

Transcript of the Nov. 17, 2021, reporter gaggle after the meeting of the Senate Subcommittee on Legislative Reapportionment

The following is a detailed list of everything that is in the public record regarding this episode.

CONTEXT: The meeting was scheduled for three hours. It met for 1 hour 22 minutes. Only one person from the public testified, Nicholas Warren, who spoke about a map he had submitted that showed it was possible to avoid drawing a state Senate district without linking two black communities by crossing Tampa Bay.

Sen. Randolph Bracy, D-Ocoee, asked questions about the submission.

The Miami Herald story about the meeting and that development is here:

<https://www.miamiherald.com/news/politics-government/state-politics/article255891711.html>

Video link to that meeting is here.

https://www.flsenate.gov/media/videoplayer?EventID=1_zc8d1g0v-202111171000&Redirect=true

After the meeting Mary Ellen Klas sent a series of follow-up questions to Katie Betta (the list of questions appears after the transcript below.)

Five days after the meeting, the Senate sent two letters addressing employers of both people asking questions about the Senate's configuration of the minority districts: Mary Ellen Klas and Nicholas Warren, an ACLU staff attorney and redistricting expert who submitted his plan as a member of the public.

Here is the transcript of the reporter's gaggle that was held Nov. 17 in the presence of Reapportionment Director Jay Ferrin, Senate Communications Director Katie Betta, Senate outside counsel George Meros and Senate outside counsel Dan Nordby. (Note: Reporters made no effort to ask their questions in secret.)

Here is an audio link of the reporters gaggle:

<https://floridapolitics.com/archives/484024-hear-the-exchange-that-spurred-wilton-simpsons-complaint-to-miami-herald-executives/>

Mary Ellen Klas 00:12

(Addressing Sen. Bracy who had just finished a discussion with Meros and Nordby)

Yeah, so you asked a really interesting question. I didn't realize that there had been a map proposed that offers an alternative to crossing the bay component. Were you satisfied with their answers? Are you asking them to come back with an alternative?

Randolph Bracy 00:30

They don't have a map crossing the bay

Mary Ellen Klas 00:34
Do you want them to make one?

Randolph Bracy 00:39
It does cross the bay. And I'd like to have one that doesn't.

Mary Ellen Klas 00:44
Keeps the district in one place?

Randolph Bracy 00:47
At least to look at it. How it changes the percentage African Americans to able to elect the candidate of choice because it affects the district next to it. So I think it's it honestly, the way I see it, I think it allows for two Democratic seats as opposed to when it crossing the bay I think it affects the other seat in that it makes it less likely for them to elect Democrat so I have to research it a little bit more, but I just like to see some different iterations.

Mary Ellen Klas 01:35
It has the potential to push up Democrats into Republicans seats. That that may happen too, but I don't know. The other question I had is one of the things that this map do have a good feel for why they chose to do functional, which districts they've chosen to do a functional analysis of? Because it seems like those are the only districts they've decided to do functional analysis are the ones where they think they don't want to see any diminishment of minority voting strength.

But there is a district right now that's held by Senator Pizzo that performs 40% Black in primary and why wouldn't they look at that to see if that could elect a minority? They haven't done a functional analysis of that district and it seems to me that hasn't been answered. Do you have a sense of that?

Randolph Bracy:

I don't. I could find out.

Mary Ellen Klas:

Okay, yeah, I mean, there's been some, some of the experts have looked at this stuff. Because it's an interesting, I did ask yesterday, what the reasoning was. The League of Women Voters yesterday testified at the congressional hearing and said, why aren't there, why isn't there a functional analysis done for all the district's? And her argument was, there's been so much growth in minority in minorities in the population in Florida over the last 10 years. That shouldn't be maximizing minority strength. Think about the Haitian voters. In South Florida you think about everything from Central Florida on but they've only decided that they need to protect the districts that are in existence, right? From 2010. That it's not, we I haven't heard them explain that they need to maximize it. And that's a question. I don't know what the law is. Maybe that's it. Maybe we're frozen. Maybe what the state established in 2010 is frozen? That's all that they need to protect going forward. I don't know where that is that? What's your read?

Randolph Bracy 03:51
protects you talking about like

Mary Ellen Klas 03:52

minority. minority districts have to protect because that's a Tier 1. Right.

Randolph Bracy 03:58

Right. Right. But I think my question to the staff of what constitutes diminishment because it seems like it can be a gray area sometimes. So like in the one district where I was talking about crossing the bay, that district has gone up in black population, but, so you're adding more blacks to a district that already would be able to like a black candidate, and that affects the next district of it being less likely for to elect a black candidate because of how they're configuring it. So I think that you know, diminishment, just I just need a little bit more clarity because you can reduce the black population in one district and they could still elect a black candidate but then they can have more power in another district.

Mary Ellen Klas 05:03

And that's sort of like the age old redistricting debate, right, because there's the minority majority districts and minority access seats. And access means you don't necessarily have a majority but you got enough to maybe elect one in a primary, which is Senator Pizzo's situation, obviously he is not a minority, but it does. You know, to me, that's a debate that should be fleshed out and we should hear about it in public forums like this. But when there's no, nobody asks those questions, they don't get on the record. And if it's not on the record, they don't have to be held to it when they go to court.

Randolph Bracy 05:40

That's a good point. Well, this what my questions were for staff. And it's I'm still figuring it all out, But I hear what you're saying. Maybe we'll, I'll talk to Senator Gibson about this, let's get these questions out there so we can really flesh it out.

Mary Ellen Klas 05:58

I think I think it's from as a reporter the more questions you guys ask, the better, the better. We can explain it to the public. I

Randolph Bracy 06:05

got it. I got it.

Mary Ellen Klas 06:08

Anyway, I was grateful for that question today. It was pretty good.

Randolph Bracy 06:13

Yeah, I'm still figuring it out. Yeah, I know. I know.

Renzo Downey 06:16

I wanted to ask you about Senate District 15, the Hispanic majority district outside of Orlando. And just your thoughts on the importance of that. There's a congressional and Senate. Yeah.

Randolph Bracy 06:32

Before I comment, which one it is, is it in East Orange County?

Renzo Downey 06:38

It'd be 15, The Kissimmee area Yeah, that's

Mary Ellen Klas 06:42

that's a super district. Like there's for both. Is it Soto and Victor? Yeah, they have like enormous overpopulation.

Randolph Bracy:
So what's the question?

Renzo Downey 06:55
Just the importance of having that Hispanic majority? Yes.

Randolph Bracy 07:01
There's been a lot of growth in that area. And I think it's important that they have the ability to let the candidate of their choice and so having a Hispanic majority seat is important for sure.

Renzo Downey 07:13
Yeah. Specifically within the central Florida that does that change the way the delegation could look like and but yeah.

Randolph Bracy 07:26
well I think I think they already have elected, like Victor Torres, for example. And so I'm sure when you look to House seats, they'll also be able to elect a number of Hispanic elected members. So I just think is important so that we have diversity in our delegation. Thank you.

Transcribed by <https://otter.ai>

On Nov. 17, at 1:14 p.m., Mary Ellen Klas sent the following email to Katie Betta:

Hi Katie --

I'd like to get the answers to this for today's story:

* How did you arrive at the 1% population deviation? What's the law? What's the legal basis for the 1%?

* Is the 1% population deviation something the state Supreme Court has said that's required? Or is that just something you consider discretionary? What's the rationale?

* Can you explain the rationale for deciding which districts to conduct a functional analysis for? Is it fair to conclude that your legal advice has been that any district that does not have a functional analysis also has no chance to elect a Black senator and therefore is not protected from diminishment?

* Can you explain why in the proposed SD 36 in the new maps there was no functional analysis done?

* In proposed SD 24, can you provide me with your analysis of what are the voting patterns of races within the districts? What are their turnout rates? How much do whites vote for the minority candidate of choice? Are African Americans and Hispanics voting in coalition, especially in primaries? Or are they voting for different candidates in the primaries?

* If this analysis has not been done, please explain why.

Thank you,

~ Mary Ellen

At 1:32 p.m. Mary Ellen Klas sent this:

Typo. This should read: **Is the 1% population deviation** something the state Supreme Court has said that's required? Or is that just something you consider discretionary? What's the rationale?

At 4:32 p.m., Mary Ellen Klas wrote:

Katie -- Can I expect an answer today?

Thanks,

At 6 p.m., Katie Betta answered:

With Special Session, I don't think we will be able to get back to you today.

On Nov. 22, 2021, Senate President Wilton Simpson sent a letter to Miami Herald editor Monica Richardson in which he misquoted Mary Ellen Klas and said she "asked a State Senator to pose questions before the committee in order to build a record for litigation."

He said this exchange: "inserted herself into the committee process and interfered with potential redistricting litigation by blatantly attempting to influence a Senator to ask certain questions with the express purpose of establishing a record in advance of court Proceedings."

He then quoted from a muted audio recording from the pocket of some member of the Senate staff and got the transcription wrong. He wrote:

"Ms. Klas stated in describing a minority access seat: "Access means you don't necessarily have a majority, but you have enough to maybe elect one in a primary, which is Senator Pizzo's situation, and obviously he's not a minority, but it does, you know, to me, that debate should be flushed out and we should hear about it before the courts get this. If nobody asks these questions, they don't get it on the record and if it's not on the record, they aren't held to it and we go to court."

The accurate translation is this:

"Access means you don't necessarily have a majority, but you have enough to maybe elect one in a primary, which is Senator Pizzo's situation, and obviously he's not a minority, but it does, you know, to me, that debate should be **fleshed flushed** out and we should hear about it **in public forums like this before the courts get this. But when there's no**, nobody asks these

questions, they don't get it on the record and if it's not on the record, they *aren't* don't have to be held to it *and* when *they we* go to court."

He then asserted that a reporter asking a question was in violation of Senate rules.

"Ms. Klas subsequently submitted a series of questions, attempting to have Senate counsel address a number of legal questions, including an unconstitutional analysis of racially polarized voting in a proposed Senate district.

For example, the following question was posed to counsel: "In proposed SD 24, can you provide me with your analysis of what are the voting patterns of races within the districts? What are their turnout rates? How much do whites vote for the minority candidate of choice? Are African Americans and Hispanics voting in coalition, especially in primaries? Or are they voting for different candidates in the primaries? If this analysis has not been done, please explain why."

As you can see, this request flies in the face of standards in Florida's Constitution, and specific directives issued by the Committee to Senate Staff which state:

Regarding compliance with the Tier One standard related to the intent to favor or disfavor a political party, you are directed to draw districts without reviewing political data other than where a review of political data is required to perform an appropriate functional analysis to evaluate whether a minority group has the ability to elect representatives of choice."

The letter continues:

"Through this series of interactions between Ms. Klas, Senators, staff, and counsel, it has become clear that she is seeking to pre-litigate the 2022 redistricting cycle, pitting Senate counsel against expert witnesses frequently used by plaintiffs in litigation against the state, thereby creating a manipulated legislative record to be used in the courts."

In a Nov. 30 response to Simpson, Richardson wrote:

Senator Simpson,

Thank you for sharing your concerns in a recent letter to me and copied to Nancy Meyer, Miami Herald/el Nuevo Herald president. We have not yet had an opportunity to meet but I look forward to doing so in the future.

Your Nov. 22 letter expressed concerns with the Miami Herald/Tampa Bay Times Tallahassee bureau's coverage of the redistricting process and, more specifically, provided your feedback and allegations about coverage by Miami Herald Tallahassee Bureau Chief, Mary Ellen Klas.

At the outset of your letter you talk about the important role that members of the media have in the legislative process. You also compliment the outstanding work of the bureau overall and, in particular, its coverage of the last redistricting process. It should be noted that the bureau's lead reporter in the last redistricting cycle was Ms. Klas.

Ms. Klas is a knowledgeable, thoughtful and diligent reporter who seeks facts and perspectives in the work that she does to try to bridge the considerable gap between Herald readers and what happens in state government, the governor's office and the Legislature. Our journalists

bring readers closer to the process and increase their understanding of complex matters, both political and administrative. Despite facing barriers, she has done this through her coverage of a myriad of issues including through three redistricting cycles.

The rules you set out for senators in advance of the redistricting process are important ones for senators. They don't apply to journalists and the questions they may have about the process. Part of a reporter's job as a journalist is to ask questions that are challenging.

I've taken the time with some other editors to review your concerns seriously. In doing so, I believe the questions about whether the Senate has applied the tests required to determine if new boundaries have helped or harmed minority representation in the Legislature or Congress are the direct result of Ms. Klas doing the job that our readers expect.

Just as it is important to you, we believe this redistricting cycle is even more important because there are no public comment hearings being held around the state to bring the process closer to the citizens.

Ms. Klas covered the legal quagmire the Senate found itself in the last time it went down the redistricting path. Her coverage of this process is informed by the past in the same way your rules of engagement for senators are informed by the court's orders the last time.

I, of course, wanted to acknowledge your concerns, even if we disagree respectfully. Your desire to forbid anyone from answering questions of the press gives me pause, because the people who are hurt by that decision are the citizens that we both serve through our respective missions, citizens who are legally entitled to this information under the Florida Constitution. Gagging Senate staff and senators on the topic of redistricting is certainly not in anyone's best interest and contrary to the transparency you say is an important part of the Senate's process.

"Nancy and I, along with our editors, would like to continue to keep the lines of communication open between us as we move forward on this and other important issues. Thanks again for taking the time to share your concerns and for your time with my reply.

Sincerely,
Monica R. Richardson
cc: Nancy Meyer, President
Rick Hirsch, Managing Editor
Dave Wilson, Senior Editor

On Nov. 22, 2021, Senate Reapportionment Committee Chair Ray Rodrigues wrote to all 40 senators complaining about Nicholas Warren.

A link to our story about that is here: <https://www.miamiherald.com/news/politics-government/state-politics/article257103327.html>