

BEFORE THE COMMISSION ON PRACTICE
OF THE SUPREME COURT OF MONTANA

In the Matter of Austin) ODC File No. 21-094
Miles Knudsen, an)
Attorney at Law,) Supreme Court Cause No.
Respondent.) PR 23-0496
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TRANSCRIPT OF PROCEEDINGS
DAY 1

On the 9th of October, 2024, beginning at
9:00 a.m., the above-captioned matter was heard
before the Commission on Practice of the Supreme
Court of Montana in the Courtroom of the Montana
Supreme Court, 215 North Sanders, Helena, Montana,
before Holly E. Fox, Court Reporter and Notary
Public.

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1	A P P E A R A N C E S	1	The following proceedings were had and testimony
2		2	taken:
3	APPEARING ON BEHALF OF ODC:	3	* * * * *
4	TIMOTHY B. STRAUCH	4	
5	Special Counsel	5	
6	P.O. Box 1099	6	CHAIR OGLE: Good morning, everyone. We're
7	Helena, Montana 59624-1099	7	going to get started here now.
8	tstrauch@montanaodc.org	8	My name is Randy Ogle. I'm the chair of this
9		9	panel of the Commission on Practice. Other panel
10	APPEARING ON BEHALF OF THE RESPONDENT:	10	members hearing this case today are Mike Lamb, to my
11	CHRISTIAN CORRIGAN	11	left, and Elinor Nault, to my left; and to my right
12	Solicitor General	12	is Carey Matovich and Troy McGee.
13	Office of the Attorney General	13	I'd like to make a few comments before we get
14	215 North Sanders	14	started with the hearing. This is the time set for
15	Helena, Montana 59601	15	the hearing in the case of Austin Miles Knudsen
16	christian.corrigan@mt.gov	16	versus -- or rather the Office of Disciplinary
17		17	Counsel against Austin Miles Knudsen. And this is
18	MARK D. PARKER	18	Supreme Court Cause Number PR 23-0496 and ODC File
19	Attorney at Law	19	Number 21-094.
20	Parker, Heitz & Cosgrove, PLLC	20	First of all, as to the Commission on Practice,
21	401 North 31st Street, Suite 1600	21	just a little bit of background for those of you who
22	P.O. Box 7212	22	are not familiar with the commission. The
23	Billings, Montana 59103-7212	23	Commission on Practice is a commission of 14 people
24	markdparker@parker-law.com	24	appointed by the Supreme Court from around the state
25		25	of Montana. There's nine attorneys, five
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1	I N D E X	1	nonattorneys on the commission. The commission is
2		2	entirely nonpartisan and nonpolitical. The mission
3		3	of the Commission on Practice is to enforce
4	RANDY COX	4	disciplinary rules for all attorneys in the state of
5	Direct Examination By Mr. Strauch	5	Montana. And the way the commission works, if a
6	Cross-Examination By Mr. Corrigan	6	complaint is filed against an attorney, of course
7	Redirect Examination By Mr. Strauch	7	the attorney has an opportunity to respond to that
8		8	complaint. The commission -- the complaint is then
9	AUSTIN KNUDSEN	9	investigated by the Office of Disciplinary Counsel.
10	Direct Examination By Mr. Strauch	10	If the Office of Disciplinary Counsel feels there's
11	Cross-Examination By Mr. Corrigan	11	merit to the complaint, it then is referred to a
12	Redirect Examination By Mr. Strauch	12	review panel, who reviews it to see if it warrants
13		13	having a complaint filed. And if it does warrant
14	BOWEN GREENWOOD	14	having a complaint filed, the complaint is then
15	Direct Examination By Mr. Corrigan	15	filed. The respondent has an opportunity to respond
16	Cross-Examination By Mr. Strauch	16	to the complaint and contest it, and then it would
17	Redirect Examination By Mr. Corrigan	17	be referred to an adjudicatory panel for a hearing.
18		18	And that's what brings us here today.
19		19	And I want to emphasize, the commission is
20		20	entirely nonpartisan, nonpolitical. And one of the
21		21	important things to notice, those of you who are
22		22	familiar with this case, is that the complaints
23		23	alleged in the complaint by the Office of
24		24	Disciplinary Counsel do have some political
25		25	overtures. They were generated from the 2021

<p style="text-align: right;">Page 6</p> <p>1 legislative session and some bills that were passed 2 by the Legislature in that session. But we're not 3 going to be getting into any political issues in 4 this case. We are going to deal only with the 5 allegations in the complaint, and, in particular, 6 whether any of the rules that attorneys are bound to 7 abide by have been violated. 8 There's been an extensive background in this 9 case to this point. A complaint was filed a little 10 over a year ago. Mr. Knudsen had an opportunity to 11 respond to the complaint. There's been discovery. 12 There have been multiple motions filed in this case 13 by both parties. Those have been dealt with. And 14 we're not going to be plowing old ground over the 15 motions that have previously been filed and 16 considered. We're going to keep this hearing 17 orderly, and we're not going to get into political 18 issues. 19 And so with that, we're ready to get started. 20 Does the Office of Disciplinary Counsel wish to 21 make an opening statement? 22 MR. STRAUCH: Yes, Mr. Chairman. 23 CHAIR OGLE: Please proceed. 24 MR. STRAUCH: May it please the commission, 25 Mr. Chairman, members of the commission, counsel,</p>	<p style="text-align: right;">Page 8</p> <p>1 an officer of the court, that he took back in 2 1988 [sic], both written and orally; and the Supreme 3 Court's July 14, 2021, decision in the McLaughlin 4 litigation. Those are the two areas under 5 Rule 3.4(c). 6 5.1(c), Charlie, responsibility for subordinate 7 lawyers' misconduct. The evidence will show that a 8 number of the statements at issue here were made by 9 the Attorney General's subordinates, and under the 10 rule, he has responsibility for those under certain 11 circumstances, which we intend to prove. 12 Rule 8.2, Alpha: Reckless statements concerning 13 the qualifications of a judge. Here, the many 14 justices of the Montana Supreme Court; indeed, the 15 entire Supreme Court. 16 Rule 8.4(a), as the commission knows, for any 17 violation of a rule of professional conduct there's 18 a standalone violation of 8.4(a). 19 And lastly, 8.4(d), conduct prejudicial to the 20 administration of the system of justice. 21 ODC will prove violations of each rule by clear 22 and convincing evidence. 23 Thank you. 24 CHAIR OGLE: Thank you, Mr. Strauch. 25 Does the respondent wish to make an opening</p>
<p style="text-align: right;">Page 7</p> <p>1 Tim Strauch, special counsel for the Office of 2 Disciplinary Counsel. With me today is Sheena 3 Broadwater, the chief investigator; and Shelby 4 Streib, its chief paralegal. 5 Mr. Chairman, the detailed complaint against the 6 Attorney General alleging 41 areas of misconduct. 7 In the course of this hearing we will go through 8 some, but not all, of the statements made by the 9 Attorney General in court filings comprising 10 the 41 counts. The rest of the AG's statements are 11 laid out in each count of the complaint and 12 highlighted in the corresponding court records that 13 will be admitted during the course of this hearing. 14 I would invite the commission, upon its 15 deliberation, to review those exhibits in rendering 16 its decision. In the interest of expediency, 17 however, I will not be going through every single 18 statement. 19 The rules at issue are Rule 3.4(c), Charlie: 20 Knowing disobedience of an obligation under the 21 rules of a tribunal. 22 Members of the commission, Mr. Chairman, here 23 there are two rules of the tribunal that the ODC is 24 concerned with. The first is the Honorable 25 Attorney General's oath as an officer, sworn oath as</p>	<p style="text-align: right;">Page 9</p> <p>1 statement? 2 MR. CORRIGAN: Yes, Mr. Chairman. 3 CHAIR OGLE: Please proceed. 4 MR. CORRIGAN: Good morning, Mr. Chairman 5 and members of the commission. My name is Christian 6 Corrigan, and I serve as Solicitor General for 7 Attorney General Austin Knudsen. My colleagues 8 Tyler Green, Shane Coleman, and Mark Parker all also 9 represent the Attorney General in this matter. 10 The Office of Disciplinary Counsel has a heavy 11 burden to meet, yet ODC will not offer you a single 12 new fact in support of its unprecedented complaint 13 against the sitting Attorney General. Every filing, 14 statement, and letter in this case was public. Each 15 occurred in plain view of the justices of the 16 Montana Supreme Court, the attorneys involved, and 17 the citizens of Montana. Yet the evidence will show 18 not a single one of them reported the 19 Attorney General or his staff for misconduct. 20 ODC simply wants you to conclude as a matter of 21 law that every allegation or every action taken, 22 every statement made by the Attorney General, 23 constitutes a violation of the Rules of Professional 24 Conduct. But the Rules of Professional Conduct 25 aren't that simple.</p>

<p style="text-align: right;">Page 10</p> <p>1 First, there are 13 counts of the complaint that 2 concern Rule 3.4(c). To find a violation of 3 Rule 3.4(c), ODC must prove by clear and convincing 4 evidence that the Attorney General knowingly 5 disobeyed an obligation under the rules of the 6 tribunal except for an open refusal based on an 7 assertion that no valid obligation existed. The 8 rule exemption is critical and it bears repeating. 9 ODC must prove that there was no open refusal based 10 on an assertion that no valid obligation existed. 11 The evidence will show that the AG openly 12 asserted his client's position, and his client was 13 the Montana Legislature. And the Legislature's 14 position was that it did not have a valid obligation 15 to comply with a court order that violated a 16 separation of powers and basic principles of 17 fairness. The Attorney General asserted that 18 position all the way until his client's appeals were 19 exhausted at the United States Supreme Court. 20 Next, the complaint asserts six counts in 21 violation of Rule 8.2(a). For these claims ODC must 22 prove by clear and convincing evidence that the 23 Attorney General or his subordinates made a 24 statement that the Attorney General knows to be 25 false or with reckless disregard as to its truth or</p>	<p style="text-align: right;">Page 12</p> <p>1 professional conduct by his subordinates. Because 2 ODC's evidence will not show any underlying 3 violation of the Rules of Professional Conduct by 4 clear and convincing evidence, all 35 counts against 5 the Attorney General for those charges must likewise 6 fail. 7 Now, taking a step back, the events giving rise 8 to this complaint were highly controversial and 9 unprecedented, and I understand that you may not be 10 comfortable in the end with the way the 11 Attorney General represented the Legislature, and 12 you may even think the Legislature's concerns were 13 unfounded and highly partisan. But that doesn't 14 mean the Attorney General violated his ethical 15 obligations. This was high stakes constitutional 16 litigation in a clash between coequal branches of 17 government. The Attorney General himself is a 18 constitutional officer. In this litigation he 19 represented the Montana Legislature, another coequal 20 branch of government. The Legislature, and by 21 extension, the people of Montana, have a right to 22 zealous legal representation. Disciplining the 23 Attorney General, as the Attorney General has argued 24 in briefing before, based on the facts and 25 circumstances you will see here would severely</p>
<p style="text-align: right;">Page 11</p> <p>1 falsity concerning the qualifications or integrity 2 of a judge. The evidence will show that the 3 Attorney General had a reasonable, good faith basis 4 for making every statement that ODC alleges violates 5 Rule 8.2(a). 6 Next, the complaint alleges 13 violations of 7 Rule 8.4(d). That rule requires ODC to prove by 8 clear and convincing evidence again that the 9 Attorney General engaged in conduct that was 10 prejudicial to the administration of justice. But 11 ODC cannot show that any action taken by the 12 Attorney General delayed or altered the course of 13 the proceedings or resulted in direct disruption of 14 pending proceedings. And if even if ODC can point 15 to some type of disruption, it must show by clear 16 and convincing evidence that there's a nexus between 17 the AG's conduct and that adverse effect. It 18 cannot. 19 Finally ODC alleges nine counts of violations of 20 Rule 8.4(a) where it makes it misconduct for a 21 lawyer to attempt to violate the Rules of 22 Professional Conduct or induce another to violate 23 the Rules of Professional Conduct. 24 Similarly, ODC's complaint alleges 26 counts 25 violating Rule 5.1(c) for alleged violations of</p>	<p style="text-align: right;">Page 13</p> <p>1 prejudice the Legislature's ability to assert its 2 interests in these types of cases. 3 Finally, as my friend on the other side of the 4 aisle mentioned in his opening, ODC is going to 5 anchor much of its legal case on the fact that 6 Attorney General Knudsen took an oath when he was 7 sworn in as a member of the bar to abide by the 8 Rules of Professional Conduct. As I said earlier, 9 ODC cannot show that he violated that oath, much so 10 that he did so by clear and convincing evidence. 11 But in January 2021 Austin Knudsen took an oath 12 when he was sworn in as Montana's Attorney General. 13 He took an oath to the people of Montana to 14 discharge the duties of his office with fidelity. 15 He is the chief legal officer of the state, and he 16 litigated this case to defend the state's interests, 17 which mean zealously advocating for the people's 18 representatives until every appeal was exhausted. 19 Thank you. 20 CHAIR OGLE: Thank you, Mr. Corrigan. 21 Mr. Strauch, if you'd call your first witness. 22 MR. STRAUCH: Mr. Chair, members of the 23 commission, yes, thank you. 24 Mr. Chairman, ODC moves for exclusion of 25 witnesses under Rule 615.</p>

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1 **CHAIR OGLE:** Any response?
2 **MR. CORRIGAN:** No objection. Our witnesses
3 have been excluded.
4 **CHAIR OGLE:** All right. So any witness who
5 might be called to testify in this case, please step
6 outside and wait outside until you're called.
7 **MR. STRAUCH:** And, Mr. Chairman, it's my
8 understanding that this hearing is being live
9 streamed, and so I think that admonishment needs to
10 apply to anyone who may be watching the live stream;
11 is that right?
12 **CHAIR OGLE:** I believe so, yes.
13 **MR. STRAUCH:** Thank you.
14 Mr. Chairman, ODC calls Mr. Randy Cox.
15 **THE WITNESS:** Is there an oath,
16 Mr. Chairman?
17 **CHAIR OGLE:** Please.
18 **THE WITNESS:** Okay. Thank you.
19 (Witness sworn.)
20
21 **MR. STRAUCH:** Thank you, Mr. Chairman.
22 Mr. Chairman, we have just a couple of -- I hate
23 to call them housekeeping measures, but we'd first
24 of all like to move for admission of exhibits, ODC
25 exhibits, to which there has been no objection. And

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1 I'm prepared to list those.
2 **CHAIR OGLE:** I think they're in the record.
3 Go ahead and list them, if you would.
4 **MR. STRAUCH:** I would -- yes, sir, so I can
5 formally move for admission.
6 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15,
7 16, 17, 19, 20, 22, 25, 26, 27, 28, 29, 30, 31, 32,
8 33, 34, and 35. We'd move for admission.
9 **CHAIR OGLE:** Any objection, Mr. Corrigan?
10 **MR. CORRIGAN:** No objection.
11 **CHAIR OGLE:** We have had prior motions
12 on -- with regard to judicial notice of those
13 documents, and that has been granted by order. So
14 the motion is granted. They're admitted.
15 (Exhibits 1-8, 10-17, 19, 20, 22, 25-35
16 admitted.)
17 **MR. STRAUCH:** And, your Honor -- or
18 Mr. Chairman, there was some orders to which there
19 were objections. The commission did take judicial
20 notice of them, but I would like to move for
21 admission formally for the record. That is
22 Exhibit 18, 21, 23, and 24.
23 **CHAIR OGLE:** They're admitted as well.
24 (Exhibits 18, 21, 23, and 24 admitted.)
25 **MR. STRAUCH:** And then, for the record,

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1 your Honor, ODC is withdrawing objections shown on
2 the respondent's exhibit list to the following
3 exhibits, and I did notify respondent's counsel of
4 this yesterday. If they wish to move for admission
5 during our case-in-chief, I have no objection to
6 that. It's respondent's Exhibits A, B, C, D, E, F,
7 G, H, I, J, O, Q, T, with the -- I would just note
8 that T appears to be an exact duplicate of
9 Respondent's H. W, X, AA, BB, DD, EE, FF, GG, HH.
10 **CHAIR OGLE:** Very well. Thank you. It's
11 noted for the record.
12 **MR. STRAUCH:** Thank you.
13
14 DIRECT EXAMINATION OF RANDY COX
15 **BY MR. STRAUCH:**
16 Q. What is your name, sir?
17 A. **My name is Randy Cox.**
18 Q. And your address please?
19 A. **I live in Missoula, Montana.**
20 Q. And, sir, you're an attorney licensed in
21 Montana?
22 A. **I am.**
23 Q. When were you admitted in Montana?
24 A. **1979.**
25 Q. Tell us -- or tell the commission, please,

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1 a little bit about your personal background.
2 A. **Personal background. Born and raised on a**
3 **ranch on the Lower Smith River. Went to high school**
4 **in Cascade. Went to college at Montana State**
5 **University, where I obtained a degree in 1975. Went**
6 **to -- then I attended Northeastern University Law**
7 **School in Boston until graduating there in 1979. At**
8 **this point I was fortunate enough to work for Senior**
9 **United States District Judge W.D. Murray, a federal**
10 **judge in Butte.**
11 **Do you need this closer?**
12 **THE CLERK:** Let me turn on the mic.
13 **THE WITNESS:** Oh, okay.
14 **THE CLERK:** Sorry about that.
15 **THE WITNESS:** No worries.
16 So went to work for Judge Murray, was two years
17 in Butte, and in the fall of 1981 moved to Missoula
18 to join the firm then known as Boone Karlberg and
19 Haddon. After, Sam Haddon was appointed by
20 President Bush to the federal bench, we changed the
21 firm name to Boone Karlberg. I stayed there in a
22 litigation practice until the end of 2021, when I
23 retired from active practice, but I continue to work
24 in a company that was started by a friend of mine.
25 And I work there as an executive vice president and

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1 chief legal officer.
2 Q. (By Mr. Strauch) And, Mr. Cox, you and I
3 know each other; correct?
4 **A. Indeed.**
5 Q. We -- mostly on the opposite side of cases;
6 is that right?
7 **A. Pretty much always, yeah.**
8 Q. Yes, sir. And I understand that you
9 represented the court administrator, Beth
10 McLaughlin, in the two Supreme Court proceedings
11 that underlie this case; namely the Brown case and
12 McLaughlin case; is that correct?
13 **A. Yes. Brown versus Gianforte, and then the**
14 **original proceeding of Beth McLaughlin versus the**
15 **Montana Legislature and the Department of**
16 **Administration.**
17 Q. Would you tell the commission a little bit
18 about your experience as a trial lawyer, please?
19 **A. Yes. Almost the entirety of my career was**
20 **devoted to litigation practice. I started out**
21 **working, had Sam Haddon as a mentor, which was my**
22 **good fortune because Judge Haddon was a superb trial**
23 **lawyer. I then went on, developed my own litigation**
24 **practice. It was predominantly on the defense side**
25 **of civil litigation. Represented everything from**

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1 **drug manufacturers to railroads, all manner of --**
2 **all manner of litigation.**
3 Q. How many cases do you think you've tried in
4 your career?
5 **A. Somewhere around 50 or 60.**
6 Q. Outside of being a trial lawyer, are there
7 other professional achievements you're proud of?
8 **A. Yes.**
9 Q. What are they?
10 **A. I was, for 25 years, a member of the Board**
11 **of Bar Examiners and was its chair for 12 years.**
12 **During the course of that, we developed what's known**
13 **as the Montana Law Seminar. That was adopted at the**
14 **time that the Court granted the Board of Bar**
15 **Examiners' petition to adopt the uniform bar exam.**
16 **And the Court said that would be okay, but we needed**
17 **to create the Montana Law Seminar, which is a**
18 **one-day program now required for anyone having**
19 **admission -- or seeking admission to the Montana**
20 **bar. I helped develop -- my other major helper in**
21 **that regard was likely Kristin Juras, now lieutenant**
22 **governor -- and we, along with other speakers like**
23 **Anthony Johnstone and some others, put on this**
24 **program, and I taught at it for a number of years.**
25 **And I stopped when I stepped down from the Board of**

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1 **Bar Examiners maybe six or seven years ago.**
2 **Somewhere around there.**
3 Q. Okay. And you're -- if my memory serves
4 right, you're a member of ABOTA?
5 **A. Yeah. There's certain honorary**
6 **organizations that are -- are invitation-only.**
7 **There's three of those that I'm a member of. One is**
8 **the American Board of Trial Advocates. Another is**
9 **the International Society of Barristers. And the**
10 **third is the American Academy of Appellate Lawyers.**
11 **Because, along with trying as many cases and**
12 **handling as many as I did, I also handled somewhere**
13 **on the order of 60 appeals to this Court and to the**
14 **Ninth Circuit Court of Appeals.**
15 Q. And I believe you mentioned it briefly.
16 What do you do for a living now?
17 **A. I'm the chief legal officer and an**
18 **executive vice president in a company based in**
19 **Bozeman called Wildfire Defense Systems that works**
20 **in 22 states and in two Canadian provinces. That**
21 **company was started about 17 years ago. We employ a**
22 **little over 400 people.**
23 Q. And you're still licensed today as an
24 attorney?
25 **A. I am.**

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1 Q. Were you subpoenaed to testify here?
2 **A. Yes.**
3 Q. Just briefly, in case certain commission
4 members don't know, who is Beth McLaughlin and what
5 does she do?
6 **A. Beth McLaughlin is the administrator of the**
7 **Court and, in that role, manages the business of the**
8 **Court. She could well describe it a lot better than**
9 **I do.**
10 Q. What led you to becoming involved as Beth's
11 lawyer? And I don't wish you to divulge
12 attorney-client privileged information.
13 But what were the circumstances?
14 **A. I can start the story with the -- with a**
15 **phone call from Ms. McLaughlin.**
16 **I'll call her Beth, if that permissible.**
17 Q. Yes, sir.
18 **A. Beth called me on a Friday evening and**
19 **explained to me that very shortly before she called**
20 **me she had received a courtesy copy of a subpoena**
21 **issued by the Montana state legislature and directed**
22 **to the Department of Administration for a broad**
23 **swath of judicial branch emails, particularly those**
24 **emails that she had received or sent or deleted or**
25 **whatever.**

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<p>1 Q. Let me show you what's been admitted as 2 Exhibit 6. It will be in the book in front of you 3 as well. 4 A. Yes, I have it. 5 Q. And is Exhibit 6 that subpoena that Beth 6 called you about? 7 A. Yes. 8 Q. Was that subpoena served on Ms. McLaughlin? 9 A. No. 10 Q. Who was it served on? 11 A. On the acting director of the Department of 12 Administration, Misty Ann Giles. 13 Q. And how did Beth get a copy of it? 14 A. It was dropped off to her office somehow. 15 I don't know how it got there. But it was described 16 as a courtesy copy. 17 Q. A courtesy copy? 18 A. Yes. 19 Q. And that would have been on Friday the -- 20 the 9th? 21 A. Correct. 9th of April. 22 MR. STRAUCH: Sheena, could you scroll 23 down -- well, first of all, stop. 24 Q. (By Mr. Strauch) The subpoena, Exhibit 6, 25 looks like it requires the director to produce</p>	<p>1 judicial standards commission, things that have 2 either legal or sometimes even constitutional 3 protections from disclosure. 4 Q. We're talking about judicial branch 5 employees' -- potentially their medical emails? 6 A. Oh, yes. Indeed. 7 Q. We're talking about emails pertaining to 8 youth-in-need-of-care cases? 9 A. Yes. 10 Q. Very sensitive information? 11 A. Well, as an example -- and, again, Beth can 12 describe it a lot better -- the 13 youth-in-need-of-care emails will often have 14 court orders in them that have -- where names are 15 disclosed, and you just can't do that. 16 Q. Children's names? 17 A. Children's names and parents' names. Sure. 18 Q. So you got the call. 19 What did you do next, Mr. Cox? 20 A. I had to -- to -- well, in talking with 21 Beth, I agreed to represent her. And I was then -- 22 I then contacted two of my partners, one of my 23 associates, and one of my paralegals saying, 24 Whatever plans you had for the weekend, you no 25 longer have because you need to come to the office</p>
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<p>1 emails on that day, Friday the 9th, at 3:00 p.m.; 2 correct? 3 A. Yes. 4 Q. When approximately did -- did 5 Ms. McLaughlin call you? 6 A. Around -- well, she called me at around 7 6:00 probably, 6:30. She had received it, I 8 believe, after 5:00 p.m. 9 Q. Okay. 10 MR. STRAUCH: And, Sheena, toward the 11 bottom of the page, please. The date. 12 Q. (By Mr. Strauch) What is the date of the 13 subpoena sent by Senator Regier? 14 A. April 20 -- or, I'm sorry, April 8, 2021. 15 Q. April 8th. Okay. 16 What was your understanding of your 17 client's concerns as the court administrator 18 regarding this subpoena, Exhibit 6? 19 A. I think they're best described in a 20 declaration that -- that we put into a petition the 21 next day. It's Beth's declaration. And the concern 22 as stated in there was that, if you just take a 23 broad swath of these emails, they are likely to have 24 some very highly confidential and sensitive 25 information in there -- youth court, medical,</p>	<p>1 on Saturday morning. We've got a project. 2 Q. Saturday the 10th? 3 A. Saturday the 10th. Yes, sir. 4 Q. Okay. And did you, on Saturday the 10th, 5 in addition to calling in your partners, your law 6 partners and associates, to work, did you attempt to 7 reach out to the director or potentially her lawyers 8 to find out their intentions with respect to the 9 subpoena and your client's concerns? 10 A. I did. Hard to do on a Saturday, as you 11 might imagine. But I ended up sending at least one 12 email. But I just was trying -- at that point I 13 didn't know that there had been emails already 14 disclosed. And I know you're going to get to that. 15 But I wanted to get the project stopped to say 16 there's -- there's a lot of information you can get, 17 but you have to get it in an orderly process, and it 18 has to be screened for privileged and confidential 19 information. And I thought that once we raised 20 those issues that likelihood was that people would 21 say, Oh, okay, we can do that, we just need to do it 22 fast. 23 Q. What project were you trying to stop? I 24 missed you on that? 25 A. The production of the emails that were</p>

<p style="text-align: right;">Page 26</p> <p>1 subpoenaed.</p> <p>2 THE WITNESS: It keeps happening, doesn't</p> <p>3 it? How about I just hold it here?</p> <p>4 THE CLERK: I just want to make sure it's</p> <p>5 tight.</p> <p>6 Q. (By Mr. Strauch) Trying to stop the</p> <p>7 production of the emails --</p> <p>8 A. Right. That had been subpoenaed.</p> <p>9 Q. -- by the director to the Legislature?</p> <p>10 A. Right. So keep in mind the subpoena went</p> <p>11 to the director of the Department of Administration,</p> <p>12 who really was nothing other than a manager of the</p> <p>13 email systems, like an ISP, internet service</p> <p>14 provider. And they were the ones who had been</p> <p>15 served the subpoena. And, of course, they would</p> <p>16 have whatever obligations one has when served with a</p> <p>17 subpoena to produce records.</p> <p>18 Q. Okay. And was it your concern then that</p> <p>19 the Department of Administration was not equipped or</p> <p>20 would not review the judicial branch emails for the</p> <p>21 type of sensitive information that Ms. McLaughlin's</p> <p>22 office may otherwise do?</p> <p>23 A. Well, of course. They would receive --</p> <p>24 they might see a record about somebody seeking time</p> <p>25 off for some medical problem and wouldn't even --</p>	<p style="text-align: right;">Page 28</p> <p>1 went. But, yes, Exhibit 7 contains those series --</p> <p>2 that series of emails to the department.</p> <p>3 Q. Thank you. And this is a series of emails</p> <p>4 April 10th to April 11th? Saturday and Sunday?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And who's Todd Everts?</p> <p>7 A. Todd Everts was counsel for the</p> <p>8 Legislature. Legislative -- legislative counsel?</p> <p>9 Q. And who's Mike Manning?</p> <p>10 A. Mike Manion was counsel at the Department</p> <p>11 of Administration.</p> <p>12 Q. I misspoke. Mike Manion. Thank you.</p> <p>13 And here again you're -- you were trying to</p> <p>14 accomplish this process of saying, Hey, guys, can we</p> <p>15 slow down, can you give us a chance to review</p> <p>16 things?</p> <p>17 Is that a fair statement?</p> <p>18 A. Yes. And if I -- it's not uncommon for any</p> <p>19 branch of government to get records requests. And</p> <p>20 it's the normal -- and including Beth McLaughlin in</p> <p>21 her role as court administrator. And so there's a</p> <p>22 process that usually gets followed, and it wasn't</p> <p>23 being followed here. And we were trying to get this</p> <p>24 into that process.</p> <p>25 Q. And then did you file an emergency petition</p>
<p style="text-align: right;">Page 27</p> <p>1 and it might not occur to them that that's a</p> <p>2 protected communication. So all kinds of different</p> <p>3 things that the court administrator would be</p> <p>4 familiar with and attuned to wouldn't necessarily be</p> <p>5 noted by the Department of Administration if, in</p> <p>6 fact, they were reviewing those documents for</p> <p>7 privilege.</p> <p>8 Q. And, Mr. Cox, you and I have tried many</p> <p>9 civil cases, and in that setting, when the other</p> <p>10 side issues a subpoena to a nonparty for potentially</p> <p>11 privileged documents, would you normally attempt to</p> <p>12 contact the lawyers on the other side and say, Hey,</p> <p>13 we need to claw back these -- anything that's been</p> <p>14 produced and give us a chance to review it, and</p> <p>15 we'll pull out the stuff that's privileged or</p> <p>16 confidential and produce what's responsive?</p> <p>17 A. Of course, yeah. I mean, that's -- the</p> <p>18 normal course is to do that. The normal course</p> <p>19 isn't to just turn them over wholesale and hope for</p> <p>20 the best.</p> <p>21 Q. In Exhibit 7, which has been admitted --</p> <p>22 it's in the book -- is Exhibit 7 the email thread</p> <p>23 that you sent to Ms. Giles and, it looks like, Todd</p> <p>24 Everts and Mike Manning [sic]?</p> <p>25 A. Yes. I mean, it's a series of emails that</p>	<p style="text-align: right;">Page 29</p> <p>1 with the Supreme Court on Sunday the 11th?</p> <p>2 A. Well, I filed -- I first filed one on</p> <p>3 the 10th.</p> <p>4 Q. Beg your pardon. Yes. Saturday the 10th.</p> <p>5 A. Yes. Late in the evening.</p> <p>6 Q. Thank you.</p> <p>7 MR. STRAUCH: And do we have Exhibit P,</p> <p>8 please?</p> <p>9 THE WITNESS: Sheena, the respondent's</p> <p>10 exhibits aren't here.</p> <p>11 MR. STRAUCH: Here. I've got a copy for</p> <p>12 you.</p> <p>13 May I approach?</p> <p>14 CHAIR OGLE: Yes.</p> <p>15 MR. STRAUCH: Respondent's Exhibits. P is</p> <p>16 in there.</p> <p>17 And, Mr. Chairman, P, as it is in the</p> <p>18 respondent's book is incomplete. And under the rule</p> <p>19 of completeness we'd like to add the Exhibits A, B,</p> <p>20 and D, which were part of that in the court record.</p> <p>21 So with -- with Exhibit -- Exhibit P, plus PA,</p> <p>22 B, and D, we would move for admission of the</p> <p>23 complete exhibit.</p> <p>24 CHAIR OGLE: Any objection?</p> <p>25 MR. CORRIGAN: No objection.</p>

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1 **THE COURT:** All right. It's admitted.
2 (Exhibits admitted.)
3 Q. (By Mr. Strauch) Mr. Cox, is Exhibit P,
4 with the Exhibits A, B, and D that I just stuck on
5 top of the table there, is that the petition that
6 you filed?
7 A. Yes.
8 Q. And you filed that on Saturday the 10th?
9 A. Sent it -- yes, by putting it into the
10 **electronic system at the clerk of the Supreme Court.**
11 Q. Okay. So you don't walk a paper to the
12 Court? You filed it electronically?
13 A. Yes.
14 Q. Exhibit D -- it's PD. What is PD?
15 A. So PD is a letter that I sent April 10,
16 2021, to Misty Ann Giles at the Department of
17 Administration care of her counsel, Mike Manion, and
18 also to Todd Everts at the Legislature's legal
19 services division.
20 Q. And this was -- was this letter one of the
21 attachments to one of your exhibits that we saw in
22 Exhibit 7?
23 A. Yes.
24 Q. All right. Thank you.
25 Directing your attention to Page 2

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1 of D-2 -- excuse me -- of Exhibit PD, so D-2, the
2 top paragraph, does that express what
3 Ms. McLaughlin, the court administrator's, concerns
4 are regarding these emails?
5 A. Yes, best as I was able to repeat them.
6 Q. And the third paragraph on D-2, does that
7 propose an orderly process for the clawback and
8 review that you were proposing?
9 A. It does.
10 Q. In this timeframe, Mr. Cox, did you email
11 other government officials other than Ms. Giles and
12 her attorney to try to resolve -- or attorneys -- to
13 try to resolve the court administrator's concerns
14 regarding confidentiality?
15 A. Yes, I did.
16 Q. And just -- do you recall who those persons
17 were? You won't find it in an exhibit. I'm sorry.
18 A. I'm finding it in my own papers.
19 Q. Okay.
20 A. I wrote late in the day on Sunday, April
21 11th, to President Blasdel, Speaker Galt,
22 Senator Regier, Ms. Abra Belke, and Mr. Todd Everts.
23 Q. All right. And who's Ms. Abra Belke?
24 A. I believe that she was staff -- maybe chief
25 of staff for, maybe, President Blasdel. I don't

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1 actually know.
2 Q. All right. Somebody associated with the
3 Legislature, however?
4 A. Yes. And I -- I knew she existed because
5 she had corresponded with Beth McLaughlin the day
6 of -- maybe even the day before -- of the subpoena
7 from the Legislature to the Department of
8 Administration.
9 Q. And with -- with your emails to
10 President Blasdel and Speaker Galt and
11 Senator Regier, Ms. Belke, what were you trying to
12 accomplish there?
13 A. Same thing I had been trying to accomplish
14 all weekend, which was to produce the information
15 that they were seeking, but without turning over
16 confidential, private, privileged material.
17 Q. Why were you trying to resolve something
18 with all these folks that weekend rather than just
19 litigating the issue?
20 A. I was trying to avoid litigation. I was
21 trying to avoid disclosure of documents, which
22 actually could have led to liability on the part of
23 State of Montana for disclosing personal, private
24 information. And it seemed -- it seemed to be the
25 best thing to do to try to get this back onto an

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1 ordinary track for production of records. That's
2 what I was trying to do.
3 Q. Trying to avoid protracted litigation
4 between branches of the government?
5 A. Protracted litigation made no sense.
6 Q. Did you tell them what you intended to do
7 if you were not able to reach a resolution with
8 them?
9 A. Both on the 10th and the 11th, in emails
10 and letters, what I said was if -- if we can't
11 get -- if we can't get an agreement to a procedure
12 for the production of records that safeguards
13 private information, we will file an emergency
14 petition with the Montana Supreme Court.
15 Q. Did any of these folks make any effort to
16 resolve your concerns?
17 A. No. I mean, Director Giles wrote me back
18 and said -- on Sunday the 11th -- and said, Look,
19 we're not equipped to deal with your concerns, and
20 we're complying with the subpoena as its written.
21 And I think -- yes, this is Exhibit 7 --
22 she said that part of the records had already been
23 turned over on Friday and the remainder would be
24 turned over on Monday.
25 Q. Okay. Exhibit 7 at the top there?

<p style="text-align: right;">Page 34</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And that was on Sunday the 11th at</p> <p>3 about 11:23 a.m., it looks like?</p> <p>4 A. Yes.</p> <p>5 Q. At the bottom -- Exhibit 7, Page 1, there's</p> <p>6 an email from you, Mr. Cox, to the director and the</p> <p>7 legislative lawyers, plus it looks like a couple of</p> <p>8 your partners, Matt Hayhurst and Tom Leonard; is</p> <p>9 that right?</p> <p>10 A. Yes.</p> <p>11 Q. And you do advise them that you had tried</p> <p>12 to copy them on the petition that you filed on</p> <p>13 Saturday?</p> <p>14 A. Yeah. We -- we filed that pretty late, and</p> <p>15 then I know that the email -- the email was -- the</p> <p>16 email to the administrator anyway was rejected. I</p> <p>17 don't think that the administrator -- that the one</p> <p>18 to Mike Manion was rejected. But I'm not sure about</p> <p>19 that.</p> <p>20 Q. All right. But you did try to get it to</p> <p>21 them Saturday?</p> <p>22 A. Yes.</p> <p>23 Q. And -- and your best recollection is the</p> <p>24 one to Ms. Giles herself got bounced back, but the</p> <p>25 one to Mr. Manion went through?</p>	<p style="text-align: right;">Page 36</p> <p>1 petition. And I think that by the time I talked to</p> <p>2 him we had also filed the supplemental petition and</p> <p>3 that -- that was that.</p> <p>4 Q. So you -- you contacted -- you left the</p> <p>5 voicemail for one of the Supreme Court justices?</p> <p>6 A. I did.</p> <p>7 Q. And in your deposition you were questioned</p> <p>8 about that, and the -- Mr. Parker, who was</p> <p>9 questioning you, basically said, Did you check the</p> <p>10 boxes?</p> <p>11 Do you recall that?</p> <p>12 A. Yes.</p> <p>13 Q. And what -- when he asked you that</p> <p>14 question, what did you understood that meant, check</p> <p>15 the boxes as a lawyer calling a judge?</p> <p>16 A. Okay. So there's a prohibition against ex</p> <p>17 parte contacts. And -- and that doesn't mean though</p> <p>18 that you can't contact a judge about anything ever.</p> <p>19 I am entitled to make an ex parte contact that the</p> <p>20 law allows, and what the law allows is a</p> <p>21 non-substantive -- that is, no discussion of the</p> <p>22 merits -- notification to the Court of, in this</p> <p>23 case, the emergency petition.</p> <p>24 Q. Okay. By "non-substantive" do you mean</p> <p>25 you're not arguing to Justice Rice, advocating your</p>
<p style="text-align: right;">Page 35</p> <p>1 A. I think so.</p> <p>2 Q. Did you contact the clerk of the</p> <p>3 Supreme Court, Bowan Greenwood, that weekend about</p> <p>4 filing the petition?</p> <p>5 A. I did.</p> <p>6 Q. And what did you learn as a result of your</p> <p>7 conversation?</p> <p>8 A. What I learned wasn't surprising, actually.</p> <p>9 What I learned was that there is no mechanism in</p> <p>10 place to let the Court know that an emergency motion</p> <p>11 has been filed. I guess I was a little surprised by</p> <p>12 that, but -- but what he said was, We don't even</p> <p>13 docket it in until Monday morning. And so that's</p> <p>14 what I learned.</p> <p>15 Q. And are you being critical of Mr. Greenwood</p> <p>16 in any way?</p> <p>17 A. Not at all.</p> <p>18 Q. Who else did you contact at the Court that</p> <p>19 you can recall?</p> <p>20 A. I contacted Justice Rice.</p> <p>21 Q. How did you contact Justice Rice?</p> <p>22 A. I called his cell phone, and he did not</p> <p>23 answer. I left a voice message for him in which I</p> <p>24 advised him that we had filed an emergency -- who I</p> <p>25 represented and that we had filed an emergency</p>	<p style="text-align: right;">Page 37</p> <p>1 client's position in that phone call, are you?</p> <p>2 A. That would be forbidden.</p> <p>3 Q. So from the time that you filed the ex</p> <p>4 parte motion on Saturday late, and you had left a</p> <p>5 message for Justice Rice, did you have any other</p> <p>6 further communications with the Court after you</p> <p>7 filed that motion that was on Saturday?</p> <p>8 A. No, I don't remember any.</p> <p>9 Q. Now, are you aware that Justice Sandefur,</p> <p>10 in this litigation, this disciplinary proceeding,</p> <p>11 provided a discovery response to the</p> <p>12 Attorney General's questions indicating that you</p> <p>13 spoke with Justice Sandefur on Saturday, April 11th?</p> <p>14 Are you aware of that?</p> <p>15 A. I have read what he wrote in that response.</p> <p>16 Q. And did you mention that in your deposition</p> <p>17 when the Attorney General's lawyers were questioning</p> <p>18 you?</p> <p>19 A. I did not.</p> <p>20 Q. Why not?</p> <p>21 A. Because I simply did not remember it, and I</p> <p>22 still do not remember it to this day.</p> <p>23 Q. So having read what Justice Sandefur said</p> <p>24 about that call, you still have no recollection of</p> <p>25 it?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. I do not.</p> <p>2 Q. Now, you mentioned -- back on Exhibit 7 at</p> <p>3 the top, please, at the top email -- you did mention</p> <p>4 that Ms. Giles had gotten back to you on Sunday</p> <p>5 morning by email. And one of the things that she</p> <p>6 mentioned is, in the sentence -- the last sentence</p> <p>7 of the first paragraph:</p> <p>8 I am happy to provide copies of the PST</p> <p>9 file of what we turned over on Friday and then to do</p> <p>10 the same on Monday with remaining documents.</p> <p>11 So what did you learn when you got this</p> <p>12 email Sunday morning? This would have been after</p> <p>13 you filed your emergency petition. What did you</p> <p>14 learn?</p> <p>15 A. What I learned was that before Beth</p> <p>16 McLaughlin even got the courtesy copy of the</p> <p>17 subpoena, documents had already been turned over by</p> <p>18 the Department of Administration to the Legislature.</p> <p>19 Q. And she's telling you the rest are going to</p> <p>20 be produced on Monday.</p> <p>21 A. Yes.</p> <p>22 Q. Despite the concerns that you've raised.</p> <p>23 A. Right. She said, We're not really equipped</p> <p>24 to deal with -- she said, We're not well-suited to</p> <p>25 ascertain those issues.</p>	<p style="text-align: right;">Page 40</p> <p>1 case. It's been admitted as Exhibit 1.</p> <p>2 And would you please look at Exhibit 1,</p> <p>3 Page 3, the April 11, '21, entries toward the bottom</p> <p>4 of the page?</p> <p>5 A. Yep. I have them.</p> <p>6 Q. Does that indicate that you filed a motion,</p> <p>7 a supplemental emergency motion that you just</p> <p>8 mentioned and --</p> <p>9 A. Well, it -- I mean, it does. It shows that</p> <p>10 there's the original emergency motion and the</p> <p>11 supplementation of the emergency motion. And I know</p> <p>12 only that -- that the -- that both of them show</p> <p>13 being docketed on the 11th.</p> <p>14 Q. Appreciate that clarification.</p> <p>15 So the motion that you sent in</p> <p>16 electronically on Saturday the 10th actually got</p> <p>17 docketed in on the 11th?</p> <p>18 A. Yes.</p> <p>19 Q. And then the supplemental motion that you</p> <p>20 filed got docketed in on 11th as well?</p> <p>21 A. Correct.</p> <p>22 Q. Thank you.</p> <p>23 Did the Court enter a temporary order</p> <p>24 granting your ex parte petition?</p> <p>25 A. It did.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. She didn't offer to stop the production?</p> <p>2 A. No.</p> <p>3 Q. She didn't offer to give you back the</p> <p>4 emails so you could review them for confidentiality?</p> <p>5 A. No, just that she would provide me a copy</p> <p>6 of what had been turned over and what was going to</p> <p>7 be turned over on Monday.</p> <p>8 Q. So as a result of that new information, did</p> <p>9 you have new concerns?</p> <p>10 A. Yes.</p> <p>11 Q. And what were those?</p> <p>12 A. Well, this wasn't just something that</p> <p>13 could -- could wait. They were already out there.</p> <p>14 And, of course, we subsequently learned, of course,</p> <p>15 that they were out there in the media.</p> <p>16 Q. What did you do to address that new</p> <p>17 development?</p> <p>18 A. I wanted to bring the additional</p> <p>19 information to the attention of the Court, and so we</p> <p>20 prepared a supplemental pleading that laid out the</p> <p>21 new information.</p> <p>22 MR. STRAUCH: Exhibit 1, please. The</p> <p>23 register. Supreme Court register.</p> <p>24 Q. (By Mr. Strauch) And Page -- I'm showing</p> <p>25 you what's the Supreme Court register in the Brown</p>	<p style="text-align: right;">Page 41</p> <p>1 MR. STRAUCH: Exhibit 10, please.</p> <p>2 Q. (By Mr. Strauch) Is Exhibit 10 a copy of</p> <p>3 the supreme court's, quote/unquote, temporary order</p> <p>4 entered on April 11th of '21?</p> <p>5 A. Yes.</p> <p>6 Q. Turning to Page 3, Paragraphs 2 and 3, in</p> <p>7 addition to temporarily staying the subpoena, did</p> <p>8 the Court give the Legislature an opportunity to</p> <p>9 respond and brief your ex parte petition?</p> <p>10 A. Yeah. This -- I mean, this is pretty</p> <p>11 normal that the Court is going to enter an order</p> <p>12 just freezing things and saying, We need time to</p> <p>13 consider this. So the Legislature gets some time,</p> <p>14 McLaughlin gets some time, and then we'll take --</p> <p>15 then we'll take up the issue.</p> <p>16 Q. But specifically giving the Legislature</p> <p>17 time to respond to what you had filed on an ex parte</p> <p>18 basis; correct?</p> <p>19 A. 14 days.</p> <p>20 Q. Did the Legislature intervene then in the</p> <p>21 Brown case and respond to the petition?</p> <p>22 MR. STRAUCH: Exhibit 1-3, please.</p> <p>23 April 14th entries.</p> <p>24 THE DEPONENT: Judging by you directing me</p> <p>25 there, I'm guessing that, in fact, they did.</p>

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1 Q. (By Mr. Strauch) Thank you. After the
2 Court issued the April 11th temporary order, did the
3 director obey the order and stop the production of
4 further emails?
5 **A. Yes. By that time the administrator had**
6 **hired Dale Schowengerdt, who at that time was with**
7 **the Crowley law firm. And what Mr. Schowengerdt put**
8 **into the court record was the administrator will**
9 **follow the court order.**
10 Q. And how many emails had the director
11 already produced before then?
12 **A. Numbers vary. Some estimates -- or some --**
13 **some said 2,000. But in a subsequent declaration**
14 **the Lieutenant General Kristin Hansen said 5,000. I**
15 **don't know which is correct.**
16 Q. So somewhere between 2,000 and 5,000.
17 According to what you were told by the Legislature
18 in court filings, somewhere between 2,000 and 5,000
19 judicial branch emails were produced to the
20 Legislature?
21 **A. Yes.**
22 Q. And were those returned at that time?
23 **A. No.**
24 Q. Do you know what was done with those emails
25 after the director of administration produced them

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1 Friday?
2 **A. I don't. I do not, other than in the -- in**
3 **the declaration by Kristin Hansen, she put a link to**
4 **media that had -- that had disclosed a bunch of**
5 **the -- of the emails Saturday, Sunday, and Monday.**
6 Q. So what then did you -- what did you do
7 next after -- after these developments? Did you
8 file an original proceeding?
9 **A. Well, yes, I filed the emergency motion in**
10 **the Brown versus Gianforte litigation, which made**
11 **sense because it arose out of the whole email**
12 **controversy which had blown up in the Brown versus**
13 **Gianforte litigation. And so then the Court, in its**
14 **temporary order, said, We've got some concerns about**
15 **procedural issues here.**
16 **And so to -- to solve that concern and to**
17 **not be involved in the Brown versus Gianforte**
18 **litigation anymore, I filed an original proceeding**
19 **that was titled McLaughlin versus the Montana**
20 **Legislature and, I think, the Department of**
21 **Administration, since they were the recipient of the**
22 **subpoena.**
23 **MR. STRAUCH:** Exhibit 12, please.
24 Q. (By Mr. Strauch) Is Exhibit 12 a copy of
25 the petition that you filed -- the original petition

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1 that you filed in the Supreme Court on April 12th?
2 **A. Yes. Monday.**
3 **MR. STRAUCH:** And Exhibit 2.
4 Q. (By Mr. Strauch) Mr. Cox, Exhibit 2 is the
5 register of actions from that McLaughlin litigation,
6 the original proceeding that you're mentioning?
7 **A. Yes.**
8 Q. Okay. And you -- here again you
9 represented the court administrator Beth McLaughlin
10 in that action?
11 **A. I did.**
12 Q. Okay. When did you find out that the
13 Attorney General would be representing the
14 Legislature in connection with these matters?
15 **A. On Monday, I believe, when -- when -- I**
16 **think by when they -- they filed something in the**
17 **Brown litigation to, you know, strike my -- my**
18 **petition. And so -- there you had it.**
19 Q. Did you -- did you get a letter from the
20 Attorney General's Office? Exhibit 11?
21 **A. Yes.**
22 Q. And is Exhibit 11 a letter dated April 12,
23 '21, from the Attorney General's Office to Acting
24 Chief Justice Rice of the Montana Supreme Court?
25 **A. Yes. Signed by Lieutenant General Hansen.**

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1 Q. Beg your pardon?
2 **A. Signed by Lieutenant General Hansen.**
3 Q. Okay. And that letter -- hang on for a
4 second. Sorry.
5 That letter notifies the chief -- and you
6 copied on this that -- that the Department of
7 Justice is going to be representing the Legislature?
8 **A. Yes.**
9 Q. Turn to Page 2. The last paragraph. I
10 highlighted language there:
11 The Legislature -- I'm reading -- the
12 Legislature does not recognize this Court's order as
13 binding and will not abide by --
14 **A. -- by it.**
15 Q. -- by it. The Legislature will not
16 entertain the Court's interference in the
17 Legislature's investigation of the serious and
18 troubling conduct of members of the judiciary. The
19 subpoena is valid and will be enforced.
20 Did I read that correctly?
21 **A. Yes, sir.**
22 Q. In your 40 years of litigation practice in
23 Montana had you ever seen opposing counsel send a
24 letter to a court to challenge a court order like
25 this?

<p style="text-align: right;">Page 46</p> <p>1 A. No.</p> <p>2 Q. Had you ever read a licensed lawyer's</p> <p>3 statement to a court that its client will not obey</p> <p>4 an order?</p> <p>5 A. No.</p> <p>6 Q. What was your reaction?</p> <p>7 A. It -- it took me aback. I -- I didn't --</p> <p>8 it took me a while to process it because it was so</p> <p>9 contrary to everything that I knew about the rule of</p> <p>10 law and courts and Marbury versus Madison. And I</p> <p>11 just -- I mean, I couldn't -- I truly couldn't</p> <p>12 understand it. It also meant that my hopes of</p> <p>13 trying to work something out and avoid litigation</p> <p>14 were probably zero.</p> <p>15 Q. And in addition to saying this, did the</p> <p>16 Attorney General's Office conduct itself thereafter</p> <p>17 in a manner consistent with what was said here?</p> <p>18 A. Well, the office certainly took the</p> <p>19 position that the Court had no business ruling on</p> <p>20 the validity of the legislative subpoena and that,</p> <p>21 in essence, this was a matter solely within the</p> <p>22 purview of the Legislature, and that was that.</p> <p>23 Q. Well, did the -- did the Attorney General's</p> <p>24 Office -- the subpoena had been quashed. Did the</p> <p>25 Attorney General's office return the emails?</p>	<p style="text-align: right;">Page 48</p> <p>1 Q. Okay. I misspoke. So, one, did they send</p> <p>2 one additional subpoena to Ms. Giles after the</p> <p>3 Supreme Court quashed the first one?</p> <p>4 A. Yes.</p> <p>5 Q. For the same emails?</p> <p>6 A. Yes.</p> <p>7 Q. Did they send a subpoena now directed to</p> <p>8 your client, Ms. McLaughlin, for the emails?</p> <p>9 A. Yes.</p> <p>10 Q. After the Court said, Don't?</p> <p>11 A. Yes.</p> <p>12 Q. And in addition to subpoenaing emails from</p> <p>13 Ms. McLaughlin, what else did they subpoena when</p> <p>14 they sent her a subpoena?</p> <p>15 A. It was -- it was pretty broad. Telephones</p> <p>16 that were used. I don't know. Desks, typewriters.</p> <p>17 It was really broad.</p> <p>18 Q. Not just emails, but telephones and any</p> <p>19 electronic devices that might have transmitted those</p> <p>20 emails?</p> <p>21 A. Yes.</p> <p>22 Q. Did the Legislature move to dismiss the</p> <p>23 petition that you filed in the original proceeding,</p> <p>24 the McLaughlin case?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 47</p> <p>1 A. No.</p> <p>2 Q. Did the Attorney General's Office try to</p> <p>3 set up what you've described as the normal procedure</p> <p>4 for the owner of the documents that had been</p> <p>5 subpoenaed to take dominion of them and review them</p> <p>6 for privilege and confidentiality? Did they do</p> <p>7 that?</p> <p>8 A. No. I did have a conversation with Dale</p> <p>9 Schowengerdt about that process, but that was with</p> <p>10 the Department of Administration, not with the</p> <p>11 Legislature.</p> <p>12 Q. Did it happen?</p> <p>13 A. No.</p> <p>14 Q. Did they file more pleadings to contest</p> <p>15 your ability to regain control for your client over</p> <p>16 judicial branch emails?</p> <p>17 A. I -- I think that in the very next pleading</p> <p>18 they filed, the argument was made that what the</p> <p>19 court administrator was seeking was another order,</p> <p>20 which would not be followed.</p> <p>21 Q. Did they -- did the Attorney General's</p> <p>22 Office for the Legislature or through the</p> <p>23 Legislature -- did -- were more subpoenas issued now</p> <p>24 to your client?</p> <p>25 A. Yes. And also not to my client.</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Exhibit 13?</p> <p>2 A. Yes.</p> <p>3 Q. And would you -- and this is the</p> <p>4 Legislature's motion to dismiss the petition dated</p> <p>5 April 14th; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And who are the lawyers -- or, excuse me,</p> <p>8 did the Attorney General's Office file an appearance</p> <p>9 for the Legislature in that case?</p> <p>10 A. Yes.</p> <p>11 Q. Specifically through Kristin Hansen,</p> <p>12 lieutenant general, and Derek Oestreicher,</p> <p>13 general counsel?</p> <p>14 A. Yes.</p> <p>15 Q. Kristin Hansen is now deceased, God rest</p> <p>16 her soul; right?</p> <p>17 A. Yes.</p> <p>18 Q. Did you read this motion when it was filed?</p> <p>19 A. Yes.</p> <p>20 Q. Pages -- the bottom of Page 8 to Page 9, if</p> <p>21 you'd take a look at that? It's the conclusion.</p> <p>22 And this says -- this reads, says that the</p> <p>23 Legislature submitted a letter to the acting</p> <p>24 chief justice on April 12th.</p> <p>25 That's the letter we just looked at; right?</p>

<p style="text-align: right;">Page 50</p> <p>1 A. Yes, sir. 2 Q. And then on the next page it says not only 3 are they not going to follow the April 11th order, 4 but that your petition seeks another order, which 5 will not bind the Legislature and will not be 6 followed. 7 Is that what you were talking about? 8 A. Yes, it was. 9 Q. What did that tell you, this brief? 10 A. Same thing. It just is -- we were on this 11 path by their choosing, and that was just what was 12 going to happen. My attempts to get things worked 13 out simply were gone. 14 Q. In other words, you were -- you were going 15 to have to engage in this litigation to get these 16 emails back? 17 A. Yes. 18 MR. STRAUCH: Exhibit 14, please. 19 Q. (By Mr. Strauch) This is a declaration of 20 the lieutenant general, Hansen, April 14th; correct? 21 A. Yes, sir. 22 Q. Paragraph 2. This paragraph, is that the 23 paragraph that you were mentioning that verifies 24 that emails were, in fact, sent to the media? 25 A. Yes.</p>	<p style="text-align: right;">Page 52</p> <p>1 have the right to it. I mean, ultimately those 2 documents the Court held should not have been 3 produced at all by the DOA to the Legislature. And 4 thus in the hands of the Attorney General, it's just 5 as wrong. 6 Q. What did it mean now that you knew 5,000 7 emails had been reviewed by the Department of 8 Administration, the Legislature, and the AG's 9 office? 10 A. That there were potentially protected, 11 private, sensitive information that was now, in 12 essence, in the public domain. 13 Q. Protected, sensitive, private information 14 pertaining to a different branch of the government 15 and its employees? 16 A. Right. It's the judicial branch emails 17 that were taken. 18 Q. Okay. Things like employees' medical 19 information, judicial branch employees' health 20 records? 21 A. Yes. 22 Q. Things like youth-in-need-of-care records 23 that had kids' names in them? 24 A. Those were the administrator's concerns. 25 Q. Those names never get out in the public, do</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Paragraph 5. That confirms that on 2 April 9th, on that Friday, that the director of the 3 Department of Administration produced over 5,000 4 emails that day in response to the subpoena; 5 correct? 6 A. That's what it says. 7 Q. Paragraph 8. Paragraph 8, the 8 Attorney General's Office confirms that, in fact, it 9 is holding the emails that were produced; correct? 10 A. That's what it says there. 11 Q. And according to the Attorney General's 12 office, quote: 13 No sensitive or protected information has 14 been disclosed. 15 Correct? 16 A. That's what it says. 17 Q. Do you agree with that claim? 18 A. I'm in no position to agree or disagree 19 with it. I have simply no way to know. But they 20 had been spilled out into the media. I don't know 21 what they looked like when they went there. 22 Q. Let me ask you this: Should the judicial 23 branch's sensitive and protected information been in 24 the possession of the Attorney General's Office? 25 A. They didn't have -- I mean, they didn't</p>	<p style="text-align: right;">Page 53</p> <p>1 they? 2 A. Not that I'm aware of. 3 Q. Now, having the benefit of the 4 Legislature's response to the petition that you 5 filed, did the Court enter a new temporary order 6 enjoining and quashing the legislative subpoenas, 7 Exhibit 15? 8 A. On April 16th the Court issued a further 9 order in -- in -- in both cases, actually. For a 10 bit we had parallel dockets running. 11 Q. Okay. And Exhibit 15 is that order? 12 A. Yes, sir. 13 Q. And it enjoins and temporarily quashes the 14 subpoena issued to your client? 15 A. It does. 16 Q. And it sets a briefing schedule; is that 17 right? 18 A. Yes. 19 Q. After that order, the April 16th order, did 20 the Attorney General's Office then send another 21 letter to the Court, Exhibit 16? 22 A. Yes. 23 Q. And is this A letter -- Exhibit 16 a letter 24 from the Attorney General's Office, April 18th of; 25 '21, to the, quote, Justices of the Montana</p>

<p style="text-align: right;">Page 54</p> <p>1 Supreme Court, end quote? 2 A. Yes. 3 Q. Did you read that letter? 4 A. I did. I don't remember when I got it. 5 But I -- I did read it. 6 Q. All right. I'm going to direct your 7 attention to some highlighted language. 8 The Court here lays claim... 9 A. I have it. 10 Q. Yeah. The Court here lays claim to the 11 sole authority over provision of due process for all 12 branches of government, which is ludicrous. 13 And then it goes on to say: 14 This statement by the Montana 15 Supreme Court -- it doesn't say that, my 16 assertion -- this statement is wholly outside the 17 bounds of rational thought. 18 Did I read that correctly? 19 A. Yes, sir. 20 Q. Did those statements in this letter give 21 you any confidence that the Attorney General's 22 Office would stand down and obey orders? 23 A. No. 24 Q. In your 40-plus years of practice in 25 Montana have you ever seen counsel of record send a</p>	<p style="text-align: right;">Page 56</p> <p>1 The self-interest is so apparent any 2 attempt by this Court to decide the question runs 3 afoul of state law and the MCJC. 4 Did I read that correctly? 5 A. Yes. 6 Q. What is the MCJC? 7 A. Montana Code of Judicial Conduct. 8 Q. Clearly accusing the Court of misconduct 9 and actually violating the code of conduct; is that 10 right? 11 A. Yes, sir. 12 Q. Are you aware of any judicial misconduct or 13 self-interest in that proceeding? 14 A. No. 15 Q. Are you aware of any factual basis to say 16 such things to the Montana Supreme Court? 17 A. No. 18 Q. Did the Court grant or deny that motion to 19 disqualify? 20 A. Ultimately denied it. 21 Q. And for the record, it's Exhibit 18. It's 22 been admitted. We don't need to look at it. 23 After the Court denied the motion to 24 disqualify, did the Attorney General then send 25 another letter to the Court? This would be</p>
<p style="text-align: right;">Page 55</p> <p>1 letter to a court, the Montana Supreme Court, like 2 this? 3 A. No. 4 Q. Did the Attorney General's Office then 5 file, after sending this letter, a motion seeking to 6 disqualify all of the Supreme Court justices, all of 7 them? Exhibit 17. 8 A. Yes. A week and a half or so later, yes. 9 Q. And Exhibit 17 is the Montana Legislature's 10 motion to disqualify all Supreme Court justices 11 dated April 30th of '21; correct? 12 A. Yes. 13 Q. And who -- on Page 17, 1, at the top -- 14 who -- whose names are on this brief for the 15 Legislature from the Attorney General's Office? 16 A. Austin Knudsen, Kristin Hansen, Derek 17 Oestreich. 18 Q. Did you read Exhibit 17 when it was filed? 19 A. Yes. 20 Q. Page -- I'm going to draw your attention to 21 just a couple things here. Page 5, top of page. 22 I'm reading, quote: 23 This matter has arisen because evidence of 24 judicial misconduct has come to public light. 25 Judicial misconduct.</p>	<p style="text-align: right;">Page 57</p> <p>1 Exhibit 19. 2 A. Yes. 3 Q. And is Exhibit 19 a letter written by the 4 Honorable Attorney General Austin Knudsen dated 5 May 19, 2021, directed to the Supreme Court 6 justices? 7 A. And including Judge Harris, who was sitting 8 by designation. 9 Q. Is that correct? 10 A. Yes, sir. 11 Q. Did you read that letter when it came out? 12 A. Yes. 13 Q. Page 1, third paragraph, it says that -- 14 the Honorable Attorney General says that his 15 lieutenant and his other Lieutenant General Hansen 16 and his other subordinate, Derek Oestreich, 17 made -- excuse me -- delivered, quote, strong 18 statements. And -- including about the Court's 19 jurisdiction and including, quote, the impropriety 20 of this Court presuming to, quote/unquote, settle 21 its dispute with a coordinate branch of government. 22 Did I read that correctly? 23 A. Yes, sir. 24 Q. Does that -- did the Honorable 25 Attorney General make it clear in this letter that</p>

<p style="text-align: right;">Page 58</p> <p>1 he was aware of the, quote/unquote, strong 2 statements of the subordinates in his office? 3 A. Seemed a direct endorsement of those 4 comments. 5 Q. Did he do anything, to your knowledge, in 6 the course of this proceeding -- in this letter or 7 thereafter in the course of the McLaughlin 8 proceeding, did he do anything -- the 9 Attorney General do anything to mitigate or 10 remediate what had been said by his subordinates 11 about the Montana Supreme Court? 12 A. Not that I'm aware of. 13 Q. Page 2, first paragraph. Bottom paragraph: 14 All this to say, while this dispute is 15 extraordinary and troubling, please refrain from 16 threatening or maligning the integrity of my 17 attorneys who are assiduously living up to their 18 ethical obligations under unusual circumstances. If 19 you wish to vent any further frustrations about the 20 conduct of attorneys in my office, I invite you to 21 contact me directly. 22 Did I read that directly? 23 A. Yes, sir. 24 Q. So the Attorney General is admonishing the 25 Court?</p>	<p style="text-align: right;">Page 60</p> <p>1 the Montana Supreme Court said? 2 A. No. 3 Q. Are you aware of any factual basis to say 4 these kinds of things that the Honorable 5 Attorney General said? 6 A. No. No. 7 Q. Did the Attorney General's Office then file 8 petition for rehearing? 9 A. Yes. 10 Q. Exhibit 20. That's the Legislature's 11 petition for rehearing dated May 26th in the 12 McLaughlin case; is that right? 13 A. Yes. 14 Q. Did you read that document when it was 15 filed? 16 A. Yes, and responded to it. 17 Q. I'll draw some attention to some of the 18 statements made in it. Exhibit 20, Page 4, Roman 19 numeral 2(a): 20 The Court overlooked and misstated material 21 facts. 22 A. Yeah. That's taken from the rule on 23 petitions for rehearing. 24 Q. Misstated? 25 A. That's what you have to prove on a petition</p>
<p style="text-align: right;">Page 59</p> <p>1 A. I don't want to characterize it. I just 2 think that it can be easily read and understood. 3 Q. There's a footnote at the bottom of that 4 page? 5 A. Yes, sir. 6 Q. The Attorney General, the Honorable 7 Attorney General Austin Knudsen, is telling the 8 Court that a statement that it made in its order is 9 inaccurate almost to a word, quote/unquote; right? 10 A. Yes, sir. 11 Q. In your 40-years-plus of practice in 12 Montana have you ever seen counsel of record say 13 such things like this to the Court? 14 A. Not a lawyer, no. 15 Q. Not a lawyer, is that what you said? 16 A. Yes. 17 Q. Are you aware of any invalid orders? 18 A. No. 19 Q. Are you aware of any improprieties by the 20 Court in the proceeding? 21 A. No. Everything was argued and hashed out 22 and decided and ultimately by the Supreme Court. 23 Q. Ultimately by the U.S. Supreme Court? 24 A. Yes, sir. 25 Q. Are you aware of any inaccuracies in what</p>	<p style="text-align: right;">Page 61</p> <p>1 for rehearing in order to get a matter reheard. 2 Q. Page 6. The highlighted language: 3 Here the justices are institutionally and 4 personally interested in the outcome so their 5 ability to be impartial is justifiably suspect. 6 Specifically, the Court asserts that no justice 7 participated in the polls conducted by the MJA, 8 which is the Montana Judges Association. 9 Quote, respectfully, public regards records 10 tell a different tale, end quote. 11 Did I read that correctly? 12 A. You did. 13 Q. Page 8, Note 4, the footnote at the bottom: 14 And it is perverse -- perverse -- to 15 suggest that this Court will determine whether its 16 own polling practices are misconduct. 17 Is that what that says? 18 A. Yes. 19 Q. Page 13. Conclusion: 20 Which begs the question, Who will judge the 21 judges? According to this Court, the judges. The 22 judges will judge the judges. That, of course, 23 defies common and constitutional sense. 24 Did I read that correctly? 25 A. Yes, sir.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. Again, in 40-years-plus of practice in 2 Montana have you seen counsel of record say such 3 things to the Court in a brief? 4 A. No. 5 Q. Are you aware of any factual basis to say 6 such things? 7 A. No. To the contrary. 8 Q. Exhibit 21. Is -- that's the order that 9 came out in the Brown litigation June 10th of '21; 10 correct? 11 A. Yes. 12 Q. And the Supreme Court actually affirmed the 13 Montana Legislature's position; did it not? 14 A. I -- it did. 15 Q. The Supreme Court agreed with the 16 Legislature that SB 140 was constitutional? 17 A. That was the holding in the majority of the 18 Court. 19 Q. Now, shortly after that order was issued in 20 Brown, what actions did the Montana legislative -- 21 excuse me -- Montana Legislature and 22 Attorney General's Office take regarding its second 23 subpoena to your client? 24 A. Not sure what you're referring to. 25 Do you want to orient me, please?</p>	<p style="text-align: right;">Page 64</p> <p>1 A. Yeah. Good question. My initial response 2 was, Huh, okay. Well, if they're going to dismiss 3 them, there isn't much I can do about that. 4 But there was. Because once we went back 5 and looked at the case law, there's some -- the law 6 says that you can't just go a ways in a case and 7 then say, Never mind, under some circumstances. One 8 of them is capable of repetition yet evading review. 9 I don't remember the other ones, but we wrote them 10 in our brief, made the decision to oppose it because 11 the questions that were there clearly looked like 12 they were going to come back around, and they 13 clearly looked like they needed some definition. 14 Q. Well, Mr. Cox, had the Legislature -- when 15 they filed this motion saying, We stand down, had 16 anybody returned the emails to the court 17 administrator? 18 A. No. 19 Q. That was still left out there, wasn't it? 20 A. Yes. 21 Q. And those emails were still in the hands of 22 the Attorney General's Office? 23 A. Yes. 24 Q. Did they say they were going to return them 25 here in this motion?</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Exhibit 22. Did it move to dismiss your 2 petition as moot? 3 A. Yes, because the actual issue of the 4 validity of legislative subpoenas -- in general, and 5 these particular ones -- were still pending. And so 6 what this was was a declaration, essentially, of 7 never mind, they're moot, we quit. 8 Q. The Legislature was saying, We withdraw the 9 subpoenas? 10 A. They did withdraw the subpoenas one 11 subpoena recipient at a time by -- in writing. 12 Q. And then they said to the Court, Since 13 we've withdrawn the subpoena, the whole case is 14 essentially irrelevant? 15 A. Yes. That was the position they took. 16 Q. Was the Montana Legislature's motion to 17 dismiss granted? 18 A. The motion to dismiss is moot. No, we 19 opposed it. And the Court denied the motion to 20 dismiss, and then ultimately ruled on the actual 21 petition. 22 Q. Okay. So -- but you've said here numerous 23 times that you were trying to avoid litigation. So 24 it looks like the Legislature is standing down. 25 Why doesn't wasn't that good enough?</p>	<p style="text-align: right;">Page 65</p> <p>1 A. I don't remember that they did or didn't. 2 I assume they did not say that, but I can't tell you 3 by memory. 4 Q. Didn't it, in fact, require an order of the 5 Supreme Court ordering them to return the emails? 6 A. Ultimately the Court ordered the return of 7 all copies. 8 Q. And as of the time of this -- the record 9 will reflect that the Court denied the motion to 10 dismiss -- it's Exhibit 23 on June 29th. 11 After the Court denied this motion to 12 dismiss in late June, had the emails been returned 13 to the court administrator's office? 14 A. No. 15 Q. Did the Court ultimately grant your 16 client's petition in McLaughlin? 17 A. Yes. 18 Q. Exhibit 24 -- for the record. We don't 19 need to look at it necessarily -- is the order dated 20 July 14th, '21, in the McLaughlin petition. 21 Now, after that July 14th order came out -- 22 and let's back up. Let's go to the end of that, 23 the -- where the Court orders what needs to happen, 24 please. 25 A. Page 35 and 6?</p>

<p style="text-align: right;">Page 66</p> <p>1 Q. Thank you. Paragraph 57. Does this 2 Exhibit 24 -- Paragraph 57 indicates that the 3 subpoena is quashed; correct? 4 A. Yes. 5 Q. And then keep going down. It enjoins the 6 Legislature and its lawyers from disseminating, 7 publishing, reproducing, or disclosing in any manner 8 any documents produced pursuant to the subpoena? 9 A. Yes. 10 Q. Paragraph D, the Legislature is ordered to 11 immediately return -- immediately return any 12 materials produced pursuant to the subpoena, or any 13 copies or reproductions thereof to your client, the 14 court administrator, Beth McLaughlin? 15 A. Yes. 16 Q. Did the Legislature order its lawyer, the 17 AG's office, immediately return the emails as 18 ordered? 19 A. No. 20 Q. Did you send a letter to the 21 Attorney General's Office about that issue? 22 A. Yes. 23 Q. Exhibit 25. And this is an email and 24 letter that you sent to the Attorney General's 25 office for the return of the documents; is that</p>	<p style="text-align: right;">Page 68</p> <p>1 petition for rehearing of the July 14th order? 2 A. Yes. 3 Q. Exhibit 26. And this is -- Exhibit 26 is 4 the Legislature's petition for rehearing August 11 5 of '21? 6 A. Yes, sir. 7 Q. Did you read that when it was filed? 8 A. I did. 9 Q. Let me draw some attention to statements 10 made in it. Paragraph -- excuse me, Page 9. Quote: 11 Simply ignoring why we are here doesn't 12 change why we're here -- questionable judicial 13 conduct. 14 Did I read that correctly? 15 A. Yes, sir. 16 Q. Page 13: 17 The Court's dismissive treatment of the 18 Legislature's investigation into the records 19 retention practices of judicial officers blinks 20 reality. 21 Did I read that right? 22 A. Yes. 23 Q. Page 16. Citing the McLaughlin case, a 24 statement made by the Court, the Attorney General 25 says, quote:</p>
<p style="text-align: right;">Page 67</p> <p>1 right? 2 A. Yes. 3 Q. And did the Attorney General's office 4 return the emails in response to that letter? 5 A. No. 6 Q. Did they respond at all? 7 A. I don't think so. 8 Q. After the July 14, '21, order was issued, 9 did the Attorney General or any of his subordinates 10 openly notify the Montana Supreme Court that he was 11 refusing to comply with the order? 12 A. No. I was told that they were going to 13 file a petition for writ of certiorari to the U.S. 14 Supreme Court and that they were going to hold on to 15 the records until that had been dealt with. 16 Q. Well, I didn't ask what you were told. I'm 17 sorry. 18 Are you aware whether the 19 Attorney General's office or any of his subordinates 20 openly notified the Montana Supreme Court in a 21 letter, in a brief was filed with the Montana 22 Supreme Court, that the Attorney General would not 23 obey the July 14th order? 24 A. No. 25 Q. Did the Attorney General's office file a</p>	<p style="text-align: right;">Page 69</p> <p>1 That is a stunning counterfactual denial, 2 end quote. 3 Correct? 4 A. Yes. 5 Q. Page 18. 6 A. Page 18 of the Court's order or Page -- 7 Q. I'm sorry. Yeah. Page 18 of the exhibit. 8 Thank you. 9 A. Of the exhibit. Okay. 10 Q. Sorry. These advisory statements must be 11 withdrawn, quote/unquote. 12 A. That's what it says. 13 Q. Page 19: 14 Apart from that, the opinion contains 15 numerous misstatements. 16 Did I read that correctly? 17 A. Yes, sir. 18 Q. Have you ever seen counsel of record say 19 such things in a brief to the Court? 20 A. It wasn't quite as incendiary, but no. 21 Q. Are you aware of any questionable judicial 22 conduct? 23 A. No. 24 Q. Are you aware of any counterfactual 25 denials?</p>

<p style="text-align: right;">Page 70</p> <p>1 A. No.</p> <p>2 Q. Are you aware of any factual misstatements?</p> <p>3 A. No.</p> <p>4 Q. Are you aware of any factual basis to say</p> <p>5 such things to the Montana Supreme Court?</p> <p>6 A. I am not.</p> <p>7 Q. Did the Court deny the petition for</p> <p>8 rehearing?</p> <p>9 A. Yes.</p> <p>10 Q. Exhibit 27, for the record. We don't need</p> <p>11 to look at it. It's an order dated September 7th of</p> <p>12 2021 denying the Legislature's petition for</p> <p>13 rehearing.</p> <p>14 After the September 7th of '21 order came</p> <p>15 out, did the Legislature or the AG's office</p> <p>16 immediately return the emails?</p> <p>17 A. No.</p> <p>18 Q. Did you send a letter to the</p> <p>19 Attorney General's Office about that again?</p> <p>20 A. I did.</p> <p>21 Q. Exhibit 28. Is that your letter to the</p> <p>22 Attorney General's Office, September 8th of '21,</p> <p>23 asking them again to return the emails as ordered?</p> <p>24 A. Yes.</p> <p>25 Q. Did the Attorney General's Office return</p>	<p style="text-align: right;">Page 72</p> <p>1 For example, did the Court say,</p> <p>2 parentheses, Unless you seek a petition for writ</p> <p>3 with the Montana Supreme Court?</p> <p>4 A. No. I mean, there's procedure for staying</p> <p>5 an order, but filing a petition for writ of</p> <p>6 certiorari isn't one of them unless you file a</p> <p>7 request with the issuing court saying, Please stay</p> <p>8 the order until the Supreme Court is active.</p> <p>9 Q. Did the Attorney General's office ask the</p> <p>10 Montana Supreme Court to stay its July 14th order?</p> <p>11 A. No.</p> <p>12 Q. Did the Attorney General's office ask the</p> <p>13 U.S. Supreme Court to stay the Montana</p> <p>14 Supreme Court's order pending its decision on a</p> <p>15 petition?</p> <p>16 A. No.</p> <p>17 Q. Is it accurate to say the Attorney General</p> <p>18 unilaterally decided how and when it would comply</p> <p>19 with the July 14th order?</p> <p>20 A. Well, they didn't comply with it.</p> <p>21 Q. Are you aware of any orders from any court</p> <p>22 relieving the Attorney General from their</p> <p>23 obligations, his obligations, under the July 14th,</p> <p>24 '21, Montana Supreme Court order?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 71</p> <p>1 the emails in response to that letter?</p> <p>2 A. They did not.</p> <p>3 Q. Did they respond at all?</p> <p>4 A. There was an email back dated</p> <p>5 September 10th that -- from -- from Derek</p> <p>6 Oestreicher, and he said he would talk to Kris</p> <p>7 Hansen about it next week.</p> <p>8 Q. Exhibit 29? Is that the email you're</p> <p>9 referencing?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Did they get back to you as he said?</p> <p>12 A. Not that I remember.</p> <p>13 Q. After the July 14th, '21, order, the order</p> <p>14 saying immediately return the emails was issued --</p> <p>15 strike that.</p> <p>16 Did they return the emails after you sent</p> <p>17 this letter dated September 10th?</p> <p>18 A. No.</p> <p>19 Q. Do you know why?</p> <p>20 A. I'm pretty sure that Mr. Oestreicher told</p> <p>21 me that there was going to be a petition for writ of</p> <p>22 certiorari to the U.S. Supreme Court.</p> <p>23 Q. And is that basis or rationale listed as an</p> <p>24 exception to the Court's July 14th order when the</p> <p>25 Court said, Immediately return the emails?</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. Did the Attorney General's office file a</p> <p>2 petition for a writ of cert with the U.S.</p> <p>3 Supreme Court?</p> <p>4 A. Yes.</p> <p>5 Q. Exhibit 30.</p> <p>6 Now, this is a petition for writ of</p> <p>7 certiorari. Mr. Cox, for the benefit of the lay</p> <p>8 folks on the commission, when you file an appeal in</p> <p>9 Montana, it's what's called an appeal of right; is</p> <p>10 that correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Meaning if you file an appeal, the Montana</p> <p>13 Supreme Court has to take it, essentially?</p> <p>14 A. Yes. Generally speaking, yes.</p> <p>15 Q. The U.S. Supreme Court is not, for the most</p> <p>16 part, an appeal of right; is that right?</p> <p>17 A. Correct. There are some appeals of right,</p> <p>18 but by and large, it's discretionary review.</p> <p>19 Q. So if you want review by the highest court</p> <p>20 of the land of the United States, you need to ask</p> <p>21 them for the right to be heard. That's what's</p> <p>22 called a petition for a writ of certiorari; is that</p> <p>23 right?</p> <p>24 A. Correct.</p> <p>25 Q. Now, did you read Exhibit 30 when it was</p>

<p style="text-align: right;">Page 74</p> <p>1 filed?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And let me draw some attention to</p> <p>4 statements made in it. Now, to be clear, these are</p> <p>5 statements made -- you see Mr. Knudsen's name there</p> <p>6 on the petition?</p> <p>7 A. Right.</p> <p>8 Q. These are statements made by the highest</p> <p>9 chief general legal officer in the state of Montana</p> <p>10 to the highest court in this country; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Page 18. Bottom of the page. Speaking of</p> <p>13 the Montana Supreme Court, the highest court in the</p> <p>14 state of Montana, to the United States</p> <p>15 Supreme Court, the highest court in the state of</p> <p>16 our -- of our country, the Attorney General says,</p> <p>17 referencing the Montana Supreme Court:</p> <p>18 Judicial self-dealing on this scale might</p> <p>19 be unprecedented in the nation's history.</p> <p>20 Did I read that right?</p> <p>21 A. Yes.</p> <p>22 Q. Page 34. Speaking of the Montana</p> <p>23 Supreme Court, quote:</p> <p>24 It reached out to facilitate a case brought</p> <p>25 by its appointee to conceal its misbehavior.</p>	<p style="text-align: right;">Page 76</p> <p>1 of day.</p> <p>2 Did I read that right?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Are you aware of any untrue statements by</p> <p>5 the Montana Supreme Court?</p> <p>6 A. I think the Court's opinions were very</p> <p>7 careful, and I don't know of anything that was</p> <p>8 stated that was untrue.</p> <p>9 Q. Are you aware of any judicial self-dealing</p> <p>10 by the Montana Supreme Court?</p> <p>11 A. No.</p> <p>12 Q. Are you aware of any inappropriate behavior</p> <p>13 by the so-called six McLaughlin justices?</p> <p>14 A. No.</p> <p>15 Q. Are you aware of any judicial branch</p> <p>16 misbehavior?</p> <p>17 A. No.</p> <p>18 Q. Are you aware of any factual basis to say</p> <p>19 such things to the highest court in this land</p> <p>20 regarding the highest court of this state?</p> <p>21 A. No, sir.</p> <p>22 Q. Did the Supreme Court of the United States</p> <p>23 deny the Attorney General's petition?</p> <p>24 A. Yes. We wrote a response, and in the</p> <p>25 normal course of things, the Supreme Court denied</p>
<p style="text-align: right;">Page 75</p> <p>1 Did I read that right?</p> <p>2 A. Yes.</p> <p>3 Q. Page 38, in Footnote 7, the bottom:</p> <p>4 In addition to being untrue, these</p> <p>5 statements -- and, again, he's referencing</p> <p>6 statements by the Montana Supreme Court -- in</p> <p>7 addition to being untrue, these statements are</p> <p>8 panegyric to -- a panegyric to insincerity, came</p> <p>9 after the nonparty justices stayed their own</p> <p>10 subpoenas.</p> <p>11 Did I read that right?</p> <p>12 A. Yes.</p> <p>13 Q. Page 43. The six McLaughlin justices of</p> <p>14 the Montana Supreme Court refused to withdraw. They</p> <p>15 charged ahead, ensuring a result that bailed</p> <p>16 themselves out of an investigation prompted by their</p> <p>17 own inappropriate behavior, end quote.</p> <p>18 Did I read that right?</p> <p>19 A. Yes.</p> <p>20 Q. Page 45 of the exhibit, quote:</p> <p>21 It permitted them -- in italics, that</p> <p>22 meaning the Montana Supreme Court -- it permitted</p> <p>23 them to resolve the legal question of legislative</p> <p>24 subpoena power, and by emasculating that power, to</p> <p>25 conceal judicial branch misbehavior from the light</p>	<p style="text-align: right;">Page 77</p> <p>1 the petition for writ of certiorari.</p> <p>2 Q. And that --</p> <p>3 MR. STRAUCH: For the record, Mr. Chairman,</p> <p>4 members of the commission, the notice of denial from</p> <p>5 the U.S. Supreme Court, March 24, 2022, is</p> <p>6 Exhibit 31.</p> <p>7 Q. (By Mr. Strauch) When did the</p> <p>8 Attorney General's office finally return emails?</p> <p>9 A. A relatively short time after the denial of</p> <p>10 cert. A couple of weeks.</p> <p>11 Q. Do you know if all emails were returned?</p> <p>12 A. I have no way to know.</p> <p>13 Q. Do you know if the emails that went to the</p> <p>14 media were returned?</p> <p>15 A. I have no way to know if they were or they</p> <p>16 were not.</p> <p>17 Q. Was the proverbial horse out of the barn?</p> <p>18 A. Yes.</p> <p>19 Q. Based on your involvement, was there a way</p> <p>20 to have avoided all of the dispute in the McLaughlin</p> <p>21 case from the beginning all the way through the</p> <p>22 Supreme Court of the United States? Was there a way</p> <p>23 to avoid that?</p> <p>24 A. Sure. What I proposed on April 10th.</p> <p>25 Q. Was?</p>

<p style="text-align: right;">Page 78</p> <p>1 A. Which was to stop things, put together a 2 program where we would, even on an expedited basis, 3 review emails, pull privileged material, prepare a 4 privilege log of what we kept, and turn the rest 5 over. 6 Q. And I think you said you would normally 7 expect that to occur in litigation? 8 A. I've done that dozens upon dozens of times 9 in litigation. 10 Q. In very adversarial cases, I assume? 11 A. Even against you. 12 Q. Thank you. 13 A. Very adversarial. 14 Q. You're saying I'm not a nice guy? 15 A. I did not say that. I said you're very 16 adversarial. 17 MR. STRAUCH: Mr. Chairman, may I ask for 18 the commission's indulgence for a moment? 19 CHAIR OGLE: Yes. 20 MR. STRAUCH: Mr. Chairman, members of the 21 commission, I may have neglected to move for 22 Exhibit P with its attached exhibits that we added 23 to it. If I did, I move for admission. 24 CHAIR OGLE: It is admitted. 25 MR. STRAUCH: I have no further questions</p>	<p style="text-align: right;">Page 80</p> <p>1 discovery responses pursuant to an agreement with 2 Justice Sandefur and Justice Rice. 3 CHAIR OGLE: Mr. Strauch? 4 MR. STRAUCH: No objection. 5 CHAIR OGLE: They're admitted. 6 (Exhibits JJ and KK admitted.) 7 MR. CORRIGAN: I have a copy for each 8 member of the commission, as well as the witness. 9 Can I approach? 10 CHAIR OGLE: Yes. 11 12 CROSS-EXAMINATION 13 BY MR. CORRIGAN: 14 Q. Mr. Cox, you -- you testified that the 15 legislative subpoena that was at issue in your 16 emergency motion was issued to the Department of 17 Administration and not your client; correct? 18 A. Correct. 19 Q. Did the Legislature first attempt to get 20 the subject of that subpoena from your client? 21 A. Yes. 22 Q. And -- and did -- 23 A. Well, let's be clear. Not -- no, that's 24 not an accurate statement. 25 Q. Did the Legislature attempt to get some</p>
<p style="text-align: right;">Page 79</p> <p>1 of this witness, Mr. Chairman, members of the 2 commission. Thank you. 3 CHAIR OGLE: Okay. We've been going for 4 about an hour and three quarters. Do you want to 5 forge forward with cross-examination, or do you want 6 to take a brief break? 7 MR. CORRIGAN: Mr. Chairman, with the 8 commission's permission, I'd request just a brief 9 break. 10 CHAIR OGLE: All right. Why don't we take 11 a break. We'll reconvene here in, say, 15 minutes, 12 11:00 o'clock. 13 (Break taken from 10:40 a.m. until 10:53 a.m.) 14 THE COURT: We're back on the record in the 15 matter of Austin Miles Knudsen, Supreme Court Cause 16 Number PR 23-0496, ODC File Number 21-094. 17 The respondent is going to start his 18 cross-examination of Mr. Cox. 19 You may proceed. 20 MR. CORRIGAN: Mr. Chairman, with the 21 commission's permission, by agreement with the 22 Office of Disciplinary Counsel, I'd like to 23 introduce two new exhibits pursuant to the good 24 cause exception. This will be Respondent's 25 Exhibit KK and Respondent's Exhibit JJ. These are</p>	<p style="text-align: right;">Page 81</p> <p>1 documents from your client that were covered under 2 the subpoena? 3 A. Some documents related to judicial polling, 4 polling of the state district court judges. 5 Q. And had your client deleted those 6 documents? 7 A. She had. And that's what she told the 8 Legislature. 9 Q. When you reached out to suggest negotiating 10 a resolution to this, was one of your proposed 11 suggestions to get the documents from your client 12 instead? 13 A. There would be a way to do it. I don't 14 know if that's what I suggested, but there would be 15 a way to do it because deleted off of one machine 16 doesn't mean gone for good. So Beth could have gone 17 to the -- the IT department and said, Do a search. 18 Q. And where is the IT department housed? 19 A. I don't know the answer to that. 20 Q. Is it housed within the Department of 21 Administration? 22 A. Told you I don't know the answer to that. 23 Q. So you were the one who filed, I think 24 we've established, the emergency motion on 25 April 10th to quash the Montana Legislature's</p>

<p>Page 82</p> <p>1 subpoena to the Department of Administration; 2 correct? 3 A. Yes. 4 Q. What day of the week was April 10th? 5 A. Saturday. 6 Q. And did the Court grant your emergency 7 motion that was the subject of that -- did the 8 Court -- strike that. 9 Did the Court grant your emergency motion? 10 A. On Sunday evening. 11 Q. And that Sunday evening would have been 12 April 11, 2021; correct? 13 A. Yes. 14 Q. And you filed all of Administrator 15 McLaughlin's subsequent court filings in this matter 16 all the way through the United States Supreme Court; 17 correct? 18 A. I did. 19 Q. Prior to representing Supreme Court 20 Administrator McLaughlin, had you practiced before 21 the Montana Supreme Court before? 22 A. Many times. 23 Q. And in your experience, does the Montana 24 Supreme Court generally accept filings on weekends? 25 A. I don't know. I've never tried to do it.</p>	<p>Page 84</p> <p>1 subject to an exception; correct? 2 A. Yes, sir. 3 Q. And so you contacted Acting 4 Chief Justice Rice with a phone call and a 5 voice mail on the evening of Saturday, April 10, 6 2021; correct? 7 A. I think so. I think it was the 10th. 8 Q. If I could move to -- we've already moved 9 to admit it. I could have you pull up Exhibit -- I 10 believe it's KK, Justice Rice's discovery response? 11 Sorry. JJ. 12 THE WITNESS: Yeah. We know that to be 13 true from what he said was the time stamp on his 14 email. 15 Q. (By Mr. Corrigan) And I think you testified 16 that you believed there was an emergency which 17 justified this ex parte conversation? 18 A. Yes. 19 Q. And after you contacted Acting 20 Chief Justice Rice ex parte with a phone call, did 21 you contact counsel for the governor or anyone at 22 the Montana Legislature to inform them that that ex 23 parte communication had occurred? 24 A. I did not. 25 Q. But you had been in contact with staffers</p>
<p>Page 83</p> <p>1 I'd never had a situation like this one. 2 Q. So if you file something on a weekend with 3 the Montana Supreme Court, you don't know if the 4 Court sees it before Monday morning? 5 A. I -- I don't. And that's why I asked the 6 clerk, Mr. Greenwood. 7 Q. And had you ever had a filing accepted on a 8 weekend before that April 11th? 9 A. I never tried filing on a weekend before, 10 that I remember. 11 Q. And so during the weekend of April 10th 12 and 11th, 2021, you knew that if you simply filed 13 something with the Montana Supreme Court over the 14 weekend, the Court likely wouldn't see it until 15 Monday morning? 16 A. Right. 17 Q. And I think you testified earlier that you 18 had an ex parte communication with Justice Rice, or 19 Acting Chief Justice Rice at the time, in order to 20 it facilitate the Court reviewing your motion over 21 the weekend; is that correct? 22 A. I did. There was no other way to get that 23 to the Court's attention that I knew of. 24 Q. All right. And ex parte conversations, I 25 think you testified, are generally prohibited</p>	<p>Page 85</p> <p>1 for the Department of -- with the Department of 2 Administration at that time; correct? 3 A. I had sent them emails. 4 Q. And you had contact information for 5 attorneys at the Attorney General's Office at that 6 time; correct? 7 A. I could have found it. 8 Q. And you had contact information for 9 legislative staff at the time; correct? 10 A. Sent some to Todd Everts. 11 Q. And in your experience as a litigator, is 12 not standard practice that anytime you're involved 13 in a case and need to contact chambers, that you 14 either include opposing counsel on the communication 15 or at least inform them that the communication 16 occurred? 17 A. Sometimes. 18 Q. Have you ever had an ex parte communication 19 other than in this case where you didn't inform 20 opposing counsel of that communication? 21 A. Probably. 22 Q. And what would the circumstances be that 23 would justify not notifying opposing counsel of that 24 communication? 25 A. Something ministerial that happened to be</p>

<p style="text-align: right;">Page 86</p> <p>1 being handled so the Court could schedule.</p> <p>2 Q. And just to be very clear, the Montana</p> <p>3 Legislature was not a party to the case in which you</p> <p>4 filed your initial lawsuit; correct?</p> <p>5 A. Until I filed the petition against them,</p> <p>6 that's true.</p> <p>7 Q. And you also contacted the clerk of the</p> <p>8 Montana Supreme Court; correct?</p> <p>9 A. I did.</p> <p>10 Q. Did your emergency motion that you filed on</p> <p>11 Saturday, April 10, contain any mention of your ex</p> <p>12 parte phone call to Acting Chief Justice Rice?</p> <p>13 A. It did not.</p> <p>14 Q. Did you ever publicly disclose your ex</p> <p>15 parte communication with Acting Chief Justice Rice?</p> <p>16 A. Not until people started asking me about</p> <p>17 it. Mr. Parker, Mr. Strauch.</p> <p>18 Q. And to your knowledge, did the Montana</p> <p>19 Supreme Court, in any of its filings, ever disclose</p> <p>20 its ex parte communication in any of its written</p> <p>21 orders or written opinions in Brown v. Gianforte or</p> <p>22 McLaughlin v. Legislature?</p> <p>23 A. No, but it was a non-substantive emergency</p> <p>24 communication that created no prejudice. That fits</p> <p>25 within the rules.</p>	<p style="text-align: right;">Page 88</p> <p>1 court?</p> <p>2 A. So that's what the discovery response says,</p> <p>3 where he said, I'm not aware of any legal authority</p> <p>4 allowing an individual justice to consider and grant</p> <p>5 emergency relief, even on a temporary basis.</p> <p>6 So he would not consider such a request.</p> <p>7 It doesn't say that I made the request. And if you</p> <p>8 know Justice Sandefur, you know he's a man with many</p> <p>9 questions.</p> <p>10 Q. Why would you call Justice Sandefur first</p> <p>11 out of all the justices?</p> <p>12 A. I -- I knew Justice Sandefur from having</p> <p>13 tried cases in his court, from having been in front</p> <p>14 of -- you know, when he was a district court judge,</p> <p>15 from having been in front of him on the Montana</p> <p>16 Supreme Court, and from his, you know, judicial</p> <p>17 campaigns and seeing him speak at various places.</p> <p>18 And he was the first person I thought of to raise</p> <p>19 this issue with. And then he pushed me off to</p> <p>20 Justice Rice.</p> <p>21 Q. And when you called Justice Sandefur, did</p> <p>22 you know that Justice Rice was the acting</p> <p>23 chief justice in the Brown case?</p> <p>24 A. I don't know. And -- yeah. And, of</p> <p>25 course, I'm dealing with what I've already said, is</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. I think you testified earlier that your</p> <p>2 phone call with Justice Rice wasn't your only ex</p> <p>3 parte communication with the Montana Supreme Court</p> <p>4 that weekend, was it?</p> <p>5 A. I've testified that it was. I subsequently</p> <p>6 learned from Justice Sandefur's written discovery</p> <p>7 response that he recalls a conversation with me.</p> <p>8 Much the same sort of thing. I don't remember it.</p> <p>9 I still don't remember it.</p> <p>10 Q. Do you have any reason to dispute</p> <p>11 Justice Sandefur's account of your conversation on</p> <p>12 April 10, 2021?</p> <p>13 A. I do not.</p> <p>14 Q. So what would have been the purpose of your</p> <p>15 call to Justice Sandefur?</p> <p>16 A. By what they've said, he was the first</p> <p>17 person that I contacted. And he essentially shunted</p> <p>18 me off to Justice Rice. So he was the second person</p> <p>19 that I talked --</p> <p>20 Q. Did you seek emergency relief directly from</p> <p>21 Justice Sandefur?</p> <p>22 A. No.</p> <p>23 Q. I can point to -- I believe</p> <p>24 Justice Sandefur testified that he said he could not</p> <p>25 grant a TRO on his own and it required the full</p>	<p style="text-align: right;">Page 89</p> <p>1 I don't remember this conversation.</p> <p>2 Q. So you don't remember the conversation.</p> <p>3 In your 40 years of litigating practice,</p> <p>4 how many ex parte conversations have you had with</p> <p>5 Montana Supreme Court justices?</p> <p>6 A. Not many. Not many, I'll tell you that.</p> <p>7 Q. Would these be the only two that are at</p> <p>8 issue here?</p> <p>9 A. I don't think so.</p> <p>10 Q. And would it be fair to characterize,</p> <p>11 according to Justice Sandefur's account, your</p> <p>12 conversation with Justice Sandefur as more</p> <p>13 substantive than your conversation with</p> <p>14 Justice Rice?</p> <p>15 A. No, I wouldn't characterize what he said</p> <p>16 that way. What -- like I said, Justice Rice [sic]</p> <p>17 is a man of many questions, and he will say a lot of</p> <p>18 things. If you've been -- if you've tried a case</p> <p>19 with him, you know about this --</p> <p>20 Q. For the record, you said Justice Rice. I</p> <p>21 think you meant Justice Sandefur?</p> <p>22 A. Justice Sandefur. I did. Thank you.</p> <p>23 And so he's just remembering what he said</p> <p>24 and reciting it here, not what I said.</p> <p>25 Q. But you had no conversation with</p>

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1 Justice Rice; it was simply a voicemail that you
2 left him?
3 **A. That's true.**
4 Q. But according to Justice Sandefur, you had
5 a somewhat -- or strike that.
6 According to Justice Sandefur, you had a
7 five minute or so conversation?
8 **A. He said approximately five minutes.**
9 Q. And according to Justice Sandefur, he
10 instructed you the proper way to convene the
11 Supreme Court on a weekend to get your motion heard?
12 **A. Does it say that?**
13 Q. I believe he told you you needed to contact
14 Acting Chief Justice Rice.
15 **A. It says Justice Sandefur informed me that**
16 **Justice Rice was the acting chief justice in the**
17 **Brown case and that he, meaning me, could contact**
18 **him, meaning Rice, if so inclined, but that**
19 **Justice Sandefur doubted Justice Rice would have a**
20 **different procedural view.**
21 Q. And was contacting Justice Sandefur -- or,
22 excuse me, was contacting Acting Chief Justice Rice
23 essential to the Court hearing your emergency motion
24 as quickly as possible?
25 **A. I thought it was.**

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1 Q. When did you decide that an ex parte
2 conversation was appropriate? Or communication.
3 **A. So let's put this in time perspective.**
4 **Saturday evening we filed the petition. I knew that**
5 **just filing wasn't likely to be good enough. That**
6 **was -- and that the Court needed to be aware of, and**
7 **it would do whatever it would do. I mean, if the**
8 **Court said, "Eh, tough luck, talk to us on Monday,"**
9 **well, they could do that.**
10 **And then -- so my concern was what I**
11 **perceived to be an emergency for all the reasons**
12 **that we stated over and over. And then that**
13 **emergency situation was underscored the next morning**
14 **when I learned that a bunch of emails had already**
15 **been produced.**
16 **MR. CORRIGAN:** Could I bring back up ODC's
17 Exhibit 7 that was put in front of you before?
18 Q. (By Mr. Corrigan) So on Page 1, this is an
19 email on Sunday, April 11, 2021, at 11:23 a.m., from
20 Misty Ann Giles, the director of the Department of
21 Administration.
22 **A. Yes.**
23 Q. What was the information conveyed in this
24 email?
25 **A. From her?**

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1 Q. From her.
2 **A. Basically, put it in context, I had**
3 **contacted her and said, This is a problem. If these**
4 **emails get produced, there's a real risk here of**
5 **personal information. So I want to enter into some**
6 **sort of an agreement to how this gets produced.**
7 **And had she wrote back and said, Look,**
8 **essentially, we have the subpoena. We're complying**
9 **with it exactly as its written. We are not able to**
10 **do a review. We're not well-suited to do a review**
11 **to see if any of the stuff is somehow privileged or**
12 **confidential. We're just going to turn it over to**
13 **the Legislature.**
14 **And that's when she said she would provide**
15 **copies of the PST file of what we turned over on**
16 **Friday -- news to me -- and then do the same on**
17 **Monday with the remaining documents.**
18 Q. And so was that particularly concerning to
19 you?
20 **A. Yes.**
21 Q. Did this email cause you to do -- strike
22 that.
23 Did this email cause you to take any type
24 of additional action?
25 **A. Yeah. We filed a supplemental petition.**

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1 Q. And for the record, it wasn't this email
2 that propelled you to contact Acting
3 Chief Justice Rice ex parte or Justice Sandefur ex
4 parte?
5 **A. No. That had been the day before.**
6 **MR. CORRIGAN:** I'd like to move for
7 admission of Exhibit CC.
8 **CHAIR OGLE:** Any objection, Mr. Strauch?
9 **MR. STRAUCH:** Well, your Honor, I think he
10 needs to lay some foundation here. This is a
11 deposition transcript, and the witness has
12 testified, so we object --
13 **MR. CORRIGAN:** So this is a prior
14 inconsistent statement offered for impeachment
15 directly discussing ODC Exhibit 7, the email from
16 Misty Ann Giles. It's not --
17 **MR. STRAUCH:** Same objection, Mr. Chairman.
18 I think foundation has to be laid here.
19 **CHAIR OGLE:** Okay. Then why don't you lay
20 further foundation.
21 Q. (By Mr. Corrigan) So, Mr. Cox, you just
22 testified that it was not this email, the subject of
23 ODC Exhibit 7, that propelled you to contact
24 Chief Justice Rice ex parte or Chief -- or
25 Justice Sandefur the day before; correct? That's

<p style="text-align: right;">Page 94</p> <p>1 impossible.</p> <p>2 A. Right.</p> <p>3 MR. CORRIGAN: Mr. Chairman, this is direct</p> <p>4 impeachment of that statement.</p> <p>5 MR. STRAUCH: Well, again, Mr. Chairman,</p> <p>6 under the impeachment rules, the witness is allowed</p> <p>7 to see what's being said, to confront the evidence,</p> <p>8 but it doesn't make the exhibit itself admissible.</p> <p>9 So same objection.</p> <p>10 Q. (By Mr. Corrigan) So did you testify that</p> <p>11 just a little bit before noon on Sunday you learned</p> <p>12 that the emails had already been produced, and</p> <p>13 that's what propelled you to contact</p> <p>14 Chief Justice Rice ex parte?</p> <p>15 A. That is what I said. It was clearly</p> <p>16 mistaken because I didn't know the dates that are</p> <p>17 set forward by Justices Rice and Sandefur.</p> <p>18 Q. So you thought that your conversations with</p> <p>19 Justices Rice and Sandefur occurred on Sunday, not</p> <p>20 Saturday?</p> <p>21 A. Right.</p> <p>22 Q. So if I understand this correctly, the</p> <p>23 timeline, in your mind, was that Director Giles sent</p> <p>24 you that email on Sunday morning, 11:23, and that's</p> <p>25 what propelled you to contact Justice Rice and --</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Presumably, it was. Yes.</p> <p>2 Q. And was that deposition transcribed?</p> <p>3 A. Yes.</p> <p>4 Q. I'd like to hand you a copy of your</p> <p>5 deposition.</p> <p>6 Forgive my clumsiness here for a moment.</p> <p>7 MR. CORRIGAN: May I approach?</p> <p>8 CHAIR OGLE: Yes.</p> <p>9 Do you have a copy of it, Mr. Strauch?</p> <p>10 MR. STRAUCH: Yes, Mr. Chair.</p> <p>11 Q. (By Mr. Corrigan) Could you turn to -- I</p> <p>12 believe it's Page 5 of the exhibit, but it is</p> <p>13 transcript Page 16 of the -- of the mini.</p> <p>14 A. Okay. I have the same thing we've just</p> <p>15 been talking about.</p> <p>16 Q. And so that is all your testimony?</p> <p>17 A. It is.</p> <p>18 Q. And you simply say that you misremembered</p> <p>19 what happened on what date?</p> <p>20 A. In my defense, in two days we put together</p> <p>21 two very substantive petitions to the Montana</p> <p>22 Supreme Court under very extreme circumstances in a</p> <p>23 very short time. There were a lot of things</p> <p>24 happening. I didn't get that one right.</p> <p>25 Q. You didn't get that one right, and you</p>
<p style="text-align: right;">Page 95</p> <p>1 Justices Rice and Sandefur on Sunday evening?</p> <p>2 A. I thought -- so my mindset when I was</p> <p>3 testifying from memory in my deposition was simply</p> <p>4 that the situation became more dire, and thus more</p> <p>5 important that I get a message of an emergency</p> <p>6 petition to the Court so the Court could take</p> <p>7 whatever action it chose to take.</p> <p>8 Q. But you testified that Misty Ann Giles's</p> <p>9 email on Sunday morning at 11:23 is what caused you</p> <p>10 to go through the mental checklist of whether an ex</p> <p>11 parte conversation was appropriate.</p> <p>12 A. That's what I testified to, but it was</p> <p>13 wrong.</p> <p>14 MR. CORRIGAN: Mr. Chairman, may I request</p> <p>15 your indulgence for just a moment?</p> <p>16 CHAIR OGLE: Yes.</p> <p>17 MR. CORRIGAN: Thank you, Mr. Chairman. As</p> <p>18 an appellate lawyer, I'm a bit of a fish out of</p> <p>19 water at times on evidentiary issues.</p> <p>20 Q. (By Mr. Corrigan) Mr. Cox, did you have</p> <p>21 your deposition taken in this matter?</p> <p>22 A. I did.</p> <p>23 Q. And was that on April 10, 2024?</p> <p>24 A. It was --</p> <p>25 Q. On or about?</p>	<p style="text-align: right;">Page 97</p> <p>1 forgot your conversation with Justice Sandefur?</p> <p>2 A. Yes. Still don't remember it.</p> <p>3 Q. So just to recap, you called</p> <p>4 Justice Sandefur on a Saturday to get emergency</p> <p>5 relief. Then later on Saturday you left Acting</p> <p>6 Chief Justice Rice a voicemail to convene the Court.</p> <p>7 And then you learned from Director Giles on Sunday</p> <p>8 that there was an emergency, which propelled you to</p> <p>9 contact the Supreme Court ex parte?</p> <p>10 A. Can't adopt it the way you said it.</p> <p>11 Q. Now, you filed your emergency motion that</p> <p>12 weekend in a case called Brown v. Gianforte;</p> <p>13 correct?</p> <p>14 A. I did, yes.</p> <p>15 Q. And I think we established earlier that</p> <p>16 your client was not a party to the case at that</p> <p>17 time; right?</p> <p>18 A. Well, yeah, nobody's a party till they file</p> <p>19 a petition to intervene.</p> <p>20 Q. And your -- the Montana Legislature was</p> <p>21 also not a party to that case?</p> <p>22 A. Not until I made them a party.</p> <p>23 Q. Mr. Cox, do you know what a temporary</p> <p>24 restraining order is?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 98</p> <p>1 Q. Have you ever sought one before?</p> <p>2 A. Yes.</p> <p>3 Q. What is it?</p> <p>4 A. A temporary restraining order is an order</p> <p>5 of the Court that essentially freezes things in --</p> <p>6 in a case of -- where there's irreparable harm and</p> <p>7 all those sorts of things. The Court can issue an</p> <p>8 order that I always refer to as a standstill order.</p> <p>9 Just everybody stop doing what you're doing, and</p> <p>10 we're going to get this sorted out.</p> <p>11 Q. And can state district court issue</p> <p>12 temporary restraining orders?</p> <p>13 A. Yes.</p> <p>14 Q. So you could have gone to a state district</p> <p>15 court to obtain a temporary restraining order</p> <p>16 against the Department of Administration?</p> <p>17 A. I suppose.</p> <p>18 Q. But instead you chose to call your client's</p> <p>19 supervisor ex parte to request that they come in on</p> <p>20 a Sunday --</p> <p>21 A. Let's just stop with that.</p> <p>22 Q. I'm allowed to ask my questions.</p> <p>23 But instead you chose to call your client's</p> <p>24 supervisor ex parte to request that they come in on</p> <p>25 a Sunday to stop a third party from releasing</p>	<p style="text-align: right;">Page 100</p> <p>1 correct?</p> <p>2 A. On Monday, I think.</p> <p>3 Q. And does that mean your intervention wasn't</p> <p>4 granted in Brown?</p> <p>5 A. It -- as the Court said, it became moot and</p> <p>6 they proceeded for a while under parallel dockets,</p> <p>7 and then in the docket alone for McLaughlin versus</p> <p>8 the Legislature.</p> <p>9 Q. Now, your lawsuit sought to quash the</p> <p>10 entirety of the subpoena issued by the Legislature;</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And that included non-privileged documents;</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And you testified earlier that your</p> <p>17 client's concerns were about various types of</p> <p>18 privileged information, such as confidential</p> <p>19 employee records and perhaps case deliberations and</p> <p>20 other types of confidential information; is that</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Are you aware of any emails that were</p> <p>24 publicly disclosed that contained the types of</p> <p>25 confidential information that your client claims she</p>
<p style="text-align: right;">Page 99</p> <p>1 emails, which included emails belonging to your</p> <p>2 client's employer, in a case where your client</p> <p>3 wasn't a party; correct?</p> <p>4 A. Absolutely not correct.</p> <p>5 Q. Which part of that question is incorrect?</p> <p>6 A. Well, first off, I didn't make a request to</p> <p>7 the Court to do anything. I just said the petition</p> <p>8 was being filed, and the Court could do what the</p> <p>9 Court was going to do. As I said before, if the</p> <p>10 Court shrugged it off, they shrugged it off. If the</p> <p>11 Court took it up, they took it up. I didn't ask</p> <p>12 that the Court be convened. I don't have that kind</p> <p>13 of power.</p> <p>14 If I had a transcript and I could go</p> <p>15 through what you just said, I'd probably give you</p> <p>16 several more examples.</p> <p>17 Q. And you knew at that time that your client,</p> <p>18 Beth McLaughlin, was the Supreme Court</p> <p>19 administrator?</p> <p>20 A. Of course.</p> <p>21 Q. And you knew her direct supervisors were</p> <p>22 the Montana Supreme Court; correct?</p> <p>23 A. I think she reported to the chief.</p> <p>24 Q. Now, you then filed a new case later that</p> <p>25 following week entitled McLaughlin v. Legislature;</p>	<p style="text-align: right;">Page 101</p> <p>1 wanted to protect?</p> <p>2 A. I didn't see -- I don't know because I</p> <p>3 didn't review every email. So I -- I couldn't tell</p> <p>4 you. I'm unaware of any.</p> <p>5 Q. But you could have reviewed all those</p> <p>6 emails?</p> <p>7 A. Sure could have.</p> <p>8 Q. So just to be very clear, you can't point</p> <p>9 to any evidence that the types of privileged</p> <p>10 information, such as confidential employee records,</p> <p>11 that were released to the Legislature were ever</p> <p>12 released publicly?</p> <p>13 A. To any evidence? That's judging it after</p> <p>14 the fact. I was judging it on the basis of the</p> <p>15 facts as they existed. You can't cure a problem by</p> <p>16 saying there was no -- there was -- there was no</p> <p>17 harm done.</p> <p>18 Q. Moving to the return of the documents, did</p> <p>19 the Attorney General's Office return the documents</p> <p>20 once the United States Supreme Court had denied the</p> <p>21 Legislature's cert petition?</p> <p>22 A. They returned what they said were the</p> <p>23 documents.</p> <p>24 Q. Did you review the documents to see if they</p> <p>25 had all been returned?</p>

<p style="text-align: right;">Page 102</p> <p>1 A. No. I would have no way to know if they 2 had all been returned. 3 Q. Did anyone, to your knowledge, review the 4 documents to see if they had all been returned? 5 A. No. 6 Q. Do you know why? 7 A. Yes. 8 Q. Why is that? 9 A. I cannot tell you because the -- that 10 decision was rooted in an attorney-client 11 conversation between me and my client, Beth 12 McLaughlin. 13 Q. Someone could have reviewed all the 14 documents to ensure they'd all been returned; 15 correct? 16 A. I don't see how that would have been 17 possible. 18 Q. Did you ever file any type of motion to 19 enforce the Montana Supreme Court's order to return 20 the documents while the case was pending before the 21 United States Supreme Court? 22 A. No. 23 Q. But you communicated with the 24 Attorney General's Office that you wanted the 25 documents returned several times; correct?</p>	<p style="text-align: right;">Page 104</p> <p>1 tells me that I should. 2 Q. Do you believe your actions representing 3 Supreme Court Administrator McLaughlin wholly 4 complied with the Montana Rules of Professional 5 Conduct? 6 MR. STRAUCH: Objection, your Honor. 7 Mr. Cox's conduct is not at issue in these 8 proceedings; it's the conduct of the 9 Attorney General. I object and move to strike the 10 answer. 11 CHAIR OGLE: Sustained. 12 Q. (By Mr. Corrigan) Mr. Cox, are you aware of 13 Montana Rule of Professional Conduct 8.3(a)? 14 A. Likely. 15 Q. Does it concern what happens when a lawyer 16 knows that another lawyer has possibly committed a 17 violation of the Rules of Professional Conduct? 18 A. Can you show it to me so I can see it? 19 Q. Sure. 20 A. Is it in your -- is it in your exhibits? 21 Q. I believe it is. 22 A. Tell me what number it is or what letter it 23 is, and I'll look at it. 24 MR. STRAUCH: It's W. 25 MR. CORRIGAN: W.</p>
<p style="text-align: right;">Page 103</p> <p>1 A. Yes. 2 Q. Could you have filed any type of motion 3 before the Montana Supreme Court to compel the 4 Attorney General's Office to return the documents? 5 A. I could have. 6 Q. And you, as opposing counsel, would you 7 have been in the best position to compel the return 8 of the documents? 9 A. Probably. 10 Q. Are you aware of any order from the Montana 11 Supreme Court holding the Attorney General or his 12 office or the Legislature in contempt for not 13 returning the documents? 14 A. I don't see how they could have issued such 15 an order because the issue wasn't brought up to 16 them. 17 Q. You could have brought it up to them; 18 correct? 19 A. Could have. 20 Q. Did you report the Attorney General or any 21 of his employees to the Office of Disciplinary 22 Counsel for not returning the documents? 23 A. Those are confidential -- those sorts of 24 complaints are confidential, and so I don't think 25 I'm permitted to tell you unless this commission</p>	<p style="text-align: right;">Page 105</p> <p>1 Thank you. 2 THE DEPONENT: Okay. 8.3 is what you're 3 talking about? Reporting professional misconduct. 4 Yes. 5 Q. (By Mr. Corrigan) You're familiar with this 6 rule? 7 A. Yes. 8 Q. And what does the rule say? 9 A. I'm not going to characterize it. Anybody 10 can read it. 11 Q. Can you read it? 12 A. You want me to read it out loud? 13 Q. Yes. 14 A. Good use of time. Okay. 15 8.3(a): A lawyer who knows that another 16 lawyer has committed a violation of the Rules of 17 Professional Conduct that raises a substantial 18 question as to that lawyer's honesty, 19 trustworthiness, or fitness as a lawyer in other 20 respects shall inform the appropriate professional 21 authority. 22 8.3(b): A lawyer who knows that a judge 23 has committed a violation of the applicable code of 24 judicial conduct that raises a substantial question 25 as to the judge's fitness for office shall inform</p>

<p style="text-align: right;">Page 106</p> <p>1 the appropriate authority.</p> <p>2 8.3(c): This rule does not require</p> <p>3 disclosure of information otherwise protected by</p> <p>4 Rule 1.6 or information gained by a lawyer or a</p> <p>5 judge while participating in an approved lawyer's</p> <p>6 assistance program.</p> <p>7 Q. (By Mr. Corrigan) If you had witnessed</p> <p>8 Kristin Hansen, Derek Oestreicher, or the</p> <p>9 Attorney General, or any other attorney in the AG's</p> <p>10 office commit an ethical violation in violation of</p> <p>11 the Rules of Professional Conduct, does this rule</p> <p>12 mean you would have had an obligation to report it?</p> <p>13 A. No.</p> <p>14 Q. Why not?</p> <p>15 A. Because I am flatly prohibited from</p> <p>16 reporting something that is -- that I haven't</p> <p>17 discussed and obtained authority from my client to</p> <p>18 have, and I always have to keep the client's</p> <p>19 interest paramount in mind so. It's not as simple</p> <p>20 as, Whoa, a violation, I report.</p> <p>21 It's not that simple at all.</p> <p>22 Q. Well, Rule 8.3(a) contains the word</p> <p>23 "shall;" correct?</p> <p>24 A. Yes, it does.</p> <p>25 Q. And "shall" means "mandatory"?</p>	<p style="text-align: right;">Page 108</p> <p>1 July of 2021?</p> <p>2 A. I think I wrote two letters and an email.</p> <p>3 Q. Right. And those letters only went --</p> <p>4 strike that.</p> <p>5 Those letters were correspondence between</p> <p>6 you and the AG's office; correct?</p> <p>7 A. Yes.</p> <p>8 Q. They weren't public?</p> <p>9 A. True.</p> <p>10 Q. So you had knowledge of the AG's office</p> <p>11 position as it relates to the return of the</p> <p>12 documents that perhaps the public didn't have at</p> <p>13 that time?</p> <p>14 MR. STRAUCH: Objection; mischaracterizes</p> <p>15 the exhibits, for the record, for Exhibit 25 and 28</p> <p>16 and 29.</p> <p>17 CHAIR OGLE: Sustained.</p> <p>18 Q. (By Mr. Corrigan) Did the Montana</p> <p>19 Supreme Court sanction or discipline the</p> <p>20 Attorney General or his subordinates for their</p> <p>21 conduct in the course of this litigation while the</p> <p>22 litigation was ongoing?</p> <p>23 A. Not that I know of.</p> <p>24 MR. CORRIGAN: Could we bring up ODC</p> <p>25 Exhibit 11?</p>
<p style="text-align: right;">Page 107</p> <p>1 A. Well, yes, but this always has to be</p> <p>2 reviewed in the light of the case law and the</p> <p>3 ethical opinions and all of those things, which I</p> <p>4 assume you've read as well.</p> <p>5 Q. Given that you were opposing counsel with</p> <p>6 the Attorney General's Office in all these cases,</p> <p>7 was there anyone in a better place than you to file</p> <p>8 a complaint? Excuse me, a grievance?</p> <p>9 A. Well, yeah, just about everybody. It --</p> <p>10 you know, it was widely known. There was news</p> <p>11 reports about this. I was in the middle of</p> <p>12 representing my client. I wasn't going looking</p> <p>13 for -- for other fights to have.</p> <p>14 Q. Well, Mr. Strauch asked you earlier about</p> <p>15 communications with the AG's office that were</p> <p>16 supposedly not open that were just made to you</p> <p>17 related to the return of the documents; correct?</p> <p>18 A. What are you thinking of?</p> <p>19 Q. So, I believe -- well, we'll go to -- we'll</p> <p>20 go to -- go to ODC Exhibit 16.</p> <p>21 A. Okay.</p> <p>22 Q. Sorry. I have my exhibits mixed up here.</p> <p>23 You communicated with the AG's office</p> <p>24 requesting to get the documents back, correct,</p> <p>25 following the Montana Supreme Court's decision in</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. (By Mr. Corrigan) And I think we</p> <p>2 established earlier that this is Lieutenant</p> <p>3 General Kris Hansen's letter to Acting</p> <p>4 Chief Justice Rice of April 12, 2021; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Is it fair to say this was an open letter?</p> <p>7 A. Yes.</p> <p>8 Q. It wasn't a private communication, was it?</p> <p>9 A. No.</p> <p>10 MR. CORRIGAN: Can we bring up ODC</p> <p>11 Exhibit 13?</p> <p>12 Q. (By Mr. Corrigan) And look at Pages 7 to 8.</p> <p>13 A. Of the document itself?</p> <p>14 Q. Uh-huh.</p> <p>15 A. Okay. I've got it.</p> <p>16 Q. And is this document a public court filing?</p> <p>17 A. Yes.</p> <p>18 Q. Move down to Page 8.</p> <p>19 So this conclusion here where the</p> <p>20 Attorney General's Office says the Montana</p> <p>21 Legislature submitted a letter to Acting Chief --</p> <p>22 the acting chief justice on April 12th notifying the</p> <p>23 Court that the April 11, 2021, order is not binding</p> <p>24 on the legislative branch and will not be followed,</p> <p>25 and then it says:</p>

<p style="text-align: right;">Page 110</p> <p>1 McLaughlin's current petition seeks yet 2 another court order, which will not bind the 3 Legislature and will not be followed. 4 These statements were public; correct? 5 A. Yes. 6 MR. CORRIGAN: Can we go to ODC Exhibit 16? 7 Q. (By Mr. Corrigan) Sorry to bring this in a 8 roundabout way. 9 A. Got nothing but time. 10 Q. And this is the Attorney General's 11 April 18, 2021, letter to the justices of the 12 Montana Supreme Court? 13 A. Yes. 14 Q. Is it fair to characterize this as an 15 open letter? 16 A. In the sense that it was in a court filing 17 and was public, and I got it and -- then yes. 18 MR. CORRIGAN: Can we bring up ODC 19 Exhibit 26? 20 Q. (By Mr. Corrigan) Is this the Montana 21 Legislature's petition for a rehearing? 22 A. Yep. It was public too. 23 Q. Can we go to Pages 19 to 20. 24 A. Okay. 25 Q. Go down to the bottom. Let's go to Page --</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. I'm not suggesting anything. I'm just 2 simply asking if that's true. 3 A. Say it again, please. 4 Q. The Montana Supreme Court ruled on the 5 validity of a subpoena brought by its own employee. 6 MR. STRAUCH: Objection. Ms. McLaughlin 7 did not bring a subpoena, Mr. Chairman. It 8 misstates facts. 9 THE WITNESS: We did bring a petition to 10 quash a subpoena that went to the Department of 11 Administration, but did concern emails of Beth 12 McLaughlin, and she is an employee of the judicial 13 branch of the State of Montana. 14 Q. (By Mr. Corrigan) Who reports to the 15 chief justice? 16 A. True. 17 Q. And was the Legislature's first attempt to 18 get emails from your client an attempt to get emails 19 related to Senate Bill 140? 20 A. Probably, yes. 21 Q. Did your client use state email to conduct 22 polling of Montana judges on Senate Bill 140? 23 A. Yes. 24 Q. Mr. Cox, in your 40 years of practice have 25 you ever moved to disqualify a judge for cause?</p>
<p style="text-align: right;">Page 111</p> <p>1 go down to Page 19 of the document. 2 We'll move on. We'll come back to this if 3 we have time. 4 To your knowledge, did the Supreme Court 5 ever offer to appoint a special master to facilitate 6 negotiations in this case given the unique 7 considerations? 8 A. They were never asked. 9 Q. So you never proposed a special master? 10 A. No. 11 Q. Did the legislative subpoena that your 12 client sought to quash seek some emails from the 13 justices of the Montana Supreme Court? 14 A. Presumably, yes. 15 Q. So when the Montana Supreme Court quashed 16 the subpoena, they were presumably, at least in 17 part, quashing a subpoena that concerned their own 18 emails? 19 A. I don't see it that way. 20 Q. So the Montana Supreme Court ruled on the 21 validity of a subpoena brought by its own employee? 22 A. Well, would you have state employees not 23 have -- or judicial branch employees have no 24 recourse to the legal system? Is that your 25 suggestion, Counsel?</p>	<p style="text-align: right;">Page 113</p> <p>1 A. Yes. 2 Q. Is every motion to disqualify successful, 3 or are there sometimes disagreements about whether 4 recusal is required? 5 A. I don't think they're all successful. I -- 6 they depend on the facts and circumstances. 7 Q. So is it automatically an ethical violation 8 if a lawyer unsuccessfully moves to disqualify a 9 judge, or do the facts matter? 10 A. Well, first of all, I'm not really planning 11 to give opinions on ethics matters, certainly not on 12 hypothetical ones. 13 Q. I'd like to move now to the Legislature's 14 petition for writ of certiorari. 15 A. Okay. 16 Q. Did you seek and receive an extension of 17 time to file your response to the cert petition? 18 A. I think I did. 19 Q. So that would have further delayed 20 resolution of this case? 21 A. I suppose, but the AG's office agreed to 22 it. 23 Is there some problem with that? 24 Q. Did you feel time was of the essence to get 25 the documents returned?</p>

<p style="text-align: right;">Page 114</p> <p>1 A. No.</p> <p>2 Q. Is it fair to say that the horse was</p> <p>3 already out of the barn at this point?</p> <p>4 A. Yes.</p> <p>5 Q. Does the United States Supreme Court have</p> <p>6 its own disciplinary power?</p> <p>7 A. Presumably.</p> <p>8 Q. So if a lawyer commits an ethical violation</p> <p>9 before the United States Supreme Court, the justices</p> <p>10 there can issue discipline?</p> <p>11 A. I actually don't know the answer to that.</p> <p>12 You probably do.</p> <p>13 Q. And did the United States Supreme Court, to</p> <p>14 your knowledge, ever issue any discipline against</p> <p>15 the Attorney General or the attorneys in his office?</p> <p>16 A. Not that I'm aware of.</p> <p>17 Q. And when the United States Supreme Court</p> <p>18 denies a cert petition, is it adjudicating that cert</p> <p>19 petition on the merits?</p> <p>20 A. No.</p> <p>21 Q. Is fair to say that the odds are quite low</p> <p>22 of getting a cert petition granted?</p> <p>23 A. That's why I was a little surprised that</p> <p>24 had they filed one. Yeah.</p> <p>25 MR. STRAUCH: Mr. Chairman, with your</p>	<p style="text-align: right;">Page 116</p> <p>1 2021; correct?</p> <p>2 A. Yes.</p> <p>3 Q. So there was a three-month period</p> <p>4 between -- roughly between the April emergency order</p> <p>5 and the final disposition that ordered the documents</p> <p>6 to be returned; correct? Roughly?</p> <p>7 A. Yes. But during that timeframe Kristin</p> <p>8 Hansen had submitted a declaration that said,</p> <p>9 Everything's in the hands of the AG, so no worries.</p> <p>10 Q. So the AG's office had the documents at</p> <p>11 this time?</p> <p>12 A. That's what she said.</p> <p>13 Q. And prior to the Montana Supreme Court</p> <p>14 ordering the documents to be returned on July 14th,</p> <p>15 it would be fair to say that the horse was also</p> <p>16 already out of the barn?</p> <p>17 A. What do you mean by that?</p> <p>18 Q. There were no more -- is it fair to say</p> <p>19 that there were no more documents released between</p> <p>20 April and July?</p> <p>21 A. I don't know the answer to that because,</p> <p>22 the -- I mean, Kristin Hansen had a link in her</p> <p>23 email. Have you looked at it? Do you know all the</p> <p>24 stuff that was shown there?</p> <p>25 Q. I --</p>
<p style="text-align: right;">Page 115</p> <p>1 indulgence, just a few minutes, and I think we can</p> <p>2 wrap up.</p> <p>3 CHAIR OGLE: Very well.</p> <p>4 MR. CORRIGAN: If we could bring up ODC</p> <p>5 Exhibit 10?</p> <p>6 Q. (By Mr. Corrigan) Is this the temporary</p> <p>7 order?</p> <p>8 A. Yes. Issued on Sunday evening, April 11th.</p> <p>9 Yes.</p> <p>10 Q. Does anything in this order require the</p> <p>11 Attorney General's Office to return documents?</p> <p>12 A. No.</p> <p>13 Q. Do you know when the first time was that</p> <p>14 the Montana Supreme Court ordered return of the</p> <p>15 documents?</p> <p>16 A. I think it was their ultimate ruling on the</p> <p>17 petition, but let me just look.</p> <p>18 Do you know the exhibit number of that</p> <p>19 order?</p> <p>20 THE CLERK: 24.</p> <p>21 MR. CORRIGAN: 24.</p> <p>22 THE WITNESS: 24. I believe that 24 was</p> <p>23 the first time when the Court said, Give back the</p> <p>24 emails that you shouldn't have taken.</p> <p>25 Q. (By Mr. Corrigan) So that was July 14th of</p>	<p style="text-align: right;">Page 117</p> <p>1 A. I know. You can't answer my questions.</p> <p>2 So -- so I don't -- I don't know,</p> <p>3 Mr. Corrigan. I don't know the answer.</p> <p>4 Q. But there's no evidence that after the</p> <p>5 Montana Supreme Court issued its order quashing --</p> <p>6 its temporary order quashing the subpoena that</p> <p>7 additional emails were released; is that correct?</p> <p>8 A. I don't know of any.</p> <p>9 Q. And, Mr. Cox, you -- on direct you said a</p> <p>10 few times that in your 40 years of experience you'd</p> <p>11 never seen this type of statement and positions that</p> <p>12 were taken.</p> <p>13 Is that fair to say?</p> <p>14 A. Yes.</p> <p>15 Q. Can you tell me how many times in</p> <p>16 your 40 years you've litigated cases where there was</p> <p>17 not-yet-binding Montana precedent?</p> <p>18 A. Numerous.</p> <p>19 Q. What about in a clash between the</p> <p>20 Legislature and the judiciary?</p> <p>21 A. That was a new one on me.</p> <p>22 Q. So to rephrase, can you tell me how many</p> <p>23 times in your 40 years that you've been an</p> <p>24 attorney -- you've been an attorney in a case about</p> <p>25 two branches of government disputing the extent of</p>

<p style="text-align: right;">Page 118</p> <p>1 their power?</p> <p>2 A. Well, I don't think I've had a case where</p> <p>3 any party, other than in an orderly way, has said,</p> <p>4 Whatever you all do, we're not going to follow it.</p> <p>5 I don't -- I've never seen that.</p> <p>6 Q. Would it be fair to characterize this case</p> <p>7 as unusual, even outside of the statements made by</p> <p>8 the Attorney General's Office?</p> <p>9 A. Oh, sure.</p> <p>10 Q. It's possible none of us will ever see a</p> <p>11 case like this again?</p> <p>12 A. Well, I'm not going to.</p> <p>13 Q. No further questions.</p> <p>14 CHAIR OGLE: Redirect, Mr. Strauch?</p> <p>15 MR. STRAUCH: Mr. Chairman, members of the</p> <p>16 commission, thank you.</p> <p>17</p> <p>18 REDIRECT EXAMINATION</p> <p>19 BY MR. STRAUCH:</p> <p>20 Q. Mr. Cox, so just to go back to the --</p> <p>21 almost the last point that Mr. Corrigan made in his</p> <p>22 questions to you, Exhibit 24, he had you establish</p> <p>23 was the first time that the Supreme Court ordered</p> <p>24 the return of the emails; correct?</p> <p>25 A. I think so. I don't --</p>	<p style="text-align: right;">Page 120</p> <p>1 MR. STRAUCH: Mr. Chairman, members of the</p> <p>2 commission, the Office of Disciplinary Counsel calls</p> <p>3 the Honorable Austin Miles Knudsen, Attorney General</p> <p>4 of the State of Montana, to the stand.</p> <p>5 (Witness sworn.)</p> <p>6</p> <p>7 DIRECT EXAMINATION OF AUSTIN KNUDSEN</p> <p>8 BY MR. STRAUCH</p> <p>9 Q. Good afternoon.</p> <p>10 A. Good afternoon.</p> <p>11 Q. Your name, please?</p> <p>12 A. Austin Miles Knudsen.</p> <p>13 Q. And, your Honor, how would you like me to</p> <p>14 address you today?</p> <p>15 A. No one has ever called me honorable before.</p> <p>16 You can refer to me as Mr. Knudsen, Austin. I'm</p> <p>17 fine with that.</p> <p>18 Q. Thank you, sir. I appreciate that.</p> <p>19 I kind of grew up where it was appropriate</p> <p>20 to address the Attorney General as "your Honor."</p> <p>21 A. We're not big on formality -- I'm not big</p> <p>22 on formality.</p> <p>23 Q. Thank you. Nor am I, sir, so you may call</p> <p>24 me Tim or whatever you'd like to call me.</p> <p>25 A. I'll be careful with that one.</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. July 14, 2021?</p> <p>2 A. Yes.</p> <p>3 Q. From that date on, did the Attorney General</p> <p>4 notify the Supreme Court of the State of Montana</p> <p>5 that it would not obey that order?</p> <p>6 A. No. They didn't -- didn't seek a stay,</p> <p>7 didn't do anything. Never told the Court that.</p> <p>8 MR. STRAUCH: No further questions.</p> <p>9 CHAIR OGLE: You can step down, Mr. Cox.</p> <p>10 THE WITNESS: Thank you very much.</p> <p>11 MR. STRAUCH: Mr. Chairman, may this</p> <p>12 witness be excused? Because he's also on the</p> <p>13 respondent's list.</p> <p>14 CHAIR OGLE: Yes, he may.</p> <p>15 So it's about 10 minutes to 12:00. Do you</p> <p>16 want to call your next witness, or should we take a</p> <p>17 lunch break?</p> <p>18 MR. STRAUCH: Mr. Chairman, members of the</p> <p>19 commission, our next witness would be the Honorable</p> <p>20 Attorney General, so probably should take a break</p> <p>21 soon.</p> <p>22 CHAIR OGLE: All right. Why don't we take</p> <p>23 a lunch break now then, and we'll reconvene at</p> <p>24 1:00 o'clock.</p> <p>25 (Break taken from 11:46 a.m. until 12:58 p.m.)</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. I'm sure you will. Thank you.</p> <p>2 You're the respondent in this proceeding?</p> <p>3 A. I am indeed.</p> <p>4 MR. STRAUCH: Mr. Chairman, members of the</p> <p>5 commission, I ask permission to ask leading</p> <p>6 questions, Rule 611(c), Charlie.</p> <p>7 CHAIR OGLE: Sure.</p> <p>8 Q. (By Mr. Strauch) Mr. Knudsen, I misspoke</p> <p>9 when I gave my opening statement. I said you were</p> <p>10 admitted in 1998 [sic], and -- and I understand you</p> <p>11 were admitted in 2008; is that correct?</p> <p>12 A. That is correct.</p> <p>13 Q. I didn't mean to age you by 10 years, sir.</p> <p>14 A. I would have set some kind of record if I</p> <p>15 was barred when I was seven.</p> <p>16 Q. I'm going to show you what has been marked</p> <p>17 as Exhibit 40, and this -- these are copies of</p> <p>18 the -- of the oral and written oaths that you took</p> <p>19 on October 7th of 2008 as -- to join the Montana</p> <p>20 bar.</p> <p>21 And please go ahead and take a look at</p> <p>22 that, sir. I'll have some questions on various</p> <p>23 pages.</p> <p>24 MR. STRAUCH: Your Honor, I understand</p> <p>25 there's no objection. We move for admission of</p>

<p style="text-align: right;">Page 122</p> <p>1 Exhibit 40. 2 CHAIR OGLE: Any objection? 3 MR. CORRIGAN: No objection. 4 CHAIR OGLE: That's admitted. Exhibit 40 5 is admitted. 6 (Exhibit 40 admitted.) 7 MR. STRAUCH: And, your Honor -- 8 Mr. Chairman, I apologize for the oversight. That 9 is not in our book, but -- 10 CHAIR OGLE: I'm sure it wasn't. 11 MR. STRAUCH: Thank you. 12 CHAIR OGLE: Thank you. 13 Q. (By Mr. Strauch) Mr. Knudsen, have you had 14 a chance to look at Exhibit 40? 15 A. Yes. 16 Q. And does this exhibit include the written 17 oath that you took on October 7th of 2008? 18 A. It's been several years, but it certainly 19 looks correct. 20 Q. Okay. And then the second page, that is 21 your name in the official roll book of attorneys 22 with the date of admission, October 7, 2008; is that 23 correct? 24 A. That is correct. 25 Q. And, Page 3, that's your signature in the</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. A few lines down there, you agree you swore 2 that you would be candid, fair, and courteous before 3 the Court and with other attorneys; correct? 4 A. That is part of that sentence. Yes. 5 Q. And the next sentence, that you swore you 6 would faithfully discharge the duties of an attorney 7 and counselor, all to the best of your knowledge and 8 ability; correct? 9 A. Yes. 10 Q. And the last, that you would strive to 11 uphold the honor and to maintain the dignity of the 12 profession; to improve not only the law, but the 13 administration of justice; correct? 14 A. Yes. 15 Q. And the last page, an oral oath, you also 16 agreed that you would faithfully follow the 17 affirmations of your written oath and the Rules of 18 Professional Conduct promulgated by the 19 Supreme Court of Montana; correct? 20 A. Yes. 21 Q. Did you ever openly refuse your 22 obligations, your sworn obligations, as an officer 23 of the court? 24 A. Ever openly refuse my obligations? No. 25 Q. Yeah. In other words, did you ever --</p>
<p style="text-align: right;">Page 123</p> <p>1 official roll book indicating that your oath was 2 filed and the certificate was issued October 7th of 3 2008; is that right? 4 A. I have no reason to think otherwise. 5 Q. Okay. And then last but not least, the 6 very last page of that is a copy of the oral oath of 7 admission; correct? 8 A. I believe so, yes. I don't see a signature 9 on it, but I have no reason to think it's not. 10 Q. Thank you, sir. 11 And you're aware that the clerk of the 12 Supreme Court, Mr. Greenwood, maintains the official 13 roll book with every attorney's name in it; right? 14 A. Yes. 15 Q. Okay. So I have some questions for you 16 regarding -- this is not your oath of office as the 17 Attorney General. This is the oath that all of us 18 lawyers take when we're sworn in to join the bar; 19 correct? 20 A. Yes. 21 Q. The second -- on the first page, one of the 22 things you swore to do was maintain the respect due 23 to the courts of justice and judicial officers; 24 correct? 25 A. Yes.</p>	<p style="text-align: right;">Page 125</p> <p>1 since you signed these documents and swore on 2 October 7th of 2008, did you ever notify the Supreme 3 Court that you were revoking your oath, that you 4 were not going to do these things? 5 A. No. 6 Q. Do you revoke your oath today? 7 A. Absolutely not. 8 Q. You and I have never met; right, sir? 9 A. Not that I can recall. 10 Q. Okay. 11 A. Not before this. And as near as I can 12 remember, that's the first time. 13 Q. I believe you're -- I believe that's right. 14 And it's an honor to meet you. And I can't recall a 15 situation where you and I were adversaries in 16 litigation, can you? 17 A. No, I cannot. I think that's correct. 18 Q. I don't know you and you don't know me; 19 true enough? 20 A. True enough. I meet a lot of people, and 21 sometimes they get mad I don't remember them. But I 22 think I can genuinely say you and I have never met. 23 Q. Thank you, sir. I agree with you. I wish 24 maybe we hadn't, frankly. 25 Would you tell the commission a little bit</p>

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1 about your personal background, please.
2 **A. Sure. Grew up on a family farm and ranch**
3 **in Roosevelt County, eastern Roosevelt County. A**
4 **little town called Bainville and Culbertson.**
5 **Graduated Culbertson High School. Attended Montana**
6 **State University. Received a double major at**
7 **Montana State. I believe that was in 2003 or 2004.**
8 **Got married about a year and a half thereafter.**
9 **Went to the University of Montana School of Law in**
10 **Missoula. Graduated there in 2008. Was sworn into**
11 **the bar. Spent the first 10 years of my life in**
12 **private practice exclusively in northeastern**
13 **Montana, first at a small firm in Plentywood, the**
14 **O'Toole Law Firm, working under a couple of very,**
15 **very good mentors in Loren J. O'Toole, Sr., and**
16 **Loren J. O'Toole, Jr.**
17 **At that time I was also elected to the**
18 **Montana State Legislature. I served four sessions**
19 **in the Montana House of Representatives from 2010**
20 **until 2017. After five years with the O'Toole Law**
21 **Firm, left, started my own solo practice law firm,**
22 **civil litigation law firm, in my hometown of**
23 **Culbertson.**
24 **In 2018 I successfully ran for Roosevelt**
25 **County Attorney. Served in that position in the**

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1 **county seat of Wolf Point. Criminal prosecutor for**
2 **two years before running for and being successfully**
3 **elected Montana Attorney General in 2020.**
4 **Q. Is it safe to say you know your way around**
5 **a courtroom?**
6 **A. Not big on patting myself on the back, but**
7 **I've been in a courtroom a few times.**
8 **Q. Okay. And you understand the rules of**
9 **civil procedure?**
10 **A. It's been a while. I don't get to practice**
11 **as much law nowadays. But, yes, yes, I'm familiar**
12 **with the rules of civil procedure and rules of**
13 **evidence.**
14 **Q. And the rules of criminal procedure?**
15 **A. Yes.**
16 **Q. The rules of appellate procedure?**
17 **A. Less so the rules of appellate procedure.**
18 **That's not ever a club I put in my bag. I figure**
19 **there's a lot smarter lawyers that work in the**
20 **Department of Justice that can handle that.**
21 **Q. Have you tried a case?**
22 **A. Yes.**
23 **Q. How many have you tried?**
24 **A. Tough to say for sure. I mean, I don't**
25 **claim any kind of great record like Mr. Cox did. A**

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1 **handful of civil trials. As you know most civil**
2 **litigation doesn't actually go to trial anymore.**
3 **Very, very rarely, which is something that kind of**
4 **upset me because I trained for trial. Much more so**
5 **when I became the county attorney. Very, very**
6 **common. So I'm going to say dozens of criminal**
7 **trials. That's probably about the best I can do.**
8 **And maybe a handful of civil trials.**
9 **Q. Generally it's a good idea for defendants**
10 **in the criminal trials that you handle to follow the**
11 **court orders?**
12 **A. Generally, yes.**
13 **Q. As Roosevelt County Attorney you had**
14 **authority to prosecute defendants if they defied**
15 **those orders; correct?**
16 **A. If we deemed it necessary, yes.**
17 **Q. Or if they failed to abide by their**
18 **conditions, you could bring that back in front of**
19 **the Court and enforce that; right?**
20 **A. We could do -- file for a revocation if a**
21 **defendant defied their conditions, yes.**
22 **Q. And -- and how -- how would a defendant**
23 **typically modify an order of their bail conditions?**
24 **How would they go about doing that?**
25 **A. Well, I never did much criminal defense,**

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1 **candidly.**
2 **Q. As you -- you observed as prosecutor.**
3 **How would the defendants opposite you**
4 **typically do that?**
5 **A. Sometimes it was openly in court.**
6 **Sometimes, if they -- if they had a particularly**
7 **skillful lawyer, they would file those with the**
8 **Court ahead of time in the form of a motion.**
9 **Q. Sure. So they'd either make a written**
10 **motion or maybe an oral motion in court?**
11 **A. Yes. Yes.**
12 **Q. Do defense counsel typically write letters**
13 **to judges to disagree with the court orders?**
14 **A. I have seen it. I won't say "typically."**
15 **I guess I'm not probably not an expert to say what's**
16 **typical. But I can tell you, in my practice, I**
17 **didn't see it very often, but we did sometimes see**
18 **it.**
19 **Q. By a defense lawyer?**
20 **A. Yes.**
21 **Q. Not very often?**
22 **A. I think that's accurate, yes.**
23 **Q. Did you -- when you were prosecutor, did**
24 **you write letters to courts to disagree with orders?**
25 **Letters?**

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1 A. Not that I can ever recall.

2 Q. If you disagree, you're representing a

3 party -- in the prosecutor role and in your current

4 role, you typically represent the State of Montana.

5 When you're advocating for a client and

6 there's a disagreement with an order, typically how

7 would you bring that disagreement to attention of

8 the Court?

9 A. Well, as I said, I don't get much involved

10 in the day-to-day litigation in the office anymore

11 since I've taken the role of Attorney General. In

12 fact, I'm a glorified administrator.

13 Q. When you were a prosecutor, sir.

14 A. When I was a prosecutor, if there was a

15 disagreement with an order, you typically would make

16 some sort of a motion, either orally or in writing,

17 to the Court.

18 Q. Or you can take an appeal, perhaps, or a

19 petition, some kind of formal motion asking the

20 Court for relief; is that right?

21 A. Typically, yes.

22 Q. Would you agree that law and order works

23 because people -- people are supposed to follow the

24 law?

25 A. Absolutely.

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1 Q. And that maintains order?

2 A. Yes.

3 Q. Please describe your roles and

4 responsibilities as the Attorney General of the

5 state.

6 A. Sure. There's several. Generally

7 speaking, I'm the administrator of the Montana

8 Department of Justice. So within the Montana

9 Department of Justice there are a number of bureaus

10 and agencies that I oversee. People typically think

11 it's lawyers, but honestly, it's much more so other

12 duties. For instance, I'm in charge the

13 motor vehicle division. That's the single biggest

14 division inside the Department of Justice. The

15 Office of Consumer Protection is under my purview.

16 The Montana -- excuse me -- the Montana Division of

17 Criminal Investigation, which is the state -- I

18 guess probably the best analogy is the state version

19 of the FBI. We have a number of narcotics agents

20 and major crimes agents and human trafficking agents

21 that go out throughout the state when they're

22 requested by local law enforcement.

23 Also in charge of the Montana Highway

24 Patrol. That's probably the closest I get to ever

25 actual hands-on law enforcement duties in Montana.

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1 I have no authority over sheriffs or local PDs.

2 Also in charge of state crime lab. We call

3 that the forensic science division, FSD. That's

4 located in Missoula with a satellite office in

5 Billings.

6 In charge of the Montana Law Enforcement

7 Academy out here in the north valley in Helena.

8 Every sworn peace officer in Montana, whether

9 they're, you know, Helena PD or sheriff's office,

10 highway patrol, fish and game, they go through the

11 Montana Law Enforcement Academy. So in charge of

12 that.

13 And then in charge of the -- what we call

14 the state's attorney's office. And within that

15 there are a number of divisions broken down within

16 that bureau. We've got the prosecution services

17 bureau that goes out and assists county attorneys

18 with particularly difficult criminal prosecutions.

19 We've got the appellate bureau. Every single

20 criminal appeal in the state of Montana that does

21 not have an attorney, those come through our office,

22 and that bureau handles every single criminal

23 appeal. We've got the civil bureau within the

24 state's attorney's office, which spends a lot of

25 time defending various laws, various state agencies

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1 in case they're sued, or if a particular law is

2 challenged. And then the solicitor's bureau, we --

3 where we focus primarily on federal litigation.

4 And I think that's a pretty -- excuse me,

5 Agency Legal Services is administratively attached

6 to the Department of Justice. Agency Legal Services

7 is basically the state's subsidized law firm. If

8 agencies want to hire outside counsel, under

9 previous administrations and legislatures, Agency

10 Legal Services was created to basically be a

11 state-subsidized law firm where agencies could hire

12 lawyers from within that division to represent them

13 in their various cases. I have very little

14 oversight over Agency Legal Services. They're

15 administratively attached. As is the Montana Board

16 of Crime Control. They're also administratively

17 attached.

18 Q. Quite a list. That's it?

19 A. I'm sure I'm forgetting something.

20 Q. Sounds like piece of cake to me.

21 A. Yeah. There's roughly, I think, last count

22 we're roughly 800 employees, give or take, all

23 throughout the state of Montana.

24 Q. I looked at the website, and it describes

25 you as the state's chief legal officer, chief

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1 law enforcement officer, and director of the Montana
2 Department of Justice; is that right?
3 **A. I think there is a statute that says I'm**
4 **the chief law enforcement officer of the state. I**
5 **am very loathe to use that term because a lot of**
6 **people think that means I have some say over local**
7 **law enforcement -- sheriffs, police departments.**
8 **They think they can call me up, and I tell them --**
9 **tell them I got to make the county sheriff do X, and**
10 **I do not have that authority. So I'm -- as I said,**
11 **I'm loathe to use that term, but I do think it's in**
12 **statute.**
13 Q. You are the state's chief legal officer?
14 **A. Yes.**
15 Q. And on the AG website, it says that you are
16 responsible for representing and defending Montana's
17 legal positions and Montana's laws; correct?
18 **A. I and my staff. But ultimately me, yes.**
19 Q. And that you control and manage all
20 litigation on behalf of the state; correct?
21 **A. Correct. Well, I -- I should qualify that.**
22 **Very often -- very often there are other agencies**
23 **that are sued or get involved in litigation that do**
24 **not fall under my purview, the Department of**
25 **Justice. Various of the governor's agencies. Very**

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1 **common for them to use their own internal lawyers to**
2 **pursue whatever litigation, whether they're suing or**
3 **being sued. That's -- that's a -- we -- we**
4 **typically allow them to do that. We don't step in**
5 **and try to step on the governor's agencies and what**
6 **they want to pursue for a legal theory.**
7 Q. On your website it says you control and
8 manage all litigation on behalf of the state. I
9 guess, is that -- with these exceptions, is that
10 accurate?
11 **A. Generally accurate. Yes.**
12 Q. And the website indicates that your legal
13 views and opinions prevail when a conflict arises
14 between state agencies and officers whom the
15 Attorney General represents; correct?
16 **A. Well, thankfully we've never had to test**
17 **that. But if that's on the website, I'll take your**
18 **word for it.**
19 Q. And we know that your office was involved
20 in what we're calling by shorthand the Brown and
21 McLaughlin lawsuits; correct?
22 **A. We became involved later. When that --**
23 **when that litigation was initiated, my office was**
24 **not involved.**
25 Q. After the Legislature intervened in Brown,

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1 your office was involved; correct?
2 **A. The Legislature retained the Department of**
3 **Justices's counsel. Yes.**
4 Q. And in the McLaughlin litigation your
5 office represented the Legislature from the get-go;
6 right?
7 **A. As soon as they intervened, yes.**
8 Q. Sorry. In the McLaughlin case, not the
9 Brown case.
10 **A. I'm probably getting my cases mixed up. I**
11 **apologize.**
12 Q. No, that's okay. McLaughlin was the
13 original proceeding that followed Brown.
14 **A. I think it's accurate to say that my office**
15 **represented the Legislature as soon as they got**
16 **involved.**
17 Q. Thank you, sir.
18 And on April 1 of '21, on behalf of the
19 governor, did you file a motion to disqualify
20 Judge Krueger in Brown?
21 **A. I would have to see that to make sure, but**
22 **I have no reason to dispute you on that.**
23 Q. It's Exhibit 4, sir, in the book. That's
24 April 1, '21, in the Brown case; correct?
25 **A. Correct.**

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1 Q. And with that, did you -- did your office
2 also submit, its Exhibit 5, a declaration of Derek
3 Oestreicher?
4 **A. Yes.**
5 Q. And was Mr. -- am I pronouncing his name
6 correct?
7 **A. I believe it's Oestreicher.**
8 Q. So do I, so thank you. I have met Derek
9 previously, and I thought that's how he pronounced
10 it.
11 Thank you, sir.
12 **A. Yep.**
13 Q. Was Mr. Oestreicher one of your
14 subordinates under your supervision at the AG's
15 office?
16 **A. He was. At time he was chief**
17 **general counsel or -- I forget what title we**
18 **technically -- I think general counsel the title we**
19 **gave him.**
20 Q. Do you recall when Mr. Oestreicher left?
21 **A. Not specifically. I mean, I want to say**
22 **maybe -- oh, boy.**
23 Q. Well.
24 **A. Year and a half? Two years ago?**
25 Q. Okay.

<p style="text-align: right;">Page 138</p> <p>1 A. Ish. 2 Q. Yeah. Okay. That's fair? 3 A. But I hope I -- I hope I have that right. 4 I couldn't say specifically. Sorry. 5 Q. Well, the reason I ask is we know -- I 6 think -- well, we'll see today as I'm asking you 7 questions that are in March of '22, 8 Mr. Oestreicher -- Mr. Oestreicher was one of the 9 ones from your office that returned the emails. 10 So does that comport with your 11 recollection? He was still with you at that time? 12 A. Yes. 13 Q. Okay. Now, in your response to the 14 grievance in this matter, you denied that the 15 Attorney General filed the motion to disqualify that 16 I just showed you, didn't you? 17 A. I -- I -- honestly, without it in front of 18 me, I couldn't say for sure. 19 Q. Take a look at Exhibit 39, please. And 20 it's -- 39, first of all, that's the response that 21 you sent to the Office of Disciplinary Counsel back 22 in '21 in response to the grievance that was 23 originally filed; correct? 24 A. That looks correct. Yes. 25 Q. Yeah. And your -- I believe your signature</p>	<p style="text-align: right;">Page 140</p> <p>1 happened or what's going on there, yeah, generally 2 mistakes happen sometimes. 3 Q. Sometimes. The motion -- back to 4 Exhibit 4, please. 5 I apologize for the back-and-forth a little 6 bit. I'll try to minimize it. 7 A. No problem. 8 Q. At Exhibit 4, Page 3, at the top, the 9 motion sought, among other things, the immediate 10 recusal or disqualification of Judge Kurt Krueger 11 and any Montana judicial officer who, quote, voted, 12 end quote, on and express -- or expressed public 13 approval or disapproval of SB 140; correct? 14 A. Yes. 15 Q. And it also sought disclosure of the voting 16 results of the Montana Supreme Court Administrator 17 Beth McLaughlin's poll regarding SB 140; correct? 18 A. Yes. 19 Q. And Exhibit 5, the declaration of 20 Mr. Oestreicher, attached to that declaration is 21 Exhibit A, which I believe begins at Page 5 -- 22 sorry, Page 6. There are emails there between the 23 court administrator and numerous judges. The 24 subject line is "SB 140." 25 Do you see those?</p>
<p style="text-align: right;">Page 139</p> <p>1 is on this. Let me check before I say that. 2 Yes, sir, on Exhibit 39, it's 39-15. 3 That's your signature; correct? 4 A. Yes. 5 Q. And then if you would please turn to 39, 6 Page 4 -- I'm referring to the Bates number pages, 7 sir, because they're off. But 39, Page 4. 8 A. Would that be ODC0070? 9 Q. Yes, sir. 10 A. Okay. 11 Q. First paragraph at the top, there's some 12 highlighted language: 13 However, the Montana Attorney General did 14 not file a motion to disqualify. That motion was 15 filed by Oestreicher. 16 Correct? 17 A. That is what that says. Yes. 18 Q. All right. Mistakes happen. We know that 19 your name is on that motion to disqualify; correct? 20 A. You just showed it to me. Yes. 21 Q. Okay. And my point is sometimes mistakes 22 happen; right? I'm not ascribing anything ill here. 23 I'm just saying it was a mistake. 24 A. You know, without sitting down with my 25 lawyers and really drilling down into how that</p>	<p style="text-align: right;">Page 141</p> <p>1 A. Starting on Page 6, I see Subject, SB 140, 2 and it's a series of emails that follow. Yes. 3 Q. Okay. So these -- when you filed the 4 motion to DQ Judge Krueger, your office already had, 5 it looks like, many -- I'm not going to characterize 6 it other than that -- of the polling emails 7 regarding SB 140; correct? 8 A. I believe we had some of them. Yes. 9 Q. What was the source of those emails? 10 A. Those came from the Montana Legislature, if 11 I'm remembering correctly. 12 Q. Now, on the same day that you filed the 13 motion to DQ Judge Krueger, did you receive a letter 14 from the Legislature on April 1, '21, to represent 15 the Legislature in Brown? 16 A. I honestly don't remember if we received a 17 letter or if it was in person or what we got. 18 Is there an exhibit you can point me to? 19 Q. Yes, sir. Absolutely. It's Exhibit O. 20 It's actually one of yours. 21 MR. STRAUCH: Can we have the book that I 22 could hand the attorney here? 23 This also has your exhibits in it. 24 Q. (By Mr. Strauch) Let's see. Exhibit O is 25 the declaration of -- of Mr. Oestreicher; correct?</p>

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1 It's a different declaration than the one we looked
2 at.
3 **A. Respondent's Exhibit O is the declaration**
4 **of Derek Oestreicher filed April the 2nd of '21.**
5 Q. And attached to that declaration,
6 Exhibit O, is an Exhibit A, which I believe is the
7 letter I was asking you about. April 1, '21.
8 **A. Yes. I see it.**
9 Q. Okay. So -- and that's where the
10 Legislature asked you, sir, to represent it in the
11 Brown case; correct?
12 **A. That looks accurate. Yes.**
13 Q. And then you agreed, obviously, to
14 undertake that?
15 **A. We had some internal discussions, as I**
16 **recall, me and some of my senior staff, there or**
17 **shortly thereafter. Yes, we agreed.**
18 **MR. STRAUCH:** And, Sheena, would you please
19 scroll down just to who is that letter signed by,
20 please.
21 Q. (By Mr. Strauch) So it's signed by
22 Speaker -- Speaker of the House Wylie Galt and
23 Senate President Mark Blasdel -- do you say Blasdel?
24 **A. Blasdel.**
25 Q. Blasdel. Thank you.

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1 Is that correct?
2 **A. That is correct.**
3 Q. And then you -- and you entered an
4 appearance for the Legislature in Brown on April 2nd
5 to request an extension and time to answer the
6 petition; is that correct?
7 **A. I -- I have no reason to dispute you there,**
8 **but if you're asking me do I recall that**
9 **specifically, I do not. But, again, I have no**
10 **reason to dispute that.**
11 Q. Okay. Between the time that you filed the
12 motion for extension to respond on behalf of the
13 Legislature in Brown and the time you filed that
14 response, your clients served a subpoena on the
15 Department of Administration; correct?
16 **A. After they had filed a -- lodged a subpoena**
17 **against the court administrator, Beth McLaughlin.**
18 Q. Yeah.
19 **A. Yes.**
20 Q. That's in the other book, sir, the white
21 book, I believe. Exhibit 6, if you'd just take a
22 look.
23 **A. The one on here.**
24 Q. Yes, sir.
25 **A. Exhibit 6 is a subpoena from the Montana**

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1 **Legislature to Director Misty Ann Giles of the**
2 **Department of Administration.**
3 Q. Dated April 8th; correct, sir?
4 **A. Correct.**
5 Q. Did your office advise the Legislature --
6 I'm not asking what the advice was -- did your
7 office advise the Legislature on this subpoena?
8 **A. To my knowledge, no.**
9 Q. Do you have any idea why the subpoena was
10 served -- a subpoena for judicial branch emails was
11 served on the Department of Administration rather
12 than the court administrator herself?
13 **A. I can say that, just in my own knowledge,**
14 **the Department of Administration generally is the**
15 **server host for all of state government. I would**
16 **presume that was why. So as I understand the facts,**
17 **a subpoena was initially served on Court**
18 **Administrator McLaughlin. She indicated that those**
19 **emails no longer existed, that she had deleted them**
20 **or done some sort of, I think in her words,**
21 **sloppiness. So I would presume -- again, this is**
22 **only my presumption -- that the Legislature decided**
23 **to go to the housing unit for that server that would**
24 **have held those emails, which would be the**
25 **Department of Administration.**

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1 Q. It's your understanding that, prior to the
2 April 8th subpoena, there was an earlier subpoena to
3 Ms. McLaughlin?
4 **A. That's my -- that's my understanding. I**
5 **could be hazy on my dates, but I think my -- my**
6 **recollection of the timeline is that the McLaughlin**
7 **subpoena was first, that it was, I think -- I**
8 **believe Director McLaughlin appeared before the**
9 **legislative committee, said, Oops, don't have them**
10 **anymore, probably was sloppy, I deleted them. And**
11 **then at that point -- sorry, I think at that point a**
12 **second subpoena was issued to the Department of**
13 **Administration.**
14 Q. And if I told you that there was no earlier
15 subpoena but there was an email request, would that
16 be consistent with what you recall or not?
17 **A. I guess my answer would be no. I thought**
18 **there was a subpoena from the Legislature, but, I**
19 **mean, at that time we were not advising them on this**
20 **matter. So I couldn't say one way or the other.**
21 Q. Okay. And you don't know if the email
22 request that Ms. McLaughlin got was for all emails
23 and attachments sent and received by her between
24 January 4, '21, and April 8, '21 -- no subject
25 matter given? Do you know that?

<p style="text-align: right;">Page 146</p> <p>1 A. I couldn't say with any certainty.</p> <p>2 Q. Do you know if email requests that</p> <p>3 Ms. McLaughlin got were specifically for polling</p> <p>4 emails, but not generally all judicial branch emails</p> <p>5 for a given point in time? Do you know that?</p> <p>6 A. I do not know that.</p> <p>7 Q. Do you recall that the court administrator,</p> <p>8 Beth McLaughlin, filed an ex parte motion to quash</p> <p>9 the subpoena, Exhibit 6?</p> <p>10 A. I think I remember hearing something about</p> <p>11 that.</p> <p>12 Q. Okay. And do you recall that on April 11,</p> <p>13 '21, the Supreme Court entered a temporary order</p> <p>14 granting that motion?</p> <p>15 A. I believe I found out about it the</p> <p>16 following Monday, whatever day that would have been.</p> <p>17 Q. Did your office send a letter to the Court</p> <p>18 challenging that order, Exhibit 11?</p> <p>19 A. Yes.</p> <p>20 Q. And then -- and this is the one we saw</p> <p>21 earlier, it says:</p> <p>22 The Legislature does not recognize this</p> <p>23 Court's order as binding and will not abide by it.</p> <p>24 Right?</p> <p>25 A. That is what that letter says. And just so</p>	<p style="text-align: right;">Page 148</p> <p>1 to a Court to challenge its order?</p> <p>2 A. I would point to Montana Rule of</p> <p>3 Professional Conduct 3.4(c).</p> <p>4 Q. Relying on the exception that says "an open</p> <p>5 refusal"?</p> <p>6 A. Correct.</p> <p>7 Q. It's your interpretation that an open</p> <p>8 refusal is a letter?</p> <p>9 A. A letter that was sent out to the justices.</p> <p>10 I'm not sure how it could be more open. But yes.</p> <p>11 Q. As opposed to a motion?</p> <p>12 A. Yes.</p> <p>13 Q. And back to my question, are you familiar</p> <p>14 with any rule of procedure -- civil, criminal, or</p> <p>15 appellate -- that allows counsel of record to send a</p> <p>16 letter to the Court to challenge an order? Not a</p> <p>17 rule of professional conduct, sir.</p> <p>18 A. We certainly were in uncharted territory.</p> <p>19 But to answer your question, no, not specifically.</p> <p>20 Q. And you recognize that the Rules of</p> <p>21 Professional Conduct govern the standards of conduct</p> <p>22 of lawyers practicing law; correct?</p> <p>23 A. Yes.</p> <p>24 Q. And -- but there's a difference. Rules of</p> <p>25 procedure are the rules that we follow when we're</p>
<p style="text-align: right;">Page 147</p> <p>1 I'm clear, we're on the April 12, '21, letter?</p> <p>2 Exhibit 11?</p> <p>3 Q. Yes, sir.</p> <p>4 And it's signed by Lieutenant</p> <p>5 General Hansen; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And she's deceased. The saints preserve.</p> <p>8 Do you remember when she passed away?</p> <p>9 A. Not specifically. Oh, boy. Year -- year</p> <p>10 and a half ago. I should remember that</p> <p>11 specifically, and it's terrible that I don't, but --</p> <p>12 Q. That's all right. I understand. You</p> <p>13 have 800 --</p> <p>14 A. Well, that's one that none of us are going</p> <p>15 to forget any time soon.</p> <p>16 Q. Yes, sir. I agree.</p> <p>17 What rule permits counsel of record -- what</p> <p>18 rule permits counsel of record to send a letter to a</p> <p>19 Court to challenge an order?</p> <p>20 A. Are you asking me what specific rule under</p> <p>21 civil procedure, or rules of conduct? What are you</p> <p>22 asking me?</p> <p>23 Q. What rule of procedure, whether it's civil</p> <p>24 procedure, criminal procedure, or appellate</p> <p>25 procedure, allows counsel of record to send a letter</p>	<p style="text-align: right;">Page 149</p> <p>1 applying to a Court for relief; correct?</p> <p>2 A. Among other things, yes.</p> <p>3 Q. Now, you acknowledge that same rule that</p> <p>4 you cited, Rule of Professional Conduct 3.4,</p> <p>5 Charlie, states that a lawyer shall not knowingly</p> <p>6 disobey an obligation under the rules of the</p> <p>7 tribunal; correct?</p> <p>8 A. That is the first portion of that rule.</p> <p>9 Unless that lawyer believes -- has made an open -- I</p> <p>10 forget what the exact verbiage is -- but basically</p> <p>11 an open assertion that no valid obligation exists.</p> <p>12 Yes, that's what Rule 3.4, Charlie, says.</p> <p>13 Q. And that includes the -- the rules of the</p> <p>14 tribunal referenced in 3.4, Charlie, include your</p> <p>15 oath as an officer of the Court, doesn't -- don't</p> <p>16 they?</p> <p>17 A. I believe -- yeah, I believe -- sure.</p> <p>18 Q. Which includes maintaining the respect due</p> <p>19 to the court of justice and judicial officers?</p> <p>20 A. That is -- yes, that's one of the rules</p> <p>21 promulgated by the Supreme Court.</p> <p>22 Q. Well, I'm talking about your oath as a</p> <p>23 lawyer. That was in there. We looked at it; right?</p> <p>24 Your oath includes the obligation to maintain the</p> <p>25 respect due to the courts of justice and judicial</p>

<p style="text-align: right;">Page 150</p> <p>1 officers; correct?</p> <p>2 A. Yes.</p> <p>3 Q. And it includes, quote, striving to uphold</p> <p>4 the honor and to maintain the dignity of the</p> <p>5 profession, end quote; correct?</p> <p>6 A. Correct.</p> <p>7 Q. This letter was disrespectful to the</p> <p>8 Montana Supreme Court, wasn't it?</p> <p>9 A. No.</p> <p>10 Q. This letter was intemperate, wasn't it?</p> <p>11 A. No.</p> <p>12 Q. It was contemptuous, wasn't it?</p> <p>13 A. Not in my opinion, no.</p> <p>14 Q. It was insulting, wasn't it?</p> <p>15 A. Nope.</p> <p>16 Q. This letter was undignified of our</p> <p>17 profession, and particularly undignified of the</p> <p>18 chief legal officer of this state, wasn't it?</p> <p>19 A. No. This letter was meant to openly assert</p> <p>20 our client's position that there was no valid</p> <p>21 obligation to comply with that court order. That</p> <p>22 was the position of our client, my client, a coequal</p> <p>23 branch of government with the judiciary.</p> <p>24 Q. The letter doesn't say, does it, that your</p> <p>25 office asserts the order is erroneous, does it?</p>	<p style="text-align: right;">Page 152</p> <p>1 will not agree with that.</p> <p>2 Q. It's your job as the chief legal officer of</p> <p>3 this state to enforce the law; right?</p> <p>4 A. Correct.</p> <p>5 Q. But telling the Court that its order is</p> <p>6 invalid and will not be followed does just the</p> <p>7 opposite, doesn't it?</p> <p>8 A. No. I think pointing out a situation where</p> <p>9 our client's genuine belief was that a coequal</p> <p>10 branch of government had overstepped its authority</p> <p>11 is not unprofessional or any of the adjectives that</p> <p>12 you used. No. I disagree with that</p> <p>13 characterization.</p> <p>14 Q. And I apologize, but I wasn't asking about</p> <p>15 that part of it.</p> <p>16 The order is the law; right?</p> <p>17 A. Which order are we --</p> <p>18 Q. The only order we've looked at so far. The</p> <p>19 order -- the temporary order that said your subpoena</p> <p>20 is quashed, the one that this letter says will not</p> <p>21 be followed.</p> <p>22 That order is the law; right?</p> <p>23 A. Well, there's statutory law dealing with</p> <p>24 the legislative subpoena power, and that is a</p> <p>25 completely untested area of law, up until this. I</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I mean, honestly, Counsel, I haven't read</p> <p>2 through this thing word for word in quite some time.</p> <p>3 Q. Fair enough. It says what it says. But</p> <p>4 you disagree with me that it is disrespectful, you</p> <p>5 disagree with me that it's intemperate, you disagree</p> <p>6 that it's contemptuous, and you disagree that it's</p> <p>7 insulting?</p> <p>8 A. I do.</p> <p>9 Q. And you also know, don't you, that the</p> <p>10 Rules of Professional Conduct 8.4(d), delta, states</p> <p>11 that it is professional misconduct for a lawyer to</p> <p>12 engage in conduct that is prejudicial to the</p> <p>13 administration of justice; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And that includes being disrespectful --</p> <p>16 that includes barring disrespectful language with</p> <p>17 respect to the Court, doesn't it?</p> <p>18 A. Yes.</p> <p>19 Q. But you acknowledge that, as an officer of</p> <p>20 the court, you're obligated to uphold the dignity of</p> <p>21 the Court; right?</p> <p>22 A. That is one of my obligations as an officer</p> <p>23 of the court, yes.</p> <p>24 Q. This letter does not do that, does it?</p> <p>25 A. You've already asked me that, Counsel. I</p>	<p style="text-align: right;">Page 153</p> <p>1 will admit that has now been litigated. But at the</p> <p>2 time my client had a bona fide and genuine belief</p> <p>3 that that order was not valid. And that was what we</p> <p>4 were instructed, and it's what -- my office was</p> <p>5 instructed to press that position.</p> <p>6 Q. Mr. Attorney General, the order of a court</p> <p>7 of this state is the law, isn't it?</p> <p>8 A. Unless there is a bona fide open assertion</p> <p>9 that that order is not valid. I will admit,</p> <p>10 Counsel, that does not happen very often. I</p> <p>11 certainly have never seen it in my career. I hope</p> <p>12 to never see it again. But that is the position we</p> <p>13 were put in in this litigation.</p> <p>14 Q. Mr. Knudsen, my question to you as the</p> <p>15 Attorney General of the State of Montana is, is an</p> <p>16 order of the Montana Supreme Court the law?</p> <p>17 MR. CORRIGAN: Objection; asked and</p> <p>18 answered.</p> <p>19 CHAIR OGLE: Sustained.</p> <p>20 Q. (By Mr. Strauch) You fully supported this</p> <p>21 letter at the time it was written; correct?</p> <p>22 A. I'm not sure I would characterize it quite</p> <p>23 that way. The conversations I recall with</p> <p>24 Lieutenant General Hansen, she -- she briefed me on</p> <p>25 the situation. She obviously was quite agitated.</p>

<p style="text-align: right;">Page 154</p> <p>1 She had been dealing with the Legislature. 2 Personally, I had not. She had told me what 3 happened. She wanted to -- if I'm remembering 4 correctly -- and, Counsel, I apologize, this has 5 been several years ago now. But I do recall she was 6 quite agitated and she told me she wanted to use 7 some quite strong language to push back and assert 8 the Legislature's position. 9 Q. And my question is, you fully supported 10 that language at the time; correct? 11 A. Yes. I'll say that. Yes. 12 Q. And you still do? 13 A. Counsel, if I'm being really honest, in 14 hindsight I think a lot of things could be done -- 15 could have been done different here and probably 16 should have been done different here. If I had this 17 to do over, I probably would not have allowed 18 language like this, so sharp, to be used. But we -- 19 we and our client truly felt that we were in an 20 absolutely novel situation of constitutional 21 emergency, and this is the language that went out. 22 Q. I appreciate that, sir. And hindsight may 23 be 20/20, but we asked you about this in hindsight 24 when we inquired originally back in '21. This is 25 Exhibit 39, Page 3. This is, again, your response</p>	<p style="text-align: right;">Page 156</p> <p>1 Administrator McLaughlin filed a new petition in the 2 original proceeding in McLaughlin in April of '21? 3 Do you remember that? 4 A. Yes. 5 Q. And for the record, it's Exhibit 12. But 6 I -- it's okay, I don't -- I don't have any specific 7 questions for you about it. 8 By April 12th, when that -- when 9 Ms. McLaughlin filed that -- filed that petition, 10 the Department of Administration had actually 11 already produced judicial branch emails to the 12 Department of Justice in response to the 13 Legislature's subpoena; correct? 14 A. I believe that's correct. 15 Q. And some emails apparently had made it to 16 the media that same weekend? 17 A. I believe that is also correct. 18 Q. After the April 11, '21, order quashing the 19 subpoena because of confidentiality concerns, did 20 you or your clients make any efforts to allow the 21 court administrator's office to regain control over 22 those emails and redact confidential information? 23 A. My recollection of the conversations I had 24 with Lieutenant General Hansen was that she -- she 25 was attempting to reach some sort of an agreement</p>
<p style="text-align: right;">Page 155</p> <p>1 to the Office of Disciplinary Counsel inquiry, 2 Page 3, Number 3. Your letter to the Office of 3 Disciplinary Counsel says, in your supervisory role, 4 you fully supported the vigorous advocacy of his 5 subordinate attorneys in this unprecedented and 6 contentious separation of powers dispute. 7 Correct? 8 A. That's an accurate statement. I -- I did 9 fully support the vigorous advocacy of my attorneys 10 and their advocacy of our client. 11 Q. And needless to say, since you fully 12 supported it, you never took any kind of action to 13 remediate it or correct it; true? 14 A. No, that's not true. 15 Q. Did you write to the Supreme Court and 16 apologize for saying these things? 17 A. No. 18 Q. Did you fire your subordinates for saying 19 these things? 20 A. No. 21 Q. Did you implement an office policy that 22 said we will not use this kind of sharp language 23 anymore? 24 A. No. 25 Q. Do you recall that Court</p>	<p style="text-align: right;">Page 157</p> <p>1 with the court administrator's office. I don't 2 think those were successful. 3 Q. Did your clients issue additional 4 legislative subpoenas for judicial branch emails and 5 various electronic devices that might house emails 6 after the Supreme Court's April 11th order? 7 A. Yes. 8 Q. Did you advise them on those subpoenas? 9 A. Well, at that point we were their clients. 10 I would imagine so, yes. 11 Q. Do you recall that on April 14th of '21 12 your office filed a motion to dismiss the McLaughlin 13 petition on behalf of the Legislature? 14 A. I couldn't tell you the exact dates, but I 15 know that we filed a motion to dismiss. 16 Q. Thank you, sir. It's Exhibit 13, and it's 17 in the book if that's easier for you to read. 18 Pages 8 to 9, please. 19 A. Okay. 20 Q. Conclusion: The Montana Legislature, your 21 client, submitted a letter to the acting 22 chief justice on April 12th. 23 That's the letter we just looked at; right? 24 A. Yes. 25 Q. And then down a little bit below, please,</p>

<p style="text-align: right;">Page 158</p> <p>1 this says: 2 McLaughlin's current petition seeks yet 3 another court order which will not bind the 4 Legislature and will not be followed. 5 Correct? 6 A. That is what it says. 7 Q. Those statements filed in a brief in the 8 Montana Supreme Court were disrespectful to the 9 Court, weren't they? 10 A. No. 11 Q. They were intemperate, weren't they? 12 A. No. 13 Q. They were contemptuous, weren't they? 14 A. No. 15 Q. This was insulting, wasn't it? 16 A. No. 17 Q. This was undignified of our profession, and 18 particularly undignified of the chief legal office 19 of this state, wasn't it? 20 A. No. 21 Q. This does not uphold the dignity of the 22 Montana Supreme Court, does it? 23 A. I believe that it does. 24 Q. Telling the Court that its orders -- that 25 its order is invalid and will not be followed</p>	<p style="text-align: right;">Page 160</p> <p>1 the attorneys that work for me. 2 Q. Well, you heard Mr. Cox's -- you heard 3 Mr. Cox's testimony about the various emails and 4 letters and efforts that he made for cooler heads to 5 prevail, and it ended flatly, no effort whatsoever 6 by you or your clients to do that. 7 Did you hear that testimony? 8 A. I heard him say that. I also had numerous 9 conversations with Lieutenant General Hansen 10 where -- almost daily where she told me she was 11 legitimately trying to open a line of communication 12 with the judiciary in hopes of resolving this. 13 Q. Do you have any information that Mr. Cox 14 provided false information here this morning? 15 A. No. 16 Q. And you fully supported the motion that we 17 just read, that language we just read; correct? 18 A. Yes. 19 Q. Do you recall on April 16th, a few days 20 later, the Court issued another order enjoining and 21 quashing the legislative subpoenas? It's 22 Exhibit 15. 23 A. Yes. 24 Q. And following that order, on April 18th 25 your office once again wrote another letter to the</p>
<p style="text-align: right;">Page 159</p> <p>1 upholds the dignity of the Court? 2 A. Again, Counsel, we were in an absolutely 3 unprecedented position, and we -- I felt my office 4 was ethically bound to press our client's position 5 firmly and zealously until we had exhausted all of 6 our remedies. I have one coequal branch of 7 government telling another coequal branch of 8 government the scope of their own power, and we had 9 one client that disagreed with that. And we felt it 10 was our position to, again, zealously uphold that. 11 Q. Understood. As an officer of the court, 12 it's your sworn obligation to uphold the dignity of 13 the court; right? 14 A. Yes. 15 Q. And it's your sworn obligation to uphold 16 the dignity of the profession and to be respectful; 17 correct? 18 A. Correct. Counsel, at all times in this 19 thing, it was our genuine hope that the Legislature 20 and the judiciary would not come to the position 21 we've come to and that there would be some sort of a 22 cooler heads prevailing and some sort of an 23 agreement over -- over the disclosure of these 24 emails. That obviously did not happen, but that was 25 the -- that was the genuine hope of our client and</p>	<p style="text-align: right;">Page 161</p> <p>1 Court; correct? It's Exhibit 16. 2 A. Yes. 3 Q. And on Page 1 of that letter, the 4 Attorney General advises the Court that its position 5 is, quote/unquote, ludicrous; is that right? 6 A. That's what it says. Yes. 7 Q. And that the statement of the Court is, 8 quote, wholly outside the bounds of rational 9 thought; correct? 10 A. Yes. 11 Q. You fully supported that statement when it 12 was made; correct? 13 A. Yes. 14 Q. Those statements are disrespectful to the 15 Montana Supreme Court, aren't they? 16 A. No. 17 Q. They're intemperate, aren't they? 18 A. No. 19 Q. They're insulting, aren't they? 20 A. No, sir. No. 21 Q. If you tell somebody that their statement 22 is wholly outside the bounds of rational thought, 23 that's not insulting? 24 A. I think sometimes strong language is 25 necessary in some of these communications, and</p>

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1 **there's certainly legal precedent for that when**
2 **we're talking about judicial -- allegations of**
3 **judicial misconduct.**
4 Q. How many times can you think -- other times
5 can you think of in the history of this state where
6 counsel of record told the Montana Supreme Court in
7 a pleading -- or, excuse me, a letter that was filed
8 in court, that it was ludicrous, that its thoughts
9 were wholly outside the bounds of rational thought.
10 Where? Show me. Think of another time
11 where something like that was said. Can you help
12 me?
13 **A. As I said, Counsel, I'm not an appellate**
14 **lawyer and never pretended to be, so I cannot point**
15 **you to one.**
16 Q. On April 30th of '21, your office moved on
17 behalf of the Legislature to disqualify all the
18 justices in McLaughlin; correct?
19 **A. Yes.**
20 Q. And it's Exhibit 17. Stop right there,
21 please.
22 At the top, that's your name; right?
23 **A. Yes.**
24 Q. And then Page 5, the top of the page:
25 This matter has arisen -- speaking of the

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1 McLaughlin case -- because this matter as arisen
2 because evidence of judicial misconduct has come to
3 public light.
4 Did I read that correctly?
5 **A. You did.**
6 Q. The self-interest is so apparent any
7 attempt by this Court to decide the question runs
8 afoul of state law and the MCJC, which is the code
9 of judicial conduct; correct?
10 **A. Yes.**
11 Q. So you're accusing the judges of the
12 Montana Supreme Court of judicial misconduct in a
13 public court filing.
14 **A. It became, at the time, apparent to us**
15 **that, given some of the emails that were disclosed,**
16 **that there were pretty flagrant conflicts of**
17 **interest that we were, of duty, obligated to point**
18 **out to the Court. As I said, there is precedent for**
19 **strong language that could be seen as disrespectful**
20 **to judges. I mean, I'm not going to -- I don't know**
21 **how a judge would not be considered disrespected if**
22 **they were being asked to recuse from a case.**
23 Q. No, sir. My question is, in a public brief
24 filed on behalf of your client, as the
25 Attorney General of the state you accused the Court

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1 of judicial misconduct; correct?
2 **A. That is sentence says there's evidence**
3 **judicial misconduct has come to light. I don't**
4 **think that's an accusation from my office. That's a**
5 **statement that there is evidence in possession of**
6 **the Department of Justice and our client, the state**
7 **legislature, that suggests there's judicial**
8 **misconduct.**
9 Q. How about the next one that I highlighted:
10 The self-interest is so apparent that any
11 attempt by the Court to do its job not only runs
12 afoul of state law, but it also runs afoul of the
13 code of judicial conduct.
14 That's accusing the Court of judicial
15 misconduct, isn't it, sir?
16 **A. That is a statement putting -- that's an**
17 **open assertion by our client -- us doing it on their**
18 **behalf -- that a valid obligation does not exist,**
19 **hence exempted under Rule 3.4, Charlie.**
20 Q. No, this is not -- this is not saying
21 you're refusing to obey a court order. This saying
22 you, the judges of the Supreme Court of the State of
23 Montana, have violated the code of judicial conduct,
24 doesn't it?
25 **A. It is our office advising the Court, in our**

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1 **opinion, in our client's opinion, that should they**
2 **decide to rule on this, it would run afoul of state**
3 **law and the MCJC.**
4 Q. Mr. Knudsen, how are you supposed to file a
5 complaint of judicial misconduct? There's a
6 mechanism for that, isn't there?
7 **A. Yes.**
8 Q. It's with the Judicial Standards
9 Commission; correct?
10 **A. Correct.**
11 Q. A constitutional body; correct?
12 **A. Correct.**
13 Q. I have a copy of the constitution, if you'd
14 like to check it.
15 **A. I believe you.**
16 Q. If you want to claim that a judge has
17 violated the code of judicial misconduct -- judicial
18 conduct, you report it to the constitutional
19 authority, the Judicial Standards Commission;
20 correct?
21 **A. That is an avenue you can take.**
22 Q. No, sir, that's the only avenue you can
23 take; right?
24 **A. If it is deemed wise to do so. In the**
25 **course of litigation, we decided things were moving**

<p style="text-align: right;">Page 166</p> <p>1 so fast -- so quickly and this was an emergent 2 situation. We didn't think that was prudent. 3 Q. No, sir. As an officer of the court, you 4 swore to follow the rules of the court. And one of 5 those rules is, if you want to bring a claim of 6 judicial misconduct, you do so through the Judicial 7 Standards Commission; correct? 8 MR. CORRIGAN: Objection; leading. 9 MR. STRAUCH: Yes, sir, it is. 10 CHAIR OGLE: Sustained. 11 MR. STRAUCH: Mr. Chairman, this is the 12 respondent in this case. I asked originally if we 13 could lead the witness. He's the -- he is the 14 adverse party. Rule 611(c) permits me to lead the 15 witness. 16 CHAIR OGLE: All right. Why don't you 17 restate the question. 18 Q. (By Mr. Strauch) As a sworn officer of the 19 court, you're supposed to follow the rules of the 20 court; correct? 21 A. Yes. 22 Q. And one of those rules is, if you want to 23 make a complaint against a judge, you file the 24 complaint with the Judicial Standards Committee; 25 correct?</p>	<p style="text-align: right;">Page 168</p> <p>1 Are you aware of that rule? 2 A. I am aware of that rule. 3 Q. Now, you understand the purpose of that 4 rule is to preserve public confidence in our far -- 5 and fairness and impartiality of our system of 6 justice; right? 7 A. That's probably one of the reasons for it. 8 Yes. 9 Q. Now your statement -- back to that exhibit, 10 please. It is Exhibit 17, Page 5. 11 Your statements here willfully and 12 knowingly undermine the presumed integrity and 13 qualifications of the justices, didn't it? 14 A. No. These were not knowingly false or 15 reckless disregarding truth statements. 16 Q. When you accuse a judge of violating the 17 rules of judicial -- the code of judicial conduct, 18 you don't think that undermines their integrity and 19 their qualifications? 20 A. This was not a knowingly false statement, 21 nor one made with reckless disregard for the truth. 22 Q. I haven't gotten to the falsity or reckless 23 part of it yet. It certainly goes to their 24 integrity and qualifications, does it not? 25 A. I'm sorry, Counsel. You had asked</p>
<p style="text-align: right;">Page 167</p> <p>1 A. Yes. 2 Q. These statements in a brief, not the 3 Judicial Standards Committee, are disrespectful to 4 the Montana Supreme Court, aren't they? 5 A. No. 6 Q. They're intemperate, aren't they? 7 A. No. 8 Q. They're contemptuous, aren't they -- excuse 9 me? They're contemptuous, aren't they? 10 A. No. 11 Q. They're insulting, aren't they? 12 A. No, sir. 13 Q. They were undignified of our profession, 14 and particularly undignified of the legal officer of 15 this state, aren't they? 16 A. No. 17 Q. This does not uphold the dignity of the 18 Montana Supreme Court, does it? 19 A. Yes, it does. 20 Q. Are you aware that Rule of Professional 21 Conduct 8.2, alpha, provides that a lawyer shall not 22 make a statement that the lawyer knows to be false 23 or with reckless disregard as to its truth or 24 falsity concerning the qualifications or integrity 25 of a judge.</p>	<p style="text-align: right;">Page 169</p> <p>1 about 8.4. I thought that's what we were talking 2 about. 3 Q. No, I'm asking about 8.2(a), which says 4 that you shall not make a statement that the lawyer 5 knows to be false or with reckless disregard as to 6 its truth or falsity concerning the qualifications 7 or integrity of a judge. 8 My question to you isn't -- I'm not asking 9 you to admit that this was false. I'm not asking 10 you admit if this was reckless. I'm simply asking 11 you that when you say they have violated the code of 12 judicial conduct, that does go to the qualifications 13 or integrity of a judge, doesn't it? 14 A. No. 15 Q. Do you recall that on May 12 of '21 the 16 Supreme Court issued a decision denying your motion 17 to disqualify the judges? 18 It's Exhibit 18. 19 A. Yes. 20 Q. Okay. Following the May 12th order, you 21 wrote your own letter to the Court; correct? 22 It's Exhibit 19? 23 A. Yes. 24 Q. And you were here when we went through this 25 with Mr. Cox; right?</p>

<p style="text-align: right;">Page 170</p> <p>1 A. Yes. 2 Q. You made it clear in this letter that you 3 were aware of the, quote/unquote, strong statements 4 of the subordinates in your office, 5 Lieutenant Hansen and Derek Oestreicher; correct? 6 You were definitely aware of those statements? 7 A. Yes. 8 Q. And did you offer to do anything to 9 remediate or in any way soften or correct the 10 statements that they made? 11 A. Officially, no. 12 Q. You certainly don't do it in this letter, 13 do you? 14 A. Correct. 15 Q. And on Page 2, the fourth paragraph, you're 16 admonishing the Court -- directing them, if you 17 will -- how to administer these issues; is that 18 right? 19 A. No. I am inviting the Court to please 20 don't take their frustrations out on my lawyers; 21 take it out on me, the elected official. 22 Q. You're aware of the fact that every court 23 in the state has the inherent authority to maintain 24 respect and the administration of justice in its own 25 court, aren't you?</p>	<p style="text-align: right;">Page 172</p> <p>1 A. No, not necessarily. No, I would never 2 call the justices liars. 3 Q. Why not? 4 A. That would be horribly inappropriate. 5 Q. And disrespectful? 6 A. To call them outright liars? Yes. 7 Q. The statements that I've highlighted that 8 we went through here in this letter that you made 9 were disrespectful to the Montana Supreme Court, 10 weren't they? 11 A. No. 12 Q. They were intemperate, weren't they? 13 A. No, sir. 14 Q. They were contemptuous, weren't they? 15 A. No. 16 Q. They were insulting, weren't they? 17 A. No. 18 Q. They were undignified of our profession, 19 weren't they? 20 A. No. 21 Q. This does not uphold the dignity of the 22 Court, does it? 23 A. It does. 24 Q. For the same reason you said earlier; 25 right?</p>
<p style="text-align: right;">Page 171</p> <p>1 A. Of course. 2 Q. But you're telling the judges -- the 3 justices of the Montana Supreme Court, Don't take it 4 up with the people that said it; take it up with 5 you? 6 A. I am asking them politely, please refrain 7 and contact me. 8 Q. If you wish to vent any further 9 frustrations about the conduct of attorneys in my 10 office -- you think that's polite? 11 A. Yes. 12 Q. To the justices of the Montana 13 Supreme Court? Vent their frustrations? Yes? 14 A. Yes. 15 Q. In the Footnote 1, you are saying the 16 statement of the Court is inaccurate, almost to a 17 word; right? 18 A. That's correct. 19 Q. You're attacking the honesty and integrity 20 of the Court, aren't you? 21 A. I'm -- no, I'm disagreeing with a portion 22 of their statement here. 23 Q. I'm sorry. I mean, saying somebody's 24 statement is inaccurate is saying they're lying; 25 right?</p>	<p style="text-align: right;">Page 173</p> <p>1 A. Yes. 2 Q. Do you know who Abraham Maslow is? 3 A. I believe I have heard that name. Yes. 4 Q. Who is he? 5 A. I couldn't tell you who he is exactly. I 6 know he's referenced in one of our filings or 7 letters. 8 Q. Do you know anything about what he wrote? 9 A. Something along the lines of, If you're a 10 hammer, everything looks like a nail. 11 Q. Do you recall on May 26th of '21 that your 12 office filed on behalf of the Legislature a petition 13 for rehearing of the May 12th order? 14 A. Is that Exhibit 20? 15 Q. Yes, sir. 16 A. Yes. 17 Q. And on Page 4 -- excuse me -- Page 6, 18 there's some highlighted language there: 19 Here the justices are institutionally and 20 personally interested in the outcome so their 21 ability to be impartial is justifiably suspect. 22 Specifically, the Court asserts that no justice -- 23 the Court said no justice participated in the polls 24 conducted by the MJA. Quote, respectfully, public 25 records tell a different tale.</p>

<p style="text-align: right;">Page 174</p> <p>1 Did I read that correctly?</p> <p>2 A. You did.</p> <p>3 Q. The judges say X, but you're saying public</p> <p>4 records say Y; correct?</p> <p>5 A. That was our client's position. Yes.</p> <p>6 Q. That's what you said?</p> <p>7 A. On behalf of our clients, yes.</p> <p>8 Q. And it's still -- is this still your</p> <p>9 testimony that this doesn't go to the honesty of the</p> <p>10 Supreme Court and the integrity of the</p> <p>11 Supreme Court?</p> <p>12 A. Yes.</p> <p>13 Q. It goes directly to their honesty and</p> <p>14 integrity, doesn't it? When you say to somebody,</p> <p>15 Hey, the public records tell a different tale,</p> <p>16 you're saying, You're not being honest; aren't you?</p> <p>17 A. We were -- we were pointing out that a --</p> <p>18 at the time what we felt was a fairly obvious</p> <p>19 conflict of interest existed.</p> <p>20 Q. And in the same breath you called the Court</p> <p>21 perverse? Page 8, Note 4? Perverse?</p> <p>22 A. "Perverse" is used in that sentence.</p> <p>23 There's not a direct -- a statement that the Court</p> <p>24 is perverse.</p> <p>25 Q. You're saying it's perverse for the Court</p>	<p style="text-align: right;">Page 176</p> <p>1 been litigated. We're done with that, so...</p> <p>2 Q. Well, now, there isn't a rule of</p> <p>3 professional conduct that excuses your behavior</p> <p>4 because it's your client's position, is there?</p> <p>5 A. I cannot come up with one, off the top of</p> <p>6 my head, right now, as I sit here.</p> <p>7 Q. But there's not? And --</p> <p>8 A. There is an ethical obligation to zealously</p> <p>9 represent the position of our client.</p> <p>10 Q. Actually, there's not that either. You</p> <p>11 didn't know, probably, that the rule zealous came</p> <p>12 out of the Rules of Professional Conduct. But</p> <p>13 that's okay. I'm not here to insult you, sir.</p> <p>14 But my question is -- let's do it this way.</p> <p>15 You did tell me that you would not tell the</p> <p>16 Montana Supreme Court they're a bunch of liars. You</p> <p>17 did tell me that.</p> <p>18 A. I forget exactly how I put it, but yes.</p> <p>19 Q. I'm not trying to say those words, but that</p> <p>20 was the gist of it; right?</p> <p>21 A. Yes.</p> <p>22 Q. The Legislature says to you:</p> <p>23 Attorney General, we want you to tell the Montana</p> <p>24 Supreme Court they're liars.</p> <p>25 Is it your testimony that because your</p>
<p style="text-align: right;">Page 175</p> <p>1 to suggest that it will decide this case; right?</p> <p>2 A. That is what that sentence says.</p> <p>3 Q. And on Page 10 there's Maslow's hammer:</p> <p>4 But the Court appears to suffer from the</p> <p>5 bias of Maslow's hammer, which is to cite, quote, if</p> <p>6 all you have is a hammer, everything looks like a</p> <p>7 nail.</p> <p>8 Right?</p> <p>9 A. Correct.</p> <p>10 Q. Is that respectful?</p> <p>11 A. I don't think it's disrespectful.</p> <p>12 Q. Page 13:</p> <p>13 Which begs the question, Who will judge the</p> <p>14 judges? According to this Court, the judges. The</p> <p>15 judges will judge the judges. That, of course,</p> <p>16 defies common and constitutional sense.</p> <p>17 Did I read that right?</p> <p>18 A. You did.</p> <p>19 Q. This is disrespectful, isn't it?</p> <p>20 A. No. This was the position of our client,</p> <p>21 the Legislature. Our client, the Legislature,</p> <p>22 genuinely could not fathom that a judiciary, who had</p> <p>23 been involved in polling and some of these emails,</p> <p>24 would also sit in judgment of that case. That was</p> <p>25 our client's position at the time. That's since</p>	<p style="text-align: right;">Page 177</p> <p>1 client's position is that, that you can say it?</p> <p>2 A. No.</p> <p>3 Q. Thank you.</p> <p>4 A. No.</p> <p>5 Q. Thank you.</p> <p>6 A. No, that's not my testimony.</p> <p>7 Counsel, can I get a drink of water? I'm</p> <p>8 sorry.</p> <p>9 Q. Yes, sir.</p> <p>10 The stuff that we just went through in this</p> <p>11 brief, the highlighted things, these were all</p> <p>12 disrespectful to the Montane Supreme Court, weren't</p> <p>13 they?</p> <p>14 A. No.</p> <p>15 Q. They were intemperate, weren't they?</p> <p>16 A. No.</p> <p>17 Q. They were contemptuous, weren't they?</p> <p>18 A. No.</p> <p>19 Q. They were insulting, weren't they?</p> <p>20 A. No.</p> <p>21 Q. They were undignified of our profession,</p> <p>22 weren't they?</p> <p>23 A. No.</p> <p>24 Q. This does not uphold the dignity of the</p> <p>25 Montana Supreme Court, does it?</p>

<p style="text-align: right;">Page 178</p> <p>1 A. It does.</p> <p>2 Q. Did the Court ultimately rule in the court</p> <p>3 administrator's favor and quash the subpoenas for</p> <p>4 the judicial branch emails and order the return of</p> <p>5 the emails?</p> <p>6 A. The Court quashed the subpoenas. We did</p> <p>7 not get an order to return the subpoenas, I believe,</p> <p>8 until July.</p> <p>9 Q. Yes, sir. It's Exhibit 24. That's the one</p> <p>10 I'm asking you about.</p> <p>11 A. 24?</p> <p>12 Q. Yes, sir. July 14th of '21.</p> <p>13 And if we go to the back of that -- let's</p> <p>14 see...</p> <p>15 A. It looks like Page 36.</p> <p>16 Q. Thank you, sir. That's the one that orders</p> <p>17 to return of the emails; correct?</p> <p>18 A. Correct.</p> <p>19 Q. July 14, '21?</p> <p>20 A. Correct.</p> <p>21 Q. And as you point out, that's the first time</p> <p>22 the Supreme Court ordered the return of the emails;</p> <p>23 right?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. And the words that the -- the word</p>	<p style="text-align: right;">Page 180</p> <p>1 A. Everything we had in our possession, yes.</p> <p>2 Q. So no employee, agent, or representative of</p> <p>3 the Department of Justice has any copies, paper or</p> <p>4 electronic, of any of the judicial branch emails</p> <p>5 received pursuant the legislative subpoena?</p> <p>6 A. Not as far as I know.</p> <p>7 Q. And no copies are anywhere in the</p> <p>8 legislative branch's computer network?</p> <p>9 A. I couldn't testify to that. I have no</p> <p>10 knowledge about that, Counselor.</p> <p>11 Q. I'm just asking you because you were the</p> <p>12 one that ordered -- ordered to do it. So my</p> <p>13 question is, sitting here today, will you please</p> <p>14 verify and affirm under oath that no employee,</p> <p>15 agent, or representative of the Department of</p> <p>16 Justice has any copies, paper or electronic, of any</p> <p>17 of the judicial branch emails received pursuant to a</p> <p>18 legislative subpoena?</p> <p>19 Can you swear to that?</p> <p>20 A. I will affirm and swear as far as I am</p> <p>21 able, yes.</p> <p>22 Q. And can you -- can you swear that no such</p> <p>23 copies are anywhere in the legislative branch's</p> <p>24 computer network?</p> <p>25 A. I cannot swear --</p>
<p style="text-align: right;">Page 179</p> <p>1 that the Supreme Court used in that version was</p> <p>2 "immediately;" correct?</p> <p>3 A. Immediately return. Yes.</p> <p>4 Q. Okay. Did the -- excuse me. Did your</p> <p>5 office immediately return all copies of the emails</p> <p>6 to the court administrator as ordered?</p> <p>7 A. We did not.</p> <p>8 Q. When did your office finally return the</p> <p>9 emails?</p> <p>10 A. Immediately upon the denial of our petition</p> <p>11 for writ of certiorari to the United States</p> <p>12 Supreme Court.</p> <p>13 Q. So in March of '22; does that sound right?</p> <p>14 A. Yes. I think that's right.</p> <p>15 Q. So about eight months after the Montana</p> <p>16 Supreme Court orders you to immediately return</p> <p>17 emails, you return emails?</p> <p>18 A. I don't know what the timeline is there,</p> <p>19 but yes.</p> <p>20 Q. Well, I just went July to March -- I just</p> <p>21 did, you know, July to December is five, plus three</p> <p>22 is eight.</p> <p>23 A. That sounds right.</p> <p>24 Q. Did the Attorney General return all copies</p> <p>25 of emails as ordered?</p>	<p style="text-align: right;">Page 181</p> <p>1 MR. CORRIGAN: Objection; lack of personal</p> <p>2 knowledge. He's asking him to testify as to what's</p> <p>3 going on at the Legislature.</p> <p>4 Q. (By Mr. Strauch) Well, I certainly am -- so</p> <p>5 let me see if I can do it this way.</p> <p>6 The Legislature was your client; right?</p> <p>7 A. Correct.</p> <p>8 Q. And as an attorney, you understand that you</p> <p>9 are an agent of your client; correct?</p> <p>10 A. Yes.</p> <p>11 Q. So when your client is directed to do</p> <p>12 something, it's your job, as your client's attorney,</p> <p>13 to make sure they do it; right?</p> <p>14 A. As much as we are able, yes.</p> <p>15 Q. Back to my question, will you affirm today</p> <p>16 that no such copies are anywhere in the legislative</p> <p>17 branch's computer network?</p> <p>18 MR. CORRIGAN: Object to the extent it asks</p> <p>19 for protected attorney-client privilege information.</p> <p>20 CHAIR OGLE: Sustained.</p> <p>21 Q. (By Mr. Strauch) Do you know what a -- I</p> <p>22 can't even say this word. Sorry. I'll try it</p> <p>23 again.</p> <p>24 Do you know what a confiscatory decree is?</p> <p>25 A. No. I might if you explained it, but no.</p>

<p style="text-align: right;">Page 182</p> <p>1 Q. I don't know either. I looked it up, and 2 it's basically a judicial fiat to take away 3 property. 4 Does that make sense to you? I mean, the 5 word "confiscate" is in it. Confiscatory. 6 "Confiscate" means to take. 7 A. Yes. 8 Q. Yes. Do you believe the July 14th order we 9 just looked at, the one that ordered you to return 10 judicial branch emails, was a confiscatory decree? 11 A. Counselor, are you referring to something 12 specific that we filed in response? 13 Q. Well, I'm asking you if you belief it was. 14 A. No. 15 Q. So Exhibit 26, Page 11, this is the brief 16 that -- that you guys filed in your petition for 17 rehearing; right? Exhibit 26? 18 A. That is our petition for rehearing, yes. 19 Q. Yeah. And on Page 11 it says: 20 The opinion -- referring to the July 14th 21 order -- is an unwarranted confiscatory decree. 22 Correct? 23 A. That is what it says. 24 Q. Those statements are disrespectful to the 25 Montana Supreme Court, weren't they?</p>	<p style="text-align: right;">Page 184</p> <p>1 a petition for a writ of certiorari with the 2 Supreme Court? 3 A. U.S. Supreme Court. Yes. 4 Q. I misspoke. Thank you, sir. 5 A. Just for the record. 6 Q. Thank you. Exhibit 30, on Page 1, your 7 name appears among others as counsel of record for 8 the Montana Legislature; correct? 9 A. Yes, sir. 10 Q. Page 47. You signed it? That's your 11 electronic signature? 12 A. Yes. 13 Q. I want to go through a few statements made 14 in this petition filed with the United States 15 Supreme Court. Page 18, quote: 16 Judicial self-dealing -- speaking of the 17 Montana Supreme Court -- judicial self-dealing on 18 this scale might be unprecedented in the nation's 19 history. 20 Did I read that correctly? 21 A. You did. 22 Q. Page 34, speaking of the Montana 23 Supreme Court, quote: 24 It reached out to facilitate a case brought 25 by its appointee to conceal its misbehavior.</p>
<p style="text-align: right;">Page 183</p> <p>1 A. No. 2 Q. They were intemperate, weren't they? 3 A. No, sir. 4 Q. They were contemptuous? 5 A. No, sir. 6 Q. They were insulting, weren't they? 7 A. No. 8 Q. They were undignified of our profession, 9 weren't they? 10 A. No. 11 Q. This doesn't uphold the dignity of the 12 Montana Supreme Court, calling one of its orders a 13 confiscatory decree, does it? 14 A. It does. 15 Q. Did the Montana Supreme Court deny your 16 petition for rehearing? 17 A. It did. 18 Q. And then, for your reference, sir, 19 Exhibit 27, is the September 7, '21, order. 20 Did the Legislature order your office 21 immediately return the emails after the 22 September 7th order? 23 A. No. 24 Q. And then I think you mentioned it. I 25 believe, sir, you mentioned it, that you then filed</p>	<p style="text-align: right;">Page 185</p> <p>1 Manifold conflicts arose at every step of 2 litigation, and the Court ignored them all. 3 Do you see that? 4 A. I do. 5 Q. Page 38, the footnote at the bottom: 6 In addition to being untrue, these 7 statements -- again, statements of the Montana 8 Supreme Court -- these statements, a panageric to 9 insincerity, came after the nonparty justices stayed 10 their own subpoenas. 11 Did I read that correctly? 12 A. You did read that footnote correctly. 13 Q. Page 43: 14 The six McLaughlin justices refused to 15 withdraw. They charged ahead, ensuring a result 16 that bailed themselves out of an investigation 17 prompted by their own inappropriate behavior. 18 Did I read that right? 19 A. You did. 20 Q. Exhibit 45. 21 A. Exhibit 45 or Page 45? 22 Q. Sorry. Page 45. Thank you, sir. 23 It permitted them -- italics -- to resolve 24 the legal question of legislative subpoena power 25 and, by emasculating that power, to conceal judicial</p>

<p style="text-align: right;">Page 186</p> <p>1 branch misbehavior from the light of day. 2 Did I read that right? 3 A. You did. 4 Q. Now, you, the highest legal officer in the 5 state of Montana, state these things about the 6 highest court of our state in an open filing before 7 the highest court of our country; is that right? 8 A. Yes. 9 Q. That is disrespectful to the Montana 10 Supreme Court, isn't it? 11 A. No. 12 Q. It's intemperate, isn't it? 13 A. No. 14 Q. It's contemptuous, isn't it? 15 A. No. 16 Q. It's insulting? 17 A. No. 18 Q. These statements that you made to the 19 United States Supreme Court were undignified of our 20 profession, weren't they? 21 A. No. 22 Q. This statement in particular about judicial 23 branch misbehavior willfully and knowingly 24 undermines the presumed integrity and qualifications 25 of the justices of the Montana Supreme Court,</p>	<p style="text-align: right;">Page 188</p> <p>1 PR 23-0496, ODC File Number 21-094. And we're 2 prepared for cross-examination by Mr. Corrigan for 3 the respondent. 4 MR. CORRIGAN: Thank you, Mr. Chairman. 5 6 CROSS-EXAMINATION 7 BY MR. CORRIGAN: 8 Q. Mr. Attorney General, during Mr. Strauch's 9 questioning, it came up that your office filed a 10 motion to disqualify in Brown on April 16th; is that 11 correct? 12 A. I think we did talk about that. Yes. 13 Q. And you reviewed ODC Exhibit 39, which was 14 used to infer that your April 2021 response was 15 mistaken or incorrect. 16 A. Yes, I did. 17 MR. CORRIGAN: Could we bring up ODC 18 Exhibit 39, please. 19 Q. (By Mr. Corrigan) Under the rule -- let me 20 know when you're there, Mr. Attorney General. 21 A. What page was that? 22 Q. So under the rule of completeness, I'd 23 direct you to the previous page, Exhibit 39, Page 3 24 of the exhibit. 25 A. Okay.</p>
<p style="text-align: right;">Page 187</p> <p>1 doesn't it? 2 A. No. 3 MR. STRAUCH: Mr. Chairman, may I have the 4 commission's indulgence for a moment? 5 CHAIR OGLE: Yes, you may. 6 MR. STRAUCH: Thank you. 7 No further questions, Mr. Chair. 8 Mr. Knudsen, thank you for your time. 9 CHAIR OGLE: Thank you, Mr. Strauch. 10 Would you care to cross-examine, Mr. Corrigan? 11 MR. CORRIGAN: Yes, Mr. Chairman. 12 Could I request just a brief recess for a 13 restroom break? 14 CHAIR OGLE: Sure. We'll reconvene 15 in 10 minutes. 16 MR. CORRIGAN: Thank you. 17 (Break taken from 2:25 p.m. until 2:35 p.m.) 18 CHAIR OGLE: We're ready to get going 19 again, everyone. We would like to ask the audience 20 to be quiet back there. We've received some 21 complaints about noise in the audience there. I'd 22 like everybody to be quite so everyone can hear. 23 We appreciate that. 24 We're back on the record in the matter of Austin 25 Miles Knudsen, Supreme Court Cause Number</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. Could you please read the first sentence in 2 the last paragraph? 3 A. This is ODC Exhibit 39, Page 3? I think 4 I'm on the wrong page. 5 Q. So let's first go to Page 15, if we could, 6 of the exhibit. 7 We have a discrepancy. I'm sorry. It's -- 8 MR. CORRIGAN: Which page is it? 9 Q. (By Mr. Corrigan) It's Page 4 of 10 Exhibit 39. Sorry. There was a numbering 11 discrepancy. 12 Could you read the first sentence in the 13 last paragraph? In the last full paragraph? 14 A. All attorneys in the Department of Justice 15 operate under of the authority of the Office of the 16 Attorney General and make court filings under those 17 auspices. 18 Q. Could you read the next sentence, please? 19 A. The Attorney General's name appears 20 typically on all pleadings and motions. 21 Q. And could you read the next sentence? 22 A. Notwithstanding, the Attorney General is 23 rarely counsel of record in the normal sense and 24 rarely participates directly in discrete litigation. 25 Q. So was your answer here addressing whether</p>

<p style="text-align: right;">Page 190</p> <p>1 you personally filed the motion to disqualify or 2 whether your office did it? 3 A. Yeah, my answer was definitely that it was 4 done under the auspices of my office. 5 MR. COLEMAN: Apologies, Mr. Chairman. The 6 exhibit has sometimes Number 2 and sometimes 7 Number 3 because it's been Bates labeled, so there's 8 some confusion as to which 3 we're on. 9 Q. (By Mr. Corrigan) So we're turning to your 10 testimony that was highlighted. 11 In saying you personally didn't file the 12 motion, you didn't make a mistake there, did you? 13 A. No, that's correct. I did not personally 14 file this motion. 15 Q. And there are numerous court filings in the 16 Department of Justice that contain your name; 17 correct? 18 A. Most certainly. 19 Q. And you physically did not hit the "file" 20 button to file the response at issue? 21 A. That's correct. 22 MR. STRAUCH: Leading; Mr. Chairman. 23 CHAIR OGLE: Sustained. 24 MR. CORRIGAN: Mr. Chairman, as it relates 25 to leading questions, I'd like to address that it's</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. And could you read the first clause of the 2 first line after "I do affirm" and your name? 3 A. I will support the Constitution of the 4 United States and the Constitution of the State of 5 Montana. 6 Q. And does the Constitution of the 7 United States contain a clause known as the 8 due process clause? 9 A. It most certainly does. 10 Q. Did the Montana Legislature advance legal 11 theories under that due process clause in the course 12 of this litigation? 13 A. Yes. That was one of their main arguments 14 was that this -- these -- this unprecedented 15 situation that we all unfortunately found ourselves 16 in was a pretty flagrant violation of constitutional 17 due process. 18 Q. And then if you could go down -- we'll call 19 that clause the first one -- one, two, three, four, 20 five, six, seven -- to the line that says "I shall 21 faithfully discharge..."? 22 A. Yes. 23 Q. Does that say: 24 I shall faithfully discharge the duties of 25 an attorney and counselor at law to the best of my</p>
<p style="text-align: right;">Page 191</p> <p>1 well-recognized that a Court may allow counsel to 2 propound leading questions to his or her own witness 3 when it's been called as an adverse witness by 4 opposing counsel, and both the Tenth, Fifth, and 5 Seventh Circuits have agreed, as well as the 6 advisory committee notes for the federal rules. 7 CHAIR OGLE: I think you can elicit 8 responses from your own client without leading. 9 Q. (By Mr. Corrigan) So, Mr. Attorney General, 10 just to be clear, you do not personally file every 11 document that comes from the Department of Justice? 12 A. I do not -- 13 MR. STRAUCH: Objection; leading. 14 Q. (By Mr. Corrigan) Do you file 15 every document that comes from the -- 16 CHAIR OGLE: Sustained. 17 THE WITNESS: I do not. 18 CHAIR OGLE: Also, it's been asked and 19 answered. I think you've got this one on the 20 record. 21 Q. (By Mr. Corrigan) So, Mr. Attorney General, 22 I'd like to take you to ODC's Exhibit 40, which you 23 looked at. And on the first page, is this the oath 24 you took as a Montana attorney? 25 A. This is our Supreme Court oath. Yes.</p>	<p style="text-align: right;">Page 193</p> <p>1 knowledge and ability? 2 A. It does. 3 Q. Do you believe, in representing the 4 Legislature, you faithfully discharged the duties of 5 an attorney and counselor at law to the best of your 6 knowledge and ability? 7 A. I did. I do believe that. Yes. 8 Q. Attorney General Knudsen, you were asked by 9 Mr. Strauch about cases involving criminal 10 defendants and following court orders. 11 Do you remember that exchange? 12 A. I do. 13 Q. Do cases involving criminal defendants 14 typically concern separation of powers questions 15 between the legislative and judicial branches? 16 A. No. 17 Q. Would you say that they're not alike at 18 all? 19 MR. STRAUCH: Objection; leading. 20 MR. CORRIGAN: Withdrawn. 21 CHAIR OGLE: Sustained. 22 Q. (By Mr. Corrigan) Now, if we could go back 23 to ODC Exhibit 39, Page 15. Now, Mr. Strauch asked 24 you questions about doing things differently if you 25 could have done them over again.</p>

<p style="text-align: right;">Page 194</p> <p>1 Do you recall that exchange?</p> <p>2 A. I do.</p> <p>3 Q. And Mr. Strauch pointed to this exhibit,</p> <p>4 which was filed on December 6, 2021.</p> <p>5 Do you recall that exhibit?</p> <p>6 A. Yes.</p> <p>7 Q. How long ago was December 2021?</p> <p>8 A. Oh, I mean, we're getting on four years</p> <p>9 here.</p> <p>10 Q. Was the Montana Legislature's petition for</p> <p>11 writ of certiorari pending at that time?</p> <p>12 A. I believe so. Yes.</p> <p>13 Q. So this was filed during the pendency of</p> <p>14 this litigation at issue?</p> <p>15 A. Yes.</p> <p>16 Q. Now, Mr. Attorney General, you were asked</p> <p>17 by Mr. Strauch about what set off the events of the</p> <p>18 Brown and McLaughlin saga, and there was an exchange</p> <p>19 relating to when the Legislature issued its first</p> <p>20 subpoena.</p> <p>21 Do you recall that?</p> <p>22 A. I do.</p> <p>23 Q. And I think you testified that you thought</p> <p>24 that the Legislature had issued a subpoena first --</p> <p>25 or to the best of your recollection.</p>	<p style="text-align: right;">Page 196</p> <p>1 refresh the witness's memory.</p> <p>2 MR. STRAUCH: May I see it?</p> <p>3 (Document provided.)</p> <p>4 MR. CORRIGAN: It's just for -- it's just</p> <p>5 to refresh his memory as to date.</p> <p>6 CHAIR OGLE: Any objection, Mr. Strauch?</p> <p>7 MR. STRAUCH: Mr. Chairman, I understood</p> <p>8 he's just refreshing the recollection, and under the</p> <p>9 rule, when refreshing the recollection, the exhibit</p> <p>10 is not admitted.</p> <p>11 MR. CORRIGAN: That's fine.</p> <p>12 CHAIR OGLE: All right. Thank you.</p> <p>13 Q. (By Mr. Corrigan) So, Mr. Attorney General,</p> <p>14 Mr. Strauch asked you earlier -- pointed out to an</p> <p>15 exhibit where the Attorney General's Office filed a</p> <p>16 motion asking for additional time because the</p> <p>17 Legislature wanted to intervene in that case that, I</p> <p>18 believe, was filed on April 1st.</p> <p>19 Do you recall your discussion with</p> <p>20 Mr. Strauch on that?</p> <p>21 A. I do.</p> <p>22 Q. And one of the attachments was a letter</p> <p>23 from the Speaker and Senate President indicating</p> <p>24 that they wanted to get involved in that case; is</p> <p>25 that correct?</p>
<p style="text-align: right;">Page 195</p> <p>1 A. To the best of my recollection, yes.</p> <p>2 Q. If I told you that the record shows that</p> <p>3 the first subpoena was issued on or around April 8th</p> <p>4 or April 9th, does that sound correct to you?</p> <p>5 A. Yes.</p> <p>6 Q. To your knowledge, was the Montana</p> <p>7 Legislature ever granted intervention in the Brown</p> <p>8 litigation?</p> <p>9 A. I don't believe so, to my knowledge.</p> <p>10 Q. And what was the issue in Brown versus</p> <p>11 Gianforte? What was the subject of case?</p> <p>12 A. I'll go back. The underlying issue was</p> <p>13 Senate Bill 140. The underlying issue had to deal</p> <p>14 with the Legislature's passing and</p> <p>15 Governor Gianforte subsequently signing Senate</p> <p>16 Bill 140, which changed the process for judicial</p> <p>17 vacancy filling.</p> <p>18 Q. Now, Mr. Attorney General, do you recall</p> <p>19 the Legislature filing a motion to intervene as</p> <p>20 respondent in Brown versus Gianforte at some point?</p> <p>21 A. At some point, yes, but not specifically.</p> <p>22 Q. You don't recall the date?</p> <p>23 A. I do not.</p> <p>24 MR. CORRIGAN: I'd like to introduce</p> <p>25 Exhibit MM to reflect the witness's memory --</p>	<p style="text-align: right;">Page 197</p> <p>1 A. Yes.</p> <p>2 Q. Do you recall the date at which the Montana</p> <p>3 Legislature actually filed for intervention in Brown</p> <p>4 versus Gianforte?</p> <p>5 A. Well, I'm going to guess it was the 13th of</p> <p>6 April, 2021.</p> <p>7 Q. And I did the Attorney General's Office</p> <p>8 represent the Legislature for that motion to</p> <p>9 intervene?</p> <p>10 A. No.</p> <p>11 Q. Who represented the Legislature?</p> <p>12 A. That would have been the Jones Law Firm in</p> <p>13 Billings, Montana. Specifically attorneys Emily</p> <p>14 Jones and Talia G. Damrow.</p> <p>15 Q. So there was -- according to the math,</p> <p>16 there was approximately a 12-day period between the</p> <p>17 Department of Justice's motion accompanied by the</p> <p>18 Oestreicher declaration and when the Montana</p> <p>19 Legislature actually filed its motion to intervene.</p> <p>20 Does that sound right?</p> <p>21 A. That sounds correct.</p> <p>22 Q. And to your knowledge, the emergency order</p> <p>23 in McLaughlin occurred over the weekend of</p> <p>24 April 10th and 11th, 2021?</p> <p>25 A. That's when I was notified, if I remember</p>

<p style="text-align: right;">Page 198</p> <p>1 correctly, when I came in the following Monday.</p> <p>2 Yes.</p> <p>3 Q. Now, Mr. Attorney General, you were asked</p> <p>4 by Mr. Strauch about the validity of orders and</p> <p>5 following court orders.</p> <p>6 Do you remember that exchange?</p> <p>7 A. Yes.</p> <p>8 Q. Is an invalid court order valid?</p> <p>9 A. No.</p> <p>10 Q. Is an invalid order law?</p> <p>11 A. No.</p> <p>12 Q. If a Court issues order that is plainly</p> <p>13 discriminatory, is that valid?</p> <p>14 A. No.</p> <p>15 Q. If a Court issues an order that's -- that</p> <p>16 discriminates on the basis of race, is that valid?</p> <p>17 A. No.</p> <p>18 Q. Mr. Attorney General, are judges supposed</p> <p>19 to prejudge the laws that might become before them?</p> <p>20 A. They are not.</p> <p>21 Q. Did Judge Krueger indicate his opposition</p> <p>22 to SB 140 before agreeing to sit in judgment of</p> <p>23 SB 140?</p> <p>24 A. He did.</p> <p>25 Q. Did Supreme Court Administrator McLaughlin</p>	<p style="text-align: right;">Page 200</p> <p>1 asked you about a number of comments that I think</p> <p>2 you conceded were strong language in the AG's</p> <p>3 filings.</p> <p>4 Is that correct?</p> <p>5 A. Yes.</p> <p>6 Q. Do you recall that discussion?</p> <p>7 A. I do.</p> <p>8 Q. Was there strong language used about you by</p> <p>9 the Montana Supreme Court?</p> <p>10 A. There certainly was.</p> <p>11 Q. Did Justice Rice compare you to Andrew</p> <p>12 Jackson and the removal of the Cherokee in his Brown</p> <p>13 concurrence?</p> <p>14 A. He certainly did.</p> <p>15 Q. Does upholding the dignity of a court</p> <p>16 sometimes include pointing out potential ethical</p> <p>17 conflicts?</p> <p>18 A. It does, fortunately.</p> <p>19 Q. Mr. Attorney General, if you believe a</p> <p>20 judge has a conflict of interest, how do you ask for</p> <p>21 the judge's recusal without pointing out that</p> <p>22 conflict of interest.</p> <p>23 A. I certainly don't know the way to do it,</p> <p>24 and I think the case law backs that up.</p> <p>25 Q. I'd like to ask you to go back over your</p>
<p style="text-align: right;">Page 199</p> <p>1 delete emails pertaining to judicial polling on</p> <p>2 SB 140?</p> <p>3 A. Those emails disappeared. Whether they</p> <p>4 were deleted or through sloppiness, I can't say for</p> <p>5 certain. But we know they certainly were no longer</p> <p>6 in her possession.</p> <p>7 Q. Now, Mr. Attorney General, Mr. Strauch</p> <p>8 asked you about the -- a -- the judicial standards</p> <p>9 complaint process.</p> <p>10 Do you recall that discussion?</p> <p>11 A. I do.</p> <p>12 Q. Is there a difference between a judicial</p> <p>13 standards complaint and a recusal motion?</p> <p>14 A. Yes.</p> <p>15 Q. Are they two separate mechanisms?</p> <p>16 A. They are.</p> <p>17 Q. And are judicial standards complaints a</p> <p>18 fast mechanism for reaching a resolution on a</p> <p>19 judicial ethics issue?</p> <p>20 A. I couldn't say for sure. I would say</p> <p>21 probably not.</p> <p>22 Q. Is a violation of the code of judicial</p> <p>23 conduct a potential basis for a recusal motion?</p> <p>24 A. Certainly.</p> <p>25 Q. Now, Mr. Attorney General, Mr. Strauch</p>	<p style="text-align: right;">Page 201</p> <p>1 testimony and ask you some general questions, but is</p> <p>2 one of your duties to prosecute and defend all cases</p> <p>3 in the Supreme Court in which the State, or any</p> <p>4 officer of the State in the officer's official</p> <p>5 capacity is a party or which the State has an</p> <p>6 interest?</p> <p>7 A. Yes.</p> <p>8 Q. And does that make you and the attorneys</p> <p>9 under your supervision somewhat unique among Montana</p> <p>10 lawyers?</p> <p>11 A. I think that's a fair statement. Yes.</p> <p>12 Q. Do you have responsibilities that other</p> <p>13 Montana lawyers don't have?</p> <p>14 A. Certainly.</p> <p>15 Q. And you are a constitutional officer;</p> <p>16 correct?</p> <p>17 A. One of five. Yes.</p> <p>18 Q. And I think Mr. Strauch pointed out</p> <p>19 Rule 3.4(c) of the Rules of Professional Conduct.</p> <p>20 Are you familiar with that rule?</p> <p>21 A. Yes.</p> <p>22 Q. And that rule states that a lawyer should</p> <p>23 not knowingly disobey an obligation or the rules of</p> <p>24 the tribunal except for an open refusal based on an</p> <p>25 assertion that no valid obligation exists; correct?</p>

<p style="text-align: right;">Page 202</p> <p>1 A. That's correct.</p> <p>2 Q. And you're aware that eight of the counts</p> <p>3 of the complaint allege statements you made or</p> <p>4 approved in court filings supposedly violated</p> <p>5 Rule 3.4(c); correct?</p> <p>6 A. That is what it says.</p> <p>7 Q. When you made each of these statements,</p> <p>8 were you attempting to disobey any obligation under</p> <p>9 the rules of the Montana Supreme Court?</p> <p>10 A. No.</p> <p>11 Q. When you made or approved each of the</p> <p>12 identified statements, were you representing the</p> <p>13 legal views of your client, the Montana Legislature?</p> <p>14 A. Yes.</p> <p>15 Q. Was it your client's view that the Montana</p> <p>16 Supreme Court had no jurisdiction over the</p> <p>17 legislative subpoena at issue?</p> <p>18 A. That was their view as a coequal branch of</p> <p>19 government, which, again, is what makes this such a</p> <p>20 novel situation. You have a coequal branch of</p> <p>21 government in what we viewed at the time as a</p> <p>22 constitutional emergency crisis case with another</p> <p>23 coequal branch of government. And that was the</p> <p>24 position of the Montana Legislature, yes.</p> <p>25 Q. At the time did you believe your client's</p>	<p style="text-align: right;">Page 204</p> <p>1 maintaining consistency in your client's view that</p> <p>2 the Supreme Court couldn't exercise jurisdiction</p> <p>3 over someone who's a party to a case?</p> <p>4 A. Yes.</p> <p>5 Q. Now, Mr. Strauch pointed out the April 12th</p> <p>6 letter from Lieutenant General Kris Hansen to the</p> <p>7 Montana Supreme Court.</p> <p>8 Do you recall that letter?</p> <p>9 A. I do.</p> <p>10 Q. And do you recall Mr. Strauch asking you</p> <p>11 why it was appropriate to send a letter and not file</p> <p>12 a motion?</p> <p>13 A. I do.</p> <p>14 Q. Is it possible that it would prejudice your</p> <p>15 client's interests by filing a motion in a case to</p> <p>16 which they had a jurisdictional objection?</p> <p>17 A. That certainly is possible and was a</p> <p>18 concern.</p> <p>19 Q. Under the circumstances, did you believe</p> <p>20 sending a letter was the appropriate thing to do?</p> <p>21 A. Under the circumstances at the time, and</p> <p>22 with the information that we had, yes, we thought</p> <p>23 that was the most reasonable course of action.</p> <p>24 Q. And when you made each of those statements,</p> <p>25 were you attempting to disobey any obligation under</p>
<p style="text-align: right;">Page 203</p> <p>1 legal position about the Supreme Court having no</p> <p>2 authority over the legislative subpoenas was a</p> <p>3 reasonable legal position?</p> <p>4 A. I absolutely thought it was a reasonable</p> <p>5 legal position. There was absolutely no</p> <p>6 Supreme Court precedent on the scope of the</p> <p>7 legislative subpoena power, the limits of the</p> <p>8 legislative subpoena power. This was completely</p> <p>9 uncharted territory.</p> <p>10 Q. And was it also the view of the Montana</p> <p>11 Legislature, your client, that the Legislature could</p> <p>12 not be subject to the jurisdiction of any court when</p> <p>13 it was not a party in any proceeding before that</p> <p>14 court?</p> <p>15 A. Yes.</p> <p>16 Q. So at the time you made or approved these</p> <p>17 statements, it was the view of your client that the</p> <p>18 Supreme Court did not have the authority to review</p> <p>19 the legislative subpoenas; correct?</p> <p>20 A. That is correct.</p> <p>21 Q. And so did you make an open refusal based</p> <p>22 on an assertion that no valid obligation existed?</p> <p>23 A. Absolutely, yes.</p> <p>24 Q. And by placing some of the identified</p> <p>25 statements in letters to the Court, were you</p>	<p style="text-align: right;">Page 205</p> <p>1 the rules of the Montana Supreme Court?</p> <p>2 A. No.</p> <p>3 Q. Did you believe you had an ethical</p> <p>4 obligation to vigorously represent the interests of</p> <p>5 the Legislature in asserting the full scope of its</p> <p>6 constitutional powers?</p> <p>7 A. Very much so, yes.</p> <p>8 Q. Did you believe you need to put forward all</p> <p>9 reasonable grounds for your client, the</p> <p>10 Legislature's, constitutional authority?</p> <p>11 A. Yes. And exhaust every possible remedy</p> <p>12 that was available to them.</p> <p>13 Q. Were all the statements you made or</p> <p>14 approved good faith representations of your client's</p> <p>15 legal interests?</p> <p>16 A. They were.</p> <p>17 Q. So even after the Montana Supreme Court</p> <p>18 entered its initial few orders, you still believed</p> <p>19 you had an ethical responsibility to argue for your</p> <p>20 client's views until all opportunities for appeal</p> <p>21 were exhausted.</p> <p>22 A. We did --</p> <p>23 MR. STRAUCH: Mr. Chairman, leading.</p> <p>24 CHAIR OGLE: Sustained.</p> <p>25 Q. (By Mr. Corrigan) Mr. Attorney General, can</p>

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1 you discuss the view of the -- of your client as it
2 relates to exhausting all appeals?
3 **A. I can. Yeah, I mean, obviously --**
4 **MR. STRAUCH:** Leading.
5 **CHAIR OGLE:** Sustained. You can elicit
6 questions from your own client without leading him,
7 Mr. Corrigan.
8 Q. (By Mr. Corrigan) Mr. Attorney General, did
9 the Attorney General's Office exhaust all appeals on
10 behalf of the Legislature?
11 **A. We did.**
12 Q. And was that the Legislature's wishes?
13 **A. It was. After, I mean, several discussions**
14 **with both Kristin Hansen, and her discussions with**
15 **the Legislature, I mean, this was a case they wanted**
16 **to press hard. The Legislature and leadership in**
17 **the Legislature were quite forceful that this was an**
18 **area of law that the Supreme Court did not have --**
19 **the Montana Supreme Court, excuse me, did not have**
20 **authority to -- to involve themselves in. And we,**
21 **as an agency and the lawyer for that client,**
22 **believed it was our duty, and certainly it was our**
23 **client's wish, to exhaust any and all possible**
24 **avenues legally within the judicial system to -- to**
25 **press that point.**

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1 Q. Now, Mr. Strauch discussed with you the
2 period of time between the Montana Supreme Court's
3 decision in July of 2021 ordering the return of the
4 documents and when the documents were actually
5 returned in March of 2022.
6 Do you remember that discussion?
7 **A. Yes.**
8 Q. Were you actively appealing those orders
9 while you kept the documents?
10 **A. Absolutely.**
11 Q. Did you or your client have any concern
12 about prejudice if you returned the emails too soon?
13 **A. We did. I mean, there was definitely --**
14 **there was questions about prejudice, there was**
15 **questions about -- about spoliation. We had already**
16 **seen one batch of emails go missing from the**
17 **Supreme Court Administrator's office. That**
18 **absolutely was a concern of our client and, frankly,**
19 **a concern of ours. So the decision was made that**
20 **while we were exploring and exhausting judicial**
21 **review, that our office, the state's**
22 **Attorney General's Office, would retain those**
23 **documents pending those appeals. That retention was**
24 **done behind secure doors. The Department of Justice**
25 **is no stranger to personally identifiable**

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1 **information and sensitive information. We protect**
2 **it every day for the citizens of Montana.**
3 **And I will also state our staff is all**
4 **trained on that. Literally every member -- every**
5 **employee of the Department of Justice is trained**
6 **annually on protection of PII and security measures**
7 **because we were required to by the FBI.**
8 Q. I'd like to move next to Rule 8.2(a).
9 Do you recall discussion with Mr. Strauch
10 about Rule 8.2(a)?
11 **A. Yes.**
12 Q. And do you generally understand that
13 Rule 8.2(a) states that a lawyer shall not make a
14 statement that the lawyer knows to be false or with
15 reckless disregard as to its truth or falsity
16 concerning the qualifications or integrity of a
17 judge, an adjudicatory officer, or public legal
18 officer?
19 **A. Yes.**
20 Q. Does the rule say that you cannot challenge
21 the integrity of a judge?
22 **A. No. In fact, sometimes it's necessary,**
23 **unfortunately. I mean, I think any proceeding where**
24 **you have to ask to recuse a judge could be taken**
25 **personally and as disrespect by that judge. That's**

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1 **the nature of asking a judge to recuse themselves**
2 **because you believe they have a conflict.**
3 Q. When you made or approved any of the
4 statements at issue under Rule 8.2(a), did you know
5 that any of the statements were false?
6 **A. No.**
7 Q. Were they made with reckless disregard as
8 to the truth or falsity?
9 **A. No.**
10 Q. In your experience as an attorney, is it
11 common for a party to ask judge or judges to recuse
12 from a case if a judge would personally be affected
13 by the case?
14 **A. Absolutely common.**
15 Q. At the time you made or approved each of
16 these statements, was the position of the
17 Legislature that Montana Supreme Court justices
18 should not be ruling on a matter that potentially
19 involved their own emails and employee?
20 **A. Yes.**
21 Q. Are you aware of any way you could have
22 filed a motion seeking recusal of the justices that
23 didn't allege that the impartiality of the justices
24 might be questioned in the case?
25 **A. I'm -- no, I'm not aware of any other**

<p style="text-align: right;">Page 210</p> <p>1 mechanism.</p> <p>2 Q. Was that necessarily -- was that -- strike</p> <p>3 that.</p> <p>4 Was that necessary to adequately</p> <p>5 representing your client?</p> <p>6 A. Yes.</p> <p>7 Q. Now, Mr. Attorney General, I'd like to take</p> <p>8 you to Montana Rule of Professional Conduct 8.4(d)</p> <p>9 that you discussed with Mr. Strauch.</p> <p>10 Do you recall that discussion?</p> <p>11 A. Yes.</p> <p>12 Q. And you're familiar with that rule?</p> <p>13 A. Generally so, yes.</p> <p>14 Q. And does it state that it is professional</p> <p>15 misconduct for a lawyer to engage in conduct that is</p> <p>16 prejudicial to the administration of justice?</p> <p>17 A. I believe that's correct, yes.</p> <p>18 Q. You're aware that 20 counts from the</p> <p>19 complaint allege that statements you made or</p> <p>20 approved in court filings or letters supposedly</p> <p>21 violated Rule 8.4(d)?</p> <p>22 A. That's correct.</p> <p>23 Q. Within the proceedings of the cases at</p> <p>24 issue, did you ever take an action that interfered</p> <p>25 with the ability of any court to carry out its job?</p>	<p style="text-align: right;">Page 212</p> <p>1 documents?</p> <p>2 A. Immediately upon that denial of cert. Yes.</p> <p>3 Q. At that point do you believe you were in</p> <p>4 compliance with the Court's order?</p> <p>5 A. Yes.</p> <p>6 Q. When you were representing the Montana</p> <p>7 Legislature in this separation of powers conflict,</p> <p>8 were all of your statements made in articulation of</p> <p>9 client's position and defense of your client's legal</p> <p>10 interests?</p> <p>11 A. All of them, yes. And at vociferous</p> <p>12 insistence of my client, I will add.</p> <p>13 Q. Do you believe that your statements fit</p> <p>14 within common litigation strategies for defending a</p> <p>15 party's legal interests, such as challenging</p> <p>16 jurisdiction?</p> <p>17 A. Yes.</p> <p>18 Q. In your experience as an attorney, when</p> <p>19 attempting to gain review or reconsideration of an</p> <p>20 order that negatively affects your client, is it</p> <p>21 common to use strong language to criticize the</p> <p>22 order?</p> <p>23 A. It is.</p> <p>24 Q. Is a motion for consideration necessarily a</p> <p>25 motion that argues with a previous decision before</p>
<p style="text-align: right;">Page 211</p> <p>1 A. No. In fact, several rulings came --</p> <p>2 multiple came -- and, I mean, the court proceedings</p> <p>3 continued on. They were not stymied. They were not</p> <p>4 stopped. They were not adversely affected.</p> <p>5 Q. Did you ever take an action that defied a</p> <p>6 court order or court order outside the realm of</p> <p>7 judicial proceedings or litigation positions?</p> <p>8 A. No.</p> <p>9 Q. Did you obey the Montana Supreme Court's</p> <p>10 order to return the documents as soon as the</p> <p>11 Legislature's final appeals were exhausted?</p> <p>12 A. Immediately upon complete exhaustion of our</p> <p>13 judicial appeals and remedies, yes.</p> <p>14 MR. STRAUCH: Mr. Chairman, I didn't get a</p> <p>15 chance to object in there, but Counsel's statement</p> <p>16 mischaracterizes what the Supreme Court ordered.</p> <p>17 The Supreme Court ordered immediate return. The</p> <p>18 Supreme Court did not order return after whatever he</p> <p>19 said about filing a petition. It mischaracterizes</p> <p>20 the evidence.</p> <p>21 CHAIR OGLE: That's sustained. That's</p> <p>22 correct.</p> <p>23 Q. (By Mr. Corrigan) Mr. Attorney General,</p> <p>24 following the U.S. Supreme Court's denial of writ of</p> <p>25 certiorari, did you and your office return the</p>	<p style="text-align: right;">Page 213</p> <p>1 the Court?</p> <p>2 A. That's exactly what a motion for</p> <p>3 reconsideration is. Yes.</p> <p>4 Q. Would you have been upholding your ethical</p> <p>5 duty to your client if you didn't vigorously try to</p> <p>6 protect your client's legal rights against an</p> <p>7 adverse ruling as long as there was a chance that</p> <p>8 ruling might be reversed?</p> <p>9 A. No. That certainly was my and my</p> <p>10 attorneys' belief.</p> <p>11 Q. Would you have been upholding your ethical</p> <p>12 duty to your client if you simply refused to</p> <p>13 participate in this novel separation of powers</p> <p>14 conflict between the Legislature and the judiciary?</p> <p>15 A. No. And that really was a consideration</p> <p>16 that we had. This was a very difficult situation</p> <p>17 that the Department of Justice was put in. We did</p> <p>18 not jump into this thoughtlessly. That was a</p> <p>19 complete novel issue, and discussion was had with,</p> <p>20 Do we even want to get involved in this?</p> <p>21 But when you look at the duties of the</p> <p>22 Attorney General, I did not believe that was an</p> <p>23 option of ours.</p> <p>24 Q. So at the time this conflict began, did you</p> <p>25 believe you had a duty to represent the</p>

<p style="text-align: right;">Page 214</p> <p>1 Legislature's legal interest as far as those 2 interests could reasonably extend? 3 A. Absolutely, yes. 4 Q. At the time you represented the 5 Legislature, did you believe that the Legislature's 6 belief that the legislative subpoenas were 7 unreviewable was a reasonable legal position? 8 A. I did. Again, we were in completely 9 uncharted water, and there was absolutely no 10 guidance anywhere on what the limits or extent of 11 the legislative subpoena power was. And the 12 understanding was it was a completely separate 13 power. It's not a judicial subpoena. It's not a 14 court subpoena. We see it on the federal level as 15 well. I mean, this is something that the -- that 16 the Legislature has, power that they have. At the 17 time, we believed it was reasonable to think that 18 that was not something that the Montana judiciary 19 could involve themselves in. 20 Q. So now I'd like to take a step back and 21 think about the entire complaint and the allegations 22 as a whole. 23 Are all the statements at issue in the 24 complaint and the allegations statements you made in 25 your capacity while representing your client, the</p>	<p style="text-align: right;">Page 216</p> <p>1 against your or your subordinates as a result of 2 this litigation? 3 MR. STRAUCH: Objection; relevance, 4 Mr. Chairman. 5 CHAIR OGLE: Sustained. 6 MR. CORRIGAN: Mr. Chairman, if I could 7 have the commission's indulgence for just a couple 8 of minutes? 9 CHAIR OGLE: Yes. 10 MR. CORRIGAN: No further questions, 11 Mr. Chairman. 12 Thank you, Mr. Attorney General. 13 CHAIR OGLE: Thank you, Mr. Corrigan. 14 Any redirect, Mr. Strauch? 15 MR. STRAUCH: Yes. Thank you, 16 Mr. Chairman, members of the commission. 17 18 REDIRECT EXAMINATION 19 BY MR. STRAUCH: 20 Q. Mr. Attorney General, you are aware of the 21 fact that not a single count in the complaint 22 against you in this case relates to the act of 23 filing a motion on behalf of your client? You're 24 aware of that; right? You're not charged with 25 any -- let me back up.</p>
<p style="text-align: right;">Page 215</p> <p>1 Montana Legislature? 2 A. All of them. Yes. 3 Q. Are any of statements at issue in the 4 complaint your own personal statements? 5 A. No. 6 Q. And at the time did you believe these 7 statements were reasonable litigation positions? 8 A. Yes. 9 Q. And are you aware of any action that 10 delayed or altered the course of proceedings or 11 resulted in a direct disruption of pending 12 proceedings? 13 A. No. 14 Q. And were all of these statements a 15 reflection of your client's views during an ongoing 16 litigation process up until the point the case was 17 final? 18 A. Yes. 19 Q. Mr. Attorney General, are you aware of any 20 discipline, sanctions, or punishment imposed on you 21 or your subordinates by the Montana Supreme Court 22 during this litigation? 23 A. No. 24 Q. Are you aware of any ethical grievance 25 filed by an attorney involved in this litigation</p>	<p style="text-align: right;">Page 217</p> <p>1 You're not charged with any ethical 2 misconduct for moving to disqualify the justices, 3 have you been? 4 A. No. 5 Q. You're not charged with any misconduct for 6 having filed motions or petitions for rehearing, are 7 you? 8 A. I think some of the -- some of counts seem 9 like some of the language used, I could take it that 10 way. 11 Q. It's the what was said in the motions and 12 the petitions that you've been charged with; 13 correct? 14 A. I think that's accurate. Yes. 15 Q. Thank you. And since it is what was said, 16 I want to go back to some questions that I asked you 17 earlier. Because I believe, during the examination 18 by your lawyer, Mr. Corrigan, you said something to 19 the effect -- and I'm not putting words in your 20 mouth -- but you said something to the effect of 21 that there's only one way to point out a conflict of 22 interest, and that you obviously have to do that if 23 you're filing a motion to disqualify or a motion for 24 recusal based on a conflict of interest. 25 Is that a fair summary?</p>

<p style="text-align: right;">Page 218</p> <p>1 A. I think that's a fair summary.</p> <p>2 Q. Okay. Now, again, you haven't been charged</p> <p>3 with any ethical misconduct for filing a motion to</p> <p>4 disqualify based on a conflict of interest; true?</p> <p>5 A. I think that's true. Yes.</p> <p>6 Q. It's what was said. And -- and it's</p> <p>7 specifically things like this is "ludicrous," this</p> <p>8 statement is "wholly outside the bounds of rational</p> <p>9 thought." Telling the Court that, when it says it</p> <p>10 wasn't involved in polling, "that the public records</p> <p>11 tell the different tale." A statement that the</p> <p>12 Court is "perverse" to suggest that it will make</p> <p>13 that determination. A statement about the Court</p> <p>14 suffering from bias of Maslow's hammer. A statement</p> <p>15 that the Court "defies common and constitutional</p> <p>16 sense." A statement that we're here because of</p> <p>17 "questionable judicial conduct." A statement that</p> <p>18 Court's order is a confiscatory decree. A statement</p> <p>19 that its decision "blinks reality." Accusing the</p> <p>20 Court of "stunning counterfactual denial." Telling</p> <p>21 the Court that it's advisory statements must be</p> <p>22 withdrawn.</p> <p>23 None of those, first of all, have anything</p> <p>24 to do with telling the Court that it had a conflict</p> <p>25 of interest, do they?</p>	<p style="text-align: right;">Page 220</p> <p>1 Q. Okay. That's why I asked the question,</p> <p>2 because I wanted to see if you were walking back on</p> <p>3 what you told me. You're not. You're not walking</p> <p>4 back on what you told me, that maybe in hindsight</p> <p>5 some softer language could have been used?</p> <p>6 A. No, I'm not walking back on that.</p> <p>7 Q. And during questioning by your lawyer, I</p> <p>8 think -- I didn't write them all down, but you</p> <p>9 mentioned sometimes when orders can be invalid</p> <p>10 because they're discriminatory or maybe based on</p> <p>11 race, and you might have listed some others; right?</p> <p>12 A. My -- I think my lawyer did. Yeah.</p> <p>13 Q. And you agreed with him?</p> <p>14 A. Yeah.</p> <p>15 Q. And any of the orders of the Montana</p> <p>16 Supreme Court in this McLaughlin case that we talked</p> <p>17 about today discriminate or are they discriminatory</p> <p>18 based on race? I mean, is any of that here?</p> <p>19 A. No.</p> <p>20 Q. We, I believe, started with something from</p> <p>21 your lawyer on Exhibit 39, Page 4, and I just want</p> <p>22 to make sure I understand your testimony.</p> <p>23 Could you turn there, please?</p> <p>24 A. (Complies.)</p> <p>25 Q. I think your counsel read you this stuff</p>
<p style="text-align: right;">Page 219</p> <p>1 A. They certainly do. No, I won't agree with</p> <p>2 that.</p> <p>3 Q. Are you charged with one single count for</p> <p>4 telling the Montana Supreme Court in a polite and</p> <p>5 respectful way that you believe --</p> <p>6 MR. CORRIGAN: Objection; asked and</p> <p>7 answered.</p> <p>8 Q. (By Mr. Strauch) -- that it had a conflict</p> <p>9 of interest?</p> <p>10 CHAIR OGLE: Overruled.</p> <p>11 THE WITNESS: As I stated earlier, no, not</p> <p>12 directly.</p> <p>13 Q. (By Mr. Strauch) Is it your testimony that</p> <p>14 it was necessary to use the language that you used?</p> <p>15 That it was necessary?</p> <p>16 A. In this unprecedented situation where we</p> <p>17 had absolutely no guidance and no case law, and</p> <p>18 where we had a bona fide belief that this was an</p> <p>19 unprecedented constitutional clash, yes.</p> <p>20 Q. You still do believe it was necessary?</p> <p>21 A. As I testified earlier, if I could employ</p> <p>22 some hindsight here, I certainly would on some of</p> <p>23 these things. I think everyone wishes cooler heads</p> <p>24 would have prevailed. But it was -- it was a highly</p> <p>25 charged, very emotional time period there.</p>	<p style="text-align: right;">Page 221</p> <p>1 that's highlighted -- the Montana Attorney General</p> <p>2 did not file a motion to disqualify, that motion was</p> <p>3 filed by Oestreicher. And then I think you</p> <p>4 basically said, Yeah, I didn't personally -- you</p> <p>5 know, I'm not often personally involved in things.</p> <p>6 Do you remember that?</p> <p>7 A. Yeah.</p> <p>8 Q. And I couldn't tell from the questioning</p> <p>9 whether he was attempting to suggest that you didn't</p> <p>10 file this motion to disqualify.</p> <p>11 Is that what you understood, that you did</p> <p>12 not personally file the motion to disqualify? Is</p> <p>13 that what you were trying to say?</p> <p>14 A. Without looking at that motion right in</p> <p>15 front of me, Counsel, I honestly can't tell you</p> <p>16 who -- who filed it.</p> <p>17 Q. Well, okay. That's fair.</p> <p>18 A. Certainly done under the auspices of the</p> <p>19 Department of Justice.</p> <p>20 Q. That's fair. But the letter -- I mean, the</p> <p>21 brief says -- excuse me. It's not a brief. It's</p> <p>22 your response to the Office of Disciplinary Counsel.</p> <p>23 It says:</p> <p>24 However, the Montana Attorney General did</p> <p>25 not file a motion to disqualify. That motion was</p>

<p style="text-align: right;">Page 222</p> <p>1 filed by Oestreicher and is referenced in Exhibit 2. 2 Do you see that? 3 A. I do see that. 4 Q. Now, Exhibit 2 is attached also to your 5 response to the Office of Disciplinary Counsel. 6 It's on Page 18 of Exhibit 39. 7 Do you see that? 8 A. Yes. 9 Q. This is the motion to disqualify the 10 justices; right? 11 A. Yes. 12 Q. And your name is at the top of it? 13 A. It is. 14 Q. So you're not suggesting that you weren't 15 involved in this, were you? Is that what you're 16 trying to suggest? 17 A. No. 18 Q. I have to ask you about this statement that 19 you made, that you were afraid if you followed the 20 Montana Supreme Court order, July 14th of '21, to 21 immediately return emails, that you were concerned 22 about -- I believe you said prejudice and 23 spoliation. 24 Is that what you said? 25 A. I mean, without having it read back to me,</p>	<p style="text-align: right;">Page 224</p> <p>1 A. I think that was a legislative subpoena, 2 not from my office. 3 Q. Understood. But the emails were still 4 there, weren't they, because you got them? 5 A. They were on the Department of 6 Administration servers, yes. 7 Q. Do you see these two boxes here, sir? 8 Right here next to the table? 9 A. Yep. 10 Q. Two boxes. Two boxes full of emails that 11 the Legislature got from the subpoena, obviously not 12 destroyed; right? 13 A. Obviously not. 14 Q. And what reasonable belief did you have 15 that, had a subpoena been sent to Ms. McLaughlin, 16 the court administrator, that she would not have had 17 a search undertaken in the court network? What 18 reasonable belief did you have? 19 A. Her appearance before the Legislature, I 20 believe, where she stated that they no longer had 21 those emails in their possession. 22 Q. No, sir. That's not what she stated, is 23 it? 24 A. To the best of my recollection, that's what 25 was stated.</p>
<p style="text-align: right;">Page 223</p> <p>1 but something along those lines. Yes. 2 Q. I think it's what you said. But, 3 spoliation, what does that mean? 4 A. The spoiling of evidence. 5 Q. You mean to imply that if you returned the 6 emails to the court administrator, she would spoil 7 them? She would destroy them? 8 A. Counsel, I think my words speak for 9 themselves, but -- 10 Q. They do. They do. But I want to hear it. 11 That's -- that was -- you actually were concerned 12 that if you followed the order, the court 13 administrator would spoil evidence? 14 A. We had had previous instance that emails 15 were accidentally deleted. 16 Q. Well, now -- 17 A. And so there was concern on behalf of my 18 clients, yes. 19 Q. Deleted from where? Deleted from 20 Ms. McLaughlin's inbox only; right? 21 A. I don't know the answer to that. 22 Q. Well, you do know the answer to that, 23 because when you guys sent the subpoena to the 24 Department of Administration, the emails were still 25 on the network, weren't they?</p>	<p style="text-align: right;">Page 225</p> <p>1 Q. Earlier today you actually did say what she 2 said. She said she was sorry, that it was sloppy 3 that she had deleted them from her inbox. 4 Isn't that correct? 5 A. Well, I think we're probably splitting 6 hairs, but, yes, that was what she said. 7 Q. And during questioning by your lawyer -- I 8 think he said something and you agreed with him -- 9 but to the effect of none of the statements made are 10 your personal statements. 11 And you agreed with him; right? 12 A. I did. 13 Q. But the letter that you wrote to the 14 Supreme Court was your personal statement, wasn't 15 it? 16 A. That was -- that was a letter that I sent 17 to the Court in the course of a very heated dispute 18 with the judiciary that I felt was in the course of 19 my job as an attorney representing my client, and 20 looking out for my attorneys, frankly. 21 Q. 19, sir, please. This is the letter -- 22 this is the letter that you wrote the Court; right? 23 A. It is. 24 Q. Your signature, your personal signature as 25 the Attorney General, is on this letter?</p>

<p style="text-align: right;">Page 226</p> <p>1 A. It is.</p> <p>2 Q. Thank you.</p> <p>3 No further questions.</p> <p>4 CHAIR OGLE: Very well. I think we're</p> <p>5 finished with this witness and you can be excused,</p> <p>6 Mr. Knudsen.</p> <p>7 THE WITNESS: Thank you, Mr. Chairman.</p> <p>8 CHAIR OGLE: You can call your next</p> <p>9 witness.</p> <p>10 MR. STRAUCH: Mr. Chairman, our next</p> <p>11 witness is Ms. McLaughlin, but she, as you know, is</p> <p>12 not available at the moment. And so I was wondering</p> <p>13 if -- if we could have a discussion about scheduling</p> <p>14 briefly here, because I'm not sure the order of the</p> <p>15 witnesses that the respondent is going to call or</p> <p>16 how long the respondent anticipates his case to be.</p> <p>17 Ms. McLaughlin does have some availability. She</p> <p>18 has availability today to testify remotely before</p> <p>19 5:00 o'clock. She has availability tomorrow morning</p> <p>20 from 8:00 to 1:00. And then her next availability</p> <p>21 would be Friday afternoon.</p> <p>22 And -- and as you know, our intent is to call</p> <p>23 her in-person, if possible. But in order to make</p> <p>24 that determination, I think we need some calculus</p> <p>25 from the respondent's table in terms of how long</p>	<p style="text-align: right;">Page 228</p> <p>1 MR. STRAUCH: Yes. But also again tomorrow</p> <p>2 morning. So think if you guys started and weren't</p> <p>3 finished, she could probably -- the information I</p> <p>4 have. I have to get in touch with her. She could</p> <p>5 probably finish in the morning, if you wish.</p> <p>6 MR. CORRIGAN: We do -- would it be</p> <p>7 possible to do her direct now and do her cross</p> <p>8 tomorrow morning?</p> <p>9 MR. STRAUCH: That's up to Mr. Chairman.</p> <p>10 I wouldn't have an objection to that,</p> <p>11 Mr. Chairman.</p> <p>12 MR. CORRIGAN: I'm just not sure we're</p> <p>13 going to meet the 90-minute window.</p> <p>14 CHAIR OGLE: Well, why don't we go ahead,</p> <p>15 call her now, do the direct, see where we're at.</p> <p>16 And if you guys can do the cross today, fine.</p> <p>17 Otherwise we can do the cross in the morning.</p> <p>18 MR. STRAUCH: Makes sense to me.</p> <p>19 May I make a -- take a five-minute break and</p> <p>20 make a phone call?</p> <p>21 CHAIR OGLE: Yeah. Let's take a</p> <p>22 five-minute break. See if you can line that up to</p> <p>23 call her today, and then we'll see where we're at in</p> <p>24 terms of cross.</p> <p>25 (Break taken from 3:25 p.m. until 3:38 p.m.)</p>
<p style="text-align: right;">Page 227</p> <p>1 they think their case is going to be.</p> <p>2 I personally believe, your Honor -- or</p> <p>3 Mr. Chairman, that the case is proceeding</p> <p>4 expeditiously. If I had to take a guess, we'd be</p> <p>5 done by tomorrow, which means calling Ms. McLaughlin</p> <p>6 on Friday afternoon makes no sense at all.</p> <p>7 And so I would invite a discussion here. And we</p> <p>8 can certainly call her right now, but it will be</p> <p>9 remotely.</p> <p>10 CHAIR OGLE: Is she your last witness?</p> <p>11 MR. STRAUCH: She is.</p> <p>12 CHAIR OGLE: Okay.</p> <p>13 Do you have an idea of how long her testimony</p> <p>14 would take?</p> <p>15 MR. STRAUCH: Well, I'm judging from how</p> <p>16 long -- I think I can be done in less than an hour,</p> <p>17 Mr. Chairman.</p> <p>18 CHAIR OGLE: You say her -- so she's</p> <p>19 available now, she's available at 8:00 o'clock in</p> <p>20 the morning?</p> <p>21 MR. STRAUCH: Yes, sir.</p> <p>22 CHAIR OGLE: Okay.</p> <p>23 MR. COLEMAN: I think -- did she -- did you</p> <p>24 say, Mr. Strauch, she may be available only until</p> <p>25 5:00? Is that the cutoff?</p>	<p style="text-align: right;">Page 229</p> <p>1 CHAIR OGLE: All right. After a brief</p> <p>2 recess here, counsel have conferred, and the ODC</p> <p>3 is -- as I understand it, Mr. Strauch, you're going</p> <p>4 to rest your case subject to the ability to call</p> <p>5 Ms. McLaughlin first thing in the morning remotely.</p> <p>6 MR. STRAUCH: Yes, sir.</p> <p>7 CHAIR OGLE: And then the respondent has</p> <p>8 agreed to withdraw their objection to</p> <p>9 cross-examining Ms. McLaughlin remotely, and so</p> <p>10 they're going to call Mr. Greenwood as their first</p> <p>11 witness today. We will have Mr. Greenwood's</p> <p>12 testimony, and then we'll call Ms. McLaughlin first</p> <p>13 thing in the morning for both direct and cross. And</p> <p>14 then we'll proceed with the respondent's case.</p> <p>15 MR. CORRIGAN: Yes, Mr. Chairman. That's</p> <p>16 our understanding as well.</p> <p>17 CHAIR OGLE: All right. Is that acceptable</p> <p>18 to you, Mr. Strauch.</p> <p>19 MR. STRAUCH: Yes, Mr. Chairman.</p> <p>20 CHAIR OGLE: Did I state that correctly?</p> <p>21 MR. STRAUCH: Yes, Mr. Chairman.</p> <p>22 And so, for the record. ODC rests its case</p> <p>23 subject to calling Ms. McLaughlin out of turn in</p> <p>24 respondent's case tomorrow morning remotely.</p> <p>25 CHAIR OGLE: Did you get all that on the</p>

<p style="text-align: right;">Page 230</p> <p>1 record?</p> <p>2 THE COURT REPORTER: I did.</p> <p>3 CHAIR OGLE: All right. So go ahead and</p> <p>4 call Mr. Greenwood then, Mr. Corrigan.</p> <p>5 MR. CORRIGAN: Mr. Chairman, respondent</p> <p>6 Austin Knudsen calls Bowen Greenwood.</p> <p>7 CHAIR OGLE: Very well.</p> <p>8 (Witness sworn.)</p> <p>9</p> <p>10 DIRECT EXAMINATION OF BOWEN GREENWOOD</p> <p>11 BY MR. CORRIGAN:</p> <p>12 Q. Good afternoon, Mr. Greenwood.</p> <p>13 A. Good afternoon.</p> <p>14 Q. Could you state your name for the record?</p> <p>15 A. Bowen Greenwood.</p> <p>16 Q. And where do you reside?</p> <p>17 A. Helena, Montana.</p> <p>18 Q. And what is your current job title?</p> <p>19 A. I'm the clerk of the Montana Supreme Court.</p> <p>20 Q. And how long have you had that job?</p> <p>21 A. Since January 7th of 2019.</p> <p>22 Q. And how did you get that job?</p> <p>23 A. I was elected by the people of Montana in</p> <p>24 November of 2018.</p> <p>25 Q. Were you the clerk of the Court in April of</p>	<p style="text-align: right;">Page 232</p> <p>1 those have been deemed compliant, then we mark them</p> <p>2 as filed, which makes it an official public record,</p> <p>3 a filing.</p> <p>4 Q. When a document is filed, does it go</p> <p>5 directly to the justices of the Supreme Court?</p> <p>6 A. Most of the time, no. An appeal, for</p> <p>7 example, follows a set briefing schedule. A notice</p> <p>8 of appeal comes in, and then there's an certain</p> <p>9 amount of time for a district court record, for a</p> <p>10 transcript, for the first brief.</p> <p>11 Documents that are filed don't necessarily</p> <p>12 go to the Court until my office sends them there.</p> <p>13 Q. Is there a term for when your office sends</p> <p>14 them to the Montana Supreme Court?</p> <p>15 A. We just call it "send to Court" or "route</p> <p>16 to justice" sometimes.</p> <p>17 Q. Is there any type of special process for</p> <p>18 filing an emergency motion with the Montana</p> <p>19 Supreme Court?</p> <p>20 A. The Montana rules of appellate procedure</p> <p>21 make no provision for emergency functions.</p> <p>22 Q. Now, when parties file documents with your</p> <p>23 office, can they file paper copies?</p> <p>24 A. It is possible to file on paper, yes.</p> <p>25 Q. Can they file documents any other way?</p>
<p style="text-align: right;">Page 231</p> <p>1 2021?</p> <p>2 A. I was.</p> <p>3 Q. What are the duties of the clerk of the</p> <p>4 Supreme Court?</p> <p>5 A. Generally speaking, we file documents</p> <p>6 according to the appellate rules. I like to tell</p> <p>7 people that the clerk's office is the front door of</p> <p>8 the Montana Supreme Court. Every case begins with</p> <p>9 us. Every appeal, every original proceeding,</p> <p>10 everybody's documents are filed on time and</p> <p>11 according to the rules for every document, every</p> <p>12 person, every time.</p> <p>13 Q. And in your position do you regularly work</p> <p>14 with the Montana Supreme Court?</p> <p>15 A. Yes.</p> <p>16 Q. And in your position do you regularly work</p> <p>17 with the office of the Supreme Court administrator?</p> <p>18 A. Yes.</p> <p>19 Q. I think you testified a second ago that</p> <p>20 your office deals with filings.</p> <p>21 What is a filing?</p> <p>22 A. People want to start a case at the Montana</p> <p>23 Supreme Court, and they do that with a document of</p> <p>24 some kind -- a notice of appeal, an original</p> <p>25 proceeding, any of those types of things. And when</p>	<p style="text-align: right;">Page 233</p> <p>1 A. The most common other way of filing is what</p> <p>2 we call e-filing or electronic filing.</p> <p>3 I want to just point out for anybody who</p> <p>4 might not know, that that is not the same thing as</p> <p>5 filing by email. The appellate rules don't allow</p> <p>6 for filing by email. There are a limited number of</p> <p>7 circumstances in which a person can file by fax</p> <p>8 machine.</p> <p>9 Q. So can a filing get to the Montana</p> <p>10 Supreme Court without going through your office?</p> <p>11 A. No, not any kind of regular filing that I</p> <p>12 would be involved with anyway.</p> <p>13 Q. And when the Montana Supreme Court issues</p> <p>14 an order, does it also go through your office?</p> <p>15 A. Correct. Yes.</p> <p>16 Q. Do you maintain the Montana Supreme Court's</p> <p>17 docket sheet?</p> <p>18 A. We keep the docket in our office. Yes.</p> <p>19 Q. And what are your hours of business?</p> <p>20 A. Monday through Friday, 8:00 to 5:00.</p> <p>21 Q. And who sets your hours of business?</p> <p>22 A. The appellate rules require that filings</p> <p>23 being be accepted during those hours, and so we're</p> <p>24 open those hours.</p> <p>25 Q. I'd like to bring up ODC Exhibit 10. I</p>

<p style="text-align: right;">Page 234</p> <p>1 think you have the binder. 2 A. All right. Number 10. 3 Q. Do you recognize this document? 4 A. Yes. 5 Q. Is that your stamp on the top right corner? 6 A. Yes. 7 Q. What does your stamp mean? 8 A. That means this document was filed in. 9 Q. And is this the Montana Supreme Court's 10 temporary order quashing the legislative subpoenas 11 on April 11, 2021? 12 A. Correct. 13 Q. What day of the week was April 11, 2021? 14 A. That was a Sunday. 15 Q. Do you normally work on Sundays? 16 A. No. 17 Q. Is it normal for the Montana Supreme Court 18 to decide motions over the weekend? 19 A. No. 20 Q. So if someone called you on a Sunday and 21 said they'd like the Supreme Court to consider their 22 emergency motion, do you have the power to put that 23 in front of the justices? 24 A. No. 25 Q. Did you send Beth McLaughlin's emergency</p>	<p style="text-align: right;">Page 236</p> <p>1 A. No. 2 Q. Did you go home after you sent the 3 emergency motion to Justice Rice? 4 A. No. 5 Q. Why not? 6 A. Because I had been told to expect an order. 7 Q. Prior to the weekend of April 11, 2021, had 8 you ever been called to file something on weekend? 9 A. No. 10 Q. Does the Montana Supreme Court promptly 11 review emergency motions over the weekend when 12 they're filed over a weekend? 13 A. No. 14 Q. To your knowledge, has the Montana 15 Supreme Court ever met on a weekend other than 16 Sunday, April 11, 2021? 17 A. Not during my term of office. 18 Q. Would any other individual besides 19 Supreme Court Administrator Beth McLaughlin have 20 been able to have the Montana Supreme Court consider 21 her emergency motion on a Sunday? 22 A. No one in the state of Montana can get 23 something filed on a weekend without some kind of 24 extra-rule procedure. 25 Q. Did this filing follow the normal process?</p>
<p style="text-align: right;">Page 235</p> <p>1 motion to the Supreme Court on Sunday, April 11, 2 2021? 3 A. That's correct, as far as it goes. 4 Q. On whose authority did you send Beth 5 McLaughlin's emergency motion to the Supreme Court 6 on Sunday, April 11, 2021? 7 A. Justice Rice. 8 Q. Did Justice Rice contact you directly? 9 A. Yes. 10 Q. What was the outcome of that conversation? 11 A. I was -- the outcome of that conversation 12 was that I came into the office to work on a case. 13 Q. And did you send Administrator McLaughlin's 14 emergency motion directly to Acting 15 Chief Justice Rice? 16 A. First Justice Rice asked for a part of that 17 filing to be emailed to him. And after he had 18 considered that and taken some other steps, then we 19 filed the emergency motion. 20 Q. Was that the only contact you had with 21 Justice Rice that day? 22 A. No. There was at least one other series of 23 text messages or phone calls. 24 Q. Was that the only document you filed that 25 day?</p>	<p style="text-align: right;">Page 237</p> <p>1 A. No. 2 Q. Tell me a -- excuse me. 3 Why not? 4 A. Normally, if a document is e-filed over the 5 weekend, that document will be processed in on 6 Monday at 8:00 o'clock. A prisoner, a politician, a 7 parent losing custody of their children -- any of 8 those people would wait till Monday morning at 9 8:00 o'clock. The only case of which I'm aware 10 where that was not the case was the Court's own 11 employee. 12 Q. Did Beth McLaughlin get special treatment? 13 A. Yes. 14 MR. STRAUCH: Objection, your Honor. That 15 is -- calls for a legal conclusion. This gentleman 16 is not a licensed -- 17 MR. CORRIGAN: Sorry, special treatment is 18 not a -- 19 CHAIR OGLE: Sustained. 20 Q. (By Mr. Corrigan) Did Beth McLaughlin's 21 position as Supreme Court administrator allow her to 22 file her motion over a weekend? 23 MR. STRAUCH: Objection; calls for 24 speculation, expert testimony. 25 CHAIR OGLE: Sustained.</p>

<p style="text-align: right;">Page 238</p> <p>1 Q. (By Mr. Corrigan) Mr. Greenwood, are you 2 aware of anyone else who's been able to file a 3 motion over a weekend other than Supreme Court 4 Administrator McLaughlin? 5 A. No. 6 MR. CORRIGAN: No further questions. 7 8 CROSS-EXAMINATION 9 BY MR. STRAUCH: 10 Q. Mr. Greenwood, how are you? 11 A. Doing great. Thank you. 12 Q. Good. You and I have met, I think, the 13 other day, right, for the first time? 14 A. As far as I know, yes. 15 Q. Tim Strauch. Nice to see you again. Thank 16 you. 17 Are you an attorney licensed in the state 18 of Montana? 19 A. I am not. 20 Q. Have you ever practiced law? 21 A. No. 22 Q. Have you ever appeared in court as counsel 23 of record? 24 A. No. 25 Q. So obviously, based on your experience,</p>	<p style="text-align: right;">Page 240</p> <p>1 renewal policy or maybe what benefits you have or 2 some type of employment question, for that matter. 3 A. Well, the human -- 4 Q. Do you take those up with the court 5 administrator's office? 6 A. The human resources department is part of 7 the court administrator's office, so I'm sure we 8 have that kind of conversation. Yeah. 9 Q. All right. Would you want those emails 10 being leaked out to someone other than the court 11 administrator's office? 12 A. Your question is would I want that? 13 Q. Yes? 14 A. I strongly believe that a state employee 15 creating a document on state time owes that document 16 to the people of Montana. 17 Q. My question is, would you want your 18 personal employment information and healthcare 19 information being released to anyone other than the 20 judicial branch? 21 A. As a state employee and an elected 22 official, I would want the people of Montana to have 23 any of my emails they ask for. 24 Q. Who asked for it? 25 A. For mine?</p>
<p style="text-align: right;">Page 239</p> <p>1 being called in to file something on Sunday is an 2 extraordinary event? 3 A. Very. 4 Q. You were asked questions about can you 5 think of any other time when you were to be called 6 in on Sunday, and you couldn't; right? 7 A. I am not aware of any other time, no. 8 Q. Can you think of any other time that a 9 subpoena was sent for every judicial branch email 10 for a specified period of time to someone other than 11 the judicial branch? 12 A. That would be information I don't have. 13 Q. Can you think of such a thing? 14 A. I have no information about that. 15 Q. When you -- do you have emails with Beth 16 McLaughlin from time to time? 17 A. I certainly do, yes. 18 Q. And do you have to take up personal 19 matters, employment matters or maybe health 20 insurance stuff, with the court administrator's 21 office? 22 A. Do I take up health insurance matters with 23 the court administrator's office? 24 Q. Yeah. I mean, like if you have a question 25 about, I don't know, getting a policy in effect or a</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. Yeah. Who asked for your emails? You 2 want -- 3 A. If anybody -- if a taxpayer, a citizen of 4 Montana wants to know what I do on public time, I 5 want them to get that information. 6 Q. Well, I'm not asking -- I guess you maybe 7 missed my question. But I'm not asking about your 8 official duties. I'm asking about your personal 9 healthcare records and stuff like that. 10 You want the taxpayers to see that? 11 A. I don't see why I wouldn't. I -- I -- I 12 don't see what's the problem with that. 13 Q. You do understand, don't you, that -- that 14 personnel records, human resources records, are 15 strictly confidential under Montana law? Don't you 16 understand that? 17 A. That's correct. I would not want any of my 18 employees' confidential information shared with the 19 public. 20 MR. STRAUCH: Thank you. 21 MR. CORRIGAN: Redirect, Mr. Chairman? 22 CHAIR OGLE: Yes. 23 /// 24 /// 25 ///</p>

<p style="text-align: right;">Page 242</p> <p>1 REDIRECT EXAMINATION</p> <p>2 BY MR. CORRIGAN:</p> <p>3 Q. Mr. Greenwood, Mr. Strauch just asked you</p> <p>4 about what you would or would not want occurring</p> <p>5 over state email; do you recall that?</p> <p>6 A. I do.</p> <p>7 Q. If you had been conducting a poll of all</p> <p>8 Montana judges on pending legislation, would you</p> <p>9 expect that that email would be released publicly?</p> <p>10 MR. STRAUCH: Objection, your Honor. Calls</p> <p>11 for a legal conclusion, expert testimony. This</p> <p>12 witness is not a lawyer.</p> <p>13 MR. CORRIGAN: It's the same hypothetical</p> <p>14 Mr. Strauch that just proposed --</p> <p>15 CHAIR OGLE: Objection sustained.</p> <p>16 Q. (By Mr. Corrigan) Mr. Greenwood, does your</p> <p>17 office follow state email policy?</p> <p>18 A. Absolutely.</p> <p>19 Q. Are you required to?</p> <p>20 A. Yes.</p> <p>21 Q. And when you create an email, do you</p> <p>22 understand that that email might be subject to</p> <p>23 disclosure?</p> <p>24 A. Yes.</p> <p>25 Q. And is that email state property?</p>	<p style="text-align: right;">Page 244</p> <p>1 Mr. Corrigan?</p> <p>2 MR. CORRIGAN: Senator Greg Hertz and</p> <p>3 Speaker Wylie Galt.</p> <p>4 CHAIR OGLE: Okay. And you how long do you</p> <p>5 anticipate for each of them?</p> <p>6 MR. CORRIGAN: I would imagine for Wylie</p> <p>7 Galt, no more than a half an hour; for</p> <p>8 Senator Hertz, no more than an hour.</p> <p>9 CHAIR OGLE: Okay. And I'm not trying to</p> <p>10 constrain you. I'm just trying to get a little bit</p> <p>11 of an idea how long.</p> <p>12 And how long do you think it might take for Beth</p> <p>13 McLaughlin, Tim?</p> <p>14 MR. STRAUCH: Mr. Chairman, I anticipate</p> <p>15 direct, less than an hour. That's about as good as</p> <p>16 I can do at the moment.</p> <p>17 CHAIR OGLE: All right.</p> <p>18 MR. CORRIGAN: Mr. Chairman, if I can ask a</p> <p>19 clarification question, if the commission intends to</p> <p>20 request posttrial briefing on proposed findings of</p> <p>21 fact and conclusions of law following the end of</p> <p>22 this hearing?</p> <p>23 CHAIR OGLE: Let me think on that over the</p> <p>24 evening. We typically have not asked for that in</p> <p>25 the past, but this a little different situation.</p>
<p style="text-align: right;">Page 243</p> <p>1 A. Yes.</p> <p>2 Q. And do you understand that there are some</p> <p>3 things that are not appropriate for state email?</p> <p>4 A. Absolutely. Yes.</p> <p>5 MR. CORRIGAN: No further questions,</p> <p>6 Mr. Chairman.</p> <p>7 CHAIR OGLE: So is that the last witness</p> <p>8 you want to call today then, Mr. Corrigan?</p> <p>9 MR. CORRIGAN: Yes, Mr. Chairman. We told</p> <p>10 our other two witnesses to -- to go home for the</p> <p>11 evening, so if we could start tomorrow with</p> <p>12 Administrator McLaughlin, we can get to our two</p> <p>13 other witnesses after that.</p> <p>14 CHAIR OGLE: Okay.</p> <p>15 MR. STRAUCH: And, Mr. Chairman, may I</p> <p>16 understand the respondent's witness lineup, please?</p> <p>17 MR. CORRIGAN: We intend to call</p> <p>18 Senator Greg Hertz and Speaker Wylie Galt.</p> <p>19 MR. STRAUCH: And that's it?</p> <p>20 MR. CORRIGAN: Uh-huh.</p> <p>21 CHAIR OGLE: And do you anticipate how long</p> <p>22 that's going to take.</p> <p>23 MR. PARKER: Very short. No more than a</p> <p>24 half-hour each. Maybe quite a bit less.</p> <p>25 CHAIR OGLE: Who are the two witnesses,</p>	<p style="text-align: right;">Page 245</p> <p>1 MR. STRAUCH: Mr. Chairman, that does raise</p> <p>2 another just housekeeping type of thing. I</p> <p>3 typically do not give a closing argument when I was</p> <p>4 ODC. In this case I would like to, if the Court --</p> <p>5 if the commission would entertain it. I certainly</p> <p>6 expect the respondent would as well. And if I had</p> <p>7 to -- if I had to estimate, my time of closing would</p> <p>8 be in the neighborhood of 30 to 40 minutes.</p> <p>9 CHAIR OGLE: Okay. And I assume you'll</p> <p>10 want to make a closing argument, Mr. Corrigan?</p> <p>11 MR. CORRIGAN: Yes, sir, Mr. Chairman. And</p> <p>12 we actually have a point brief on -- supporting</p> <p>13 respondents' ability to file proposed findings of</p> <p>14 fact and conclusion of law for posttrial briefing.</p> <p>15 I have one for all the commission members, as well</p> <p>16 as you, Mr. Chairman, of course, and ODC, if you're</p> <p>17 going to consider it over the evening.</p> <p>18 CHAIR OGLE: All right. Well, why don't</p> <p>19 you file that.</p> <p>20 You've got a copy for Mr. Strauch, I assume.</p> <p>21 Okay. So we will recess for the day. We will</p> <p>22 reconvene tomorrow morning at 9:00 o'clock. We will</p> <p>23 call Ms. -- ODC will call Ms. McLaughlin first thing</p> <p>24 in the morning at 9:00, and then after that</p> <p>25 respondent will finish up with their last witnesses,</p>

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1 and then you'll both have an opportunity to make
2 closing arguments.
3 All right. Have a good evening, everybody. See
4 you in the morning.

5 **MR. STRAUCH:** Thank you, Mr. Chairman,
6 members.

7 (Proceedings adjourned at 3:57 p.m.)

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1 C E R T I F I C A T E

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4 I, HOLLY FOX, Freelance Court Reporter and a
5 Notary Public for the State of Montana, do hereby
6 certify:

7 That the foregoing hearing was taken before me
8 at the time and place herein named, that the hearing
9 was reported by me, and that the foregoing pages
10 contain a true record of the testimony of the
11 witnesses to the best of my ability.

12 DATED this 18th day of October, 2024.

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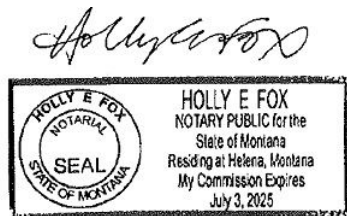
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