting 112:14
feet 145:15 146:8,12	flip 65:3	forms 102:18
fellow 117:15 144:21	floating 147:19	formulating 18:10,14 151:8
felt 97:10 135:22 169:16 173:4 178:22	floor 39:20 40:8,17 48:13,15,18 49:4 77:4 81:25 82:2 110:21 182:23 220:25	forum 102:12
feverishly 189:4	focus 65:12 122:7 128:6	forward 117:12 118:6,15 180:12
figure 47:10 129:12 176:24	focused 37:24 219:12	found 66:18
file 8:17 44:20,21,23,25 45:3,11 150:19,23,25 155:16 173:20 191:23 197:24 198:1,3,10,19 199:19 200:2 203:15,19,23 211:1,4,8,17 223:15	folder 155:17 186:16	founded 54:4
files 43:23 149:25 150:9,13,15 198:11,13,15,16 199:4,22 200:8 224:5	folders 186:16	frame 128:8,21 135:4,5,13 149:11 155:5 160:2 184:16 188:13 220:7 224:8 225:6 226:25
final 32:14,22 57:17 59:24 60:8 64:24 65:3,6 68:15 72:12,17,21 74:10,11 80:9 87:9 88:20,22 89:17 93:21,25 94:3 111:10,11,16,17 112:13 113:4 114:14 116:12 117:17 123:2 137:13,20 151:23 154:11 158:14,21,23 159:4 162:15 163:15 165:24 173:20 175:8 181:2 188:14 190:19 191:24 192:1,15 193:4 195:21,24 198:20 199:11,22 200:9, 10 207:2 208:23 211:18	folks 164:2	framed 34:25 78:5
finalize 137:17 161:9 162:16	follow 137:10 193:13,17 207:2	framework 14:7 16:22 17:5,9,17,22 18:1,3 19:3,23 20:1,2,5,8,11,15 22:1,5,11,16,20 23:6 24:22 25:3 26:7 29:22 31:8,10 54:10,12,14,16 55:10,15,22,24 58:5,10,14 66:5,13 67:20,22 68:2 73:10 75:18 76:5,13 79:23 81:20 84:18 85:24 86:5,13,14, 15,18,20 87:4,22 88:20 89:10 98:12 124:9 140:14 152:22 153:15 157:12 158:5 179:5,9,17,20 180:1,7,12,25 181:1,11 182:5 184:8,12,17
finalized 30:21,23 157:4 163:2 199:18	follow-up 21:6 72:14 208:6 219:10	frameworks 26:20 165:11 179:23 180:8 181:13 182:2 183:17,23 188:14
finalizing 43:25 146:8 163:11	font 201:19	framing 177:20
finally 30:23 112:23 199:10,14	force 11:16	free 218:11
find 212:16	forced 163:8	frequently 108:18 176:10 177:2 215:9 221:17,21 222:1
finding 95:8 117:19	Forest 70:4,5	fresh 125:12,21
fine 141:14	forget 39:21	friendly 118:9
fingers 196:15	forgetting 39:22	front 35:5,8 51:3 99:3 111:8,18 181:11 184:3
finish 39:4 225:15	form 9:24 10:17 13:11,17 14:13,15 15:11,20 17:9,16 18:11 21:4,21 22:9 23:19 26:1 27:19 28:6 30:7,10 32:6, 24 35:25 43:3 44:2 46:5 48:4 49:24 50:7 52:8 55:6 56:6 62:21 63:13 65:20 72:10,19 73:1,8 75:5 77:13 78:15 81:9,21 82:11 84:5 85:16 86:24 88:17 89:3,9,14 90:20 91:9,11 93:10 94:8 96:2 98:17 101:7 103:25 104:19 105:5 111:24 112:1 113:1 115:17,19 117:6 120:5 121:21 122:23 123:21 125:4 134:24 135:14 136:2 137:3,22 139:15,21 140:8,18 142:6 143:21 145:5,17 146:10 149:5,7,23 150:4 152:19 154:20 155:6 157:21 160:16 162:1 163:22 164:18 165:9 166:4 167:3 174:14 180:10 183:19 192:5,7,8 199:22 216:19 218:23 223:9 224:13 225:10, 18,24 226:20 227:5 228:11 229:16	full 95:10 110:13 186:5
finished 133:23 134:2 166:21		fully 151:12 169:21 227:7
finishing 203:25 213:10 226:4,12,		function 144:14
		futz 206:22

G		
gain 64:20	grab 41:6 209:25	happened 46:11,12 50:19 53:14 91:24 154:18 159:1 163:20 182:7 185:20 188:17 204:19
games 170:25	Grave- 183:8	happening 52:5 91:18 99:11 123:11,12 134:15 162:23 203:22
garbled 94:16	Graves 18:8 19:24 20:3,5,13 37:19, 23 38:5 41:15,17 42:19,20 49:3,5, 12,14 50:24 54:20 66:6,12 68:6,16 70:25 71:6 75:17 76:13,18,23,25 77:18 78:10 79:16,17 80:10 81:2,7, 13,15,24 82:9,21 84:14 85:1,3,15,20 86:5,13,17 87:21 95:11,12 96:13,16 97:11,14 98:3,7 110:10 121:18,20 122:6 145:9 165:21 166:14,16 168:8,11 169:4 172:14,22 173:3 174:11 180:5,20,24 181:19,22 182:2,8 183:6 185:7,17 187:4 204:13,18 216:12,16,17,23 224:24	happy 188:6 219:14 227:20
gathered 220:24 221:6,8,11	Graves' 122:3	hard 62:15 63:2,3 71:10 111:9 120:12 216:14,17,23 217:8
gathering 163:11	gray 216:11	hard-and-fast 100:23
gauge 101:5	great 32:13 58:23	head 59:25 75:14 87:19 129:8 153:24
gave 142:18	greater 57:7	headed 210:2
general 65:13 131:18 132:10 133:15 141:21 142:18 145:21 201:5 225:19	Greg 98:15	health 230:7,9
general's 130:4 132:25 200:22 201:1,6 205:11	ground 97:6	hear 26:15 60:25 101:15 123:15 140:9 158:17 160:23 161:8 182:17 217:20 227:20
generalized 114:21 155:8	grows 74:15	heard 99:5 123:15 159:25 174:18 177:19,21 178:22 201:10,14 228:2
generally 46:13 83:14 187:7 208:19 230:4	guess 22:3 23:22 24:3 27:5,6 29:2 30:13 52:24 78:2,6,23 88:10 92:9 98:23 104:20,22 106:14,15 111:3 117:24 120:17 121:11 122:18 125:10 145:14 149:17 163:17 176:19 191:7 196:22 201:23 221:3	hearing 71:11 76:17,22 158:22 164:13
generated 15:23 179:24	guests 101:15	heartburn 206:25 207:3
geographic 14:10 26:23 27:14 66:10,11 157:9,13	guidance 132:5	held 70:19 75:15 76:11 141:21 143:17,20 213:11 215:10
geographical 11:20 15:14,22 27:9, 10 67:24 68:1,4,8	guys 39:22 215:6	helpful 17:15 156:13 178:1 185:21 196:10
geographies 68:25		high 112:3
geography 45:2	H	highest 11:25
get all 57:9	half 213:1	highlight 71:25 156:13 157:22
giggling 38:14,16	halfway 211:13	highlights 117:16 201:20
give 20:17 33:7 46:4 55:14,18 60:13 69:14 73:16 80:20 110:16 123:18 142:9 152:13 158:14,23 176:10 177:2 189:5 206:25 213:12 214:11	hallway 49:11 50:3 104:3 175:15, 18,19 176:2	Historic 11:23
giving 57:4,25 189:20 212:3 219:12	Hampton 38:10 39:20 40:18 47:25 48:2 109:11,15,18,22 144:23 204:12 220:25 229:12	historical 44:12
glad 23:4	handful 10:7	historically 73:25 90:12
go-between 167:7,13,14	hands 21:17 130:8 192:25	hit 101:1
goal 74:13 112:4	happen 66:21 97:19 99:9 204:22 228:10	hold 106:10 170:24 193:1
good 39:5 101:4,8,9 156:4 228:23 230:3,7		holder 44:6
good-bye 118:18,19		holed 38:19
governing 93:18,20,24 94:4 164:6		holistic 120:24
government 12:18,20 93:15 104:18 105:1 139:5,10,14,20 143:5		home 38:7 229:21
governments 11:22 143:13		hope 117:18 137:10
		horizontal 21:17

host 152:12

hosting 40:22

hotel 38:12,17,20,21,23 41:18,23
46:17,20 47:24 48:12 127:2,9
144:25 189:11 213:8 220:25 223:22,
23

hotels 39:8

hour 39:3 79:1,4,5 141:8 224:15

hours 47:14,17 82:4,7,8 89:17 115:9
123:24 126:7,17 136:23 141:11
154:3,5,19 172:3 202:17 221:2,4

Hovering 151:19

human 113:21

hunched 151:14

hundred 40:23 41:3 208:25

hung 52:24

hurry 225:15

hurrying 203:24

hypothetical 171:7

I

I-90 75:18,23 76:3,4

idea 53:10 78:12

ideas 66:17

identification 230:21

identified 186:16

identifies 133:18

identify 44:18 45:4 191:24

idly 14:3

illustrating 109:24

imagine 24:11 40:25 127:7

immediately 46:13 125:13,17 130:2
176:4

impact 84:7

impair 230:5

impasse 84:9,10,12,16,21 161:23
162:4,25 167:14 172:3

imperfect 228:22

implicate 135:13 136:25

implications 104:18 105:1

implying 91:13

important 64:14 66:20 67:9 153:3
171:1

impossible 74:15 89:7

impression 137:12 139:1 200:7

improvement 59:20,22 60:11 65:19

in-person 102:16 164:25

inaccurate 117:23 188:13

inappropriate 38:17 91:22

include 77:18 133:10 196:25

included 23:11 32:18 34:14 35:12
36:16 44:15 58:16 73:11 85:12 87:9,
13 91:20 114:22 144:8 165:5

including 30:19 80:21 128:23
165:12

inclusive 54:14 55:19

inclusively 56:10

inconsistent 151:24

incorporate 75:3

incorrect 155:5 160:12 177:20
187:14 195:9 196:4 213:14

independent 169:5 197:12

index 197:20

indicating 130:17 142:19 212:23

individual 85:10 98:21 174:2

individualized 171:21

individuals 37:16,18 126:2,16
145:20 146:3 148:11 189:16

inferred 88:6

inferring 207:18

informal 43:12,13

information 11:7 23:8 43:23 80:20,
24 95:12 113:5 123:6,11 130:24
133:5,9,11 147:3 151:12 211:2,3
214:7

informed 24:10 36:16 53:25 66:19
67:5 165:22 183:13

informing 32:11

initially 72:3

Inn 38:10 39:20 204:12 220:25
229:12

input 10:25 11:1 32:16,19,20 33:7,
10,12 90:14 148:2,4 163:11,13,16

inquired 209:23

inquiry 10:22

inside 127:21 129:8 216:11

insight 121:14

insinuation 221:12

instance 64:19 74:5 82:18 94:5
102:25 103:5 104:23 125:1 167:10

instant 8:19 102:19,22

instruct 130:22 200:19

instructed 32:4 176:16

instruction 176:9,25 178:12

instructions 189:20

integrate 32:3

integrated 112:24

Integration 114:16

intend 16:21 116:5

intended 212:19

intent 89:1 103:9

intention 116:9 218:25

intentionally 101:25

interactive 151:15

interest 58:6,24 66:9 87:8,16,23

interested 17:7 169:11 199:1

interests 157:13 171:2

Internet 192:11

interpret 218:13

interpretation 27:1 138:12

interpreted 156:20 219:11

interrupt 38:1

interruption 16:5 61:8 202:9

invite 53:10 171:13,16 175:1,3
185:3 218:5

invited 53:19 171:10

involve 100:11 158:5,11 210:7

involved 31:23 38:8 58:5 83:8 98:21
100:4,9 103:15 153:17 157:12 159:7
166:15,18,19 212:14 217:2 226:24
228:5

involvement 96:23 150:6,8,12
168:1

involving 119:16 226:17,18

isolated 167:10

isolation 66:22

issue 102:17 139:13 186:19 210:6

issued 67:4 138:9

issues 85:7 90:9 95:8 105:3 122:14
136:16 138:24,25 178:15,16 179:3

item 172:7,8 180:9,25

items 136:6,10 166:10 171:19
183:18

iteration 181:5 199:11

iterations 9:22 10:1,5,10 24:9 25:16
30:3 32:9 65:17

J

January 7:2

JD 12:6

Joan 39:2 78:25 120:20 132:20
141:7 192:23 206:15 211:12 215:14
218:2

job 12:15 17:7 225:20

Joe 7:4,10,18 146:17 155:23 177:12

John 7:3 18:20 177:25

join 176:9 177:1

joint 12:7

joke 218:13,14,15 219:2

joking 219:9

joy 71:14

junction 55:18 86:2 96:25 97:2
119:9 137:25

Junior 11:22

juris 12:1

juris- 138:21

jurisdiction 130:5,14,17 132:9
133:1,18,25 134:22 135:6,12,17,20,

22 136:8 137:14 138:22 140:16
147:6 148:6 153:1 190:8

jurisdiction's 130:8

jurisdictional 137:1

justice 208:13

Justin 174:25 175:2,11

K

kay 156:7

keeping 111:25 145:21

Kent 73:22

key 90:13 127:16,17

kids 38:7

kind 10:24 14:21 27:22 38:13 51:10
68:10,21 77:7 90:7 94:16 102:20
105:6,12 110:2,15,20 115:18,19,20
131:23 158:9 181:9 182:6,11 184:22
193:10 201:19,20 203:4

kinds 92:21

King 12:21,22 25:9 142:2

knew 20:7,10 53:12 87:22 88:2
112:19 121:18 122:3,21 123:6 126:1
140:25 141:4 180:4 183:11,12

knock 127:21

knowing 95:22,23 116:18

knowledge 27:12 84:15 85:23
112:9,21 119:14 134:20 141:3 143:8
160:11 163:6 177:6 182:1,4 197:10,
12,17 198:21 201:24 202:1,13
205:21 230:8

L

label 187:15 195:17 199:22

labeled 187:9 191:3

laboriously 184:22

lack 55:12 58:21 130:13 164:15

Lake 70:4,5 203:7

Lane 7:20

language 54:7,15 198:7

laptop 51:7,8,9,10 189:19

laptops 189:22

large 25:5 38:12,18 39:19 40:17,21
150:18 152:12 223:4

largely 53:6 110:24 151:11

last-minute 172:12

lasted 84:12

late 17:3 18:6,21 81:15 85:1 97:1
172:3 182:16 224:14,15

latest 181:5

Latinx 60:24 61:1 87:10

latitude 45:4

lattes 219:25

laundry 66:4

law 12:13 21:8 25:13 60:21

LD 219:12

lead 123:9

leading 200:10

lean 60:22

learn 151:16

leave 9:20 35:20 126:20 151:21

leaves 61:19

leaving 91:6 151:11 152:11 229:12

led 154:12 166:11

leeway 61:19

left 29:13 46:22 48:25 50:22 126:17
151:21 152:3,8 200:15 204:11
223:21,23 228:22 229:15,18

leg 216:15,18 217:9

legal 91:13 104:17 139:6 140:22
177:1 194:8 200:22

legalities 200:18

legality 204:19

legislative 8:24 9:2,7,8,11,17 10:2,
5 15:1,8,16,19 16:1,3,12 37:24
53:23 54:6,11,12 55:11,15,22 56:24,
25 57:6,21 58:16 59:17,23 60:6,18
61:5,12 62:8 64:2 66:7,12 69:8,19
74:16,18 75:2 76:24 77:10 79:15,18
80:25 83:18,19 87:7,12 94:6 95:2
96:14 98:12 102:2 122:8 150:25
151:2,7,23 152:4 153:12 154:22
156:24 160:10,20 169:12,15 170:1,

10 179:19 180:19 212:14 216:24 217:3 218:10,19	log 51:18,23	229:20
legislature 9:6 12:24,25 13:2 15:10 25:25 59:24 112:23 114:16 137:2	logged 53:8 77:17	makes 28:25 101:4
lengthy 66:16 179:24	logging 53:18	making 91:16 112:3 131:11 150:13 158:25 209:15 218:13 229:22
lens 109:25	long 20:4 21:8 22:17 133:10,14 207:1 214:15 226:9	mandate 143:19
letter 190:16 191:7,23 192:5 215:25	longer 84:11 133:24 135:7 136:8 140:16 153:1 229:2	manner 89:11 136:13 188:6
Letter_11.15.21 193:4	longitude 45:5	map 14:9,10 15:8,16 16:17,23 26:7 32:1,14 35:13 36:15,19 37:3,11,21, 22 42:16,23,24 43:5,7,10,15 44:1,14 45:2 46:16 50:6,10 53:20,23 54:13 55:16,22,25 59:24 60:21 72:5,21 95:7 98:12,13 100:3,13,15 101:3 108:24,25 111:16,17 112:22 113:4 114:14 115:4 122:17 125:25 137:13, 24 138:7 150:3,16 151:2,23 152:4 153:10,12 154:9 159:19 160:3 161:7 169:9,16 170:2 171:1,2,6 174:6 175:8 180:19 189:9,19,21 190:1 198:15,20 200:18 201:12 203:15 208:20 214:12 215:1 216:14,15,18, 24,25 217:3,9 223:15 224:5,23
Letter_plansubmittal_draft 191:4	looked 111:10 113:8 151:1 169:2 183:9,10 192:2 203:6	mapped 23:13 44:10 111:10 158:8 161:17
level 11:25 153:20 179:22	lookie-loo 196:13	mapping 22:8 26:11 42:10 137:13 151:9 153:4 158:10 160:25 161:10 162:17,20,21 188:20,23 189:1,4,6 198:16 225:20
liberated 135:23	lose 137:10	maps 14:6,8 15:22 21:4,5 22:11 23:17,20,23,25 27:15 30:18,19,21 31:1,4,20 32:10,22 33:1 37:9,13,24, 25 38:5,9 45:23 46:1,2 49:23 50:1, 10 54:11 55:16 56:1,14 60:8 67:4,11 71:24 74:10 77:23 79:18 88:8,23 89:2,5,25 90:24 94:6 95:2 96:10,11, 14,21 98:23 99:13,18 100:5 102:3 111:11 122:6,8 134:17,18 136:13 137:17,20 140:15 145:24 146:8 148:9 149:16,18 151:8 153:18 154:6,10,11,22 155:1 156:24 157:8, 19 158:1,14,21,24 159:5,9,12 160:10,19,20 163:12,15 164:12,21 165:5,7 169:12,13 171:5 180:16 183:17,23 184:3,7 185:11,12 189:22 190:17 199:10,14,16,17 203:25 204:7 205:23 207:19 211:18 213:25 214:4 215:5,8 217:18 219:12,18 224:8 225:4,16,21 226:4,12,16,19 227:4,9,13 228:8
licensed 12:8,11	loss 64:20	Maria 195:2
light 78:1	lost 101:12 135:17 190:8 229:9	mark 106:18 107:22 193:2 195:17
limited 26:23,25 27:1 99:17 103:12 116:6 128:17 166:11	lot 8:18 28:17 37:25 67:3 86:7 90:14 91:17,19,20 95:20,22,25 101:8 118:14 122:5 151:17 152:14 154:22 179:23 184:9 224:15	
limiting 70:18		
lines 21:17 23:22 24:7 25:19,22 26:5 33:15,16 35:18 161:3 190:22,23		
linking 102:21	<hr/> M <hr/>	
links 199:23	M.S. 7:3	
Lisa 149:24	ma- 188:25	
list 55:19,20,21 57:4,25 66:5 69:14 70:23 73:3,15 123:18,23 124:1	Macbook 51:11	
listed 114:5	made 11:20 24:1 31:4,7,14 43:9 53:15,16 62:8 74:15 84:3,10 97:3 112:2,3 116:4 123:18,19 124:4 125:3,13 131:8 135:4 137:1 159:13 160:10 184:18 209:18 229:25	
litany 134:5	magnitudes 90:16	
litigable 138:25	main 40:17 220:24	
live 179:2	maintain 25:20 30:4 31:16 32:5 170:15	
living 113:20	maintained 27:16	
load 24:16,22,25	maintaining 25:23 108:15	
lobby 50:3 144:25 147:2 183:11 189:11,17 215:11	majority 47:20 60:23,25 87:10 93:2, 3 97:16 107:10 142:14,23	
local 11:22 143:13	make 16:11,14,16,24 17:2 23:16 32:15 53:19 54:1 60:23 63:1 67:21 80:2 99:6 101:9 116:2 118:11 127:8 131:19,25 133:2 134:21 136:12,22, 25 149:15 155:8 157:16 170:24 173:11 189:20 191:16 194:3 209:10, 11 211:22 212:13 222:13 225:21	
locate 115:5		
located 222:20		
location 44:9 45:5		
locations 48:13,15 50:2		
lock 127:13		
lodging 227:22		

marked 106:18,24 107:24 117:13
155:14 191:3 193:1 195:16,20
207:3,8 230:20

markers 146:16,22,25 147:1

mask 144:24 145:1,2

maskless 145:4,9,12,14

masks 144:22 146:4

master's 12:1,2

match 111:13

matched 30:20 111:12

matter 94:13,15 151:17 152:18
197:3 224:18

matters 138:25

meaning 15:3 28:9 49:2 92:24
118:11 120:22 129:19 135:24
218:14 219:5

means 21:11 28:18 63:12,20 67:8
83:10 110:1,4 111:13 113:24 205:2
208:24 210:21

meant 33:21 170:9 181:3 198:15
211:15

measure 74:17

measured 82:4

measures 28:13

measuring 116:25

mechanical 174:5

mechanics 195:14

mechanism 17:12

mechanisms 112:6

medi- 167:22

mediating 96:18 166:23 167:1

mediation 166:23

mediator 166:1,10 167:8,22

mediator's 83:1,4,14 84:3,10 97:4
163:4 167:14 168:3,4 209:24

medical 230:4

meet 14:1 54:1 79:5 93:20,24 94:4
148:5 189:8 210:1,2,3 213:13,21,22
214:17

meeting 13:15,16 16:9 46:10,13
47:22 50:14,18 51:1,6,13,18,20,24

52:1,21 54:22 67:12,13,15 77:16,17
79:13,22,25 90:4 91:4,6,24 93:4
102:5,16 103:4,19 123:19 124:3,13,
14,24 125:2,6,14 126:16 130:3
135:24,25 144:12 154:5 160:21
171:9 174:25 175:1,2,3,8,10 176:10
177:2 179:2,10,13 180:9 182:3
183:6,7 192:2 195:14 200:1 210:20,
22,23 212:22 213:8 214:14 215:15
217:17 220:24 221:6

meetings 93:9,12,15 94:12,23
117:10 124:21 139:18 141:22
143:17,20 144:1 164:25 178:18

Mell 7:16 10:1,19,24 13:14,19 14:18,
25 15:15,25 16:11 18:14,17,20,25
19:2,21,22 21:25 22:13 23:25 26:6
27:21 28:17 30:8,12 32:15,25 33:6
34:18,23 35:4 36:3 39:6,9,18 40:2,7,
13,16 42:2,7 43:6 44:8 46:10 48:7,
14 50:5,13 52:11 55:7 56:8 61:11
62:24 63:4,19 65:23 66:4 71:17
72:13,23 73:5,16 75:8 77:16 78:24
79:3,12 81:12,23 82:16 84:9 85:22
87:3 88:24 89:6,13,19 90:2,17 91:4,
10 92:1,12 93:14,23 94:24 96:6,17
99:1 101:10,14,19,24 104:10,25
105:6 106:17,23 107:22,24 112:9
113:7 117:13 120:8,21,23 121:25
122:3 123:3 124:1 125:7 130:25
131:21 132:7,21,23 133:12 134:1
135:3,21 136:9 137:9 138:1,5
139:19,24 140:5,11,17,19,21
141:10,14,19 142:9 143:24 144:21
145:8,23 146:14,21 150:7 153:4
155:3,10 156:3,4 157:24 158:6
160:19 162:4 164:9,24 165:16
166:16,22 167:12 174:17 176:13,23,
25 177:19 178:6,11 180:21 183:22
184:18 186:2,7,11,21,23 187:2,13,
21,24 188:11,12 192:24 193:7
194:22 201:2,9,18,23 202:15,16
206:17,20 207:5,13 208:5 211:13,16
215:18,22,25 216:22 218:5 219:5
220:6 230:13

Mell's 187:16

member 13:2 101:4,9 199:1,6

members 38:25 42:17 93:7,19
107:4,5 108:20 140:25 141:1 153:18
179:14,15 189:3,15

memo 107:3,16,22 108:1,19 109:7,
10 117:16 118:22,23,25 119:1,2,6,
10,21 121:5 156:12 196:11 200:12
209:2

memorializing 117:2,4,8

memory 62:9 224:11 230:5

mentioned 83:19 168:12 216:13

message 51:15 118:8 132:13
164:25 165:7 185:19 207:14 212:19
216:21 217:6,10,15

messages 186:12,15 206:6

messaging 8:19 102:19,22 185:18
212:18

messy 181:8

met 139:11,14 166:13 212:23 214:3,
5

metadata 199:9,15,16,19,23 209:12

method 111:25

methods 82:17

metric 9:21,22 27:5 61:20 64:7,10,
14 70:16 111:11 114:23 116:23,24

metrics 14:4 27:2,7,25 63:22 64:15
72:4 73:12 115:4 116:24 157:8,13,
20 158:2,5,7,12 168:23

middle 7:23 97:6

midnight 97:17 100:3 127:5 128:4
133:24 172:25 173:6 189:2 190:8
192:13 195:12 200:16 226:16

midway 83:21,23

mike 19:10

million 25:7

milliseconds 196:25 197:3

mind 27:21 35:21,22 53:15 56:12
62:17 64:6 73:4 101:11 102:6
103:23 104:14,25 121:1,4 129:9,10,
11 141:8 152:17,20,23 170:3,7
185:5 212:20

minds 84:19

mine 112:4

minimize 74:13

minimum 190:25

minority 93:18,19,20,24 94:4

minute 106:13 115:13

minutes 35:18 50:23 79:1 186:5

misinterpreting 177:11

missed 156:18**mistaken** 35:16,23 36:2,14**mistakenly** 143:11**misunderstand** 25:1**misunderstanding** 154:16**mixed** 75:14**Mm-hmm** 26:12 38:3 41:16 60:2
121:7 196:19 213:5**modest** 60:10,13**modified** 84:1**modify** 201:3**moment** 52:3 53:17 66:14 69:23
77:21 99:8 110:25 123:8 128:24
130:2 151:5 185:13 201:1 213:18**moments** 17:3 172:25**Monday** 47:6 48:25 156:25 160:20
214:3,6**Monday's** 117:19**month** 66:15 138:16 208:22,23**months** 57:3 69:10 85:8 163:11**morning** 46:23 123:24 126:18 149:3
152:13 154:3 209:5,6 214:6 221:2,3
229:13**motion** 15:25 16:3,10,11,14,17,18,
24 17:2 53:11,19 54:1,5,8,14,15
57:20 59:17 60:6,18 61:6 62:7 74:18
124:16,17,21 171:11,15,16 195:11,
12 196:20**motions** 181:10 193:12,14,15**mountains** 88:3**mouth** 138:18 205:3**move** 28:24 35:24 41:7 53:22 75:25
131:14 171:19 206:3,6 207:9 212:11**moved** 28:15 69:23 192:16,17 193:8
196:7**movement** 63:17 76:6**moving** 161:10 162:17,20 172:7,8
183:17,24 184:4**multiple** 25:18 26:6 33:9 38:24
41:25 75:6 147:10 189:22 190:5**multiples** 69:20

N

names 200:2**naming** 198:21,24 199:4,8**narrative** 15:22**narrow** 82:6**narrowly** 78:23**natural** 11:20 126:3**nature** 28:12 132:3 149:14 164:6**necessarily** 27:20 35:21 44:22 45:4
66:21 78:10 80:5,15 114:24 116:24
143:7 161:20 163:20 170:17,18
205:17**necessitated** 26:4**necessity** 44:13 74:1**needed** 43:19 51:17 52:12 75:25
76:8 127:19,23 144:14 173:7,9,18,
21 176:6 190:7 197:22 205:6**negatives** 23:1**negotiate** 91:7 95:14 116:18**negotiating** 18:15 50:5 90:3 92:3
99:23 102:2 120:9,14 121:16,19
161:24 162:6 172:21 214:24 215:7
218:9**negotiation** 82:10,13 117:18 166:3
178:21 212:9**negotiations** 49:22 67:1 76:22,24
77:11,20 78:14 79:14 80:21,25
85:15 90:18 95:1 98:13 109:10,22
114:12 116:7 117:5 120:1,4,11,16,
24 121:10,13 122:4,11,19,22 123:7,
12 144:22 145:16 161:9,24 162:5,
16,19 163:1 172:12 173:14 210:5
212:4 213:9**neighbor** 71:9**neighborhood** 34:15**nexus** 65:5 76:3 81:6,11**night** 37:25 58:25**noes** 26:17**noise** 38:15**Normandy** 7:21 36:5,6,8,11,16
202:25**north** 21:12 69:25**north-south** 21:12**Nos** 230:18**not-competitive** 30:1**note** 64:14 66:20 209:10**noted** 197:13**noticeable** 61:24**November** 13:10,16 15:15,18
109:4,14 144:23 157:1 192:20**number** 7:25 8:2,4,5,9 10:8 11:9
24:16 28:4,15 29:20 50:19 58:5
59:19 60:13 63:21 64:12 65:8 66:16
72:5 73:13,24 75:1,7 76:25 85:7
99:13 106:11 128:22 138:25 167:6
178:18 184:8 191:2 193:3 206:11
207:6**numbers** 74:2 75:12 161:10,25
162:6,17,19 163:2 164:11 188:20,23
198:3 206:5,22,23

O

O'NEIL 164:9 174:12 175:13 200:13
201:11**O'Neil's** 155:4 189:19**O-P-M-A** 103:21**object** 9:24 10:17 13:11,17 14:15
15:11,20 18:11 19:5 21:21 22:9
23:19 26:1 27:19 28:6 30:7,10 43:3
44:2 46:5 48:4 49:24 50:7 52:8 55:6
56:6 62:21 63:13 65:20 72:10,19
73:1,8 75:5 77:13 78:15 81:9,21
82:11 84:5 85:16 86:24 89:3,9,14
90:20 91:9 93:10 94:8 96:2 98:17
101:7 103:25 104:19 105:5 112:1
113:1 117:6 120:5 121:21 122:23
123:21 125:4 130:19 134:24 135:14
136:2 137:3,22 139:15,21 140:8,18
142:6 143:21 145:5,17 146:10 150:4
152:19 154:20 155:6 156:18 157:21
160:16 162:1 163:22 164:18 165:9
166:4 167:3 174:14 176:15 180:10
183:19 200:19 216:19 223:9 224:13
225:10,24 226:20 227:5 228:11**objecting** 86:15**objection** 19:15 32:6,24 35:25
48:10 65:25 86:18 88:17 89:21 90:5
91:10,14,16 92:7 93:16 131:8 133:3

140:1,12 227:14,22 229:16	opining 138:24	part 30:18 34:19 47:4 50:3 52:11 56:15 57:5 69:2,4,5,11 76:15 77:1 85:19 88:19,20 100:1,13 162:7 166:11 170:19,20 174:16 178:15 179:3 200:8,9 212:1,25 215:12
objections 85:25 86:6	opinion 40:21 138:5 142:4 151:8 197:25	partial 21:4
objectives 135:25	OPMA 92:14 102:1,17 103:21,23 104:6,18 105:14 134:22,23 135:4,13 136:25 138:15 141:19,23,24,25 142:5,22 143:9	participant 129:15,18 163:25
obligation 142:16 143:14	opportunity 43:7 86:23 128:1 151:22 159:4,10 194:2	participants 89:24 121:2 134:12 163:24
observation 162:18	opposed 119:16	participate 82:25 96:22 173:23 175:10 210:17
observe 128:1 182:18	option 52:20,22	participating 97:13
occasionally 14:2	options 76:4	participation 90:14
occasions 190:5	oral 17:19	parties 44:7
occupied 48:19 146:23	orally 26:13	partisan 13:2 14:1 23:11,12 25:2,4, 20,24 26:8,23 27:9,17,23 28:9,11,13 29:18 60:7 61:16,18 63:18,19,23,24 65:2 73:12 84:2 162:22 168:23
occur 92:18 94:21 182:19 189:13 203:10 204:17	order 31:4,15 68:9,10 69:15 138:9, 17,19 163:16,17 173:8,10,18 194:10,11,13	partisanship 161:10,25 162:6,17, 19 163:1 164:11 188:20,23
occurred 30:17 34:7 149:22 172:24 182:8,12 189:1,2 203:20 214:16 221:13 223:3,19	organizations 148:12	parts 25:9 38:22 178:20
occurring 99:19 161:7	original 223:5	party 13:3,4 59:20,23 60:11 65:9 83:6 182:10,17 199:20,21
occurs 93:4	originally 115:24	pass 127:8 175:13
odd 144:11	Osta 153:13,14	passage 165:1 214:11
off-line 55:4 90:18 95:1 120:2	outage 192:12	passed 133:19 136:16
offer 83:1 95:16 131:7 166:9 210:8	outcome 138:13	passive 129:18
offered 83:20,22 174:20	overlapping 211:22	past 39:9 67:1 90:16 104:3
offering 167:21	overlay 23:12 45:2	path 117:19 197:24 198:1,3,19
offers 164:24 174:10	overnight 46:20 47:21	paths 191:24 198:10
office 12:23 44:5 200:22 201:1,6	overspoke 19:12	Paul 31:23 32:2 33:4,7,21 34:8,10 35:5,8 36:16,17 58:10 82:24 189:11 203:22 209:25 210:2,3,7,15 216:2, 12,16,21 217:6,7 223:20
official 93:1 113:21 132:5		Paul's 217:5
oftentimes 64:18 74:14	P	pause 19:14 42:4 79:9 101:21 104:17 141:16 186:8
Olympia 143:20		Pellicciotti 113:10,12,14,16 114:2, 3,9
on-camera 50:18	p.m. 101:22 141:17 174:9 186:9 189:7 195:3 209:22 230:17	people 25:7 40:23 41:10 63:23 79:4 99:2,15 126:6 134:11 164:4
one-and-one 119:16	pace 156:6	percent 27:4,5,11,18 60:15 61:21, 24 62:2,11,14,16,19 63:5,9,10,12,16
one-on-one 102:8 119:19 147:23	Pacific 7:2	
ongoing 64:13	painstakingly 161:17	
open 44:25 45:3,11 93:15 94:11,23 102:5 104:18 105:1 107:18 112:4 127:17,18 139:5,10,14,17,20 143:5 169:23 179:1 195:18 214:20	paper 51:2	
opened 127:16	paragraph 160:9,13 167:5	
opening 194:22	pardon 75:12	
operate 136:15	Park 7:21 36:5,6,8,11,16 202:25	
operated 145:1	parse 136:21 180:21 221:8	
operating 133:21 160:6 204:23		

209:1
percentage 9:21 27:11 28:15 29:18 64:20 83:24,25
percentages 64:5
perception 136:23
perfect 111:13 224:11 228:17,19
perform- 63:24
performance 20:20 23:11,12 24:16, 23 25:2,5,20,24 26:8,24 27:9,17,23 28:10,12 29:18 55:11,12 56:23 57:1, 22 58:7,16,20,21 59:15 60:4,7,17 61:4,14,15,16,18 62:4,7,12,20 63:18,20,25 64:2,16,18 66:2,8 69:16 73:12 83:16,17 84:2 114:3 162:23 165:12
performed 8:25 9:3 43:15 112:8 136:19
performing 137:17
period 144:5 182:16 224:11 227:2, 11
permissible 104:7,8 185:23
permit 112:16
permutations 21:23
person 111:14,16 129:14,18 145:16 153:6,7 165:7 174:13
personal 8:10 51:8,9 149:14 163:6 186:17 201:23 202:1
personally 10:7 45:25 46:2 112:12 204:6 226:8
perspective 135:11 190:10
pertaining 94:20
pertains 94:2 200:20
pertinent 18:22 178:2,17
phone 7:25 8:2,5,8,9 204:13 208:6,9 229:20,23,25
phrase 94:2 143:11
phrased 52:15 157:16
physical 8:8 15:13,22 21:4,5 37:22 45:6 89:25 90:24 230:4
physically 51:15
pick 30:16 65:2,4
picking 19:9
picture 110:16 129:9
picture's 129:10
piece 47:11 124:12 137:10
pieces 78:20 163:13
piles 115:15
ping 127:20
pivot 152:14
place 42:11 84:24 104:5 126:3 155:19 158:10 172:1
placeholder 190:21,23
places 197:21
plan 14:14,23 15:2,3,6,8,19 16:1,12, 15 44:6 116:25 135:17 139:25 141:5 169:15,22 170:1,9 171:13,16,22 172:21 173:7 191:24 212:14 217:2 220:10,12
plans 95:3 110:2 114:23,24
play 95:7 97:8,21 161:2 170:25
playing 83:9 97:10
point 22:12 31:3 35:1 46:14 53:16 54:22,23 59:19,22 60:14 62:23 65:18 76:19 81:15 82:1 83:24,25 84:16 85:13 111:9 115:7 120:25 125:19 131:7 132:22 135:18 137:6 138:6,7 141:2 147:4,8 151:23 152:18 160:4 162:25 166:13,20 169:18 174:17 175:11 183:1 185:4 187:16 188:19,22 200:14 201:11 203:23 204:10,23 205:7 208:9 219:15 220:23 221:5,11 224:20 225:14 227:3 229:13
point-by-point 46:12
points 50:19 110:5 184:23
poke 219:13
political 9:20,22 11:12,14,16 14:4 20:20 55:11 56:23 57:1,22 58:6,16, 19,21 59:15 60:4,17 61:4 62:7 64:6, 10 65:5,11 66:2,8 69:15 157:8,13,20 158:1,5,7,12
population 11:10 26:4 27:3 60:24 74:2,15 75:25 76:6,7,12 87:10 88:4, 5 203:8
portion 34:13 50:14,22,23 51:1,6, 12,18 79:25 107:23 109:8 171:9 179:10,18 182:3 183:18,24 184:4
portrayed 205:1
position 66:18 93:3 113:21 116:14, 17 117:3,4 140:24,25 141:4 149:17 150:1 158:20 170:16,19,23 174:7 180:13 185:8 193:11 205:10 217:2, 3,5
positions 217:8
possibilities 53:5
possibility 17:5 53:3,12,13
possibly 51:14 57:23 58:18 118:20 197:3
post 121:5 205:23
posted 67:15 225:16
potentially 161:1
power 136:17
practice 12:8,11,13 44:12 124:20
pre- 56:14
preceded 172:7
precise 29:20,21 44:9
precluded 102:7
predominantly 10:13 11:10 64:1 122:8
prefer 89:4
preferable 164:20
preference 13:3,4
premarked 206:21
preparation 197:6
prepare 97:24 113:3,7
prepared 53:14 115:5,8 116:13 170:13 180:14 190:7
preparing 97:14
presence 11:23 160:24
present 55:2 71:6 83:12 99:21 129:6 134:6 150:16,17,18,22,24 153:20 154:2 189:12,16 201:9 203:17,19 222:10,16
presentation 17:17 141:21 142:19, 20 199:25 211:14
presented 9:10 67:12 83:7 150:3 152:24 164:21 181:1
presenting 169:6

president 12:16**press** 67:7 149:7 205:23**pressure** 151:17 212:15**pretty** 39:5 66:15 144:11 152:12
168:16**previous** 21:1 24:9 29:6 30:18 32:9,
18 33:3 34:14,15 36:15,18,19,23
37:2 55:25 56:14 58:2 69:10 104:12
144:14,16,17 208:22**previously** 31:21 63:2 73:20 74:21
76:11 83:19 100:5 124:6 163:3
165:21 166:8 172:14 223:19 226:23
229:17**primarily** 65:12**primary** 64:24 65:1,6,9 108:16**principle** 148:8**prior** 19:4 20:8,11 48:20 50:12 54:22
56:10 58:11 70:25 84:22 108:4
109:12,17,20 110:24 116:21 141:1,4
157:20 158:14 159:13 160:20
164:21 170:3 179:9,13,17 180:9,25
181:17 183:17,23 195:12 196:7
214:17**priorities** 110:5 111:25 117:16
161:1,2 163:9**prioritized** 74:4**prioritizing** 108:23**priority** 85:9 108:16 109:24 112:3,8
117:8 118:12**private** 91:23 119:14**privately** 55:1,2 79:20 102:3 119:12
135:24 139:25 140:4**privilege** 130:21 131:4,10,17
133:13 176:16,21 177:10**privileged** 130:23 133:5,9**pro** 52:6,10**problem** 115:16 222:7**problems** 230:5**procedural** 208:19**proceed** 131:6 132:18 184:2**proceeding** 124:9**proceedings** 7:6 42:4 79:9 101:21
141:16 186:8**process** 24:11 33:11,12 43:19,20
57:18 63:21 66:16 67:5 71:23 77:6
78:19 84:8 86:3 90:7,10,15 91:25
94:21 95:24 97:18 98:20 100:3,6,10
102:6 105:20 108:17 111:21 112:5
126:1 128:24 130:6 131:13 135:16
137:25 138:13 142:15 144:6 151:13
162:24 163:25 164:1 165:4 169:21
170:11 171:19 172:1 173:19 175:12
179:3,25 180:17 200:11 202:18
212:12 215:12 226:9**processing** 202:17**produced** 106:14,16 107:17 114:20**producing** 115:12**product** 30:22 32:17 101:6**productive** 108:21 151:18,19**program** 8:5,7,9 11:8,9 12:7 43:22**progress** 68:7 76:23 82:22 97:3
166:12**progressing** 169:13**pronounced** 113:13**proper** 88:25**properly** 113:13 207:3**proposal** 14:12 17:11 23:23 25:24
26:2 31:1,5 54:10,12,16 55:10,15,
22,24 56:17 58:14 66:6,13 67:20
68:15 69:12 75:18 76:5,13,15 79:23
81:3,17 83:1,4,5,15 84:7,10,13,25
85:2,6,19 86:16,22 87:1,9 89:8
95:10 97:5,15,17,23 101:3 111:7
114:8 163:5 165:24 166:1,10
167:15,24,25 168:3,5,6,22 169:1,6,
10 173:8 179:16 184:12,17 190:2
209:24 218:10,19**proposals** 14:7 27:14 32:10,18
34:14,15 36:21 56:1 72:2 77:1,6,15
78:1,9 90:8 93:6 95:25 96:4 98:24
110:6 112:7 117:11 120:11 154:18
165:3,6 174:20 189:10 208:20 214:9**proposed** 16:22 17:9,17,22 18:1,3
19:2,23 20:15 21:3 22:1,5,16,20
23:6 24:22 26:7,20 29:22 31:8,10
32:22 85:19 86:13 87:4,21 98:12
179:5,9 180:24 182:5 188:14**prosecutor's** 12:23**protected** 132:6,16**protecting** 131:25**protective** 132:3**provide** 33:10 123:22 159:4 161:18
191:11 194:15,18,20 214:7**provided** 8:6 33:12 84:13 194:24
200:23**providing** 80:23 95:16**public** 30:19 32:4,12,13,14,16,19,20
51:18 66:17 67:1,2,8,12,13,14,16,17
77:12,16,17 78:20 79:22 84:18
89:25 90:4,14 91:1,6 92:4,25 93:4
94:7,11,23 99:11 102:5,11 103:18
107:17 116:3,4,5 120:2 123:19
124:3,13,14 139:18 141:1,4 148:24
149:1,8,18 159:8,13 163:11 176:9
177:1 178:13 179:4,8 183:7 186:13
187:8 194:24 198:25 199:1,5,6
205:1 210:23 225:21**publication** 149:16 160:4**publicized** 135:25 149:8**publicizing** 208:20**publicly** 36:25 55:4 79:13 89:16
117:11 119:12 132:13 134:16,18
164:21**publish** 116:12**published** 116:3 160:3**Puget** 21:9**pull** 155:14**purely** 169:2**purpose** 44:24 191:8**purposes** 148:22,25 154:4 186:14
191:7**put** 11:2 34:19 48:14 109:6 116:9
117:11 138:18 155:19 173:19
201:19 203:3 205:3 206:24 212:15

Q

qualifiers 57:9**qualifying** 24:17**quantify** 122:9**question** 9:1 10:4 11:4 14:17,20
15:5 17:1 18:21,22 19:1,20 21:2,6
22:3,17 34:24 35:1 42:11 44:24
48:11 52:23 59:1,13 60:3 66:24,25
67:24 68:24 78:5 80:2 86:9 90:22

91:15 92:3,5 94:2 101:10 103:7
 108:4,11 111:4 120:18 121:5 123:4
 129:7 130:23 132:3,4,20,22 139:18
 146:21 156:9 160:18 162:3 169:23
 170:6,18 173:11 176:20 177:5,13,
 18,22 178:2,8 179:7 183:21 188:8
 193:13,25 198:8 199:13 213:5 215:4
 222:13 223:5,11,24 225:18 226:22
 227:7,18 228:13 229:11 230:8,9

question's 31:9

questionable 204:19

questioning 39:4 128:7

questions 22:25 86:7 154:1 178:20
 187:16 215:2 220:10,13 229:4

quibble 157:15

quick 71:8 79:1 101:18 115:13

quickly 35:19 152:14 184:25 188:1
 203:10 204:7 225:16 226:4

quo 9:21 20:21 26:20,21 27:4,7,8,
 16,22 28:5,18,21 29:17,22 30:5
 31:16 32:5

R

race 64:3,7,12,24 65:7

random 199:5

range 28:2

ranges 27:25

rationale 97:24

RC003040 106:19

re-ask 173:11

re-reviewed 142:25

reach 82:17 97:20 105:4 208:6
 226:8

reached 76:18 81:20 148:7 150:10
 163:1 179:5,6,9,13 180:8

reaction 122:3,5

read 18:22 39:9 138:16 144:3
 155:10 156:19 161:4 167:4,5 174:1
 177:25 178:2 198:20 219:1

reads 44:22 168:21

ready 152:15 190:17 200:8 210:1,19
 213:17

real 52:24 101:18 202:3

reality 88:15

realized 51:17

reason 65:15 117:22 155:3 175:15
 182:11 187:13,14,17 188:12 195:8
 196:3 217:11

reasoning 54:2

reasons 116:16

recall 10:7 13:20,22,24 16:20 20:6
 23:10 32:1,21 33:2,8 37:12,17,20,22
 40:14 41:9 42:18,22 43:11,13 44:15
 46:12,22 47:10 48:17 49:8,18,21
 50:11,25 51:16,19 54:7,15 55:9,17
 56:13 57:2,10 58:25 59:18 60:9
 68:3,23 69:24 70:9,11,22 71:1,7
 72:11,21,24 73:2,17 74:22,25 75:24
 76:16,20 80:22 81:22 86:17 87:25
 97:1,8 98:5 99:15 102:25 103:5,14
 104:2 105:18 107:15 109:21 111:5,
 9,11,23 112:11 114:18 115:11
 116:4,8,11 120:1 122:24 123:8
 124:2,19 125:1,14,23 126:11 127:4,
 12 128:19 129:2,16,17,20 134:4,25
 135:2,9 136:3 139:12 141:6 142:18
 143:14 144:2,7,24,25 145:2,7,13
 146:3,25 147:7,17 148:16 149:4,9,
 11,12,25 150:20 152:1,2,7,10
 154:24 155:1,2 158:18,22,25 159:6,
 11,14,17 160:7,22 161:4,6,11
 164:13 168:10 171:10,20,23 172:2,
 4,10,12 174:22 175:3,5 176:1
 183:25 185:17 188:25 189:23 190:3,
 11,18,20,23 192:17 195:13 198:6,23
 199:25 201:4 204:15,21 205:25
 208:15 213:23 217:4 220:2,22
 221:3,5,7,13,14 222:11,12,17,22
 223:1,18,23 224:3,4,6,9,20,22
 225:9,12,14,22,25 226:1,7,11,17
 227:1,11 228:5,14 229:12,15,22
 230:1

recalling 129:3

receive 122:5 143:9 175:4 176:25

received 57:17 58:1 67:16,17 80:24
 112:10 114:4 115:6 130:11 132:5
 133:11 136:6 141:25 149:24 163:13
 186:13 190:1 198:25 204:13

receiving 131:2 142:11 144:20
 208:11

recently 142:24 155:12

recipient 217:24

recitation 205:17

recognize 106:24 195:21

recollect 31:18 203:1 229:11

recollection 9:16 15:13 20:17,18
 28:23 35:6,14 61:14 69:21 71:3,18,
 20 76:7 84:12 86:2 97:9 109:16,17
 110:25 113:9 114:21 119:25 120:7
 122:7 123:14,17 124:23 130:12
 135:3 142:24 143:18 145:19 150:21
 158:19 159:2 170:11 171:17 172:5,6
 183:2 185:16 188:3,16 191:5,19
 192:4 194:5,13 199:3 200:14 201:7
 203:21 217:13 225:1 228:14,15,18
 229:18

recollections 228:20

recommendation 152:25

reconciled 50:11 134:17 154:11,18

reconciliation 100:4 126:1

reconciling 31:19 32:17,18 46:16

record 19:15 21:15,16 35:2 63:12
 72:13 79:6,8 101:17,20 106:21
 131:14 181:13,18 183:3 193:5
 206:13 207:11 209:10 227:22
 228:20 230:14

recorded 134:16

recording 197:20

records 107:17 186:13 187:8
 194:24

redis- 14:23

redistricting 8:20 14:18,23 15:8
 16:12,15 44:6 54:13 70:17 77:6
 90:10 94:13,21 95:2 105:3 128:24
 130:6 136:15,18 138:13 139:1 141:5
 142:14 178:16 214:18

refer 178:19

refer- 161:20

reference 27:5 82:18 114:1 143:25
 182:20 200:2 209:7 226:7

referenced 20:12 100:2 124:6
 154:13 163:3 189:16,17 224:21
 226:14

referencing 64:6 139:13,23 159:20
 162:7 175:24,25 204:1 218:8 224:22

referred 48:17,19 125:20

referring 17:11 39:25 40:18 48:6
77:8 128:4 157:23 160:13 165:1
187:13 195:5

refers 15:9

reflect 9:7 23:23 31:1,5 32:3 56:16
99:4 114:16 186:21 198:20 199:11
214:23

reflected 56:2 85:14 88:22 99:16
115:2 117:11 152:5 196:6 209:13

reflective 51:2 215:6

reflects 193:10 202:20 207:14

refresh 71:2,17,20 153:5 191:5
200:13

refreshed 74:9 114:19

refreshes 185:16

refreshing 35:6 125:15

regard 16:24 20:15 23:5,6 25:4
27:17,23 29:22,23 31:14 43:14
44:13 54:5 61:11 62:5,11 65:24
66:7,12 76:6 77:19 79:15 80:8 87:7
90:10 93:8 102:18 103:8,20 122:19
136:1 138:6 156:12 167:13 180:19
188:13 197:5 200:15,22 207:14
208:10

regular 13:15 50:14 103:2 124:21
213:24

regularly 77:5 162:22,23

reject 188:5

rejected 137:18 168:24

rejoining 54:22

rel- 144:18

relate 81:2

related 42:15

relates 77:23 108:14

relative 24:22 29:3 32:16 64:17
75:9,22 87:7 93:15 108:12 143:5
165:12

relayed 84:25 85:3 172:15 174:12

relaying 80:13

release 207:19

released 134:18 147:19

relevant 28:16

relive 171:7

relying 36:10 195:14

remainder 107:8

remaining 28:23 29:2,3,13,14,16,23

remember 34:11 48:20 54:5 55:7
56:18 58:8 66:8 70:24 71:5 76:14,
17,22 80:11 102:14 109:5,18
110:14,18 120:8 127:13 134:8
141:25 142:2 147:24 149:23 151:12
159:18,22 161:12,23 168:11 171:18
173:1 174:17 178:19 185:4,7 190:15
191:21 192:15 195:11 203:24 204:5,
9 208:5,8 223:8

REMEMBERED 7:1

repeat 10:4 22:19 86:9 94:17 160:17
179:7 198:8 211:19 213:5

repeated 211:20

repeatedly 162:15 164:9

rephrase 142:13

report 15:9,10

reporter 7:3,12 10:15,18,21 16:5
18:23 19:7,11,17 34:16 39:14 46:6
61:8 63:14 94:15 106:17 120:20
144:16 146:17 166:17 177:17 178:3
184:14 193:2 194:18 202:9 206:7
207:2,25 211:12 219:3 221:20,24
222:5,7 228:24 229:6

reporters 203:25 225:17 226:5

reports 95:20

represent 57:3 194:23 198:15

representation 14:11 45:6 155:8
193:19 195:1

representations 156:12

representative 99:5

represented 181:4 187:10

representing 228:18

Republican 13:5 60:22 97:15
189:12

Republicans 168:23 169:2 174:20

request 13:8 186:13 187:8 220:16

requested 87:12

requesting 194:4

requests 194:24

require 161:16

required 22:5 27:2 170:12 191:23

requirement 143:12 146:5 170:8

requirements 44:4 142:21

reservations 69:6 87:11

reserved 230:15

reserving 43:2

resolution 35:19 190:21,24 191:6,
23 192:15 193:4,7 195:3,12,22
196:7 197:23 198:2,4,9,14 211:1
212:16

respect 14:5 26:8 43:9 57:20 58:15
60:18 121:9 124:3 141:24 142:5
147:4 172:20

respective 99:20

respond 104:24 178:11

responded 213:16

responding 194:6

responds 10:21

response 134:1 186:13

responsibility 169:17

restack 21:19 24:2

restacked 23:9 24:13

restacking 20:19,25 21:7,10,25
22:5,16,22 23:7,13,16 24:6

restate 222:12

rested 136:17

result 85:14 86:21

results 65:13

retained 69:19

retroactively 138:11

revealed 36:25

review 91:1 97:23 105:21 107:15
115:14 151:23 158:14,21 159:4,10
192:10

reviewed 9:5,10 32:17 60:7 89:25
114:20 144:6 155:12 159:12 183:4
190:24 191:25 198:4

reviewing 167:20 224:7

ribbing 219:5,15**road** 45:4**role** 83:9 97:10,21 148:19,20 167:7,9**roles** 98:20**room** 18:9 38:11,12,20,21 39:19,25 40:1,2,3,7,8,13,17,18,19,21,22 41:2,6,8,11,13,14,17,20 42:13,14 46:14,15 48:17,19,22,23,25 49:1,5,6,12,15 50:6,12,24 51:20 82:4 105:2,23 125:22,24 126:4,5,7,9,20 127:1,3,11,12,13,18,19,21,23 128:2 134:11,15,17 145:4 150:18 155:20 183:10 203:17 220:25 221:2,6,10,15 222:10,16,20,25 223:2,7**rooms** 38:9,17,24 39:7 40:12 42:1 49:4,16,20 50:16**roughly** 25:7**rounds** 67:4,11**Rs** 167:2**rubric** 116:20 119:7**rule** 100:23**rule-making** 144:6**rules** 137:8 139:20,22 143:19,25 144:3,9,10**run** 214:15**rushed** 18:6

S

Sarah 208:12 210:15,25**sat** 128:24**satisfied** 68:9 85:7**Saturday** 47:2,4,5,9,15,18 109:14**scenarios** 202:23**scene** 134:9**scheduled** 50:15 174:25**scope** 63:6**screen** 106:1,4,7,8 155:24,25 156:2 192:23 212:25**screenshot** 210:10**screenshots** 209:16,18 211:21**scripted** 171:25**scroll** 108:4,6,7 155:21 156:8 188:7 194:25 218:1**scrolling** 197:23 206:2 207:21 208:4**scrutiny** 58:1**SDC** 163:7**search** 45:12**seating** 41:3**Seattle** 12:5 33:18 206:16**sec-** 213:12 214:11**second-floor** 50:16 55:8**second-to-the-last** 183:1**seconds** 197:4**secret** 140:5,17,21**secretary** 44:5**SECURED** 191:5**security** 199:8**seek** 200:17 201:2**selected** 30:23**Senate** 31:24 163:7 189:11**Senator** 182:21,22**send** 101:1 107:5 108:19 112:19 169:9 195:2 203:15 214:9 223:15 224:4**sending** 110:13 215:25**sense** 11:20 29:1 52:6 56:4 92:22,23 108:20 120:24 122:10 131:19 152:14 173:2,4,5 189:5 225:19**sentence** 33:19 108:14 202:21**separate** 49:4**separately** 107:18**sequence** 93:20,25 94:5**serial** 93:8,12,15 226:17**serially** 227:3**session** 84:18**sessions** 178:14**set** 41:1,4,5 48:3,8 103:10 118:3 121:1 134:9 143:1 152:17,20,23 173:14 207:2 216:7**sets** 11:10**settled** 170:12**severals** 30:16**sham** 140:7,11**shape** 43:23 44:20,21,23,25 45:2,3,11 150:9,13,15,19,23,25 173:20 211:1,4,8,17**share** 19:2 37:13 55:17 57:2 99:6 106:1,4,5,6 112:12,16 132:7 155:25 156:2 160:19 179:4 190:12**shared** 14:7 18:7 19:23 37:3,6,14,15,22 66:17 72:5 80:11 87:1 90:24 92:9 96:15 98:7 100:24 110:12,14,16,17 112:20 119:9,11 163:10 165:4,19 172:22 199:7**sharing** 95:13 110:4 116:21 120:3 130:20,23 131:19 178:23 192:22**shift** 135:22**Shoot** 195:17**short** 141:9 198:24**shortly** 189:10 223:21**showing** 106:23 107:24 109:23 117:13 191:3 195:16,20 197:19 207:8**Sick** 38:7**side** 45:8 65:2**side-by** 196:9**sides** 65:6**sign** 145:2 191:16**sign-off** 158:14**signature** 191:18 195:25 196:4 230:15**signed** 192:5,8,11 193:4 198:2,9**Signed.pdf** 191:5**significance** 103:24**significant** 61:16,18,22,25 62:17,20 64:21**signing** 191:17 192:15 198:12,14,17**similar** 96:12 113:3 210:10**similarity** 81:12**similarly** 122:20 134:7

simply 157:7 187:3
Sims 20:7 68:18 76:18,23 77:19
78:11 80:14 81:19 82:21 84:14 85:4,
5,15,21,23 86:2,5,14,19,23 87:2
96:13 97:11 119:1,3 121:12,14
122:21,25 123:1,5,10 161:8,11,20
162:14 165:20,23 166:14 168:7,13,
23 169:4 172:16 174:11,18,19
180:5,20,24 181:5,21 182:12 183:8
217:17,24 218:18
Sims' 153:6,7
simultaneous 16:6 61:9 202:10
single 38:19 56:2
sit 14:2 72:23 73:5 147:14
sitting 18:9 72:7 91:21 110:20
117:22 129:3
situation 105:10 156:17 175:24
situations 103:16
size 41:4 106:8
skinny 21:9
slash 224:15
sleep 46:17 160:6 204:23,24 224:16
slightly 60:22
Smith 207:13,15 208:5
Snohomish 70:1,2,3
softphone 8:5,7
software 11:8,9 44:22 45:10,13,15,
18
sole 138:6
solely 138:3
sort 212:10 215:11
sought 200:23
Sound 21:9
sounds 128:10 163:19
Southwest 7:20
space 48:18 125:19 146:25 150:18
189:2 223:4
spaces 38:13 146:23
sparks 185:5
speak 54:3 110:10 116:10 121:1
135:16 154:7 165:18 180:15 188:17,
18 193:23 199:19 200:6
speakers 16:6 61:9 202:10
speaking 86:4 105:9 129:5 163:24
170:20
specific 42:9 44:18 45:8 46:9 50:20
58:3 68:3 70:11 75:18,19 77:7 82:18
92:2 93:12 103:5 104:23 118:11
121:2 123:8,25 139:20 143:6
153:22,23 156:9,14 165:1 173:16
180:22 185:12,13 188:3 190:11
192:7 195:14 196:23 204:5 215:2,4
222:24 226:7
specifically 14:23 60:9 78:3 93:11
99:15 102:14 118:23 139:12,23
159:14 221:16,24 223:1 224:3
specificity 120:18
specifics 76:5 144:8 157:9
speculate 36:12 104:21 140:22
171:4 182:14
speculating 139:6
speculation 82:14
sped 94:16
spend 48:12,25 49:1 81:24
spent 35:18 82:3 95:22
split 69:4,17,20 71:25 72:8,12,17,21
73:6,19,20,21,25 74:19,20,21,23
75:3 87:15,23
splits 70:10,13,16,18,21,24 71:21
72:25 73:3,11 74:11,13
spoke 17:21 35:4 83:11 128:3,14,16
spoken 108:17 117:10
spreadsheet 115:22
stacked 21:23 24:9
staff 8:22 31:18,22,24 37:14,15
38:25 42:17 43:17,18 46:15 49:3,5,
17 55:2 98:10,11,15,19,20 99:2,3,4,
14,20,23 100:18,19,24 101:4,9
111:14,16 112:10,12,14,16,17
113:2,7 115:5 120:1 123:9 126:2
144:22 145:23 146:7 149:19,20
150:1,3,9,14,19,22,24 151:7,11,18,
20 153:6,7,11,15,17 154:1,17 158:6
159:3,13 160:19,20,23,24 161:8
173:17,21 174:3 188:19,22 189:3,
15,25 191:15 198:22 202:22 203:16
210:25 214:8 215:10 220:23 221:1,
6,10,17,25 223:16,20 224:5 225:15,
22
staff's 150:15
staffer 127:20 203:18
staffers 151:14
stage 150:6,8 165:4 205:16 212:9
stamina 141:12
stamp 192:19 197:18 209:3,8
stamps 192:18 195:23 197:2
standard 105:16 124:20 140:23
standards 139:5,10,14
standpoint 85:9
start 17:16 19:21 29:2 34:21,23
56:22 109:1 188:20,23
started 13:16 52:1 83:10
starting 160:13
starts 206:11
state 7:17 8:6 12:9,23 14:11 64:2,7
68:21 69:1 113:19 143:15 169:3
178:20 225:11
state's 44:5
stated 88:1,6 89:15 163:9 164:22
165:21 223:19 229:17
statement 92:11 147:18 148:14,16,
21,24 149:2,7,8 155:10 160:11
162:8,14 163:18 164:7 190:9 194:21
statements 67:7 155:9 156:10
static 20:19 24:16,22 25:2,4,20,23
26:8
stating 138:9 212:11 217:13 223:3
statistic 27:22 62:18
statistically 108:25
status 9:21 20:21 26:20,21 27:4,7,8,
16,21 28:5,18,21 29:17,22 30:5
31:16 32:5 79:14 80:25 82:13 95:20
96:16 120:10 128:23 212:3 213:9
statute 14:24 15:7,9 70:17 136:14
142:5
statutory 17:4 170:8
stay 46:14 47:21 145:15 154:5,7
staying 47:24

stays 64:18	suggest 92:13 217:6	33:22 36:18 40:4,5 41:17 64:19
step 18:18 66:14 135:16	suggested 82:23,24 163:4 210:8	68:14 71:19 77:10 78:9 83:23 87:21
steps 103:10 129:24 130:1	suggestion 83:20 84:4,8 167:21	110:22 121:20 125:9 129:8 130:7
stipulated 186:15 201:17	169:5 190:15	142:10 144:15 145:25 168:10,11
stipulation 186:24 187:9	suggestions 148:13	175:19 176:2 183:10 197:3
stopped 176:5	suggests 213:13	talks 83:10
straddle 74:6	suite 38:19,23 41:18,23 55:8 77:4	targets 27:3
strategic 185:8	110:21	taxing 11:22
strategically 212:11	suites 81:24	team 157:18,25 163:7,8
strategize 82:10	sum 60:10	technical 7:22 10:12 39:13 94:14
strategizing 95:14	Sun- 47:8	174:5 207:24
strategy 161:12,14 172:2	Sunday 47:6,9,15,19,20 109:14	technology 8:10 51:5
stretch 21:9	support 151:20 179:22 180:1	tedious 187:25
strike 18:1 32:21 74:17 78:6 81:5	supporting 85:6	telecommunications 8:11
91:5 93:25 109:1 110:15 117:3	suppose 17:23 62:14 121:6 138:11	televised 135:24
118:9 124:13 130:14 136:20 137:15	supposed 19:20 79:4	telling 51:15 95:16 208:5 213:11
143:3 150:13 159:7 197:5 198:18	supreme 9:6 97:15,22,23 112:24	217:7
strikes 115:14	114:15 130:8,17 132:25 134:21	tells 210:9 214:7
structure 17:11	135:11,18,22 136:1 137:2,14,18,24	ten 25:14 29:11 41:12 141:8
struggling 31:12 78:4 92:12,15,16	138:6,9,14,16 139:3,9 147:5 148:15,	ten-month 179:25
stuff 131:24 151:16 152:15 205:21	17 193:23 194:4,14	tense 118:9
213:20	surprise 112:20	term 95:15 157:10 167:17
subject 67:16 94:13,15 226:3,4	surprising 164:8	term-of-art 14:20
230:5	switching 217:19	terms 9:6 17:17 21:19 39:18 58:3
subjective 124:11	sworn 7:10	60:16 72:25 82:3 86:14 139:16
subjects 147:15	system 8:11,15,18 10:14,24 43:18	153:22 166:3,22 171:3 180:21 181:3
submitted 149:5 173:8,9		199:11 214:24 215:6 221:11
submitting 148:10,13	<hr/> T <hr/>	test 191:14
subsequent 72:3 97:21	tactics 82:10,23 166:23	testified 7:13
substance 96:20 97:7 98:22 131:17	takeaway 42:25	testify 164:3
132:1 136:12 172:15 200:21 228:7	takes 202:18	testimony 58:12 78:20 159:25
substantial 32:19	taking 51:3 52:6 88:24 104:12,16	198:25 199:5,7
substantially 138:20	114:11 115:13 139:24 141:8 158:20	text 51:15 102:19,21 103:1,10,14
substantive 96:20 138:24 160:25	159:18 170:25 173:9 184:5	164:25 165:7 185:17,21 186:12,15
179:3	talk 37:20 61:13 63:24 68:16 96:19	206:6 207:14,22 208:3,11,12 210:14
substantively 138:10	97:7 98:15 99:3 100:21 111:2	212:2 213:7 214:23 216:7,21 217:6,
success 82:15	126:15 130:13,16 208:20 212:23	10,14
Suffice 143:2 144:9	213:8,22 218:11,20 219:8	texting 217:23
sufficient 142:8,21	talked 67:14 77:5 97:5 128:22	texts 186:16 209:12,18
	168:14 175:11 202:15,19 217:1	that'd 215:21 221:3
	talking 10:20 14:25 25:11 29:14	there'd 210:12

thing 65:1 95:11 102:20 110:15,20 131:7 189:4

things 8:14 11:20 17:13 21:5 48:14 55:19,20 67:9 87:19 91:18,19 101:8 103:4 104:10 144:12 161:16 172:11 174:5 177:11 212:11

thinking 29:21 120:4 129:4 131:1

third-party 167:21

thought 29:8 34:13 35:11,17,22,23 40:7 60:5 63:6,10 67:22 81:14 99:7 105:11 115:11 120:10,16 121:12,15, 19 137:11 151:9,24 152:6 169:18 205:6 210:12

thoughts 143:4 199:7

thousand 22:7 30:12

thousands 21:19 78:19 163:13

thread 103:1,12,14 105:18 210:14

threads 102:19,21

Three-quarters 25:7

thrown 63:23 78:21

tightly 82:6

time 7:2 10:4 13:9 15:23 18:5,17 29:9 34:9 35:24 37:25 39:5 41:11 43:2 46:10,15,17,22,24 47:12 48:12 49:1 50:12,18,25 51:23 52:1 57:5 58:8 59:18 61:23 66:19 69:10 70:22 71:10 73:4 74:25 81:23 82:3 84:13, 16 85:13,23 86:10 88:12 89:5 90:25 91:15 95:18,21,22,25 97:1 99:10 102:13,24 103:6 104:2,5 105:18 110:11 111:22 114:8 116:8,11 118:3,10 119:7,19 120:12,14 121:3, 11,15 126:8,16,17,20 127:23 128:3, 8,20 130:2,10 132:14 133:8 134:13 135:4,5,9,12 136:15 140:15 141:2 142:7,9,11,23 144:5,6,7,11,25 146:24 147:5,20 149:11,22 150:17, 20 155:4 157:5 160:2,4,8,21 162:5, 25 163:3 164:14 169:10,16,18,24 170:3,16 171:17,24 172:11,24 173:1,2,6,16,18,24 174:1,3,17 181:9 182:16 183:14 185:11 186:19 188:13,16,22 189:14,15 190:14,25 192:1,10,18,19 195:23 196:4,6 197:18,20 198:12,14,16 199:12,15, 16,23,24 201:6,9 202:2,3,4,13,14 203:13,18 204:15 205:14,18 206:15, 16 208:16,25 209:3,8 213:23 214:5, 11 215:5 217:4 220:7,11 221:7,9,13, 14 222:10,16,19,21,22 223:1,7,18, 23 224:6,8,12,21 225:2,6,13 226:8, 24 227:1,10 228:5 229:15

timeline 193:10,14,15,19 194:4,21, 23 195:1 197:7 200:12

times 33:6,9 40:12 49:14 93:7 94:22 99:9 102:5 103:4 122:7 127:14,18 128:14 129:4 134:10 144:24 146:3, 4,8 163:9 175:21 178:18 180:16 188:18 197:9,13,17 209:13 214:1 225:8

timing 88:11 147:17 149:4 160:9 172:8 193:11

timing-wise 121:4,8

tired 196:15 219:24 228:16

titled 186:16

titles 187:8

today 38:7 72:7,23 73:5 117:22 147:14

told 51:14 68:17 76:13 133:12,15 136:7 157:18,25 162:15 189:8 213:18 217:7

tone 118:9

tool 111:20 112:5 114:23,25 115:1

top 21:11 28:2,3 59:25 74:3 87:19 153:23 218:2

topic 128:19

topics 128:23 147:11

total 82:3 137:24

touch 213:16

track 47:12 64:15,21 65:5 111:25

tracking 70:14,15 71:23

traded 174:10

Traditional 11:21

traditionally 75:15

traffic 8:18

training 141:19,20,24 142:1,4,12, 17,21 143:4,9,12

tran- 191:22

transcript 16:19 38:16

transcripts 39:11

transferred 135:6 148:7

transitory 213:20

translate 99:24 101:6

translated 27:10 140:14

translating 164:10

transmit 200:8

transmittal 137:19 158:15 190:16 191:7,22 192:5

transmitted 9:5 25:25 59:24 112:23 114:15 137:18 148:15 159:5 192:9 199:10,14,17

transmitting 10:19

transparency 164:16

transparent 89:13,20,24 90:3,19 91:2,8,13 92:4,6,18

transpired 164:17

Transportation 11:23

travel 33:17

treasurer 113:19 114:4

treasurer's 64:3,7,12

treated 171:6

tribal 69:6,17

trigger 102:1,17 103:23

triggering 103:20 136:4 137:7

trip 206:5

tripping 120:19,22

trouble 171:8

true 22:10 188:5

trusting 42:25

Tuesday 47:7 149:3 207:16 221:3

turned 176:4

Turning 200:12

TVW 197:20

two-page 106:20

type 83:20

types 67:8

typically 27:15 113:16 114:7

U	V	
uh-hum 26:15	vacant 50:3	voice 164:9
ultimately 209:12	vague 31:9 69:21 125:9	voicing 201:11
unable 97:19	validity 201:24	volume 67:7
unclear 11:4 15:5 23:3 52:4 134:10 170:5	values 62:23	voluminous 32:12
uncompetitive 28:9,13	variation 28:17,19,21 62:19	volunteer 143:15
understand 9:1 13:13 17:1 22:3 36:10 40:16 44:24 63:23 78:4 85:13 92:24 95:19 99:21 113:23 131:24 136:22 162:13 168:2 173:12 196:16 198:13 199:13 227:7 228:4	variety 147:11	vote 15:18,24 18:5 19:4,25 20:4,8,11 29:17 52:7,10,12 53:1,4,25 56:17 57:19 64:9 65:2 70:25 73:7 74:19,23 80:4,6 81:4,8,18 84:17,22 87:6 88:21,24 89:5 90:1,25 104:12,16 105:7 140:5,7,11,13,17,21 141:1,4 151:25 156:25 157:5,7,11,20 158:8, 11,20,23 164:21 165:24 169:19 170:4,16 171:3,13 173:8,9,10 180:14 181:4,17 184:5 190:7,16 200:9,18 204:25
understand- 78:6	verbiage 39:7	voted 22:1,20 24:14 25:24 26:7 28:20 54:9,10,17 55:15 56:5,12 57:19,20 59:17 60:6,17 61:5 67:22 68:2 69:12 70:21 72:9,24 73:4,6,10 74:16,18 75:10 84:25 89:7 111:7 151:10,24 152:6,22 156:25 184:17
understanding 15:6 36:8 41:22,25 43:22 67:19 78:8 84:3 85:2 86:12 93:1,5,8,14,23 104:6 105:13 117:24 136:19 137:16 138:14,19 151:22 153:20 157:25 158:4,16 166:22 168:25 171:8 173:13 182:2 186:22 198:19	verification 175:8	voted-on 68:15
understood 58:11 86:20 103:21 122:11,13 123:10 182:4	verify 197:22	voter 45:9
Undisputed 157:3	verifying 211:23	votes 93:2
unexpected 163:21	vernacular 14:21	voting 29:19 58:4,15 60:24 62:6 64:11 81:14 87:10 96:6 101:25 102:12,15,23 103:1,15,17 104:4,15 105:10 107:10,13 119:11,15,17,20, 22 120:15 126:10 140:25 141:1,3 165:8 171:25 176:7 181:17 183:16, 23 200:15 201:12 228:6
unfulfilled 142:16	versa 181:22	vouch 197:1
unintended 65:12	version 33:3 36:15,18,19,24 37:2,13 111:22 150:3 209:12	
uniquely 144:10	versions 14:7 31:20 36:20 37:10 56:1,14 71:24 111:19 154:15	W
University 12:5,22	versus 65:2 78:12	wait 106:12
unpack 80:2	vertical 21:17	waiting 91:21 95:20 155:24 156:1 176:12
unsure 78:2	vet 86:23	waive 131:10
unwilling 174:19	vetting 90:8	waived 131:12
update 96:16 212:8	vice 181:22	walk 176:24
updated 190:1	videoconference 7:4,22 10:11 39:13 94:13 207:24	walked 209:25
updates 176:11 177:3 212:3	view 79:22 92:25 94:7 99:12 113:5	walking 104:3 175:18 209:20
upload 202:17	viewable 79:13	Walkinshaw 17:6,24 18:5 19:4,24 20:1,13 33:24 34:7,12 35:5,9,10,13
uploaded 106:19	viewed 88:19 108:24 135:15 169:15,25	
upset 159:15	viewing 109:24	
urgency 173:2,4,5 225:20	violated 92:14 139:17,19	
urging 225:15,22	violation 94:23	
	virtually 89:6 152:13	
	visible 90:24	
	visit 218:5,6	

36:7,9 37:4,14 42:8,17 50:1,6,9 95:5,6 96:9 100:15 118:22 121:16 122:4,12,16,20,22 123:7,13 124:7 145:11 146:7 152:8 158:20 160:14 165:20 168:13 169:11,14,25 174:13 180:6 181:24 182:12 183:9 185:9, 18,19 189:8 202:22 212:3 216:16,23 217:7 224:7 225:3 226:14 227:8	10 43:3 44:2 46:5 48:4,10 49:24 50:7 52:8 55:6 56:6 62:21 63:13 65:20,25 71:14 72:10,19 73:1,8 75:5 77:13 78:15,25 79:6 81:9,21 82:11 84:5 85:16 86:24 88:17 89:3,9,14,21 90:5,20 91:9,12 92:7 93:10,16 94:8 96:2 98:17 101:7,17 103:25 104:19 105:5 112:1 113:1 117:6 120:5 121:21 122:23 123:21 125:4 130:19 131:15,23 132:12,19 133:2,14 134:24 135:14 136:2 137:3,22 139:15,21 140:1,8,12,18 141:7,12 142:6 143:21 145:5,17 146:10 150:4 152:19 154:20 155:6,23 157:21 160:16 162:1 163:22 164:18 165:9 166:4 167:3 174:14 176:14 177:4, 12,15,18,24 178:7 180:10 183:19 186:11,25 187:11,20,22 192:22 200:19 201:16 206:15,18 207:1 215:14,20 216:19 218:1,4,23 220:9, 14 223:9 224:13 225:10,24 226:20 227:5,14,21,24 228:11 229:1,5,16	17 89:8 109:8,19 116:17 117:9 118:8 wrote 24:16 25:1 26:21 109:5,17,23 118:5
wanted 42:22 49:9 108:22 116:13, 16,19 149:17 154:7 161:9 162:16 164:2,5 170:24 202:5 204:6,7 218:18 224:24	121:21 122:23 123:21 125:4 130:19 131:15,23 132:12,19 133:2,14 134:24 135:14 136:2 137:3,22 139:15,21 140:1,8,12,18 141:7,12 142:6 143:21 145:5,17 146:10 150:4 152:19 154:20 155:6,23 157:21 160:16 162:1 163:22 164:18 165:9 166:4 167:3 174:14 176:14 177:4, 12,15,18,24 178:7 180:10 183:19 186:11,25 187:11,20,22 192:22 200:19 201:16 206:15,18 207:1 215:14,20 216:19 218:1,4,23 220:9, 14 223:9 224:13 225:10,24 226:20 227:5,14,21,24 228:11 229:1,5,16	Y
wanting 11:6 38:17 131:5 140:22 156:11 206:18	word 14:9,10,12,14 16:4,9,16 18:15 24:4,18,24 40:3,13 62:1 69:2 80:8 91:13 108:14 181:8 201:14 211:14	years 25:14 142:1 yes-or-no 92:5 177:13,18,21 227:18 yeses 26:17 yesterday 187:5 216:13
Washington 12:12,22,23 76:1 113:18 203:7	words 16:2 17:21 62:23 68:23 117:21 118:10 138:18 167:6,18 184:9 205:3 221:8	Z
ways 21:19 22:7 26:6 66:3 67:7 75:1,7	work 8:20,25 9:3 12:18 14:18 26:10 30:16,22 32:11 38:13 42:25 43:1,15 86:21 91:3 97:14 99:1,4 101:6 104:15 106:16 111:14,15 113:5 118:17 131:13 133:23 134:2 136:19 137:13,16 138:21 145:3 148:9 149:19,21 150:2,21 162:21 163:17 190:14 198:16 205:12 219:18 226:15	Zoom 51:18,20,23 54:22 71:14 79:13,22 102:15 120:2 183:6,13 192:12 210:22
wear 144:22	worked 12:21 109:7 227:8	
wearing 144:24 146:3	working 12:20 38:25 41:24 99:22 145:23 146:7 210:6 219:19,20	
website 67:15 159:19	worry 132:10 134:23	
Wednesday 7:1	worse 113:20	
weeks 57:17 58:2 190:24 192:1 198:5 200:3	worth 203:5,11,12	
weighed 148:1	Wow 113:21	
well-known 112:4	wrap 206:19 215:17 220:14 229:2	
Wenatchee 74:8	write 66:10 109:2,4,10 144:9	
West 220:9,12,17,21 222:8,9 223:13,14 224:17 225:14 226:1 227:1,11,16,17,21,23 228:1,9,15 229:1,3,10,12,20 230:10	writing 17:19 55:23 109:21 117:2 159:20	
western 76:1	written 20:23 34:1 43:24 44:10,13,	
window 71:9 128:15		
wishes 100:20,22		
wit 7:6		
withdraw 151:25		
witnessed 175:13		
witnesses 71:5		
woke 203:25 225:17 226:6		
wondering 19:19 77:9		
Wong 9:24 10:11,15,17 13:11,17 14:15 15:11,20 18:11 19:5,9,13 21:21 22:9 23:19 26:1 27:19 28:6 30:7,10 32:6,24 35:25 39:2,24 40:4,		