

VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 12/21/2011

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA,
CARLENE BECHEN, RONALD BIENDSEIL,
RON BOONE, VERA BOONE, ELVIRA BUMPUS,
EVANJELINA CLEEREMAN, SHEILA COCHRAN,
LESLIE W. DAVIS III, BRETT ECKSTEIN,
MAXINE HOUGH, CLARENCE JOHNSON,
RICHARD KRESBACH, RICHARD LANGE,
GLADYS MANZANET, ROCHELLE MOORE,
AMY RISSEEUW, JUDY ROBSON, GLORIA ROGERS,
JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP,
and TRAVIS THYSSEN,

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE,
and RONALD KIND,

Intervenor-Plaintiffs,

v. File No. 11-CV-562

Members of the Wisconsin Government
Accountability Board, each only in
his official capacity:
MICHAEL BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, and TIMOTHY VOCKE,

[Caption Continued]
VIDEOTAPE DEPOSITION
ADAM R. FOLTZ

Madison, Wisconsin
December 21, 2011

Susan C. Milleville, Court Reporter

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and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin
Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR.,
THOMAS E. PETRI, PAUL D. RYAN, JR.,
REID J. RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants.

VOCES DE LA FRONTERA, INC.,
RAMIRO VARA, OLGA VARA,
JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v. Case No. 11-CV-1011
JPS-DPW-RMD

Members of the Wisconsin Government
Accountability Board, each only in
his official capacity:
MICHAEL BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, and TIMOTHY VOCKE,
and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin
Government Accountability Board,

Defendants.

1	<u>E X H I B I T S</u> (Continued)	
2	<u>No. Description</u>	<u>Identified</u>
3	30 December 13, 2011 expert report of Ronald Keith Gaddie, Ph.D.	158
4	31 December 14, 2011 expert report of John Diez/Magellan Strategies BR	160
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8	(The original exhibits were attached to the original transcript and copies were provided to counsel)	
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25	(The original deposition transcript was filed with Attorney Douglas M. Poland)	

VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 12/24/2011

1 VIDEOTAPE DEPOSITION of ADAM R. FOLTZ, a
 2 witness of lawful age, taken on behalf of the
 3 Plaintiffs, wherein Alvin Baldus, et al., are
 4 Plaintiffs, and Members of the Wisconsin Government
 5 Accountability Board, et al., are Defendants, pending
 6 in the United States District Court for the
 7 Eastern District of Wisconsin, pursuant to subpoena,
 8 before Susan C. Milleville, a Court Reporter and
 9 Notary Public in and for the State of Wisconsin, at
 10 the offices of Godfrey & Kahn, S.C., Attorneys at
 11 Law, One East Main Street, in the City of Madison,
 12 County of Dane, and State of Wisconsin, on the 21st
 13 day of December 2011, commencing at 10:21 in the
 14 forenoon.
 15

16

17 A P P E A R A N C E S

18

19 DOUGLAS M. POLAND, Attorney,
 20 for GODFREY & KAHN, S.C., Attorneys at Law,
 21 One East Main Street, Suite 500, Madison,
 22 Wisconsin 53703, appearing on behalf of
 23 Plaintiffs Alvin Baldus, et al.

24

25 PETER G. EARLE, Attorney,
 for LAW OFFICE OF PETER EARLE, LLC, Attorneys at Law,
 839 North Jefferson Street, Suite 300,
 Milwaukee, Wisconsin 53202, appearing by
 telephone on behalf of Plaintiffs
 Voces De La Frontera, Inc., et al.

1 MR. KELLY: Mr Hassett, before you
 2 begin, could we have the same agreement with
 3 respect to objections; that is, that an
 4 objection made by one attorney will stand as
 5 an objection for all attorneys without the
 6 necessity of going around the table and
 7 joining in?
 8 MR. HASSETT: Sure.
 9 MR. KELLY: Is that acceptable to
 10 all other counsel?
 11 MR. POLAND: Yes.
 12 MS. LAZAR: Yes.
 13 MR. SHRINER: Sure.
 14 MR. KELLY: Thank you.
 15

16 ADAM R. FOLTZ,
 17 called as a witness, being first duly sworn,
 18 testified on oath as follows:
 19

20 EXAMINATION

21 By Mr. Hassett:

22 Q Good morning, Mr. Foltz. My name is
 23 Scott Hassett. I represent the intervenor
 24 plaintiffs, Moore, Kind and Baldwin. I'm going to
 25 ask you a few questions. This is really

1 A P P E A R A N C E S (Continued)

2

3 P. SCOTT HASSETT and JAMES A. OLSON, Attorneys,
 4 for LAWTON & CATES, S.C., Attorneys at Law,
 5 Ten East Doty Street, Suite 400, Madison,
 6 Wisconsin 53703, appearing on behalf of the
 7 Intervenor-Plaintiffs.

8 MARIA S. LAZAR, Assistant Attorney General,
 9 for STATE OF WISCONSIN DEPARTMENT OF JUSTICE,
 10 17 West Main Street, Madison, Wisconsin 53703,
 11 appearing on behalf of the Defendants.

12 DANIEL KELLY, Attorney,
 13 for REINHART BOERNER VAN DEUREN S.C.,
 14 Attorneys at Law, 1000 North Water Street,
 15 Suite 2100, Milwaukee, Wisconsin 53202,
 16 appearing on behalf of the Defendants.

17 THOMAS L. SHRINER, JR., Attorney,
 18 for FOLEY & LARDNER, LLP, Attorneys at Law,
 19 777 East Wisconsin Avenue, Milwaukee,
 20 Wisconsin 53202, appearing on behalf of the
 21 Intervenor-Defendants.

22 ERIC M. MCLEOD, Attorney,
 23 for MICHAEL BEST & FRIEDRICH LLP, Attorneys at Law,
 24 One South Pinckney Street, Suite 700, Madison,
 25 Wisconsin 53703, appearing on behalf of the
 Wisconsin State Senate by its Majority Leader
 Scott Fitzgerald, the Wisconsin Assembly by its
 Speaker Jeff Fitzgerald, and Adam R. Foltz.

Also present: Todd S. Campbell, CLVS
 Campbell Legal Video Company
 417 Heather Lane, Suite B
 Fredonia, WI 53021
 (262) 447-2199

1 Mr. Poland's deposition, and I think he will cover
 2 some of the ground much more thoroughly than I do
 3 on some of the background questions. If you don't
 4 understand a question, please state that.
 5 Understand that for purposes of the court reporter
 6 you can't nod your head. You do have to give an
 7 answer.
 8 A Understood.
 9 Q First of all, where are you employed?
 10 A The Wisconsin State Assembly.
 11 Q And how long have you been employed there?
 12 A Since January of 2007.
 13 Q And what did you do prior to that?
 14 A Various political work, campaign work.
 15 Q And who do you report to currently in the
 16 assembly?
 17 A Speaker Fitzgerald.
 18 Q And that would be Jeff Fitzgerald?
 19 A Correct.
 20 Q Tell me what your basic job duties are.
 21 A Speaker Fitzgerald tasked me with drafting the
 22 legislation that ultimately became Wisconsin
 23 Act 43.
 24 Q Did you have any involvement in Act 44?
 25 A Not in drawing of the map but in facilitating the

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1 drafting.
 2 Q Okay. Who did draw that map?
 3 A I don't know.
 4 Q Well, you were involved in facilitating the
 5 drafting of the map?
 6 A Correct.
 7 Q Explain what that means.
 8 A We received a file, a block assignment file I
 9 believe is the correct term, which was then turned
 10 over to LRB for drafting.
 11 Q And who sent that to you? Where did you receive
 12 it from?
 13 MR. McLEOD: I'm going to insert an
 14 objection. Insofar as it calls for
 15 information subject to the attorney-client
 16 privilege, I would instruct the witness not
 17 to answer. To the extent he has an answer
 18 that does not implicate the attorney-client
 19 privilege, he's free to answer.
 20 Q Can you tell me who sent you that file?
 21 A I received it from legal counsel.
 22 Q And you're going to follow the instructions of
 23 your counsel and not answer that --
 24 A Correct.
 25 Q -- specific question in any more detail?

1 A Correct.
 2 Q Thank you.
 3 MR. McLEOD: I'm going to insert an
 4 objection to the extent that there wasn't a
 5 pending question separate from the question
 6 asked. So my objection stood with respect to
 7 the first question.
 8 Q Do you have some experience in redistricting
 9 matters?
 10 A This is my first go-round with redistricting.
 11 Q And when did you first begin working on that?
 12 A I was originally assigned the job duty sometime in
 13 2009 I believe.
 14 Q In your earlier political career did you have any
 15 involvement in redistricting?
 16 A No.
 17 Q Now, I'm going to show you Exhibit 10 and refer
 18 you to Page 5, and that would be -- on that page
 19 is Paragraph 10, and you have been identified as a
 20 person who was involved in drawing the
 21 redistricting maps --
 22 A Uh-huh.
 23 Q -- that were signed into law August 9, 2011. And
 24 I'm paraphrasing, but you're described as an
 25 individual who reviewed the 2010 census and

1 assisted in determining the appropriate
 2 constitutional boundaries for the state and
 3 congressional districts as memorialized in Act 43
 4 and 44. Is that a true statement?
 5 A I just want to make sure I'm reading that.
 6 MR. McLEOD: Can I have that
 7 question read back, please.
 8 (The following was read by the reporter:
 9 Q "Now, I'm going to show you Exhibit 10 and
 10 refer you to Page 5, and that would be -- on
 11 that page is Paragraph 10, and you have been
 12 identified as a person who was involved in
 13 drawing the redistricting maps that were signed
 14 into law August 9, 2011. And I'm paraphrasing,
 15 but you're described as an individual who
 16 reviewed the 2010 census and assisted in
 17 determining the appropriate constitutional
 18 boundaries for the state and congressional
 19 districts as memorialized in Act 43 and 44. Is
 20 that a true statement?")
 21 MR. McLEOD: I'm going to object to
 22 the form of the question, but to the extent
 23 you understand the question, please feel free
 24 to answer it.
 25 A I would say more specifically that I was tasked

1 with Act 43 in the drawing aspects of it, and I'll
 2 refer to my previous answer on facilitating
 3 drafting of Act 44.
 4 Q Explain what you mean by facilitating again if you
 5 would.
 6 A The block assignment file was given to LRB. A
 7 draft was returned.
 8 Q Were you involved in the exchange of any data or
 9 statistics with anyone for purposes of
 10 congressional redistricting?
 11 MR. McLEOD: I'm going to object to
 12 the form of the question.
 13 To the extent you can answer, please do
 14 so.
 15 A Can you rephrase that question?
 16 Q Listen, at some point I believe you testified you
 17 turned some materials over to the LRB --
 18 A Uh-huh.
 19 Q -- that you received from counsel.
 20 A Uh-huh.
 21 Q Prior to that did you have any involvement in
 22 congressional redistricting?
 23 A No.
 24 Q You were not involved in the exchange of any data
 25 or statistics or material of that nature for

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1 congressional redistricting?
 2 MR. McLEOD: I'm going to object to
 3 the form the question. It's compound.
 4 If you can answer the question, please
 5 do so.
 6 A I did not exchange any data. I want to be careful
 7 here. I did not exchange any data with anyone
 8 involved in the congressional redistricting.
 9 Q Now, you worked on redistricting. At what work
 10 sites did you perform this work?
 11 A What do you mean?
 12 Q Did you work in your offices in the capitol
 13 building, at offices of legal counsel or anywhere
 14 else? What was the physical --
 15 A Offices of legal counsel.
 16 Q Okay. All of your redistricting work was done at
 17 offices of legal counsel?
 18 A Outside of the public testimony.
 19 Q And what offices was that?
 20 A The offices of Michael Best & Friedrich.
 21 Q And approximately how much time did you spend in
 22 the course of this project?
 23 A I don't know.
 24 Q Was it a matter of days? Weeks? Months?
 25 A I don't know. It was my job.

13

1 Q It was over a period of months?
 2 A Yes.
 3 Q Now, during the time you were doing this work did
 4 you ever observe any congressional redistricting
 5 maps, draft, final or otherwise?
 6 A No.
 7 Q Did you hear anybody talking about any
 8 congressional redistricting matters?
 9 A No.
 10 Q Did you engage in any conversations with anybody
 11 about congressional redistricting?
 12 A Yes.
 13 Q Who was that?
 14 A Andy Speth.
 15 Q Andy who?
 16 A Speth.
 17 Q How do you spell that?
 18 A I believe it's S-p-e-t-h.
 19 Q And who is he?
 20 A Chief of staff to Congressman Paul Ryan.
 21 Q What was the nature of that conversation?
 22 A Primarily regarding the legislative time line for
 23 action.
 24 Q Aside from counsel that may have been involved in
 25 legislative redistricting, do you have knowledge

14

1 of anybody -- strike that. Aside from counsel
 2 that were involved in congressional redistricting,
 3 do you know of anyone else who was involved in
 4 congressional redistricting?
 5 A No.
 6 Q Any congressional staffers that you were aware of?
 7 A Not outside of my previous answer.
 8 Q Now, you did testified at the hearing in July,
 9 correct?
 10 A Yes.
 11 Q I'm referring to Exhibit 19 which is a transcript
 12 of those proceedings. On Page 18 you described
 13 economic and social interests, correct?
 14 A Where are you looking?
 15 Q Let me find the line. That would be Lines 11 and
 16 12. 10 through 13 I should say.
 17 A Uh-huh.
 18 Q Yes?
 19 A Yes.
 20 Q What do you mean by common economic and social
 21 interests in terms of redistricting?
 22 A I believe that is one way of defining communities
 23 of interest.
 24 Q And what's your understanding of communities of
 25 interest? How do you define that?

15

1 A There are multiple ways you can define it.
 2 Q What's your understanding of it?
 3 A Well, again, there are multiple definitions of it.
 4 It's a very nebulous term.
 5 Q Give me one of the definitions.
 6 A Well, what I say here in Lines 10 through 13 I
 7 think could be interpreted as one definition of
 8 it.
 9 Q Do you have any other understandings or
 10 definitions of community of interest?
 11 A It could be anything from a school district to a
 12 political subdivision. It's a very open-ended
 13 term.
 14 Q What's your understanding of compactness, the term
 15 compactness, as it relates to redistricting?
 16 A There are multiple measures of compactness used to
 17 evaluate compactness of a district.
 18 Q And what are they to your knowledge?
 19 A I couldn't list them off the top of my head.
 20 Q What about the term core retention as it relates
 21 to community of interest? What's your
 22 understanding of that?
 23 A They're two different things.
 24 Q And what are they, please?
 25 A Core retention is traditionally the amount of --

16

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1 the number of constituents carried over from a
 2 previously existing district to the new district
 3 as I understand it.
 4 Q How is core retention used in redistricting?
 5 A To evaluate the number of constituents from an old
 6 district that are carried over to the new
 7 district.
 8 MR. HASSETT: I have nothing
 9 further. Thank you.
 10
 11 EXAMINATION
 12 By Mr. Poland:
 13 Q Mr. Foltz, my name is Doug Poland, and I represent
 14 the plaintiffs in the case. I'll be asking you
 15 some questions probably for a little while.
 16 You're here today pursuant to a subpoena, correct?
 17 A Yes.
 18 MR. POLAND: Let's go ahead and
 19 mark this as Exhibit 23.
 20 (Exhibit No. 23 marked for
 21 identification)
 22 Q Mr. Foltz, I've handed you a copy of a document
 23 that has been marked as Deposition Exhibit 23. Do
 24 you have that in front of you?
 25 A Yes, I do.

1 A Well, technically I am on the payroll of the
 2 assembly chief clerk and assigned to the speaker.
 3 Q How long have you worked at the state assembly?
 4 A What was my previous answer? January of 2007 I
 5 believe.
 6 Q I would like you to turn to the last page of --
 7 I'm sorry. Not the last page. The second to the
 8 last page of Exhibit 23. It has a heading at the
 9 top that says Exhibit A.
 10 A Uh-huh.
 11 Q Do you see that on that page that is headed
 12 Exhibit A there are five different enumerated
 13 paragraphs asking you to produce certain
 14 materials?
 15 A Uh-huh.
 16 Q And did you in fact look for all of the materials,
 17 search for all of the materials that are
 18 identified in the five paragraphs in Exhibit A?
 19 A Yes, I did.
 20 Q And you brought some materials with you this
 21 morning; is that correct?
 22 A That is correct.
 23 Q Let's go ahead and mark those as an exhibit and
 24 get that on the record. Can you hand me the stack
 25 that is underneath, the whole thing. We have two

1 Q Do you see this is a subpoena for your testimony
 2 at our deposition here today?
 3 A Uh-huh.
 4 Q Have you seen this document before?
 5 A Yes.
 6 Q When did you receive it?
 7 A I don't recall.
 8 Q Do you see that the cover letter is dated
 9 December 13, 2011?
 10 A I do see that.
 11 Q You received it sometime on or after December 13th
 12 then?
 13 A I don't recall.
 14 Q Who gave you Exhibit 23?
 15 A Eric McLeod.
 16 Q And Mr. McLeod is representing you here today,
 17 correct?
 18 A Correct.
 19 Q You testified before that your employer is the
 20 Wisconsin State Assembly?
 21 A Correct.
 22 Q It's not any particular person within the state
 23 assembly; is that right?
 24 A I work for Speaker Fitzgerald.
 25 Q Is he technically your employer?

1 disks as well?
 2 A Right.
 3 (Exhibit Nos. 24 through 27 marked for
 4 identification)
 5 Q Mr. Foltz, I'm first going to hand you a document
 6 that's been marked Exhibit No. 24, and the caption
 7 of the document says Documents Produced in
 8 Response to Subpoena Issued by Plaintiffs to
 9 Adam Foltz. I'm handing you that document now.
 10 Is that a document that you have seen before?
 11 A Yes.
 12 Q When did you first see that document?
 13 A A day ago. Two days ago potentially.
 14 Q Did you assist in preparing that document?
 15 A Yes.
 16 Q What work did you do in assisting to prepare that
 17 document?
 18 A Produced the documents.
 19 Q So you identified the documents that you had that
 20 were responsive to the subpoena?
 21 A Correct.
 22 Q Were you asked to comment at all on the
 23 preparation of Exhibit 24?
 24 A No.
 25 Q When you saw Exhibit 24, did you see it in the

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1 final form if you know?
 2 A I don't know.
 3 Q Were you asked to review the responses in
 4 Exhibit 24 to comment on whether they were correct
 5 and accurate?
 6 MR. McLEOD: I'm going to assert
 7 attorney-client privilege. To the extent
 8 there were conversations between counsel and
 9 Mr. Foltz with respect to the preparation of
 10 this document or commenting on the document,
 11 I'm going to instruct him not to answer.
 12 Q And are you going to follow counsel's instruction
 13 not to answer the question?
 14 A Yes.
 15 Q Take a look at the first page of Exhibit 24,
 16 please.
 17 A Uh-huh.
 18 Q The Item Number One that's identified in there is
 19 a July 7, 2011 E-mail. Do you see that?
 20 A Yes.
 21 Q And then Item Number Two also identifies another
 22 July 7, 2011 E-mail correspondence. Do you see
 23 that?
 24 A Yes.
 25 Q You have gone through and there are I think

21

1 through Paragraph Number Six -- those are all
 2 identified E-mail exchanges, correct?
 3 A It appears so, yes.
 4 Q In addition to those E-mails that are identified
 5 in Paragraphs One through Six, are there any other
 6 E-mails that you located when you searched your
 7 records?
 8 A Yes.
 9 Q All right. Have those been produced today?
 10 A Yes, they have.
 11 Q Are there any E-mails that you had in your
 12 possession, custody or control that were requested
 13 in the subpoena, which is Exhibit 23, that you
 14 have not either produced here today or that have
 15 not been identified in Exhibit 24?
 16 A No.
 17 Q I would like you to look at Exhibit -- I'm sorry.
 18 Paragraph Number Seven in Exhibit 24, please.
 19 That identifies a category of documents. It
 20 states, "Documents used during meetings between
 21 Legislative Staff Member Adam Foltz and state
 22 representatives including memoranda analyzing
 23 population changes of each district enumerated in
 24 the 2010 census, maps illustrating the analysis of
 25 the district population changes over the decade,

22

1 maps confirming the physical location of members'
 2 residence and new district analysis." Do you see
 3 that description?
 4 A Yes, I do.
 5 Q Are there any documents that fall within that
 6 description that you have produced here today?
 7 A Not to my knowledge.
 8 Q Did you search for all such documents described in
 9 that Paragraph Seven that were within your
 10 possession, custody and control?
 11 A Yes.
 12 Q All right. So anything that you had that fell
 13 within that description either is being withheld
 14 from production pursuant to the objections stated
 15 in Exhibit 24 --
 16 A Uh-huh.
 17 Q -- or was produced?
 18 A I believe so, yes.
 19 Q But there is nothing that you're producing in that
 20 category today; is that correct?
 21 A That's my -- yes.
 22 Q I would like you to look at Item Number Eight,
 23 please.
 24 A Uh-huh.
 25 Q This is on Exhibit 24. That identifies political

23

1 analysis of draft/final maps compared to current
 2 districts. Do you see that?
 3 A Yes, I do.
 4 Q Did you produce any materials falling into that
 5 category today in the documents you brought with
 6 you?
 7 A No.
 8 Q Did you in fact search for all documents falling
 9 into that category within your possession, custody
 10 and control?
 11 A Yes.
 12 Q And so anything that you would have had in your
 13 possession, custody or control is being withheld
 14 from production pursuant to Exhibit 24?
 15 A Correct.
 16 Q Look at Paragraph Number Nine, please, Demographic
 17 Analysis of Minority Population
 18 Trends/Proportionality.
 19 A Uh-huh.
 20 Q Did you produce any documents or materials falling
 21 within that category today?
 22 A Yes.
 23 Q What have you produced that is described in
 24 Paragraph Nine here today?
 25 A I'm sorry. I think I got a little too much into a

24

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1 rhythm there. Go back to the question regarding
 2 Number Nine.
 3 Q Sure. Paragraph Number Nine, and this is in
 4 Exhibit 24, describes documents falling into the
 5 category of demographic analysis of minority
 6 population trends/proportionality.
 7 A Uh-huh.
 8 Q Did you in fact search the records that were
 9 within your possession, custody or control for
 10 materials falling under that document category?
 11 A Yes, I did.
 12 Q Did you bring any documents falling within that
 13 category with you today?
 14 A No.
 15 Q So any documents that you identified within your
 16 possession, custody or control are being withheld
 17 from production pursuant to the objections stated
 18 in Exhibit 24?
 19 A Correct.
 20 Q Did you in fact locate any documents when you were
 21 looking that fall within that category?
 22 A Yes.
 23 Q I should go back, actually, and ask you the same
 24 question with respect to Paragraph Number Eight.
 25 Did you in fact identify any documents when you

25

1 looked that fall into the category of political
 2 analysis of draft/final maps compared to current
 3 districts?
 4 A Yes.
 5 Q Did you identify any documents within your
 6 possession, custody or control that fall within
 7 the description of Paragraph Number Seven?
 8 A Yes.
 9 Q I would like to draw your attention to Paragraph
 10 Ten of Exhibit 24 which identifies a category of
 11 materials, spreadsheets analyzing census and
 12 election data. Do you see that?
 13 A Yes.
 14 Q And you looked for documents that fell within that
 15 category?
 16 A Correct.
 17 Q Did you identify any such documents?
 18 A Yes.
 19 Q Are you producing any documents today that fall
 20 within that category of materials?
 21 A No.
 22 Q So any documents that you have within your
 23 possession, custody or control are being withheld
 24 pursuant to the objections that are stated in
 25 Exhibit 24?

26

1 A Yes.
 2 MR. SHRINER: You are being
 3 summoned into the hallway by your assistant.
 4 MR. POLAND: Okay. I'll go out
 5 there in just a minute. Thank you.
 6 Q Paragraph Number 11 identifies a category of
 7 documents, maps incorporating census and elections
 8 data. Do you see that?
 9 A Yes.
 10 Q Did you look for documents falling within that
 11 category?
 12 A Yes.
 13 Q Did you identify any documents?
 14 A Yes.
 15 Q Did you produce any documents falling within that
 16 category today at your deposition?
 17 A No.
 18 Q So any documents that you identified that fall
 19 within the category of Paragraph 11 are being
 20 withheld pursuant to the objections stated in
 21 Exhibit 24?
 22 A Yes.
 23 Q And the last category of documents that are
 24 identified in Exhibit 24 are in Paragraph 12, and
 25 that identifies a category of draft maps prepared

27

1 by Legislative Staff Member Adam Foltz.
 2 A Yes.
 3 Q Did you look for any such documents?
 4 A Yes, I did.
 5 Q Did you identify any such documents?
 6 A Yes.
 7 Q Are you producing any of those documents today?
 8 A No.
 9 Q So any documents that are described in
 10 Paragraph 12 are being withheld from production
 11 based on the grounds identified in Exhibit 24?
 12 A Correct.
 13 MR. POLAND: Let me take just a
 14 break for a second here.
 15 (Recess)
 16 Q Mr. Foltz, I would like to ask you to take a look
 17 at Exhibit No. 25, please. I'm handing that to
 18 you now.
 19 A Uh-huh.
 20 Q This consists of a number of different written
 21 documents that you brought with you this morning;
 22 is that correct?
 23 A That is.
 24 Q Let's just take these one by one here from the
 25 top. The very first document that's on the stack

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1 that's included within Exhibit 25 is a document
 2 that states at the top 2011-12 Legislative
 3 Statistics and Maps SB 148. Do you have that in
 4 front of you?
 5 A Yes, I do.
 6 Q That is a stapled document? Is your copy stapled?
 7 A My copy is not stapled.
 8 Q Your copy is not stapled. How many pages is that
 9 first document? Is that four pages?
 10 A Yes.
 11 Q All right. What is that document?
 12 A This is the population deviation summary that is
 13 produced by LRB and attached as an addendum to the
 14 bill draft of SB 148.
 15 Q And then if you turn the page -- I'm sorry. If
 16 you go to the fifth page, it states at the top
 17 Memorandum SB 148 Memo Two. Do you see that?
 18 A Yes.
 19 Q What is that memorandum?
 20 A A summary of municipal splits contained within
 21 SB 128.
 22 Q Who prepared this document?
 23 A Either Tad Ottman or I.
 24 Q Do you recall who prepared it?
 25 A No.

1 Q Turn to the next page. There it says SB 148
 2 Memo Three dated July 15, 2011. What document is
 3 that?
 4 A Milwaukee County population trends and racial
 5 composition.
 6 Q Who prepared this document?
 7 A Either Tad Ottman or I.
 8 Q Did you prepare any such memorandums together?
 9 A I don't recall.
 10 Q Did anyone else assist in the preparation of this
 11 Memo Number Three?
 12 A No.
 13 Q It would have just been you or Mr. Ottman?
 14 A Correct.
 15 Q And Memo Number Two was the previous page. Same
 16 question. Did anyone assist in the preparation of
 17 Memo Two?
 18 A No.
 19 Q Do you know where you would have received the data
 20 that underlies the municipal splits information in
 21 Memo Two?
 22 A The autoBound software. And for the 2002 court
 23 map, it would have been the court decision.
 24 Q When you or Mr. Ottman prepared Memo Number Two,
 25 were you looking at a printed report from

1 autoBound to draw this information?
 2 A Printed or electronic. I don't recall which.
 3 Q And when you say or electronic, what do you mean?
 4 Do you mean you were looking at a computer screen
 5 or --
 6 A Yes.
 7 Q Where were you physically when you prepared
 8 Memorandum Number Two?
 9 A The offices of Michael Best & Friedrich.
 10 Q Did you produce any of these memos, and we will
 11 get to some other ones as well, any of these
 12 memorandums in conjunction with Senate Bill 148 at
 13 any location other than the offices of Michael
 14 Best & Friedrich?
 15 A No.
 16 Q Was anyone else present when you prepared
 17 Memorandum Number Two?
 18 A No.
 19 Q Where were you in Michael Best & Friedrich's
 20 offices when you prepared Memo Number Two?
 21 A I don't understand.
 22 Q Were you in an attorney's office? Were you in a
 23 conference room? Were you in the law library?
 24 A I was in an office.
 25 Q Was that an office that you alone were using?

1 A Tad Ottman and I.
 2 Q When did you first start using an office at
 3 Michael Best & Friedrich with respect to the
 4 redistricting?
 5 A I don't recall.
 6 Q How many months did you have an office at Michael
 7 Best & Friedrich where you were doing the
 8 redistricting?
 9 A I don't recall.
 10 Q When did you first start working on redistricting
 11 matters?
 12 A Can you elaborate?
 13 Q Sure. With respect to the 2011 redistricting,
 14 when were you first asked to work on that?
 15 A I believe it was in 2009 when the speaker asked me
 16 to begin performing preliminary tasks related to
 17 redistricting.
 18 Q And when did you first meet with somebody from
 19 Michael Best & Friedrich about the 2011
 20 redistricting?
 21 A I don't recall.
 22 Q Had you started working with Michael
 23 Best & Friedrich by February of 2011?
 24 A Yes.
 25 Q Had you started working out of Michael

1 Best & Friedrich's offices in Madison by February
2 2011?
3 A Yes.
4 Q Did you have a specific office that you and
5 Mr. Ottman worked in at Michael Best & Friedrich
6 by February 2011?
7 A Yes.
8 Q Did you have that same office through the end of
9 the time that your work on the redistricting
10 completed?
11 A I'm sorry. Say that again.
12 Q Sure. Did you and Mr. Ottman have a specific
13 office that you worked in during the time that you
14 worked on the 2011 redistricting?
15 A Yes.
16 Q That was an office that you both shared?
17 A Yes.
18 Q Were there computers in that office?
19 A Yes.
20 Q How many computers were there?
21 A Three.
22 Q Did you and Mr. Ottman each have your own computer
23 in that office?
24 A Yes.
25 Q Who was the third computer for?

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1 A It wasn't assigned to anyone specifically. It was
2 there in the event we needed an additional
3 machine.
4 Q Was there ever a time that anyone else was in that
5 office with you and Mr. Ottman working?
6 A Yes.
7 Q Who else was in that office working with you and
8 Mr. Ottman?
9 A Legal counsel and experts.
10 Q Who were the experts who were in that office
11 working with you?
12 A Dr. Keith Gaddie.
13 Q Anyone else?
14 A Joe Handrick.
15 Q Anyone else?
16 A Not to my knowledge.
17 Q And you mentioned legal counsel was present in
18 that office with you as well working on
19 redistricting?
20 A That is correct.
21 Q Who were the specific legal counsel who were
22 present with you?
23 A Eric McLeod, Ray Taffora, Jim Troupis,
24 Sarah Troupis, Michael Screnock, Sarah -- did I
25 say Sarah Troupis?

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1 Q Yes.
2 A I believe that's everyone.
3 Q And who is Michael Screnock?
4 A An attorney at Michael Best.
5 Q Was Speaker Fitzgerald ever present in that office
6 with you?
7 A Yes.
8 Q Was Senator Fitzgerald ever present in that office
9 with you?
10 A Yes.
11 Q Was Robin Vos ever present in that office with
12 you?
13 A Yes.
14 Q And what about Representative Zipperer?
15 A I'm sorry?
16 Q What about Mr. Zipperer, the senator? Was he ever
17 present in the office with you?
18 A Yes, he was.
19 Q Were there any other legislators that were present
20 in the office with you?
21 A Not that I can recall. No. No.
22 Q Was anyone else ever present in that office with
23 you other than the people that you have mentioned
24 while you were performing legislative
25 redistricting work?

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1 A I don't believe so. Actually, let me go back to
2 it real quick. Representative Scott Suder.
3 Q I want to take your attention back to Exhibit 25.
4 A Uh-huh.
5 Q We will look at a document that's titled Memo Four
6 SB 148 dated July 13, 2011. Do you see that?
7 A Memo Four?
8 Q Yes.
9 A Yes, I do.
10 Q Who prepared that document?
11 A Either Tad Ottman or I.
12 Q Did anyone else work on the preparation of that
13 document?
14 A No.
15 Q Memorandum Number Five is the next page. Who
16 prepared that document?
17 A Either Tad Ottman or I.
18 Q And looking through the rest of these memos --
19 let's say Six and Seven. Who prepared Memos Six
20 and Seven?
21 A Either Tad Ottman or I.
22 Q Did anyone else assist you and Mr. Ottman in
23 preparing any of these memos that we have looked
24 at so far up through Memo Number Seven?
25 A The only exception would be LRB Memo One is a

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1 report produced by LRB. Other than that it was
 2 Tad Ottman and I.
 3 Q After Memo Seven there's a document that says
 4 Hispanics for Leadership. Do you see that
 5 document?
 6 A I do.
 7 Q What is that document?
 8 A This was the testimony submitted by it appears
 9 Zeus Rodriguez as he gave it to the committee.
 10 Q And when was it submitted to the committee?
 11 A I don't know. I would believe it was on the day
 12 of the public hearing, but I don't know if it was
 13 submitted ahead of time or after the fact which
 14 can happen.
 15 Q Have you ever spoken with Mr. Rodriguez before?
 16 A I have not.
 17 Q Do you know whether Mr. Ottman ever spoke to
 18 Mr. Rodriguez?
 19 A I don't know.
 20 Q Do you know whether -- strike that question. Were
 21 you involved at all in asking Mr. Rodriguez to
 22 submit this letter to the committee?
 23 A I never spoke to Mr. Rodriguez.
 24 Q Does the next page that also has a caption at the
 25 top Hispanics for Leadership -- was that attached

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1 to the first page?
 2 A To the best of my knowledge.
 3 Q When was the first time that you saw this
 4 document?
 5 A Honestly, the first time I saw this document I
 6 believe was today. I heard his testimony, but I
 7 had not actually seen this prior to today.
 8 Q The next page is a memo from the Office of the
 9 Mayor of the City of Fitchburg. Do you see that?
 10 A Yes, I do.
 11 Q What is that document?
 12 A It appears to be his testimony to the committee.
 13 Q Have you ever spoken with Mayor Shawn Pfaff of the
 14 City of Fitchburg?
 15 A Yes.
 16 Q Have you spoken with the mayor about redistricting
 17 matters?
 18 A No.
 19 Q Had you seen this memo from the Office of the
 20 Mayor of the City of Fitchburg before today?
 21 A No.
 22 Q Why were you producing these two documents, the
 23 Hispanics for Leadership document and the City of
 24 Fitchburg memo today?
 25 A This is the entire packet that the committee clerk

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1 for Senator Zipperer's committee had in his
 2 possession.
 3 Q And when you say the entire packet, how far does
 4 that packet go? Is that all of the written
 5 materials that you produced today?
 6 A No.
 7 MR. McLEOD: I'm going to object to
 8 the form of the question. I'm not sure I
 9 understand it.
 10 To the extent you understand it, feel
 11 free to answer.
 12 Q Which of the documents that you have in front of
 13 you that I've marked as Exhibit No. 25 make up the
 14 packet that you just testified about?
 15 A The packet. I'm just looking for the end point
 16 here. I believe that the committee -- you're
 17 referring to the committee packet, I just want to
 18 make sure, the submitted testimony to the
 19 committee. I just want to be clear on that.
 20 Q Well, you had identified a packet that was in the
 21 possession of the clerk.
 22 A Yes.
 23 Q So that's what I'm asking you about.
 24 A Okay. To my understanding this is the last page
 25 of that.

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1 Q So the last page is -- can you identify that for
 2 the record.
 3 A I honestly don't --
 4 Q Is there a heading on it?
 5 A There's not a heading on it. It appears to be
 6 some type of plat map.
 7 Q Okay. All right. But at any rate, in the stack
 8 that you have got there that's Exhibit 25, that
 9 last page appears just before a table that says
 10 Disenfranchisement at the top?
 11 A That is correct.
 12 Q So beginning with Memo One and then through the
 13 document that you just identified, that is the
 14 packet that the clerk had?
 15 A Yes.
 16 Q Did you ask the clerk for documents and the clerk
 17 provided this to you?
 18 A I did not ask.
 19 Q Do you know who did ask the clerk for documents?
 20 A I don't know.
 21 Q All right. You can set that first part of
 22 Exhibit 25 to the side.
 23 A Okay.
 24 Q The next document in Exhibit 25 is a table that
 25 has a heading Disenfranchisement at the top. Do

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1 you see that?
 2 A Uh-huh.
 3 Q What is that document?
 4 A It's a summary of '92 and '02 court submissions
 5 summarizing the delayed voting or
 6 disenfranchisement in each of those submissions as a
 7 raw number and as a percentage of the total
 8 population at the time of the '90 and the '02
 9 census.
 10 Q Did you prepare this document?
 11 A It was either Tad Ottman or I.
 12 Q Turning your attention to the top table that says
 13 2002 Court Submissions. Do you see that?
 14 A Uh-huh.
 15 Q The first column says Plan?
 16 A Uh-huh.
 17 Q And then there are a number of different rows in
 18 that table?
 19 A Uh-huh.
 20 Q Do you see that? The first one says Plan JP1.
 21 What does that indicate?
 22 A I believe Jensen Panzer 1.
 23 Q And then the second row would be Jensen Panzer 2?
 24 A Correct.
 25 Q And then 3 for the next row down?

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1 A Yes.
 2 Q And then what is the AB 842?
 3 A AB 842 was the bill passed by the state assembly.
 4 Q And then the next one is Dem A?
 5 A Yes.
 6 Q And the next one SB 463?
 7 A Uh-huh.
 8 Q What does that indicate?
 9 A That is the redistricting plan passed by the state
 10 senate during the '02 redistricting cycle.
 11 Q And then what is the CCE row?
 12 A If memory serves, it's Citizens for Competitive
 13 Elections. It was Representative Fred Kessler's
 14 group. I believe that's what the acronym stands
 15 for, but I'm not 100 percent on that.
 16 Q WMC, is that Wisconsin Manufacturers and Commerce?
 17 A Correct.
 18 Q And then finally is the court plan that was
 19 actually adopted?
 20 A Yes.
 21 Q Why did you and Mr. Ottman put together the
 22 particular table with respect to the 2002 court
 23 submissions?
 24 A To look at where the various parties were ten
 25 years ago and also see where the court landed.

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1 Q All right. And why were you doing that?
 2 A To have a better understanding of redistricting.
 3 Q And specifically with respect to
 4 disenfranchisement?
 5 A Yes.
 6 Q What does disenfranchisement mean to you in the
 7 context of redistricting?
 8 A In the context of redistricting disenfranchisement
 9 or delayed voting is when you have staggered terms
 10 in the upper house an inevitable consequence of
 11 redistricting is going to be a six-year delay
 12 between state senate elections in this case if you
 13 move from an even to an odd numbered senate
 14 district.
 15 Q Where did you draw the data from that you included
 16 in the 2002 court submissions table that's on this
 17 page?
 18 A The court decision itself and the pleadings index.
 19 Q So it was the materials that were submitted in the
 20 2002 redistricting litigation?
 21 A That is correct.
 22 Q Did anyone request you and Mr. Ottman to prepare
 23 this table?
 24 A No.
 25 Q You decided to do it yourself?

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1 A Yes.
 2 Q Looking at the 1992 court submissions table --
 3 A Uh-huh.
 4 Q Do you see that? There are three rows in that,
 5 correct?
 6 A Yes.
 7 Q One was a plan submitted by -- it says Prosser
 8 IIIA?
 9 A Yes.
 10 Q And that was the republican plan?
 11 A Yes.
 12 Q And then the next one says -- that's a legislative
 13 or legislature plan?
 14 A Yes.
 15 Q And that was the democratic plan?
 16 A Correct.
 17 Q And then finally is the plan adopted by the Court?
 18 A Correct.
 19 Q Why did you prepare this table for the 1992 court
 20 submissions?
 21 A Same reason as the '02.
 22 Q Did anyone ask you to take a look specifically at
 23 the 1992 disenfranchisement numbers?
 24 A No.
 25 MR. McLEOD: Let me just insert an

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1 objection. To the extent that the question
2 asks for information which is within the
3 scope of the attorney-client privilege, I
4 would instruct the witness not to answer. To
5 the extent the question seeks to elicit
6 information about a conversation between
7 Mr. Foltz and somebody outside of the scope
8 of the attorney-client privilege, he's free
9 to answer. I just want to make sure that
10 that's clear. The questions have potentially
11 implicated the privilege. I just want to
12 make sure that that objection is asserted.

13 Q Are you going to --

14 MR. EARLE: Can I ask a clarifying
15 question on that?

16 MR. POLAND: Hold on, Peter, just
17 one second.

18 Q Are you going to follow counsel's instruction not
19 to answer questions with respect to privileged
20 conversations?

21 A Correct.

22 MR. EARLE: With regard to the
23 scope of privilege, we're talking about
24 communications not only with counsel but also
25 with Mr. Handrick? Is that correct or not

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1 correct as you were asserting it here now?
2 MR. McLEOD: I'm asserting that the
3 privilege applies to communications with
4 attorney and client. If there is a specific
5 question that relates to conversations with
6 Mr. Handrick, we will deal with that at the
7 appropriate time.

8 MR. EARLE: Okay. Thank you.

9 Q You can set that to the side. Mr. Foltz, the
10 next -- there's a clipped package. My copy is
11 stapled. There's an E-mail on top that says From
12 Michael Keane to Adam Foltz dated Monday,
13 July 11th, and then there's some additional
14 materials that are attached to that I think
15 included within the packet that was clipped
16 together that you have.

17 A Uh-huh.

18 Q Correct? All right. What is that collection of
19 documents?

20 A Various E-mails regarding redistricting.

21 Q And are these E-mails that were in your
22 possession?

23 A Yes.

24 Q Do you have an E-mail account through your work at
25 the state assembly?

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1 A Yes, I do.

2 Q Is that the E-mail account that these E-mails were
3 sent to?

4 A Yes.

5 Q So these E-mails were still on your computer at
6 the state assembly; is that correct?

7 A Yes.

8 Q Did you send or receive E-mails on the computer
9 you were working within at Michael
10 Best & Friedreich?

11 A I'm sorry. State that again.

12 Q Did you send or receive E-mails on the computer
13 that you were working with when you worked at
14 Michael Best & Friedrich?

15 A Yes.

16 Q Are any of those E-mails included within this
17 packet that you have produced today?

18 A Yes.

19 Q Are any of them within the clipped stack that you
20 have got in front of you?

21 A Yes.

22 Q Are you able to identify which ones you received
23 when you were at Michael Best & Friedrich versus
24 which ones you would have received or sent when
25 you were in your office at the capitol building?

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1 A No.

2 Q The very first page says, "From Michael Keane" --

3 A Uh-huh.

4 Q -- to you. The date is July 11. Who is
5 Michael Keane?

6 A An employee of LRB.

7 Q You had asked Mr. Keane for this information?

8 A Yes.

9 Q Why did you ask Mr. Keane for this information?

10 A He is the person at LRB that is tasked with
11 districting to my knowledge.

12 Q And so why did you ask him for the specific
13 spreadsheet that was attached to this E-mail?

14 A I don't recall the specific reason.

15 Q Is the spreadsheet that Mr. Keane attached -- is
16 it among the materials that you produced here
17 today?

18 A Yes, it is.

19 Q Is that in one of the electronic documents or
20 documents on a CD or DVD?

21 A Yes.

22 Q The next page is also an E-mail from Mr. Keane,
23 and the subject is 2002 Redistricting Plan. Why
24 did you ask Mr. Keane for that?

25 A I'm sorry. Which E-mail is this?

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1 Q It's the second E-mail.
2 A I don't recall why I specifically asked for that.
3 Q Were you working at the Michael Best & Friedrich
4 offices when you received these E-mails from
5 Mr. Keane?
6 A I don't recall.
7 Q Do you know whether these E-mails were printed
8 from your E-mail account at the state capitol
9 building or at Michael Best & Friedrich?
10 A Say that again.
11 (Question read)
12 A The clipped packet is all of the same E-mail
13 account. It's the state legislative E-mail
14 account.
15 Q When you accessed E-mail when you were at Michael
16 Best & Friedrich, was that through Web Mail
17 basically accessing your state assembly E-mail
18 account?
19 A Uh-huh. Either Web Mail, OWA, as we call it, or a
20 VPN connection.
21 Q The third page is an E-mail from
22 Tony Van Der Wielen to you dated July 11th. Do
23 you see that?
24 A Yes.
25 Q And who is Tony Van Der Wielen?

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1 A If he -- somebody requested it from him.
2 Q Do you know who requested it from him?
3 A No. It was either Tad or I since we were both
4 included in the To field with the forwarding
5 E-mail attached.
6 Q The next page is an E-mail from Mr. Van Der Wielen
7 May 25, 2011 to you and to Mr. Ottman, correct?
8 A Uh-huh.
9 Q It says Slow Assignments.
10 A Uh-huh.
11 Q What is meant by slow assignments?
12 A I would assume it was an issue we were having with
13 the software.
14 Q What software?
15 A AutoBound 9.
16 Q What is autoBound 9?
17 A It is the redistricting software.
18 Q When you say 9, is that a version number?
19 A Correct.
20 Q Where did you get that software from?
21 A LTSB.
22 Q When was it provided to you?
23 A I don't recall.
24 Q Were you trained on it?
25 A Yes.

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1 A He is the GIS division, I believe it's referred to
2 as a division, lead for LTSB. He deals with all
3 of the geographic information systems.
4 Q And that forwards an E-mail from Tony
5 Van Der Wielen to a number of other people dated
6 Wednesday, April 14, 2010. Do you see that?
7 A Uh-huh.
8 Q Who are the other people who are identified either
9 in the To or the CC lines of the April 2010
10 E-mail?
11 A Okay. Tad Ottman and Michael Keane we have
12 already discussed. Jeff Ylvisaker is the director
13 of LTSB. Gratz@speedymail.org I believe is
14 Joel Gratz, a democratic expert on redistricting.
15 MWhite@theshopconsulting is Mike White, a democrat
16 expert who works at The Shop Consulting which is a
17 lobbying firm. Adam Foltz is obviously me. CC to
18 legislative GIS staff. That would be the
19 employees that work under Tony Van Der Wielen. I
20 am not sure who Lori is, and I'm not sure who the
21 Wisconsin.edu E-mail address is.
22 Q Do you know why Mr. Van Der Wielen was forwarding
23 this to you?
24 A No, I don't.
25 Q Was it something that you requested?

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1 Q Who gave you the training?
2 A LTSB.
3 Q When were you trained?
4 A Over last summer and last fall I believe.
5 Q When you say last, do you mean 2010 or 2011?
6 A When was that? I believe there was training in
7 2010 and some training in 2011.
8 Q Had you used autoBound before the 2011
9 redistricting?
10 A No.
11 Q Did you contact Mr. Van Der Wielen very often with
12 technical questions about the software?
13 A Yes.
14 Q Did you contact anyone else other than
15 Mr. Van Der Wielen with technical questions about
16 using the software?
17 A Yes.
18 Q Who else did you talk to with technical questions
19 about the software?
20 A Ryan Squires, an employee of Tony Van Der Wielen.
21 Q So Mr. Squires is also with the LTSB?
22 A The GIS team at LTSB. Correct.
23 Q Did anyone other than Mr. Van Der Wielen or
24 Mr. Squires give you advice on the technical
25 aspects of autoBound 9 software?

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1 A Possibly Jeff Ylvisaker I believe is his name,
 2 another employee of Tony Van Der Wielen at LTSB.
 3 Potentially Dana Wolff as well who is another
 4 member of the GIS team.
 5 Q Did anyone outside of LTSB ever give you technical
 6 advice or consult with you on the use of autoBound
 7 software?
 8 A No.
 9 Q It looks like there are a number of additional
 10 E-mails here from Mr. Van Der Wielen to you and to
 11 Mr. Ottman, correct?
 12 A Yes.
 13 Q And do those all have to do with your use and
 14 Mr. Ottman's use of the autoBound 9 software?
 15 A A good number of them. I don't want to say all.
 16 Q Let's take a look. There is an E-mail, and it has
 17 at the bottom of the printed Page 29. I should
 18 ask -- by the way, I see that there are page
 19 numbers at the bottom of some of these. Do you
 20 know why there are these page numbers?
 21 A No, I don't.
 22 Q And I note that the first E-mail that we talked
 23 about has a page number at the bottom of 14.
 24 A Uh-huh.
 25 Q And then it skips to 17?

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1 says, "Tad and Adam, here is the new data base and
 2 report for disenfranchisement." Do you see that?
 3 A Uh-huh.
 4 Q Is that something that you had requested?
 5 A I believe so.
 6 Q Why did you request that?
 7 A It was a more streamlined way of reporting
 8 disenfranchisement.
 9 Q More streamlined than what?
 10 A Than the core constituency report.
 11 Q And the core constituency report, is that
 12 something that we have already looked at?
 13 A No.
 14 Q All right. Who produces a core constituency
 15 report?
 16 A AutoBound 9 produces the core constituency report.
 17 Q And so had you printed core constituency reports
 18 for the purposes of legislative redistricting?
 19 A I don't recall.
 20 Q This is a different type of a report that
 21 autoBound would print; is that correct?
 22 A Yes. This is a custom report that was put
 23 together by LTSB that is outside of the standard
 24 autoBound 9 package.
 25 Q Something that you and Mr. Ottman couldn't do

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1 A Uh-huh.
 2 Q And then 15 and 16 and 27 and 28?
 3 A Uh-huh.
 4 Q Do you know how that pagination got onto these
 5 pages?
 6 A No.
 7 Q Did you put that pagination there?
 8 A No.
 9 Q When you typically print E-mails, is their
 10 pagination at the bottom?
 11 A I don't know.
 12 Q I'll refer to those page numbers because that
 13 probably makes it easier for the purposes of the
 14 record.
 15 A Okay.
 16 Q Did you assemble these pages, by the way, in this
 17 particular order?
 18 A I don't recall.
 19 Q If you look at page -- it has Page 29 at the
 20 bottom.
 21 A Uh-huh.
 22 Q Do you see that's an E-mail from Mr. Van Der
 23 Wielen dated May 24th.
 24 A Yes.
 25 Q Do you see that? All right. It starts out and

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1 through autoBound 9?
 2 A Could, but this is a more streamlined way of doing
 3 it.
 4 Q And did you in fact produce reports based on the
 5 instructions here from Mr. Van Der Wielen?
 6 A Yes.
 7 Q Do you still have copies of those reports?
 8 A No.
 9 Q Those are not reports that are being withheld from
 10 production today?
 11 A No.
 12 Q You simply don't have them anymore?
 13 A Correct.
 14 Q How many times did you get these more streamlined
 15 types of reports from Mr. Van Der Wielen?
 16 A This is the only one.
 17 Q Did you ever produce any other of these more
 18 streamlined reports yourself?
 19 A No.
 20 Q Did you ever produce any core constituency reports
 21 from the autoBound software?
 22 A Yes.
 23 Q Did you produce any of those here today?
 24 A No.
 25 Q Did you retain any of those core constituency

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1 reports that you printed?
 2 A No.
 3 Q Do you recall approximately how many you would
 4 have created?
 5 A No.
 6 Q All right. The next page, which is numbered 30,
 7 is an E-mail from Mr. Van Der Wielen to you and
 8 Mr. Ottman, correct?
 9 A Uh-huh.
 10 Q And what's the purpose of this E-mail from
 11 Mr. Van Der Wielen?
 12 A This ties back to the previous E-mail regarding
 13 the disenfranchisement report, seeing if the -- it
 14 appears that he's asking us if the format of the
 15 plan -- the format of the new report is agreeable
 16 to us.
 17 Q So this also involves the same custom report that
 18 is identified on Page 29?
 19 A That's correct.
 20 Q All right. The next page is Page 32.
 21 A Uh-huh.
 22 Q Does that also concern the same streamline report?
 23 A Yes.
 24 Q The next page, Page 34, another E-mail from
 25 Mr. Van Der Wielen dated May 13th, correct?

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1 division.
 2 Q And what would constitute a minor city division?
 3 A City of Madison.
 4 Q Are you talking with municipalities generally?
 5 A In regards to what? MCD?
 6 Q Yes.
 7 A Yes. Generally, yes.
 8 Q Did this one have specifically to do with Madison?
 9 A No.
 10 Q Now, it says that there is a report. It's a PDF
 11 file. Do you see that? That's what's referred to
 12 in the attachments?
 13 A Yes.
 14 Q So that was a report that was produced by
 15 Mr. Van Der Wielen?
 16 A Yes.
 17 Q Is that a document that you brought with you
 18 today?
 19 A I believe so.
 20 Q Did you and Mr. Ottman -- strike the question.
 21 Did you or Mr. Ottman ever produce your own report
 22 identifying political subdivisions that are split
 23 between districts?
 24 A Yes.
 25 Q How many of those did you produce?

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1 A Uh-huh.
 2 Q What's the purpose of this E-mail from
 3 Mr. Van Der Wielen?
 4 A It seems to just be walking me through some
 5 questions I had regarding autoBound.
 6 Q And there's a reference to split geography. What
 7 is that in reference to?
 8 A Something about the split? I'm sorry. Could you
 9 say your question again?
 10 Q I'm just asking you the purpose of this E-mail
 11 that Mr. Van Der Wielen sent to you.
 12 A I don't exactly recall what we were discussing
 13 here.
 14 Q It references political subdivisions split between
 15 districts. Do you see that?
 16 A Yes.
 17 Q And what is meant by political subdivisions split
 18 between districts?
 19 A A political subdivision being an MCD, a county.
 20 Something along those lines. A split is obviously
 21 when that political subdivision is not wholly
 22 contained within one assembly or senate district.
 23 Q When you refer to MCD, what are you referring to
 24 there?
 25 A I believe the acronym stands for minor civil

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1 A I don't know.
 2 Q Did you bring any of those with you today?
 3 A No.
 4 Q Do they still exist?
 5 A No.
 6 Q Did anyone ever tell you not to retain any of the
 7 reports that you created?
 8 A No.
 9 Q Is there a reason that you didn't retain them?
 10 A There's no reason to.
 11 Q Meaning that reports had been changed or updated
 12 or revised or why is there no reason to retain
 13 them?
 14 A We had the information from them. That was it.
 15 Q And what did you do with the information that you
 16 took from the reports generally speaking?
 17 A Generally speaking?
 18 Q Yes.
 19 A I would say preparation of the memos for the
 20 committee testimony.
 21 Q At what point would you have discarded the reports
 22 that you had printed?
 23 A I don't recall.
 24 Q The next page, which is 35, is an E-mail from
 25 Mr. Van Der Wielen to you dated May 10th. Do you

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1 see that?
 2 A Yes, I do.
 3 Q There's a link in there?
 4 A Uh-huh.
 5 Q What is that link to?
 6 A I don't recall.
 7 Q Do you know whether that still is a live link?
 8 A I don't know.
 9 Q The subject just says Data, correct?
 10 A Yes.
 11 Q Is there a way from telling from the link what
 12 that data pertained to?
 13 A No.
 14 Q The next page, which is Page 44 --
 15 A Uh-huh.
 16 Q That's an E-mail with an attachment, is that
 17 correct, the next page?
 18 A Yes.
 19 Q And this is simply you're asking Mr. Van
 20 Der Wielen for technical support in using
 21 autoBound?
 22 A Mr. Squires in this case.
 23 Q You're asking Mr. Squires?
 24 A And Mr. Squires and Mr. Van Der Wielen is included
 25 in the reply from the initial E-mail between

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1 Tad Ottman and Ryan Squires.
 2 Q On the page that begins 46 -- and we're working
 3 backwards here chronologically in time it appears.
 4 This is an E-mail from Mr. Van Der Wielen to you
 5 and to Mr. Ottman on May 4th, correct?
 6 A Uh-huh.
 7 Q The subject is 2010 State Senate Election Data.
 8 Do you see that?
 9 A Yes, I do.
 10 Q What's the purpose of this E-mail from
 11 Mr. Van Der Wielen?
 12 A It appears as though there was an addition to the
 13 database, and this is the steps to prepare the
 14 database for the updated data from LTSE.
 15 Q It looks like Page 49 is a continuation of that
 16 same E-mail; is that correct? No. That's not
 17 correct, is it? Let's actually turn to the next
 18 page which is Page 48.
 19 A Uh-huh.
 20 Q That's an E-mail from Mr. Squires to you? I'm
 21 sorry. It's to Mr. Ottman and Mr. Van Der Wielen
 22 and a copy to you?
 23 A Correct.
 24 Q And that's dated April 14th?
 25 A Uh-huh.

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1 Q It identifies on there a subject matter that says
 2 All Election Data Spreadsheet 2000 to 2010. Do
 3 you see that?
 4 A Yes.
 5 Q And then it says there's an Excel spreadsheet
 6 that's attached?
 7 A Yes.
 8 Q Is that Excel spreadsheet among the materials
 9 you're producing today?
 10 A Yes.
 11 Q And the subject line indicates All Election Data
 12 Spreadsheet. What is contained within that
 13 spreadsheet generally speaking, what data?
 14 A Judging by the file name it appears to be a ward
 15 breakdown of all of the data that LTSE provides to
 16 us. The VTDS is indicative of ward level data.
 17 Q So would that have been all election results from
 18 2000 to 2010 by ward?
 19 A I believe so, yes.
 20 Q Is that material or information that you
 21 considered during the redistricting process?
 22 MR. McLEOD: I'm going to assert
 23 the privilege, the legislative privilege, for
 24 the reasons set forth in the privilege log
 25 that we have submitted in connection with the

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1 documents today. That goes to information
 2 concerning motives, objectives, plans,
 3 reports or procedures used by lawmakers to
 4 prepare the redistricting plans here. And
 5 that's based on the Committee for a Fair and
 6 Balanced Map which is the central decision
 7 for Judge Stadtmueller's decision concerning
 8 the motions to quash. The legislative
 9 privilege applies to considerations made. It
 10 does not apply to objective facts that may
 11 have been used which is ultimately the
 12 subject of what's being presented here in
 13 terms of the information contained in this
 14 exhibit.
 15 MR. POLAND: Is there instruction
 16 not to answer?
 17 MR. McLEOD: I would instruct
 18 Mr. Foltz not to answer as it relates to
 19 matters within the scope of legislative
 20 privilege.
 21 Q Are you going to follow counsel's instruction not
 22 to answer the question?
 23 A Yes.
 24 Q If you turn --
 25 MR. McLEOD: Can I have the last

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1 question that you asked read back so that I
 2 can hear it again, please.
 3 MR. POLAND: Yes.
 4 (The following was read by the reporter:
 5 "Is that material or information that you
 6 considered during the redistricting process?")
 7 MR. McLEOD: Let me make sure my
 8 objection is clear which is to the extent
 9 that election data generally formed the basis
 10 or objective facts used in the drawing of
 11 districts in the redistricting process, I
 12 don't think the legislative privilege
 13 applies. To the extent you're asking about
 14 what amounts to the manner in which it was
 15 used and for what purpose, it does fall
 16 within the scope of legislative privilege.
 17 To the extent that the question merely asked
 18 was this information used, I don't think the
 19 privilege would apply, and I wouldn't
 20 instruct the witness not to answer that
 21 specific question.
 22 Q So let me go back to the question and ask you.
 23 Was this information used during the redistricting
 24 process?
 25 A Yes.

1 Q What did you use it for?
 2 A It's the underlying data at the ward level.
 3 Q And what was it used for specifically in the
 4 redistricting process?
 5 A To draw the districts. Well, I should say more
 6 accurately -- given that this is ward level data,
 7 it reflects the given demographics and election
 8 results broken down at the ward level.
 9 Q And that was used during the redistricting process
 10 to draw the districts that resulted in Act 43?
 11 A It is part of the underlying data.
 12 Q Part of the underlying data that was used to draw
 13 Act 43, the assembly districts?
 14 A Yes.
 15 Q Did anybody in particular instruct you to use that
 16 data?
 17 A No.
 18 Q Why did you decide to use that data?
 19 A It was a standard included database from LTSB
 20 provided to all four caucuses.
 21 Q Why is the election data from 2000 to 2010 being
 22 used to draw the 2011 Wisconsin Act 43 legislative
 23 districts?
 24 MR. McLEOD: I am going to assert
 25 the objection as it relates to why would it

1 be used as legislative privilege; why it
 2 would be used to draw Act 43 or Act 44. I
 3 think that falls within the scope of the
 4 legislative privilege, and I would instruct
 5 the witness not to answer. If there's a more
 6 general question about why this information
 7 would be used in the redistricting process as
 8 sort of underlying data, objective facts
 9 used, I think that would fall outside of the
 10 scope of the privilege. I think there's a
 11 division here between what I think you asked
 12 and what I think is appropriate for him to
 13 answer.
 14 Q Let me ask you first generally. Why would this
 15 type of data be used?
 16 A I couldn't answer that.
 17 Q You mentioned that it was included as part of the
 18 package that the LTSB sent out?
 19 A Correct.
 20 Q Did you have a specific purpose in mind in using
 21 this data to draw the assembly districts in
 22 Act 43?
 23 MR. McLEOD: I'm going to assert
 24 the legislative privilege and instruct the
 25 witness not to answer.

1 Q And you're going to follow counsel's instruction?
 2 A Correct.
 3 Q Did you ever have any conversations with anyone
 4 about using the 2000 to 2010 election data in
 5 drawing Wisconsin Act 43?
 6 MR. McLEOD: I'm going to assert
 7 two privileges. One is the legislative
 8 privilege to the extent that it involves
 9 conversations with members of the legislature
 10 or legislative aides or it falls within the
 11 legislative privilege.
 12 To the extent that it calls for a
 13 response that involves communications with
 14 counsel, it would fall within the scope of
 15 attorney-client privilege.
 16 On those two grounds I would instruct
 17 the witness not to answer. If there are
 18 conversations outside of the scope of those
 19 two privileges, he's free to answer.
 20 Q Did you have any conversations with anyone other
 21 than counsel or legislators about the use of the
 22 2000 to 2010 election data in drawing 2011
 23 Wisconsin Act 43?
 24 A Yes.
 25 Q Who did you discuss that with?

1 A Tony Van Der Wielen and Brian Squires.
2 Q Anyone other than Mr. Van Der Wielen and
3 Mr. Squires?
4 A No.
5 Q Did you discuss it at all with Mr. Gaddie?
6 A The underlying data?
7 Q Yes. Or using the underlying election result
8 data.
9 A Yes.
10 Q What were the discussions that you had with
11 Mr. Gaddie about that subject?
12 A I don't recall. I don't recall the specific
13 conversations.
14 Q Do you recall generally what you discussed about
15 the election results using that data with
16 Mr. Gaddie?
17 A With respect to this specific file or --
18 Q Just generally with respect to the legislative
19 redistricting process.
20 A I'm sorry. State the question again.
21 Q Sure. What did you and Mr. Gaddie discuss about
22 using the 2000 to 2010 election data in creating
23 the assembly districts that were included in
24 Wisconsin Act 43?
25 MR. McLEOD: I'm going to assert an
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1 objection to the form of the question. I
2 think it mischaracterizes what he previously
3 stated. It was vague and ambiguous.
4 To the extent that you can answer the
5 question, please do so.
6 A Dr. Gaddie was made aware of the existence of this
7 data.
8 Q And did you discuss this data with Dr. Gaddie?
9 A Yes.
10 Q What did you and Dr. Gaddie discuss about this
11 data?
12 A That it is available.
13 Q All right. Did you discuss at all how it would be
14 used in preparing what became the assembly
15 districts included in Wisconsin Act 43?
16 A I don't recall.
17 Q Did Dr. Gaddie suggest that you take this data
18 into account in drawing the assembly districts?
19 A I don't recall.
20 Q Did you discuss this data with anyone other than
21 the people we have already discussed?
22 A Not that I can recall.
23 Q If you turn then to Page 51.
24 A Uh-huh.
25 Q It looks like Pages 51 through 53 --
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1 A Right.
2 Q -- also relate to the all election data
3 spreadsheet, correct?
4 A Uh-huh.
5 Q There's another E-mail that appears on Pages 54
6 through 56?
7 A Uh-huh.
8 Q That also relates to the all election data
9 spreadsheet?
10 A Correct.
11 Q Right? And then if we turn to the next page,
12 Pages 57 through 59.
13 A Yes.
14 Q That also relates to the all election data
15 spreadsheet, correct?
16 A Yes.
17 Q And then on Pages 60 to 61 there's another E-mail
18 from Mr. Squires to you and Mr. Ottman also
19 relating to the all election data spreadsheet?
20 A Uh-huh.
21 Q And then the same thing on Page 62. That's
22 another E-mail from Mr. Van Der Wielen relating to
23 the all election data spreadsheet, correct?
24 A Yes.
25 Q In each of those E-mails that we have just talked
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1 about there is an indication that there are --
2 strike that question. In the E-mails that are on
3 Pages 60 and 62 --
4 A Uh-huh.
5 Q -- it indicates there is a zip file that's
6 attached; is that correct?
7 A Yes.
8 Q Are those zip files that you're producing today?
9 A If not the zip file the Excel spreadsheet
10 contained within that zip folder.
11 Q So those were Excel spreadsheets then that were
12 within the zip files?
13 A Correct. It's the same file we have been seeing
14 time and time again going back through this. For
15 some reason they decided to attach it as a zip
16 file for the remainder of the time as we worked
17 through some of the errors we were catching. As
18 you see in the E-mail chain, the revisions were
19 reflected in the updated spreadsheet going
20 forward.
21 Q The remaining documents that we have here on
22 Page 63 through the end of this particular
23 document -- the pages are not all numbered in any
24 particular order --
25 A Uh-huh.
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1 Q -- it would appear. It looks like it goes from
 2 Page 63 up to 76, and then there are a number of
 3 pages that are numbered either 1, 2 or 3 in the
 4 remainder of that document; is that correct?
 5 A Yes.
 6 Q And these are all E-mails between you and
 7 Mr. Ottman and Mr. Van Der Wielen and Mr. Squires
 8 it would appear?
 9 A It would appear. There may be a Dana Wolff E-mail
 10 that is in there potentially. Maybe not. They
 11 appear to be between Ryan Squires, Tony
 12 Van Der Wielen, Tad and I.
 13 Q There is --
 14 A There is one Dana Wolff here, and that attachment
 15 is included on the disk.
 16 Q And there is an E-mail that is I think second --
 17 it appears it's the last E-mail.
 18 A Uh-huh.
 19 Q There's one additional name on there and that's --
 20 I'm go to ask you to pronounce the name.
 21 A Joel Ylvisaker.
 22 Q And he's with LTSB as well?
 23 A Yes.
 24 Q There is a reference to Fred in that E-mail. Who
 25 is that that Mr. Squires is referring to?

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1 A He would be referring to Fred Hejazi. I believe
 2 he works at or is potentially the CEO of City Gate
 3 GIS which is the company that produces autoBound.
 4 Q Again, a technical question? Does that appear
 5 what you're asking about here?
 6 A Yes. There's an air capture after that which
 7 would be some snafu with the software.
 8 Q I would like to look at the next document in the
 9 stack or set of documents. It appears that there
 10 are several printouts of E-mails from a Gmail
 11 account?
 12 A Yes.
 13 Q And that is your own personal Gmail account?
 14 A That is.
 15 Q Did you use your Gmail account for communicating
 16 with other people in the redistricting process?
 17 A Sometimes.
 18 Q And so this first E-mail that's printed out is
 19 from Sunday, July 17th?
 20 A Uh-huh.
 21 Q It's from Dr. Gaddie to Mr. Ottman, and then a
 22 number of people are CC'D on this E-mail, correct?
 23 A Yes.
 24 Q Now, what's the purpose of sending this E-mail?
 25 A It appears that this is Tad Ottman showing

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1 Dr. Gaddie the amendment for the Hispanic
 2 districts, Assembly Districts 8 and 9, that was
 3 adopted by the committee.
 4 Q And Mr. Ottman's E-mail is on Sunday, July 17th,
 5 correct?
 6 A Yes.
 7 Q And that is after the hearing, correct?
 8 A Yes.
 9 Q Do you know, was Mr. Ottman responding to a
 10 request that Mr. Gaddie had?
 11 A I don't know.
 12 Q Do you know -- in his E-mail Mr. Ottman says to
 13 Dr. Gaddie that Jim Troupis asked that Dr. Gaddie
 14 look at the amendment that was adopted in
 15 committee on the Hispanic districts. Do you see
 16 that?
 17 A I do.
 18 Q Do you know why Mr. Troupis made that request?
 19 A I do not.
 20 Q Did you have a discussion at all with Mr. Troupis
 21 about that?
 22 A I don't recall.
 23 Q Did you have a discussion with Mr. Ottman about
 24 that?
 25 A I don't recall.

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1 Q Did you participate in any discussions with
 2 Mr. Gaddie on the issue of the Wisconsin Hispanic
 3 districts?
 4 A Yes.
 5 Q When did you have those discussions with
 6 Mr. Gaddie?
 7 A I don't recall.
 8 Q Was it before the July 13th hearing?
 9 A Yes.
 10 Q Generally speaking what did you and Dr. Gaddie
 11 discuss?
 12 A The Hispanic districts.
 13 Q Anything in particular about them?
 14 A Basically how to draw them correctly.
 15 Q Did you have those discussions before the
 16 districts were actually drawn?
 17 A I don't recall.
 18 Q And when we're talking about the Hispanic
 19 districts, we mean Districts 8 and 9, Assembly
 20 Districts 8 and 9, correct?
 21 A That's correct.
 22 Q And those are in Milwaukee?
 23 A Yes.
 24 Q Now, you will see in Mr. Ottman's E-mail it says,
 25 "Amendment Two is the configuration that was

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1 adopted. The HVAP in AD 8 65 percent and AD 9 is
 2 54 percent." Do you see that?
 3 A Yes.
 4 Q All right. And what is HVAP?
 5 A Hispanic voting age population.
 6 Q It says that's it's 60.5 percent in District 8,
 7 right, correct?
 8 A Yes.
 9 Q Do you know who made the decision to go with the
 10 60.5 number there?
 11 A That was the result of conversations between legal
 12 counsel and the Mexican American Legal Defense
 13 Education Fund or MALDEF.
 14 Q And what about the 54 percent number in AD 9? Was
 15 that also a decision made by legal counsel and
 16 MALDEF?
 17 A Yes.
 18 Q When you say legal counsel, are you referring to
 19 any attorney in particular?
 20 A No.
 21 Q Were you a participant in any conversations or
 22 communications between MALDEF and legal counsel
 23 having to do with the HVAP in either Assembly
 24 District 8 or 9?
 25 A No.

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1 Q Do you know whether Mr. Ottman participated in
 2 those?
 3 A I do not know.
 4 Q The next document is an E-mail. It looks like
 5 it's two pages or at least in my copy it's two
 6 pages stapled together.
 7 A Uh-huh.
 8 Q Again, E-mails from Sunday, July 17th. It looks
 9 like that first page is again the same E-mail that
 10 we just looked at from Mr. Ottman to Mr. Gaddie,
 11 correct?
 12 A It appears that way.
 13 Q And the page that's attached is an E-mail from
 14 Dr. Gaddie to Mr. Ottman, correct?
 15 A Yes.
 16 Q It just says, "I will look at them and can talk
 17 after 5:00 p.m.," correct?
 18 A Yes.
 19 Q Did you participate in any follow-up conversation
 20 with Dr. Gaddie?
 21 A No.
 22 Q The next document -- my copy is stapled together.
 23 I'm not sure if your copy is as well.
 24 A Yes.
 25 Q All right. What is this collection of pages here

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1 just generally?
 2 A Generally this is an E-mail chain forwarded to me
 3 by a legal counsel reflecting the conversations
 4 between MALDEF, the Mexico American Legal Defense
 5 Education Fund, and legal counsel regarding the
 6 configurations of Assembly Districts 8 and 9.
 7 Q And it was sent to you on Monday, July 11th,
 8 correct --
 9 A It appears that way.
 10 Q -- of 2011? And that was two days before the
 11 hearing, the July public hearing?
 12 A Yes.
 13 Q When you refer to legal counsel, that's
 14 Mr. Troupis, correct?
 15 A It appears so.
 16 Q Do you know why Mr. Troupis was sending this to
 17 you?
 18 MR. McLEOD: I'm going to assert
 19 the attorney-client privilege. To the extent
 20 that the answer requires disclosure of any
 21 communication between Mr. Troupis as counsel
 22 and Mr. Foltz I will instruct Mr. Foltz not
 23 to answer.
 24 Q Are you going to follow counsel's instruction not
 25 to answer the question?

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1 A Yes.
 2 MR. EARLE: Excuse me, Doug?
 3 MR. POLAND: Yes, Peter?
 4 MR. EARLE: During the next break
 5 could you have somebody fax me a copy of that
 6 exhibit?
 7 MR. POLAND: It's a number of
 8 pages. I can see if we can have it scanned
 9 to you, Peter.
 10 MR. EARLE: That would be helpful.
 11 Thank you.
 12 MR. SHRINER: Doug, you're marking
 13 this 27?
 14 MR. POLAND: No. This is actually
 15 all one exhibit. It is Exhibit 25.
 16 MR. SHRINER: I thought we had a
 17 26.
 18 MR. POLAND: We do have a 26.
 19 There are two different disks.
 20 Q Mr. Foltz, there is an E-mail from Elisa Alfonso
 21 to Mr. Troupis dated Monday, July 11th, and that
 22 is something that Mr. Troupis is forwarding to
 23 Mr. Ottman and to you, correct?
 24 A Yes.
 25 Q Did you ever speak with Elisa Alfonso?

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1 A No.
 2 Q There's a CC to Alonzo Rivas as well?
 3 A Yes.
 4 Q Did you ever speak with Alonzo Rivas?
 5 A No.
 6 Q Did you ever personally participate in any
 7 conversations with MALDEF?
 8 A No.
 9 Q Or I should say any representative of MALDEF.
 10 A No.
 11 Q If you turn to the fourth page into the stapled
 12 group of E-mails, you will see an E-mail from
 13 Jim Troupis to Elisa Alfonso and Alonzo Rivas
 14 dated July 11th at 6:41 p.m.?
 15 A Yes.
 16 Q Do you see Mr. Troupis says, "Lisa and Alonzo, I
 17 liked your proposal. We have taken it a bit
 18 further. Here is a comparison of MALDEF's
 19 proposal to a suggestion we think might work a bit
 20 better."
 21 A Uh-huh.
 22 Q "MALDEF's option is shown in color and our
 23 suggestion to do the same thing on the same
 24 template is shown in outline forms as an overlay."
 25 Do you see that?

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1 A Yes.
 2 Q Is that attached to this E-mail chain?
 3 A Yes, it is. The very last page is the overlay
 4 that Mr. Troupis is referring to.
 5 Q The very last page is?
 6 A Let me just double-check that. Shown in color and
 7 shown in outline form -- yes.
 8 Q And then there are HVAP numbers under two plans.
 9 Do you see that?
 10 A Yes.
 11 Q There are numbers listed for MALDEF?
 12 A Uh-huh.
 13 Q And then Mr. Troupis says, "Our alternative"?
 14 A Uh-huh.
 15 Q Do you know what he means by our alternative?
 16 A Our alternative is reflected in the outline of the
 17 map on the back of this packet.
 18 Q And when he says our, whose alternative is that?
 19 A Ours. The redistricting team, for lack of a
 20 better term.
 21 Q Do you know who came up with those numbers, the
 22 60.52 and 54.03 numbers?
 23 A Either Tad Ottman or I.
 24 Q How did you arrive at those numbers?
 25 A The software.

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1 Q And when you say the software, you mean autoBound?
 2 A AutoBound, yes.
 3 Q Is there a way to cause autoBound to generate that
 4 kind of number? In other words, a calculation to
 5 generate that kind of a number?
 6 A It's part of the software, yes.
 7 Q How would you go about -- strike that question.
 8 How does autoBound calculate that number?
 9 A Well, I don't know the nuts and bolts of it.
 10 Q But generally speaking how is it generated?
 11 A Using census data.
 12 Q Do you know whether autoBound when it's generating
 13 that takes citizenship into account?
 14 A No. It does not. It is not a census -- it is not
 15 a census category of data.
 16 Q So autoBound only uses census categories of data?
 17 A And the other -- for example, the election data
 18 that we were talking about was part of the
 19 autoBound data. That is outside of the scope of
 20 the census but included in the autoBound
 21 underlying database.
 22 Q So what all data was included within the autoBound
 23 database that you used in the redistricting
 24 process?
 25 A Say that again.

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1 Q What data was included in the autoBound database
 2 that you used to produce the assembly district
 3 maps as part of Act 43?
 4 A The PL 94 171 data provided to the U.S. Census
 5 Bureau and the redistricting data office and
 6 merged with the election data provided to us by
 7 LTSB and all four caucuses.
 8 Q Any other data that was part of the autoBound
 9 database that you used?
 10 A Not to my knowledge.
 11 Q Do you know, does autoBound have the capability to
 12 add data other than that?
 13 A I don't know.
 14 Q The autoBound database that you used to create
 15 Wisconsin Act 43, is that included within the
 16 materials that you have produced today?
 17 A Yes, it is.
 18 Q If you turn to -- the pages aren't numbered here,
 19 so I'm trying to count from the back end.
 20 A Uh-huh.
 21 Q If you turn to the 1, 2, 3, 4, 5, 6th page from
 22 the back end of the document, there's an E-mail
 23 from Mr. Troupis to Elisa Alfonso and Alonzo Rivas
 24 dated July 12th. It's on the bottom half of that
 25 page.

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1 A The 11:41 or --
 2 Q It is 10:35. It's just down below that one.
 3 A Yes. I see that.
 4 Q All right. Do you see that Mr. Troupis says, "I'm
 5 meeting with legislative leaders this afternoon."
 6 Do you see that?
 7 A Yes.
 8 Q Were you a part of the meeting between Mr. Troupis
 9 and the legislative leaders?
 10 A I don't recall.
 11 Q Do you recall meeting with Mr. Troupis and the
 12 legislative leaders with respect to the Hispanic
 13 districts in Milwaukee generally?
 14 A I don't recall.
 15 Q Mr. Troupis also states in that E-mail, "This
 16 morning I asked staff to consult with our
 17 Legislative Research Bureau on these alternatives
 18 as they must ultimately draft any amendment." Do
 19 you see that?
 20 A Yes.
 21 Q Do you recall consulting with the LRB on these
 22 alternatives?
 23 A Yes.
 24 Q All right. Who did you talk to at the LRB about
 25 these alternatives?

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1 Q Why would they not be retained through the course
 2 of the redistricting process?
 3 A A block assignment file is not the proprietary
 4 format that autoBound uses to store information.
 5 It's a deliberate export of data that allows GIS
 6 software to be able to speak to each other across
 7 proprietary formats.
 8 Q All right. So you had to export data from
 9 autoBound into a block assignment file; is that
 10 correct?
 11 A Yes.
 12 Q Is that something that you did with any frequency?
 13 A No.
 14 Q Did you do it other than to send block assignment
 15 files to the LRB?
 16 A Not that I can recall.
 17 Q So the last two pages of this stapled group of
 18 documents -- there are two maps, correct?
 19 A Yes.
 20 Q And the second to the last page, what does that
 21 map portray?
 22 A I believe that is Assembly Districts 8 and 9 as
 23 reflected in Act 43.
 24 Q So as actually adopted by the legislature?
 25 A I believe so.

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1 A I don't recall. Probably Mike Keane, but I don't
 2 recall.
 3 Q What was your conversation with someone at the LRB
 4 whether it was Mike Keane or someone else?
 5 A Instructions on drafting the amendment that MALDEF
 6 had signed off on.
 7 Q What types of instructions did you need to receive
 8 from Mr. Keane.
 9 A What did he need to receive from me or Tad Ottman?
 10 Q I'm sorry. Yes. What did he need to receive from
 11 you?
 12 A The block assignment file that would be used to
 13 draft the Hispanic district configuration
 14 amendment that MALDEF agreed to.
 15 Q Did you ultimately transmit a block assignment
 16 file to the LRB?
 17 A I don't know if I did. Either Tad Ottman or I.
 18 Q One of the two of you would have done that?
 19 A Yes.
 20 Q Is that block assignment file that you sent to
 21 them part of the materials you're producing today?
 22 A I don't know off the top of my head.
 23 Q Were block assignment files maintained through the
 24 course of the redistricting process?
 25 A No.

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1 Q And there are three triangles on there with names
 2 on them, correct?
 3 A Yes.
 4 Q There's one, Josh Zepnick, correct?
 5 A Yes.
 6 Q And then JoCasta Zamarripa?
 7 A Yes.
 8 Q And then Christine Sinicki, correct?
 9 A Yes. And also Mark Homadel and Jon Richards
 10 towards the top of the page.
 11 Q All right. What do those triangles denote?
 12 A The residence of incumbents.
 13 Q Why is it important to have the residence of
 14 incumbents reflected on the map?
 15 A It is part of the standard data set that was
 16 provided to us by LTSB.
 17 Q The next page is -- this is the last page of the
 18 stapled set. What does this map reflect?
 19 A This is the alternative that MALDEF proposed to us
 20 that was between the 57/57 HVAC configuration of
 21 ADs 8 and 9 and the 64/50 between 8 and 9. This
 22 was MALDEF's attempt to draw a 60/53 I believe it
 23 was on HVAP and the outline -- as Jim Troupis
 24 mentioned, the outline is our counterproposal that
 25 was a 60/54 configuration.

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1 Q Now, within 8 and 9 there is also -- the top half
 2 of it is light blue, and the bottom half -- well,
 3 the bottom portion is a darker green. Do you see
 4 that?
 5 A Yes, I do.
 6 Q What did light blue and the darker portion of the
 7 green represent?
 8 A That was MALDEF's proposal to us.
 9 Q And then the solid blue line that appears on that
 10 last page --
 11 A Uh-huh. Okay. I see it.
 12 Q The solid blue line. What does that denote?
 13 A The solid blue line would be the outline of AD 8
 14 as reflected in Act 43.
 15 Q And then the solid black line, is that AD 9 as
 16 reflected in Act 43?
 17 A Wholly contained, but you can also see the
 18 boundaries of other districts sprawling out there.
 19 Q Why was a decision made not to go with MALDEF's
 20 proposal?
 21 A It would have required redrawing of at least four
 22 other assembly districts, so we proposed to them
 23 our version of a 60/54 alternative that they
 24 signed off on.
 25 Q Was anyone other than MALDEF consulted on the

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1 eventual configuration of these two districts, 8
 2 and 9?
 3 A Not that I know of.
 4 Q Did you personally speak with anyone about the
 5 configuration of Districts 8 and 9?
 6 A No.
 7 Q You can set that document to the side. The last
 8 document that was in the paper copies at least
 9 that you provided to us today --
 10 A Yes.
 11 Q -- is an 11-by-17 it appears.
 12 A Uh-huh.
 13 Q It's a chart. What is this chart?
 14 A This is something that I put together at the
 15 instruction of Dr. Gaddie.
 16 Q When did you put this together?
 17 A I don't recall.
 18 Q Was it before or after your testimony on
 19 July 13th?
 20 A Before.
 21 Q What was the purpose of this?
 22 A Relevant information that Dr. Gaddie needed.
 23 Q Do you know what he needed it for?
 24 A Well, the column headings reflect the different
 25 categories of information reflected in the

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1 following information.
 2 Q Did he tell you why he needed it?
 3 A To perform some analysis.
 4 Q Do you know the analysis that he was performing?
 5 A I do not.
 6 Q Did Dr. Gaddie make the request of you to compile
 7 this chart?
 8 A Yes.
 9 Q So he spoke to you directly about it?
 10 A Yes.
 11 Q Was he at Michael Best & Friedrich's offices
 12 working with you when he asked you to prepare this
 13 chart?
 14 A Yes.
 15 Q Was anyone else present?
 16 A I don't know.
 17 Q Was he present in the office that you and
 18 Mr. Ottman typically worked in?
 19 A Yes.
 20 Q How many times did Mr. Gaddie travel to Madison
 21 and work in that office at Michael
 22 Best & Friedrich with you?
 23 A I don't recall.
 24 Q Was anyone else present at times when you and
 25 Mr. Gaddie were together in Michael Best's

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1 offices?
 2 A Legal counsel and Joe Handrick.
 3 Q What about Mr. Ottman? Was he ever present as
 4 well?
 5 A And Mr. Ottman. I apologize.
 6 Q When you say legal counsel, that would be one of
 7 the attorneys that you have mentioned before?
 8 A Yes.
 9 Q Was anyone else ever present when you Mr. Gaddie
 10 were there working together?
 11 A No.
 12 Q You can set that document to the side. There were
 13 also two disks that you brought with you today,
 14 correct?
 15 A Yes.
 16 Q I'm going to hand you a copy of a disk that has an
 17 exhibit sticker on it that says Exhibit No. 26.
 18 A Okay.
 19 Q Do you have that in front of you?
 20 A Yes.
 21 Q You see there's a label on that CD case?
 22 A Yes.
 23 Q What does the label say?
 24 A Documents Responsive to 12/13/11 Subpoena.
 25 Q Do you know what documents roughly are on that

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1 disk?
 2 A Various documents that are responsive to the
 3 subpoena.
 4 Q Are they all electronic files?
 5 A Yes.
 6 Q Not scanned documents I mean?
 7 A No.
 8 Q Generally speaking what kinds of electronic files
 9 are on there if you can answer the question?
 10 A Generally objective facts used to craft the map.
 11 Q Are there any data analysis files in there do you
 12 know?
 13 A No.
 14 Q Where were these electronic documents located?
 15 A On my computer and in E-mail attachments.
 16 Q Where is that computer located?
 17 A Michael Best.
 18 Q Is that a desktop computer or a laptop?
 19 A Desktop.
 20 Q So not one that you could take with you other
 21 places?
 22 A Correct.
 23 Q Was there any kind of a data repository created
 24 like an FTP site or anything that data was put in
 25 to that you used?

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1 A No.
 2 Q All of the data that you used for the
 3 redistricting process was on your computer?
 4 A Yes.
 5 Q Exhibit No. 27 then. I'm going to hand you a copy
 6 of that. Can you identify on the label what that
 7 says.
 8 A Statewide Data Base.
 9 Q And what is that?
 10 A This is underlying data provided by LTSB to all
 11 four caucuses that autoBound looks to for
 12 Wisconsin geography. It also contains the
 13 incumbent shaped file, those plots we were talking
 14 about earlier with the triangles and the dots.
 15 Those are contained in here as well. And the 2002
 16 plans for the assembly senate and court maps.
 17 Q Is the autoBound database that you referred to
 18 before on one of these two disks?
 19 A Yes.
 20 Q Is that in the disk that's Exhibit 26?
 21 A 27.
 22 Q It's in 27?
 23 A Yes.
 24 MR. POLAND: Why don't we take
 25 about a five-minute break.

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1 Peter, I will see if I can get a scanned
 2 copy of those documents to you.
 3 MR. EARLE: That would be great.
 4 (Recess)
 5 Q Mr. Foltz, we just came back from a lunch break.
 6 During the lunch break did you meet with anyone
 7 other than Mr. McLeod?
 8 A I ate lunch with Marie and Dan and Tom.
 9 Q And did you discuss anything about your testimony
 10 this morning?
 11 A Nope.
 12 Q This morning I asked you a number of questions
 13 about the documents that you brought with you
 14 today, correct?
 15 A Yes.
 16 Q All right. Have you seen a copy of discovery
 17 orders that were entered by the Court in this
 18 case?
 19 A Could I see them?
 20 Q Yes. Let's mark them as an exhibit.
 21 (Exhibit Nos. 28 and 29 marked for
 22 identification)
 23 Q Mr. Foltz, I've handed you two documents. The
 24 first has been marked as Exhibit No. 28. You see
 25 it's an order. Down at the bottom it's dated --

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1 there's a stamp and it says Filed 12/8/11. Do you
 2 see that?
 3 A Yes, I do.
 4 Q All right. Did you ever receive a copy of this
 5 order?
 6 A I believe so, yes.
 7 Q Who did you receive it from?
 8 A Eric McLeod.
 9 Q Did you ever have a discussion -- I'm just asking
 10 now whether you had a discussion. I'm not asking
 11 what was said. Did you ever have a discussion
 12 with Mr. McLeod about how this would affect the
 13 subpoena and your production of materials pursuant
 14 to it?
 15 A Yes.
 16 Q Exhibit No. 29.
 17 A Uh-huh.
 18 Q If you look at the bottom, you will see that it's
 19 dated December 20, 2011. That's yesterday?
 20 A Yes.
 21 Q Did you ever see a copy of this order?
 22 A Yes.
 23 Q And who gave you this order?
 24 A Joe Olson with Michael Best.
 25 Q And did you have a discussion with Mr. Olson or

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1 Mr. McLeod about how this order would affect your
 2 production of materials in this case?
 3 A Production of my materials? No.
 4 Q What about the production of materials pursuant to
 5 the subpoena served on you?
 6 A No.
 7 Q You didn't discuss how this order in Exhibit 29
 8 would affect that?
 9 A Not that I can recall.
 10 Q Okay. You can set those to the side. Mr. Foltz,
 11 where do you currently reside?
 12 A Sun Prairie.
 13 Q How long have you lived there?
 14 A Year and a half.
 15 Q Do you have a résumé or a curriculum vitae, a CV?
 16 A No, I don't. Not an updated one I should say.
 17 Q How old is the last one that you have?
 18 A Pretty old at this point.
 19 Q Does it predate the time that you started working
 20 for the assembly?
 21 A Does not predate the time working in the assembly.
 22 Does predate my time working for Representative
 23 Fitzgerald.
 24 Q Rough date?
 25 A 2007, 2008.

1 A What do you mean?
 2 Q In January 2009 how did you come to have that job?
 3 A He hired me.
 4 Q Before January of 2009 what did you do?
 5 A I worked for Representative Brett Davis.
 6 Q When were you hired to work with Brett Davis?
 7 A Approximately November of '07.
 8 Q And then that was up until January of 2009?
 9 A Yes.
 10 Q When you started with Representative Fitzgerald in
 11 January of 2009, what were your tasks?
 12 A Miscellaneous, jack of all trades type of work.
 13 Policy, working with the caucus on things like
 14 member outreach, technology issues where I could
 15 be helpful. Things along that sort.
 16 Q And were you tasked immediately to work on
 17 legislative redistricting in January of 2009?
 18 A No.
 19 Q When did that come about?
 20 A Later.
 21 Q You might have testified to that earlier. I don't
 22 have that date in front of me.
 23 A I don't recall the exact date of when Jeff
 24 assigned me that task.
 25 Q Do you currently have an office over in the state

1 Q All right. You graduated from the University of
 2 Wisconsin-Whitewater, correct?
 3 A That's correct.
 4 Q And you have a bachelor of arts in finance?
 5 A And economics.
 6 Q And economics too? You graduated in 2005?
 7 A Correct.
 8 Q Did you ever attend law school?
 9 A No.
 10 Q Do you have a law degree?
 11 A No.
 12 Q Other than your undergraduate studies, have you
 13 had any formal education beyond high school?
 14 A No.
 15 Q You have held your current position since what
 16 year?
 17 A My current position with Representative Fitzgerald
 18 was January of 2011. No. Wait. What year is it
 19 now? 2010.
 20 Q So since January of 2010 --
 21 A I'm sorry. Let me think. 2009. January of 2009
 22 would have been my starting time with
 23 Representative Fitzgerald.
 24 Q How did you come to work with Representative
 25 Fitzgerald?

1 capitol?
 2 A Yes.
 3 Q Do you have your own office or do you share an
 4 office with someone else?
 5 A The speaker's office.
 6 Q All right.
 7 A There is a desk in the speaker's office.
 8 Q And do you have a computer at that desk?
 9 A Yes. There are workstations. There are
 10 workstations at all of the desks.
 11 Q That workstation is yours alone at your desk?
 12 A No.
 13 Q Other people work on it as well?
 14 A Yes.
 15 Q Do you have a cell phone that was issued by your
 16 employer?
 17 A No.
 18 Q Do you have your own personal cell phone that you
 19 use?
 20 A Yes.
 21 Q Is your current cell phone number (715) 360-2779?
 22 A That's correct.
 23 Q Do you use that cell phone for business as well?
 24 A Yes.
 25 Q Is it a BlackBerry or does it have E-mail

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1 capability?
 2 A Yes.
 3 Q Does it have texting capability?
 4 A Yes.
 5 Q What kinds of things did you do for Brett Davis
 6 when you worked for him between November 2007 and
 7 January 2009?
 8 A I worked on policy issues focusing largely on
 9 education policy. He was the education committee
 10 chair at the time although I did not clerk that
 11 committee. Also just various tasks that a
 12 legislative aide would provide. Constituent
 13 relations, constituent outreach. Then I left
 14 State service to run his assembly race in 2008.
 15 Q So you were working directly for Representative
 16 Davis in the reelection?
 17 A No. It's the Republican Party of Wisconsin and
 18 Republican Assembly Campaign Committee who
 19 assigned me to run Brett Davis's race.
 20 Q Got it. And how long did you do that for?
 21 A I believe I left State service in September and
 22 returned after the election. I believe it was
 23 September roughly.
 24 Q So about one year?
 25 A September through November.

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1 college?
 2 A No.
 3 Q What did you do before that?
 4 A Special election for Scott Newcomer for assembly,
 5 33rd assembly district.
 6 Q When were you hired by Scott Newcomer?
 7 A You're really testing my memory here. Whenever
 8 Dan Vrakas was elected to Waukesha County exec. I
 9 want to say it was September. Maybe October.
 10 Q Of 2005?
 11 A Yes. Yes.
 12 Q And you did that up until about January 2006?
 13 A Yes.
 14 Q What did you do before you worked for
 15 Mr. Newcomer?
 16 A Went to college.
 17 Q So that was your first job out of college then?
 18 A Yes.
 19 Q Did you have any part-time positions or
 20 internships or externships during college working
 21 with any political subdivision or any campaign?
 22 A No.
 23 Q So working for Mr. Newcomer was your first
 24 experience working in politics?
 25 A In a paid capacity.

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1 Q September through November. And then before you
 2 began working for Brett Davis in November 2007
 3 what did you do?
 4 A Worked for representative Karl Van Roy.
 5 Q How long did you do that?
 6 A From January of that year until I began working
 7 for Brett Davis.
 8 Q So from January of 2007 through November 2007?
 9 A Yes.
 10 Q What was your position with Karl Van Roy?
 11 A Legislative aide.
 12 Q Before you began working for Karl Van Roy in
 13 January of 2007 what did you do?
 14 A I worked for the Republican Party of Wisconsin.
 15 Q What was your position with the Republican Party
 16 of Wisconsin?
 17 A I worked for the Republican Assembly Campaign
 18 Committee.
 19 Q When were you hired by the Republican Party of
 20 Wisconsin?
 21 A January of '06 maybe. That's a rough estimate.
 22 Q So for about a year then, January of '06 to
 23 January of '07?
 24 A Approximately. Yes.
 25 Q Was that job in January 2006 your first job out of

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1 Q You had done volunteer work before?
 2 A Exactly.
 3 Q Nothing on redistricting, though, before you
 4 started working on the 2011 redistricting?
 5 A That's correct.
 6 Q All right. Mr. Foltz, did you meet with anyone to
 7 prepare for your deposition before you came today?
 8 A Spoke to legal counsel.
 9 Q And that would be Mr. McLeod?
 10 A Yes.
 11 Q Did you meet with anybody else?
 12 A Other members of the legal team.
 13 Q And when you say the legal team, what attorneys
 14 specifically?
 15 A Joe Olson.
 16 Q Anyone else?
 17 A No.
 18 Q Have you ever given a deposition before?
 19 A No.
 20 Q This is your first time?
 21 A Yes.
 22 Q Were you ever told that you would not have to be
 23 deposed in this lawsuit?
 24 A Not that I can recall.
 25 Q Do you understand you have been identified by the

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1 defendants in this lawsuit as a potential trial
 2 witness?
 3 MR. KELLY: Objection, form.
 4 Q You can answer the question.
 5 A I'm sorry. Say the question again.
 6 Q Sure. Have you ever been told that you could be a
 7 potential trial witness in this case?
 8 A No.
 9 Q Did you ever discuss with anyone whether you would
 10 or would not be a witness at trial in this case?
 11 A No.
 12 Q I'm going to ask you if you can pull out -- you
 13 have got a number of different stacks. I'm going
 14 to ask if you could find Exhibit No. 10. Maybe I
 15 can find it for you right here. I would ask you
 16 to take a look at that. If you turn to the very
 17 first page, and let's make that the second page,
 18 you will see that it says Defendants Amended
 19 Initial Rule 26(A) Disclosures. Do you see that?
 20 A Yes.
 21 Q This is a document that Mr. Hassett, who is not
 22 here this afternoon -- he had asked you about it
 23 this morning. Do you recall when Mr. Hassett
 24 asked you about this document?
 25 A I don't remember being asked about this document.

1 A Uh-huh.
 2 Q Is it true that you were involved in reviewing
 3 population and other data so as to preserve to the
 4 extent possible and practicable the core
 5 population of prior districts as well as
 6 communities of interest?
 7 A Yes.
 8 Q Yes? Paragraph 13. Is it true that you assisted
 9 the legislature in insuring that the new
 10 redistricting maps to the extent possible kept
 11 wards and municipalities whole within legislative
 12 district boundaries and to the extent possible
 13 recognized local government boundaries?
 14 A Yes.
 15 Q And Paragraph Number 14. Is it a true statement
 16 that you assisted the legislature to insure that
 17 if the voters were shifted from odd to even senate
 18 districts they were not unnecessarily
 19 disenfranchised by being deprived of the
 20 opportunity to vote?
 21 A Yes.
 22 Q And then Paragraph 15. Did you in fact review the
 23 2010 decennial census data and the previous
 24 districting maps to insure that the new districts
 25 were as geographically compact as possible?

1 Q Turn to Page 5 of the document if you would.
 2 A Okay. There. Now I do remember being asked about
 3 this document.
 4 Q All right. Mr. Hassett had asked you a question
 5 about Paragraph Number Ten. Do you see that
 6 paragraph?
 7 A Yes.
 8 Q And you see that your name is identified there?
 9 A Yes.
 10 Q All right. I'm going to ask you whether you were
 11 involved in reviewing the 2010 decennial census
 12 and whether you assisted in determining
 13 appropriate constitutional boundaries for the
 14 state districts as memorialized into Act 43.
 15 That's a correct statement?
 16 A I would -- yes.
 17 Q And if you turn the page then to Page 6, you see
 18 there's a Paragraph Number 11?
 19 A Uh-huh.
 20 Q Is it a true statement that you reviewed census
 21 and population data from the 2010 decennial census
 22 to ensure minimal population deviation for the new
 23 districts?
 24 A Yes.
 25 Q Paragraph Number 12.

1 A Yes.
 2 Q I'm sorry. Actually, I misstated that. The new
 3 districts were geographically compact as
 4 practicable.
 5 A Yes.
 6 Q If you turn the page to Paragraph 16. Did you in
 7 fact assist the legislature to prevent unnecessary
 8 and unconstitutional voter dilution of minority
 9 voters?
 10 A Yes.
 11 Q And then Paragraph 17. Did you assist the
 12 legislature to insure that the new districts
 13 reflected communities of interest?
 14 A Yes.
 15 Q In carrying out these tasks you will see in each
 16 of the paragraphs we just went over the names
 17 Tad Ottman and Joe Handrick also are identified.
 18 A Uh-huh.
 19 Q In carrying out these tasks did you work both with
 20 Mr. Ottman and Mr. Handrick?
 21 A Yes.
 22 Q Did you ever see a copy of this Amended Rule 26(A)
 23 Disclosures that's in Exhibit No. 10 before today?
 24 A No. Today was the first time.
 25 Q Have you discussed with anyone giving testimony on

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1 any of those topics that we just went over?
 2 A I've testified on those topics at the legislative
 3 committee hearing.
 4 Q Have you discussed with anyone testifying at the
 5 trial in this case on any of those topics?
 6 A No.
 7 Q Have you seen a copy of the complaint in this
 8 case?
 9 A Yes.
 10 Q When did you first see a copy of the complaint in
 11 this case?
 12 A I don't recall. Well, before the map was even
 13 introduced. The initial complaint was before
 14 anything even public was introduced. There was no
 15 act, bill, draft.
 16 Q Let me just give you a copy of the complaint so we
 17 don't have to guess.
 18 MS. LAZAR: It's Exhibit 11.
 19 Q That's right here. This is actually an amended
 20 complaint. If you see on Exhibit 11 it says
 21 Second Amended Complaint for Declaratory and
 22 Injunctive Relief?
 23 A Uh-huh.
 24 Q Have you seen a copy of this amended complaint?
 25 A Yes.

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1 Q Did you mark it up or anything?
 2 A Yes.
 3 Q Do you still have that copy of the complaint?
 4 A No.
 5 Q Was it significant to you as a staffer to Speaker
 6 Fitzgerald that that complaint was filed?
 7 A Yes.
 8 Q Why was it significant?
 9 A Because my job was redistricting and I'm tasked to
 10 be apprised of what is going on with it.
 11 Q Did you do anything as a result of the complaint
 12 being filed?
 13 A No.
 14 Q With respect to redistricting did you do anything
 15 as a result of the complaint being filed?
 16 A What do you mean?
 17 Q Did it cause you to take any actions, the fact
 18 that the complaint was filed?
 19 A I read it.
 20 Q Have you seen a copy of the answer that was filed
 21 to the complaint in this case?
 22 A Yes.
 23 Q When did you first see a copy of the answer?
 24 A I don't know.
 25 Q Do you know whether it was before or after it was

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1 Q If you flip to the back page, you will see the
 2 date is November 18, 2011.
 3 A Uh-huh.
 4 Q Did you see the original complaint filed in this
 5 case?
 6 A Yes.
 7 Q And that was filed back in June?
 8 A I believe so.
 9 Q Who gave you a copy of the complaint?
 10 A I don't recall.
 11 Q Do you know why you were given a copy of the
 12 complaint?
 13 A No.
 14 Q Were you asked to do anything with respect to the
 15 complaint?
 16 A No.
 17 Q Did anybody ever ask you to read through it and
 18 give them your impressions of the complaint, the
 19 allegations and the claims that were made in it?
 20 A Not that I can recall.
 21 Q Did you do anything with the complaint when it was
 22 given to you?
 23 A Read it.
 24 Q Did you keep a copy of it?
 25 A No.

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1 filed?
 2 A Before.
 3 Q So were you asked to comment on the answer before
 4 it was filed?
 5 A Yes.
 6 Q Who asked you to comment on a draft answer before
 7 it was filed?
 8 A Legal counsel.
 9 Q Was that Mr. McLeod?
 10 A Yes.
 11 Q Anyone else?
 12 A That asked me to comment on it?
 13 Q Correct.
 14 A No.
 15 Q Did you provide Mr. McLeod with comments on the
 16 draft answer to the complaint?
 17 A Yes.
 18 Q Do you understand what discovery is in a lawsuit,
 19 the setting of the lawsuit?
 20 A In broad sense. Obviously I'm not an attorney.
 21 Q Have you heard the term interrogatory before?
 22 A Yes. I've heard of it.
 23 Q This is Exhibit No. 12. Actually, let's do it
 24 this way. This is Exhibit No. 13.
 25 A Okay.

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1 Q I'll take that back from you.
 2 A All right.
 3 Q Do you see that Exhibit No. 12 is -- I'm sorry.
 4 Exhibit No. 13 says it's Plaintiffs' First Set of
 5 Interrogatories and First Request for Production
 6 of Documents. Do you see that?
 7 A Yes.
 8 Q If you turn to the very back page, you will see
 9 there's a date of November 22, 2011.
 10 A Okay.
 11 Q Have you ever seen this document before?
 12 A I have not.
 13 Q Did anybody ever ask you to -- actually, strike
 14 that question. If you turn to Page 3, you will
 15 see it begins there with an Interrogatory No. 1.
 16 A I'm sorry. Interrogatory No. 1?
 17 Q Page 3.
 18 A Okay.
 19 Q Bold face that says Interrogatory No. 1?
 20 A Yes.
 21 Q If you flip through the pages up through Page 5,
 22 you will see there are nine interrogatories that
 23 appear in there?
 24 A Uh-huh.
 25 Q Did anybody ever give you these interrogatories

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1 Q Can you give me a rough approximation?
 2 A Well, it was when I began working for
 3 Jeff Fitzgerald in 2009, but it wasn't right at
 4 January. It was sometime later in the year.
 5 Q Who was it who told you that you were going to
 6 work on redistricting?
 7 A Speaker Fitzgerald.
 8 Q Do you know how Speaker Fitzgerald made the
 9 determination he would ask you to do that?
 10 A No.
 11 Q Were you told at the outset of that what your
 12 involvement would be in the redistricting process?
 13 A Yes.
 14 Q What were you told?
 15 A That I would be drawing the map.
 16 Q Did Speaker Fitzgerald tell you why you would be
 17 drawing the map?
 18 A Because it's constitutionally required to draw a
 19 map every ten years.
 20 Q Did he tell you why in particular he was going to
 21 ask you to do that?
 22 A No.
 23 Q Do you know other than from what he told you why
 24 he asked you in particular to do that?
 25 A No.

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1 and ask you to provide information to respond to
 2 them?
 3 A No.
 4 Q And then beginning on Page 5 it says Request for
 5 Production of Documents?
 6 A Uh-huh.
 7 Q And then if you turn to Pages 6, 7 and 8, you will
 8 see there are a number of document requests that
 9 are there?
 10 A Uh-huh.
 11 Q A total of 13?
 12 A Uh-huh.
 13 Q Did anyone ask you to produce those documents in
 14 response to these particular requests?
 15 A No.
 16 Q Are you aware whether there was ever any document
 17 that responded to Exhibit No. 13?
 18 A No.
 19 Q Did anybody ever show you a draft of such a
 20 document?
 21 A No.
 22 Q You testified before that you couldn't recall when
 23 you first began working on the 2011 redistricting;
 24 is that correct?
 25 A Right.

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1 Q You didn't have any experience before then in the
 2 drawing of legislative district maps, correct?
 3 A That's correct.
 4 Q So you don't know how it was decided what role you
 5 were going to play in the redistricting?
 6 A That's correct.
 7 Q Above and beyond your salary that you draw serving
 8 on Speaker Fitzgerald's staff, do you receive any
 9 additional salary or any additional compensation
 10 for your work on redistricting?
 11 A No.
 12 Q All right. Now, we mentioned before you did
 13 testify at the July 13th joint public hearing,
 14 correct?
 15 A That is correct.
 16 Q If you would take a copy of that. It's Exhibit 19
 17 right in front of you there.
 18 A Uh-huh.
 19 Q Have you seen Exhibit 19 before?
 20 A Yes.
 21 Q And this is a transcript of that hearing, correct?
 22 A That is correct.
 23 Q Was the testimony that you gave at this hearing
 24 true and correct?
 25 A To the best of my knowledge, yes.

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1 Q Have you reviewed your testimony?
 2 A Yes.
 3 Q Have you submitted any corrections or revisions to
 4 your testimony?
 5 A No.
 6 Q Is there a process for doing that?
 7 A No.
 8 Q And there is a videotape of this testimony as
 9 well, correct?
 10 A WisconsinEye was there. Yes.
 11 Q And have you watched that videotape?
 12 A No.
 13 Q Sitting here now, is there anything that you know
 14 of in this transcript of your testimony that you
 15 would correct or change?
 16 A No.
 17 Q Did you consult with any of the other witnesses
 18 before the hearing?
 19 A No. Well, Tad Ottman.
 20 Q Mr. Ottman did testify too, correct?
 21 A Yes.
 22 Q Did you consult with anyone other than the
 23 witnesses who testified before the hearing?
 24 A I'm sorry. Say that again.
 25 Q Sure. Before the hearing started did you consult

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1 with anyone other than Mr. Ottman about your
 2 testimony?
 3 A Legal counsel.
 4 Q Which legal counsel?
 5 A I don't know off the top of my head.
 6 Q Did you consult with Mr. Handrick before the
 7 hearing?
 8 A Not that I can recall.
 9 Q What about Dr. Gaddie?
 10 A No.
 11 Q After the hearing did you speak with Mr. Ottman
 12 about your testimony?
 13 A Yes.
 14 Q And did you speak with Mr. Ottman about his own
 15 testimony after the hearing?
 16 A Yes.
 17 Q What did you and Mr. Ottman discuss about each
 18 other's testimony after the hearing?
 19 A Just how it went.
 20 Q What did Mr. Ottman tell you about his testimony?
 21 A I don't recall.
 22 Q Do you recall what you told Mr. Ottman about your
 23 testimony?
 24 A I don't recall.
 25 Q After the hearing did you have any discussions

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1 about your testimony with anyone other than
 2 Mr. Ottman?
 3 A Yes.
 4 Q Who was that with?
 5 A Legal counsel.
 6 Q Which particular lawyers?
 7 A Eric McLeod and possibly -- I would say Eric and
 8 Ray Taffora and Jim Troupis.
 9 Q Did you have discussions with anyone other than
 10 Mr. Ottman and legal counsel about your testimony?
 11 A Yes.
 12 Q Who else did you speak with?
 13 A Joe Handrick, Speaker Fitzgerald, members of
 14 speaker staff.
 15 Q Were they all together when you had this
 16 conversation?
 17 A I don't recall.
 18 Q What was the nature of the conversations you had
 19 with Mr. Handrick after the hearing?
 20 A He just congratulated me and said *Good job*.
 21 Q Where did that discussion occur?
 22 A I don't recall.
 23 Q Was it over in the state capitol building?
 24 A I don't recall.
 25 Q What about Speaker Fitzgerald? What was the

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1 nature of those conversations?
 2 A Same. Good job.
 3 Q And what about the staff?
 4 A Same.
 5 Q Were the staff and Speaker Fitzgerald together
 6 when you had these conversations with them?
 7 A I don't recall.
 8 Q Did you continue to work out of the Michael
 9 Best & Friedrich office after the date of this
 10 hearing on July 13th?
 11 A Sometimes.
 12 Q Did you do any legislative redistricting work
 13 outside of Michael Best's office after July 13th?
 14 A No.
 15 Q In your view is there a difference between
 16 reapportionment and redistricting?
 17 A Are you asking my understanding of the
 18 definitions?
 19 Q Correct.
 20 A My understanding of the definition is the
 21 difference between reapportionment and
 22 redistricting is that reapportionment is the
 23 formal use to enumerate the number of
 24 congressional seats, house seats, given to each
 25 state following the census. Redistricting is the

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1 process by which you redraw legislative districts
 2 to balance populations to account for the changes
 3 in the demographics resulting from the census.
 4 Q When you did work on the redistricting plan, in
 5 addition to Mr. Ottman who did you work with?
 6 A The people I listed before. Legal counsel,
 7 Dr. Gaddie, Joe Handrick.
 8 Q So the list that you gave me before?
 9 A Yes.
 10 Q Is there anybody in addition to those people that
 11 you listed before?
 12 A Not that I can think of.
 13 Q Outside of the work that you did and other than
 14 the people you have already identified, is there
 15 anyone with whom you have discussed the
 16 redistricting process?
 17 A No.
 18 Q I want to direct your attention specifically to
 19 Joe Handrick and the work that you did with
 20 Mr. Handrick on the redistricting plan.
 21 A Uh-huh.
 22 Q First of all, let me ask you. Do you have any
 23 relatives who live in Minocqua?
 24 A No.
 25 Q Did you know Mr. Handrick before the 2011

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1 Mr. Handrick?
 2 A No.
 3 Q Have you worked with Mr. Handrick outside of the
 4 redistricting process?
 5 A Yes.
 6 Q And what did you previously do working with
 7 Mr. Handrick?
 8 A He was involved in Representative Meyer's
 9 reelection campaign.
 10 Q Which year was that?
 11 A 2010. That I'm aware of I should say. I don't
 12 know if he was involved in prior cycles. That is
 13 the extent of my knowledge.
 14 Q And you worked with him on that reelection
 15 campaign?
 16 A I know of his involvement in that reelection
 17 campaign.
 18 Q Did you do any work with him in that reelection
 19 campaign?
 20 A Not that I can recall.
 21 Q Did you know Mr. Handrick before Representative
 22 Meyer's reelection campaign?
 23 A I believe -- yes.
 24 Q Does that help to refresh your memory at all as to
 25 when you met Mr. Handrick?

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1 redistricting process?
 2 A Yes.
 3 Q When did you meet Mr. Handrick?
 4 A I don't recall.
 5 Q How long have you known him?
 6 A I don't know.
 7 Q Did you meet him before you started working for
 8 Speaker Fitzgerald?
 9 A That's a good question. I don't know.
 10 Q How did you first meet Mr. Handrick?
 11 A I don't remember.
 12 Q Do you remember who it was through?
 13 A No.
 14 Q Did Mr. Handrick introduce you to Speaker
 15 Fitzgerald?
 16 A No.
 17 Q When did you first start working with
 18 Mr. Handrick?
 19 MR. McLEOD: I'm going to insert an
 20 objection as to form. I think it's vague and
 21 ambiguous.
 22 To the extent you can answer, please do
 23 so.
 24 A I don't know.
 25 Q You don't recall when you started working with

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1 A No. I just know it was before the 2010 election
 2 cycle.
 3 Q In terms of the redistricting work that you
 4 performed for 2011 redistricting, when did you
 5 begin doing that work with Mr. Handrick?
 6 A I don't recall.
 7 Q Do you recall whether it was before February of
 8 2011?
 9 A I don't recall exactly when it was.
 10 Q Did you meet with Mr. Handrick to perform any work
 11 on the redistricting plan?
 12 A Say that again.
 13 Q Sure. Did you and Mr. Handrick -- were you ever
 14 together at the same time in the same place
 15 working on the redistricting?
 16 A Yes.
 17 Q And was that at the Michael Best & Friedrich
 18 office you described earlier?
 19 A Yes.
 20 Q And that work, your work on the redistricting
 21 plan, occurred only at the Michael Best offices;
 22 is that correct?
 23 A Outside of committee testimony.
 24 Q Outside of committee testimony. That was the
 25 July 13th testimony?

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1 A Actually, let me clarify that. The committee
 2 testimony and then there was a round of meetings
 3 with individual members that took place in the
 4 speaker's office.
 5 Q When you say individual members, you mean members
 6 of the assembly?
 7 A Yes.
 8 Q When did those meetings occur?
 9 A I believe the latter part of June, early July.
 10 Q Were those meetings with individual members or
 11 were there groups of members that you met with?
 12 A Individual members with Representative Vos in the
 13 room.
 14 Q And so at each of those meetings you were present?
 15 A Yes.
 16 Q And a member of the assembly was present?
 17 A Correct.
 18 Q And Representative Vos was present?
 19 A Yes.
 20 Q And Mr. Handrick was present?
 21 A No. He was not.
 22 Q Who else was present at those meetings?
 23 A No one else.
 24 Q So it was just those people?
 25 A Yes.

1 objectives, plans, reports and/or procedures
 2 used by lawmakers to prepare the
 3 redistricting plan and would instruct the
 4 witness not to answer pursuant to the
 5 legislative privilege.
 6 Q Are you going to follow counsel's instruction not
 7 to answer the question?
 8 A Yes.
 9 Q Other than those meetings that you had, those
 10 rounds of meetings with members of the assembly,
 11 and then your testimony at the July 13th hearing,
 12 was all of the work that you performed on
 13 redistricting done at Michael Best & Friedrich's
 14 offices?
 15 A Yes.
 16 Q Do you know why you only worked at Michael
 17 Best & Friedrich's offices on redistricting?
 18 A I can't say.
 19 Q Did anyone ever tell you why all of that work
 20 needed to be done at Michael Best & Friedrich's
 21 offices?
 22 A No.
 23 Q When you were performing the work at Michael
 24 Best & Friedrich's offices, did you save the work
 25 that you performed in any way?

1 Q Were the members of both parties in attendance at
 2 those meetings?
 3 A No.
 4 Q They were just with the republican members of the
 5 assembly?
 6 A Correct.
 7 Q Did you meet with every republican member of the
 8 assembly?
 9 A Yes.
 10 Q And what was the purpose of those meetings?
 11 MR. McLEOD: First of all I'm going
 12 to object to the form. I assume you're
 13 referring to the meeting he just described
 14 with members of the legislature in the
 15 capitol.
 16 MR. POLAND: That's correct.
 17 MR. McLEOD: If the question is
 18 what was the purpose of that meeting, those
 19 meetings, I'm going to assert on the grounds
 20 of legislative privilege for the reasons set
 21 forth in our privilege log and specifically
 22 the Committee for a Fair and Balanced Map
 23 which articulates and defines the scope of
 24 the legislative privilege as it would relate
 25 to information concerning motives,

1 A I'm sorry. Say that again.
 2 Q Sure. Did you save the work that you performed
 3 there in any way?
 4 A Some, yes.
 5 Q Did you save paper copies of things that were
 6 printed out such as reports?
 7 A Sometimes.
 8 Q Did you save copies of electronic files that you
 9 created?
 10 A Sometimes.
 11 Q Are those documents still in existence?
 12 A Some.
 13 Q And there are others that are not?
 14 A That were produced during the redistricting
 15 process that are no longer there?
 16 Q Yes. Correct.
 17 A Yes.
 18 Q Were those documents moved anywhere that you know
 19 of?
 20 A No.
 21 Q Were those documents destroyed in some way?
 22 Thrown out? Discarded?
 23 A Yes.
 24 Q Did anyone ever tell you to preserve the materials
 25 that you were creating during the redistricting

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1 process?
 2 A No.
 3 Q Did anyone ever tell you to discard the materials
 4 that you were creating?
 5 A No.
 6 Q You just decided not to keep them?
 7 A Uh-huh.
 8 Q Do you know whether there are files that were
 9 saved on a computer that are still in existence at
 10 the Michael Best offices?
 11 A Yes.
 12 Q Are you still doing any work out of that office?
 13 A Sometimes.
 14 Q What's the purpose of the work that you're doing
 15 over there now?
 16 A Redistricting.
 17 Q Is there anything to be left with the
 18 redistricting process?
 19 A Litigation.
 20 Q Is there anything other than litigation to be done
 21 with it?
 22 A Not to my knowledge.
 23 Q How often did you work with Mr. Handrick at the
 24 Michael Best offices?
 25 A That's hard to say.

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1 A I would defer to legal counsel on that one.
 2 Q Was that a determination that you made?
 3 A No.
 4 Q Did you print copies of all of the E-mails and
 5 give them to legal counsel?
 6 A Yes.
 7 Q And legal counsel made a determination then about
 8 whether they were privileged or not?
 9 A Yes. Yes.
 10 Q Did you ever text message with Mr. Handrick?
 11 A I don't recall.
 12 Q And that's regarding redistricting.
 13 A I don't recall.
 14 Q Same answer? What about instant messaging? Do
 15 you ever instant message with Mr. Handrick
 16 regarding redistricting?
 17 A No.
 18 Q When you and Mr. Handrick were together at Michael
 19 Best's offices, what did you observe Mr. Handrick
 20 doing?
 21 A Drawing maps.
 22 Q What map specifically was Mr. Handrick drawing?
 23 A Act 43. Well, maps involved in the process of
 24 leading towards Act 43.
 25 Q Any specific maps that you can identify?

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1 Q Was it a daily basis?
 2 A No.
 3 Q Weekly basis?
 4 A Sometimes. Some weeks, yes; some weeks, no.
 5 Q Did you communicate with Mr. Handrick about
 6 redistricting outside of Michael Best's offices?
 7 A No.
 8 Q Did you ever communicate with Mr. Handrick by
 9 E-mail about redistricting?
 10 A Yes.
 11 Q All right. Did you use the E-mail account from
 12 which the E-mails we went over this morning were
 13 printed?
 14 A Yes.
 15 Q Do you still have copies of the E-mails that you
 16 exchanged with Mr. Handrick regarding
 17 redistricting?
 18 A Some.
 19 Q Have you produced any of those today?
 20 A I don't know.
 21 Q Were there any that were withheld from production
 22 today?
 23 A Yes.
 24 Q Do you know, was that on the privilege grounds
 25 that has been asserted?

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1 A The assembly and senate plans. I should say
 2 versions of alternatives that eventually became
 3 Act 43.
 4 Q Was Mr. Handrick drawing those on a computer or
 5 was he drawing those by hand?
 6 A Computer.
 7 Q Was that also using the autoBound software?
 8 A Yes.
 9 Q Did he have his own computer over at Michael Best?
 10 A Yes.
 11 Q So that was not the same as the computer that you
 12 used?
 13 A Correct.
 14 Q Do you know, is Mr. Handrick still working out of
 15 the Michael Best office?
 16 A No.
 17 Q When was the last time that you saw him at the
 18 Michael Best office?
 19 A I don't recall.
 20 Q Do you know whether it was after Act 43 was
 21 passed?
 22 A I don't recall. It was after. Yes.
 23 Q But you don't recall how recently it was?
 24 A Yeah. Right.
 25 Q Was anyone ever in the room with you and

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1 Mr. Handrick while he was drawing various	1 Q And then disenfranchisement?
2 alternatives for the maps that eventually became	2 A It's a function of core retention. I don't
3 Act 43?	3 recall.
4 A Legal counsel.	4 Q You just don't recall whether Mr. Handrick had
5 Q That would be Mr. McLeod or one of the other	5 given you any specific advice on drawing maps with
6 lawyers you have mentioned before?	6 respect to core retention or disenfranchisement?
7 A Yes.	7 A Right.
8 Q Was Mr. Ottman ever in the room?	8 Q Do you know whether the alternatives that
9 A Yes.	9 Mr. Handrick drew in autoBound were retained in
10 Q Did you and Mr. Handrick ever look at maps that he	10 any way?
11 was drawing together?	11 A I don't know.
12 A Yes.	12 Q You don't know if they would still be in existence
13 Q And did you provide any commentary to him on the	13 on the computer at Michael Best's offices?
14 maps that he was drawing?	14 A He had electronic files that were produced.
15 A I'm sure I did.	15 Q And when you say the electronic files that were
16 Q What about maps -- strike that question. Were	16 produced, do you mean produced today --
17 there times when you were drawing maps in	17 A No.
18 autoBound that Mr. Handrick commented on them?	18 Q -- in the disks?
19 A In autoBound?	19 A No.
20 Q Correct.	20 Q Okay. Produced in what way?
21 A Not that I can recall.	21 A My understanding is yesterday.
22 Q What about paper maps? Were there paper maps that	22 Q Okay. You also worked with Mr. Ottman on the
23 you were drawing that Mr. Handrick commented on?	23 redistricting plan, correct?
24 A Yes.	24 A Yes.
25 Q Were those also maps, various versions of what	25 Q Did you and Mr. Ottman divide up the work in some
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1 eventually became Act 43?	1 way that you performed?
2 A Yes.	2 A Not so much with a map. I would say that the
3 Q Were there any specific aspects of the	3 drafting was more Tad's responsibility than mine.
4 redistricting plan that Mr. Handrick was focusing	4 Q And when you say drafting, you mean drafting of
5 on?	5 the maps themselves?
6 A The fundamental criteria. The splits, deviation,	6 A The correspondence with LRB and things like that
7 core retention and disenfranchisement which is a	7 to turn the block assignment file into a
8 function of core retention and things like that.	8 legislative draft.
9 Q Did Mr. Handrick give you any guidance on any of	9 Q Did Mr. Ottman take the lead in any particular
10 those criteria?	10 areas of the drafting process?
11 A Yes.	11 A No.
12 Q Generally what kind of guidance did he give on	12 Q So, for example, with respect to any specific
13 those criteria?	13 districts or areas of the state, did Mr. Ottman
14 A I can't recall.	14 take a lead role?
15 Q Did you ever look at any versions of the maps with	15 A No.
16 Mr. Handrick where he specifically advised you on	16 Q What about on the congressional districts? Did
17 splits?	17 Mr. Ottman have any involvement with those?
18 A I'm sure he did, yes.	18 A Not that I know of.
19 Q And what about population deviation? Did he ever	19 Q Do you know who was involved in drawing the
20 give you specific guidance on population	20 congressional districts?
21 deviation?	21 A No.
22 A I'm sure at some point, yes.	22 Q Was there any work done in the Michael Best office
23 Q What about core retention? Did he ever give you	23 at the time that you were present where there was
24 specific advice on core retention?	24 work done on the congressional districts?
25 A Not that I can recall.	25 A No.
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1 Q Do you know whether Mr. Ottman began working on
 2 redistricting before you did?
 3 A I don't know.
 4 Q Was one of you working in the Michael Best offices
 5 first? Before the other in other words?
 6 A I don't remember.
 7 Q Do you know whether you started working there
 8 roughly around the same time?
 9 A I don't remember.
 10 Q What was Mr. Ottman's role generally speaking in
 11 the redistricting process?
 12 A Drawing the map.
 13 Q When you say drawing the map, this is using
 14 autoBound software, correct?
 15 A Yes.
 16 Q I want to ask you just about you personally and
 17 what you did in terms of drawing the map, but I
 18 want to talk specifically about using the
 19 computer. When you use autoBound, are you
 20 actually using a mouse to draw a map?
 21 A Yes.
 22 Q Are you doing it by position a cursor on a screen
 23 and drawing lines or how does that process work?
 24 A Assigning -- I think the more accurate way to put
 25 it would be assigning existing census geography.

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1 A LTSB.
 2 Q And that was the autoBound Version 9 you were
 3 talking about?
 4 A Correct.
 5 Q So you did some training on the software before
 6 the census data was released?
 7 A Uh-huh.
 8 Q And then after the census data was released, is
 9 that the point at which the process of drawing the
 10 maps began?
 11 A Say that again.
 12 (Question read)
 13 A Yes. I would say that's safe to say. I think
 14 there was a lag between when we actually received
 15 the PL data from the census bureau, the
 16 redistricting data office of the census bureau,
 17 and when it is put into a form autoBound can use.
 18 So there was a delay in there between when LTSB
 19 received it and when they were able to put it in
 20 proper form.
 21 Q So it's LTSB that puts it in the format that
 22 autoBound could use and manipulate?
 23 A Yes.
 24 Q All right. It was some time after you received
 25 that data from LTSB that you then began drawing

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1 I can't just freeform a line, but you can select a
 2 census block, a ward, a county, a CCD or an MCD
 3 and assign that to District X.
 4 Q And is that done in a graphical way? You have got
 5 a map up on the screen and you click on something
 6 and you make an assignment?
 7 A That's correct.
 8 Q In this case it was census blocks that were being
 9 used, correct?
 10 A Yes.
 11 Q As opposed to wards?
 12 A Yes.
 13 Q Do you know census blocks were being used instead
 14 of wards?
 15 A The wards didn't exist at that point. The new
 16 wards did not exist at that point.
 17 Q When was the first time that you started drawing a
 18 map for the purpose of the 2011 redistricting?
 19 A I don't recall.
 20 Q Do you recall whether it was -- it must have been
 21 after the census data was released, correct?
 22 A Well, we had the software available to us before
 23 then. It was largely a training exercise to get
 24 familiar with the software and its functions.
 25 Q And who provided the software?

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1 the maps?
 2 A Yes.
 3 Q Is there a reason that you didn't wait until after
 4 the ward process had been completed in the state
 5 to draw the maps?
 6 A No.
 7 Q Do you recall in the testimony that was given at
 8 the hearing there was a reference to this
 9 litigation having been filed --
 10 A Uh-huh.
 11 Q -- and the need to draw the maps before the
 12 litigation proceeded?
 13 A I'm sorry. Say that again.
 14 (The two previous questions were read)
 15 A I don't remember that specific reference or that
 16 specific line of testimony.
 17 Q All right. Do you know any reason other than the
 18 fact that the wards had not yet been created that
 19 census blocks were used to draw the maps?
 20 A It was what's available to us.
 21 Q Using census blocks as opposed to wards created
 22 difficulties for municipalities; is that correct?
 23 MR. McLEOD: I'm going to assert an
 24 objection to the form of the question.
 25 To extent you can answer, please do so.

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1 A I don't agree with that.
 2 Q Why do you not agree with that?
 3 A The change in the process did not force them to
 4 redraw aldermanic or supervisory districts. The
 5 legislation allowed for them to maintain those
 6 boundaries.
 7 Q Did anybody ever tell you otherwise or express an
 8 opinion otherwise?
 9 A To me directly?
 10 Q Correct.
 11 A No.
 12 Q Did you ever hear about anybody expressing the
 13 opinion otherwise?
 14 A Yes.
 15 Q All right. When was that that you heard that?
 16 A At the hearing.
 17 Q All right. Any time other than the hearing that
 18 anyone -- that you heard about that?
 19 A No.
 20 Q So when you were engaged in the process of drawing
 21 the maps at the Michael Best office, you would --
 22 using the mouse you would click on a census block
 23 and you would assign it to a particular district;
 24 is that correct?
 25 A Any level of census geography. So it could be

1 block at the smallest, multiple counties at the
 2 largest.
 3 Q And in the maps that you created did you use
 4 different levels of geographic areas? Did you use
 5 census blocks? Did you use counties? Did you
 6 use larger areas?
 7 A Uh-huh.
 8 Q Who else other than you and Mr. Ottman and
 9 Mr. Handrick engaged in that process at the
 10 Michael Best offices?
 11 A No one.
 12 Q So just the three of you?
 13 A Correct.
 14 Q Was there ever a time when you were at the Michael
 15 Best office where anyone instructed you how to
 16 create certain districts using the mouse and the
 17 autoBound software?
 18 A Not that I can recall.
 19 Q Did anyone ever tell you as you were engaged in
 20 the process of selecting census blocks and
 21 assigning them that you should put a particular
 22 census block in a certain district?
 23 A I don't remember.
 24 Q Was there ever a time that Dr. Gaddie was present
 25 there where you were creating maps, clicking on

1 census blocks, and he was advising you about that
 2 process?
 3 A I don't remember.
 4 Q What about Mr. Handrick? Was there ever a time
 5 that you were assigning certain census blocks and
 6 Mr. Handrick was advising you whether to assign
 7 them to a certain district or a different
 8 district?
 9 A I don't remember.
 10 Q I want to split up a couple of different
 11 categories of people here. First I'm going to
 12 talk about legislators; Speaker Fitzgerald,
 13 Senator Fitzgerald, Robin Vis and Senator
 14 Zipperer.
 15 A Uh-huh.
 16 Q They were present at various times at the Michael
 17 Best offices during the redistricting process?
 18 A Yes.
 19 Q Did any of them ever advise you where to draw any
 20 of the district boundaries?
 21 A I'm sure they did.
 22 Q Do you recall any of those conversations and what
 23 they said?
 24 A No.
 25 Q Do you recall whether any of the -- strike that.

1 Do you recall which districts they would have been
 2 discussing with you in the redistricting process?
 3 A I don't recall.
 4 Q Do you recall discussing any boundaries with any
 5 of the legislators in, for example, Milwaukee
 6 County?
 7 A Say that again.
 8 Q Let me strike that question. Let me rephrase it.
 9 Did you discuss with any of the legislators any of
 10 assembly district boundaries in Milwaukee County?
 11 A In Milwaukee County? Yes.
 12 Q What was the nature of that conversation?
 13 A I don't remember.
 14 Q Did you talk at all with any of the legislators
 15 about the Latino districts in Milwaukee County?
 16 A Yes.
 17 Q What was the nature of those conversations?
 18 A Explaining to them the amendments and the
 19 alternative that we introduced and the
 20 conversations with MALDEF.
 21 Q Who made the decision ultimately about where the
 22 boundaries of Assembly Districts 8 and 9 would be
 23 in Milwaukee County?
 24 A The legislature.
 25 Q And that was when they adopted Act 43 as amended?

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1 A Uh-huh.
 2 Q With respect to the map that was submitted to the
 3 legislature for its consideration, who was it who
 4 made the final decision about where the district
 5 boundaries for Assembly Districts 8 and 9 would
 6 be?
 7 MR. McLEOD: I'm going to assert
 8 the legislative privilege on the same grounds
 9 that I stated previously and as set forth in
 10 our privilege log that we have provided
 11 earlier today. So to the extent that the
 12 question calls for information concerning the
 13 identities of persons who participated in
 14 those types of specific decisions, then I
 15 think it's subject to the legislative
 16 privilege as set forth in the Committee for
 17 the Fair and Balanced map.
 18 Q Are you going to follow counsel's instruction --
 19 A Yes.
 20 Q -- and not answer the question?
 21 A Yes.
 22 Q We just have to be careful not to talk over each
 23 other here.
 24 A Yes.
 25 Q Sometimes my questions are painfully long, but you

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1 Q Was it a handful of times?
 2 A I don't know.
 3 Q No estimate at all?
 4 A No.
 5 Q What about Senator Fitzgerald? How many times was
 6 he present over at Michael Best's offices when you
 7 were there?
 8 A I don't know.
 9 Q Can you give me a ballpark? Was it more than 15?
 10 20?
 11 A I don't know.
 12 Q What about Robin Vos? How many times was
 13 Robin Vos present at Michael Best's offices?
 14 A I don't know.
 15 Q Again, can you give me any kind of a ballpark?
 16 Was it just a handful? Was it more than a dozen?
 17 A I don't know.
 18 Q And then what about Senator Zipperer? How many
 19 times was Senator Zipperer present at Michael
 20 Best's office during the redistricting process?
 21 A I don't know.
 22 Q Again, ballpark? Can you say a few? 15? 20?
 23 A I don't know.
 24 Q Did you ever communicate with any of those four
 25 legislators by E-mail about the redistricting

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1 have to wait until I finish them.
 2 What about with respect to the assembly
 3 districts in Kenosha and Racine Counties? Did you
 4 have any conversations with the legislators, and
 5 that would be Speaker Fitzgerald, Senator
 6 Fitzgerald, Robin Vos or Senator Zipperer, about
 7 then Kenosha and Racine assembly districts?
 8 A Yes.
 9 Q What was the nature of those conversations?
 10 A I don't recall.
 11 Q Do you know who made the final decision on the
 12 assembly district boundaries in Racine and Kenosha
 13 Counties that ultimately were reflected in Act 43?
 14 MR. McLEOD: I'm going to assert
 15 the same legislative privilege objection.
 16 I'm not going restate it at length other than
 17 to note my prior objection and instruct the
 18 witness not to answer accordingly.
 19 Q And you're going to follow counsel's instruction
 20 not to answer the question?
 21 A Yes, I am.
 22 Q How many times was Speaker Fitzgerald present over
 23 at Michael Best's offices that you saw during the
 24 redistricting process?
 25 A I don't know.

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1 process?
 2 A Not that I can recall.
 3 Q Did you ever communicate with any of those four
 4 legislators by text message or instant messaging
 5 about the legislative process?
 6 A Not that I can recall.
 7 Q I'm sorry. And I said the legislative process. I
 8 meant the redistricting process.
 9 A Not that I can recall.
 10 MR. SHRINER: He knew what you
 11 meant.
 12 Q Now I want to take a different group of people,
 13 and that's the legal counsel. That's Mr. McLeod,
 14 Mr. Taffora, Jim Troupis and Sarah Troupis.
 15 A Uh-huh.
 16 Q Were there any other legal counsel who were
 17 involved in providing advice regarding
 18 redistricting?
 19 A I mentioned Michael Screnock earlier.
 20 Q That's right. You said he is an attorney at
 21 Michael Best & Friedrich?
 22 A Right. Joe Olson has come up in conversation
 23 today.
 24 Q Did Mr. Olson's involvement -- that postdated the
 25 passage of Act 43?

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1 A Correct.
 2 Q So Mr. Olson was not involved in the redistricting
 3 process itself before the time that the act was
 4 passed, is that correct, to your knowledge?
 5 A To my knowledge, yes.
 6 Q At least you had no involvement with him before
 7 that time?
 8 A Yes.
 9 Q So in terms of the legal counsel that you
 10 mentioned and you identified before --
 11 A Uh-huh.
 12 Q They were present at various times in the office
 13 at Michael Best & Friedrich where you were
 14 working?
 15 A They work there too.
 16 Q But in terms of that specific office that you were
 17 in when you were over there where you and
 18 Mr. Ottman had computers and worked, they were
 19 present in that office from time to time?
 20 A Yes.
 21 Q And generally speaking did they provide you with
 22 any advice on the redistricting process itself?
 23 A Yes.
 24 Q Generally speaking what kind of advice did they
 25 provide to you on that redistricting process?

1 A Yes.
 2 Q What about text messaging? Did you ever text
 3 message with any of the legal counsel regarding
 4 redistricting?
 5 A Not that I can recall.
 6 Q What about instant messaging? Did you ever
 7 instant message with any legal counsel?
 8 A No.
 9 Q So either E-mail communications or face-to-face
 10 communications with legal counsel?
 11 A Or phone.
 12 Q Or phone conversations. Did you have a phone in
 13 the Michael Best & Friedrich office that you were
 14 working out of?
 15 A Yes.
 16 Q And did you use that for the purpose of
 17 redistricting?
 18 A Yes.
 19 Q What about cell phone? Did you have
 20 communications with anyone on your cell phone
 21 about the redistricting process?
 22 A Yes.
 23 Q You also mentioned that you had conversations with
 24 Scott Suder about redistricting; is that correct?
 25 A Yes.

1 MR. McLEOD: I'm going to assert
 2 the attorney-client privilege. I think the
 3 substance of any communications regarding
 4 advice provided to the client is squarely
 5 within the scope of that privilege, and I
 6 would instruct the witness not to answer.
 7 Q And you're going to follow counsel's instruction
 8 and not answer the question?
 9 A Yes.
 10 Q Did you ever communicate with any of the legal
 11 counsel by E-mail regarding the redistricting
 12 process?
 13 A Yes.
 14 Q And we saw some examples of some of those E-mails
 15 this morning, correct?
 16 A Yes.
 17 Q We saw some E-mails. Mr. Troupis was involved in
 18 some of those, correct?
 19 A Yes.
 20 Q All right. There were additional E-mails that you
 21 have with legal counsel that you have not produced
 22 today, correct?
 23 A That's correct.
 24 Q Were those E-mails that you printed out and gave
 25 to Mr. McLeod or to legal counsel to look at?

1 Q And who is Mr. Suder?
 2 A The majority leader.
 3 Q What were your conversations with Mr. Suder?
 4 A Regarding redistricting.
 5 Q Regarding redistricting. You are just saying
 6 regarding redistricting?
 7 A Yes.
 8 Q What was the specific nature of the conversations
 9 you had with Mr. Suder about redistricting?
 10 MR. McLEOD: I'm going to have to
 11 assert the legislative privilege on the same
 12 grounds that I had stated at length
 13 previously and instruct the witness not to
 14 answer as to those specific conversations
 15 that are within the scope of the legislative
 16 privilege.
 17 Q And you're going to follow counsel's instruction
 18 not to answer that question?
 19 A Yes.
 20 Q Were there ever any times that you had any
 21 conversations with Mr. Suder where anyone else was
 22 present?
 23 A Yes.
 24 Q And regarding redistricting?
 25 A Yes.

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1 Q All right. Who else was present during those
 2 conversations?
 3 A Legal counsel, Representative Vos, Representative
 4 Fitzgerald, Senator Zipperer, Senator Fitzgerald,
 5 Joe Handrick.
 6 Q And what was said at those meetings where those
 7 people were present regarding redistricting?
 8 A I don't remember.
 9 Q Do you know generally the nature of the subject
 10 matter of those conversations?
 11 MR. McLEOD: I'm going to object to
 12 the form because if the question specifically
 13 involves meetings in which Joe Handrick was
 14 present, then it's different than if we're
 15 talking about other meetings in which he
 16 wasn't present. I think there's sort of
 17 this -- I would have a general form objection
 18 because you're talking about meetings
 19 generally. Maybe a different cast of
 20 characters and different individuals may
 21 implicate different responses and also
 22 different objections.
 23 If you understand my point --
 24 MR. POLAND: Yes.
 25 Q Any meetings where you were discussing with

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1 Scott Suder the redistricting process where
 2 Mr. Handrick was also present.
 3 A I'm sorry. Say the question again.
 4 Q Were there any meetings that you had or -- strike
 5 that. Were there any conversations that you had
 6 with Mr. Suder regarding the redistricting process
 7 where Mr. Handrick was also present?
 8 A Yes.
 9 Q And what did you discuss at those meetings?
 10 A Redistricting.
 11 Q Anything specific about redistricting?
 12 A I don't recall.
 13 Q When did those meetings occur?
 14 A I don't recall.
 15 Q Were those over at Michael Best & Friedrich's
 16 offices?
 17 A Yes.
 18 Q Was there more than one such meeting?
 19 A Yes.
 20 Q Do you know approximately how many meetings there
 21 were?
 22 A No.
 23 Q Were maps being drawn at any of those meetings?
 24 A No.
 25 Q Was there any kind of work being done on a

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1 computer at any of those meetings?
 2 A No.
 3 Q Were you looking at any paper copies of maps at
 4 those meetings?
 5 A Yes.
 6 Q Do you recall what the maps were that you were
 7 looking at?
 8 A I'm sorry?
 9 Q Do you recall what the maps were that you were
 10 looking at?
 11 A Redistricting maps.
 12 Q And those would have been for the purpose of
 13 Act 43, correct?
 14 A Yes.
 15 Q Do you recall whether there was any specific
 16 aspect of those maps that you were discussing?
 17 A I don't recall.
 18 Q Did you ever discuss redistricting with any
 19 democratic member of the legislature?
 20 A No.
 21 Q Did you have any particular goal in developing the
 22 maps that became Act 43?
 23 MR. McLEOD: I'm going to assert an
 24 objection as to form as it relates to my
 25 prior comment before in terms of are we

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1 talking about specific meetings with
 2 legislators? Are we talking about specific
 3 meetings with Joe Handrick present? Because
 4 my objection is different depending on what
 5 you're asking. So form of the question
 6 subject to that objection.
 7 Q All right. This is going to be a standalone
 8 question not referring specifically to any
 9 meetings. Was there a goal that you had in
 10 developing the map that became Act 43?
 11 A Yes.
 12 Q And what was that goal?
 13 A To draw something that would pass the state
 14 assembly and state senate and be signed by the
 15 governor and survive a court challenge.
 16 Q Was it a part of the goal to increase the
 17 republican membership in the legislature?
 18 A No.
 19 Q Have you ever discussed with anyone the question
 20 of district boundaries for senate --
 21 MR. EARLE: I didn't hear the
 22 answer to that.
 23 MR. POLAND: We can have the court
 24 reporter read it back.
 25 (Answer read)

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1 MR. EARLE: Is there any way to get
 2 the mike closer?
 3 MR. POLAND: Let us know if the
 4 sound fades out again and we need to speak
 5 up.
 6 MR. EARLE: Thank you.
 7 Q Let me repeat the last question. Have you ever
 8 discussed with anyone the question of district
 9 boundaries for senate recall elections?
 10 A Not that I can recall.
 11 Q Were you involved in drafting the provision that
 12 established the effective date for Act 43?
 13 A Not that I can recall.
 14 Q Do you know who was involved in that?
 15 A Not that I can recall.
 16 Q Do you have any opinion on the appropriate
 17 boundaries for the pending or potential recall
 18 elections?
 19 A My opinion is irrelevant.
 20 Q Okay. You can answer the question.
 21 A What was the question? What my opinion is of --
 22 Q The appropriate boundaries for the pending or
 23 potential recall elections.
 24 A That's a matter that's going to be decided by a
 25 Court and not by me.

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1 Q So you saw it sometime after it was a final
 2 document?
 3 A Correct.
 4 Q Did you speak with Dr. Gaddie about his report
 5 before he submitted it?
 6 A No.
 7 Q Did you see a draft of it before it was submitted?
 8 A No, I did not.
 9 Q Did Dr. Gaddie ask you to provide any information
 10 that was going to be used to prepare this report?
 11 A No, he did not.
 12 Q Did you engage in any kind of E-mail
 13 communications or other electronic communications
 14 with Dr. Gaddie about his report?
 15 A No.
 16 Q Have you been asked to look at Dr. Gaddie's report
 17 since he produced it and make any comments about
 18 it?
 19 A No.
 20 Q When did you first meet Dr. Gaddie?
 21 A I don't recall.
 22 Q Were you involved in retaining Dr. Gaddie at all
 23 to work as an expert witness in this case?
 24 A No.
 25 Q Have you spoken with him about his work in the

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1 Q So you do have an opinion but you don't want to
 2 state it?
 3 A Yes.
 4 Q You understand that there are expert witnesses who
 5 have been identified by the defendants in this
 6 case?
 7 A Yes.
 8 Q Have you seen any of their expert reports?
 9 A Yes.
 10 (Exhibit No. 30 marked for
 11 identification)
 12 Q Mr. Foltz, I've handed you a copy of a document
 13 that the court reporter has marked as Exhibit
 14 No. 30. Do you have that in front of you?
 15 A Yes, I do.
 16 Q Do you see it says it's the expert report of
 17 Ronald Keith Gaddie, Ph.D.?
 18 A Yes, I do.
 19 Q Have you ever seen a copy of this document before?
 20 A Yes, I have.
 21 Q When have you seen this document before?
 22 A I'm not sure exactly when.
 23 Q Did you see this document before December 13,
 24 2011?
 25 A No, I did not.

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1 litigation?
 2 A I don't believe so.
 3 Q How many times did you meet with Dr. Gaddie in the
 4 course of the redistricting process itself?
 5 A I don't recall.
 6 Q Did you work with Dr. Gaddie at all before the
 7 2011 redistricting process?
 8 A No.
 9 Q You can set the document to the side.
 10 (Exhibit No. 31 marked for
 11 identification)
 12 Q Mr. Foltz, I have handed you a document that the
 13 court reporter has marked -- I'm handing you a
 14 document the court reporter has marked as
 15 Exhibit 31.
 16 A Uh-huh.
 17 Q Do you have that in front of you?
 18 A I do.
 19 Q Do you see that it's dated December 14, 2011?
 20 A Yes.
 21 Q Do you see it's to Daniel Kelly, Reinhart
 22 Attorneys at Law?
 23 A Uh-huh.
 24 Q From John Diez/Magellan Strategies BR?
 25 A Uh-huh.

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1 Q I'm going to represent to you that is a copy of an
2 expert report submitted by Mr. Diez in the
3 redistricting litigation. Is that a document that
4 you have seen before?
5 A No.
6 Q Have you ever spoken with John Diez?
7 A No.
8 Q Have you ever spoken with anyone at Magellan
9 Strategies?
10 A No.
11 Q Were you ever asked to provide any data or other
12 information that was to be used by John Diez or
13 Magellan Strategies to your knowledge?
14 A No.
15 Q To your knowledge was Mr. Diez involved at all in
16 the redistricting process that resulted in the
17 passage of Act 43?
18 A No.
19 Q You can set that document to the side.
20 (Exhibit No. 32 marked for
21 identification)
22 Q Mr. Foltz, I've handed you a copy of a document
23 the court reporter has marked as Exhibit 32. Do
24 you have that in front of you?
25 A Yes, I do.

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1 A I believe he's a demographer.
2 Q Did you work with any demographers at all in the
3 redistricting process?
4 A No.
5 Q Was there ever any discussion of working with any
6 demographers in the redistricting process?
7 A Not that I recall.
8 Q Were you asked to provide any information or any
9 data that was given to Dr. Morrison for the
10 purpose of his report as far as you know?
11 A No.
12 Q Were you ever asked to compile any demographic
13 information and provide it to counsel?
14 A Not that I can recall.
15 Q Have you been asked -- after you looked at
16 Dr. Morrison's report, have you been asked by
17 anyone to provide any comments on it?
18 A No.
19 Q Do you still have copies of Dr. Morrison's expert
20 report and Dr. Gaddie's report?
21 A I don't know.
22 Q You can set that aside. I'm going to ask you
23 questions about two exhibits that we marked
24 yesterday, Exhibits 14 and 15. Do you have those
25 in front of you?

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1 Q It's titled Declaration and Expert Report of
2 Peter Morrison, Ph.D.
3 A Uh-huh.
4 Q And it's dated December 14, 2011.
5 A Uh-huh.
6 Q Have you ever seen a copy this document before?
7 A Yes.
8 Q When did you see a copy of this document?
9 A I don't remember exactly when.
10 Q Did you see any drafts of this document before it
11 was final?
12 A No, I did not.
13 Q So you have seen it at some time between
14 December 14th and today?
15 A Yes.
16 Q And that was the first time?
17 A Yes.
18 Q Have you ever meet Peter Morrison?
19 A No, I have not.
20 Q Have you ever spoken with Peter Morrison?
21 A No.
22 Q Corresponded with him in any fashion, E-mail, text
23 messaging or anything?
24 A No.
25 Q Do you know what Dr. Morrison's discipline is?

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1 A I do.
2 Q I would like to draw your attention first on
3 Exhibit 14 to Statute Section 801.50(4m). Do you
4 see that?
5 A 50(4m). Oh, there we go. Yes.
6 Q Were you involved in any way in the development of
7 this statute?
8 A Yes.
9 Q What was your involvement in the development of
10 801.50(4m)?
11 A Conversations with legal counsel, legislative
12 leaders.
13 Q And which legal counsel was that?
14 A Michael Best.
15 Q Anyone in particular at Michael Best?
16 A I don't recall.
17 Q Do you know when those conversations occurred?
18 A I don't recall.
19 Q Do you know when that statute was passed?
20 A Roughly the same time line as Act 43 I believe.
21 Q Did those discussions occur over at Michael
22 Best & Friedrich's office?
23 A Yes.
24 Q Do you know who was present for those discussions?
25 A I don't recall.

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1 Q Was Mr. Handrick involved at all in the drafting
2 of that statute?
3 A No.
4 Q Was he involved in any of your conversations with
5 Michael Best & Friedrich?
6 A No.
7 Q And who were the legislators that were involved in
8 those discussions?
9 A I don't remember.
10 Q Do you know what the goal of that statutory
11 provision was?
12 A I think the statute speaks for itself.
13 Q Were there any other goals that were discussed
14 other than what's on the face of the statute?
15 A No.
16 Q I would like you to take a look then at Exhibit
17 No. 15 and specifically at Section 751.035.
18 A I'm sorry. Say the section again.
19 Q Sure. 751.035.
20 A Okay.
21 Q Same question. Were you involved in any way with
22 the development of this statute?
23 A Yes.
24 Q Was that at the same time you were involved in the
25 development of 801.50(4m)?

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1 regarding the redistricting that are currently in
2 front of the Wisconsin Supreme Court?
3 A I'm aware of them, yes.
4 Q Have you seen a copy of the original petition that
5 was filed in Wisconsin Supreme Court?
6 A I don't remember.
7 Q I would like you to take a look at Exhibit No. 16.
8 Exhibit No. 16 is titled Petition for Appointment
9 of Three Judge Panel and it goes on from there.
10 Do you see that?
11 A Uh-huh.
12 Q If you flip through the document, the very last
13 page -- you will see it's dated November 21st?
14 A Okay.
15 Q All right. Now, this is a copy that does not have
16 the exhibits attached to the back. There are a
17 thick number of exhibits. I just wanted to ask
18 you about the document itself.
19 A Uh-huh.
20 Q Have you seen a copy of this petition before?
21 A I don't remember if I have or not.
22 Q Have you discussed the supreme court action with
23 anyone?
24 A Yes.
25 Q Who have you discussed it with?

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1 A I believe both provisions were included in the
2 same bill, so yes.
3 Q Again, you had discussions about that with legal
4 counsel at Michael Best & Friedrich?
5 A Uh-huh.
6 Q And also with legislators as well?
7 A Uh-huh.
8 MR. KELLY: Mr. Poland, so that the
9 record gets taken down correctly, when you're
10 referring to the 801 statute, it's actually
11 801.50(4m).
12 MR. POLAND: Correct.
13 MR. KELLY: 801.50(4m).
14 MR. POLAND: That's correct.
15 Q So these two statutes that we have discussed that
16 are reflected in Exhibits 14 and 15 were drafted
17 at the same time, correct?
18 A They were part of the same bill, yes. To the best
19 of my knowledge they were.
20 Q And was the goal of Section 751.035 the same as
21 the goal for Section 801.50(4m)?
22 A I think the statutes speak for themselves.
23 Q Mr. Foltz, are you aware of any pending lawsuits
24 regarding the redistricting litigation -- strike
25 that. Are you aware of any pending lawsuits

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1 A Representative Fitzgerald.
2 Q And what have you and Representative Fitzgerald
3 discussed about this lawsuit?
4 A Just that it exists.
5 Q Have you discussed at all any of the statements or
6 the allegations that are raised in this particular
7 petition?
8 A Not that I can remember, no.
9 Q Are you aware that there is also litigation
10 pending in the Waukesha County Circuit Court?
11 A Yes.
12 Q All right. And have you seen a copy of the
13 complaint filed in that action?
14 A I don't remember.
15 Q If you look at -- there are two exhibits actually
16 here, 17 and 18. I'll hand them both to you.
17 A Okay.
18 Q You will notice that one of them, Exhibit 17, is a
19 complaint and then Exhibit No. 18 is an amended
20 complaint.
21 A Okay.
22 Q And, again, I don't have the exhibits attached to
23 Exhibit 17. Exhibit 18 is a full copy of what was
24 filed. Have you ever seen copies of those
25 complaints before?

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1 A I don't remember if I have seen these before or
2 not.
3 Q Have you discussed with anyone the Waukesha County
4 lawsuits?
5 A Yes.
6 Q Who did you discuss those with?
7 A Representative Fitzgerald.
8 Q What was the nature of those conversations?
9 A Made him aware that they existed.
10 Q Did he discuss them at all with you?
11 A He was part of that conversation that I had with
12 him, yes.
13 Q Once you made him aware that these existed, what
14 was the conversation that you had about the
15 lawsuits?
16 A I don't recall.
17 Q Were you aware of any of these complaints before
18 they were filed?
19 A No.
20 Q Were you involved in drafting any of the legal
21 documents that were filed in these complaints?
22 A No.
23 Q I would like you to take out again the transcript
24 of the testimony from last summer. That's
25 Exhibit 19.

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1 Q That this was not actually a reapportionment? It
2 was a redistricting?
3 A Yes.
4 Q Are there any other core principles that are part
5 of redistricting?
6 A Yes.
7 Q What are those?
8 A Preservation of political subdivisions.
9 Q Anything else?
10 A No.
11 Q Mr. Ottman's testimony refers to equal population
12 there. Do you see that?
13 A Yes.
14 Q And what is the standard for equal population?
15 A The standard?
16 Q Yes. Is there a standard for equal population?
17 MR. McLEOD: Object to the form of
18 the question.
19 To the extent you can answer, please do
20 so.
21 A I'm not a lawyer. I really can't comment on
22 standards. I can comment on what the map's
23 deviation is and I can comment on where it stacks
24 up versus the core plan ten years ago.
25 Q Was there a standard that you were attempting to

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1 A Okay.
2 Q Were you present for Mr. Ottman's testimony on
3 July 13th as well?
4 A We testified at the same time.
5 Q So you were both -- you can see that on the video;
6 that you're both there at the same time, correct?
7 A Uh-huh.
8 Q I would like to draw your attention to testimony
9 on Page 4 at Lines 9 through 12. Specifically
10 Mr. Ottman testifies there are three core
11 principles to any reapportionment plan.
12 A Uh-huh.
13 Q Equal population, sensitivity to minority concerns
14 and compact and contiguous districts. Do you see
15 that?
16 A Yes, I do.
17 Q Do you agree with that statement?
18 A Yes. Although I don't necessarily agree with
19 reapportionment versus redistricting.
20 Q So you would substitute the word redistricting for
21 reapportionment?
22 A Yes.
23 Q Is that because of the distinction that you made
24 earlier between redistricting and reapportionment?
25 A Based on my understanding of the definitions.

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1 follow for equal pop to achieve equal population
2 in Act 43?
3 A Act 43's overall range is .78 I believe.
4 Q Was there a specific standard or target that you
5 were aiming for?
6 A Not that I can recall.
7 Q How did you decide that the actual population
8 deviation that was achieved was an appropriate
9 one?
10 A Looked at previous court decisions on the maps.
11 Q And which court decisions were those?
12 A 2002.
13 Q So you were trying to follow the population
14 deviation that was acceptable to the Court in
15 2002?
16 A We were roughly half of where the Court was in
17 '02.
18 Q Why were you only going for roughly half of what
19 the Court --
20 A I'm not saying we were going for half. That was
21 what the map turned out to be. I believe it was a
22 .78 overall range, as we call it, versus the court
23 map ten years ago which I believe was 1.58. But I
24 could be wrong on that.
25 Q So zero deviation, in other words a zero percent

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1 population deviation, is not an absolute
 2 requirement for redistricting, correct?
 3 A That is my understanding. Not for legislative
 4 redistricting versus congressional.
 5 Q Correct. And that's a fair distinction. I am
 6 referring specifically to legislative
 7 redistricting. You were not involved in the
 8 congressional redistricting, correct?
 9 A Correct. In the drawing of the map but the
 10 facilitation of the drafting.
 11 Q As you testified to earlier today?
 12 A Correct.
 13 Q Mr. Foltz, what are the appropriate conditions for
 14 taking race into account when drawing legislative
 15 district boundaries?
 16 MR. McLEOD: I would assert an
 17 objection as to the form of the question.
 18 If you can answer it, please do so.
 19 A Could you state the question again?
 20 MR. POLAND: Could you read it
 21 back.
 22 (Question read)
 23 A What do you mean by appropriate?
 24 Q Are there any conditions under which race can be
 25 taken into account when drawing legislative

1 assembly district boundaries?
 2 A I don't recall.
 3 Q Would you look at Page 27 of the transcript,
 4 please.
 5 A Uh-huh.
 6 Q I should actually -- let me ask you one question.
 7 If you turn to Page 26, just the preceding page,
 8 you will see there's a reference there on Line 5
 9 to Mr. Holtz. That's, I think, a reference that
 10 appears throughout. That should be Foltz,
 11 correct?
 12 A That is correct. I have not changed my name in
 13 the interim period.
 14 Q If you look at Page 27, I would like to draw your
 15 attention to Lines 2 through 5. This is
 16 Mr. Ottman testifying?
 17 A Uh-huh.
 18 Q His statement is, "So over the course of the next
 19 decade you could see that senate district, that
 20 that senate district, grow in Hispanic voting age
 21 population to the point where it may tip over to a
 22 majority minority district." Do you see that?
 23 A Yes.
 24 Q Do you know who made the assessment that the
 25 Hispanic voting age population could grow to the

1 district boundaries?
 2 A Yes.
 3 Q Under what conditions can that be done?
 4 A I don't understand the question.
 5 Q When can that be done? When can race be taken
 6 into account in drawing legislative district
 7 boundaries?
 8 A When there is a dense enough population of a given
 9 minority.
 10 Q Is there any specific legislation that covers
 11 that?
 12 A Not to my knowledge. I guess I'm not following
 13 the question.
 14 Q Did you have any involvement in taking race into
 15 account in drawing any of the assembly district
 16 boundaries that are reflected in Act 43?
 17 A Race was part of the census data.
 18 Q So was race considered outside of the bounds of
 19 the census data?
 20 A What do you mean?
 21 Q In drawing the assembly district boundaries.
 22 A No. What was part of the census data is what we
 23 had access to.
 24 Q So there was no data beyond that relating to race
 25 that was taken into account in drawing the

1 point where it may tip over to a majority minority
 2 district?
 3 A I do not.
 4 Q Did you have any discussions about that with
 5 Mr. Ottman?
 6 A I don't recall.
 7 Q Did you have any discussions with anyone else
 8 about that?
 9 A I don't recall.
 10 Q I would like you to look at Page 28, please, of
 11 the transcript.
 12 A Uh-huh.
 13 MR. SHRINER: Doug, if you were
 14 going to take a break -- we have been at it
 15 for about an hour and a half since lunch. I
 16 could use about ten minutes.
 17 MR. POLAND: That's fine. We can
 18 take a break. This is an appropriate place
 19 to take a break.
 20 (Recess)
 21 Q Mr. Foltz, just before we broke we were taking a
 22 look at the transcript of the July 13th hearing.
 23 Do you still have that transcript in front of you?
 24 A Yes. Page 28.
 25 Q Yes. Page 28. I would like to draw your

1 attention to Lines 13 through 15. Do you see
 2 there's a reference there that Mr. Ottman is
 3 making that says, "Pairings are sometimes an
 4 inevitable consequence, and that is why you see
 5 those pairings here." Do you see that testimony?
 6 A Yes.
 7 Q And there he's referring to incumbent pairings
 8 that came about as a result of Act 43, correct?
 9 A Yes.
 10 Q Do you agree that pairings are sometimes an
 11 inevitable consequence of redistricting?
 12 A I would agree with that.
 13 Q Do you know how many incumbent pairings there were
 14 in Act 43?
 15 A There's a memo attached to the committee testimony
 16 that we had produced that accurately reflects the
 17 pairings.
 18 Q Do you know whether there were 11 pairings at
 19 least in assembly districts? Does that sound
 20 familiar?
 21 A It sounds familiar. I don't know off the top of
 22 my head.
 23 Q Did you have any involvement in determining which
 24 incumbents were paired in legislative districts?
 25 A I drew the map.

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1 Q Was the pairings a concern that you took into
 2 account when you were drawing the map?
 3 A Yes. It's definitely something we know of.
 4 Q Okay. Did you speak with any of the incumbents
 5 who were paired in the process of developing the
 6 map?
 7 A Yes.
 8 Q Which incumbents did you speak with?
 9 A All of them.
 10 Q All of them that were paired?
 11 A All of -- yes.
 12 Q All of the republicans that were paired?
 13 A All of the republicans that were paired, yes.
 14 Q And that's all republicans who were paired against
 15 any other incumbent whether they were a democrat
 16 or a republican?
 17 A Correct.
 18 Q Did you speak with any of the democratic
 19 incumbents who were paired?
 20 A No.
 21 Q So you did speak with republicans who were paired
 22 against other republicans as a result of Act 43?
 23 A Yes.
 24 Q I would like to draw your attention to the
 25 testimony at the bottom of Page 28 that is

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1 attributed to you. Again, with a correction that
 2 it's Foltz not Holtz.
 3 A Uh-huh.
 4 Q There you're talking about the districts --
 5 Assembly Districts 8 and 9 and the Hispanic
 6 community, correct?
 7 A Yes.
 8 Q Which members of the Hispanic community did you
 9 talk with about those legislative districts,
 10 Assembly Districts 8 and 9?
 11 A As I testified earlier, I did not speak to any
 12 member of the Hispanic community directly.
 13 Q Did anyone who was part of the redistricting
 14 effort speak with members of the Hispanic
 15 community?
 16 A Yes.
 17 Q We had the communications from Mr. Troupis before,
 18 correct?
 19 A Yes.
 20 Q And those are reflected in -- it was the documents
 21 that you had produced earlier today.
 22 A Yes.
 23 Q And that's Exhibit 24?
 24 MS. LAZAR: Exhibit 25.
 25 Q Correct. Exhibit 25.

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1 MR. POLAND: Thank you, Maria.
 2 A Uh-huh.
 3 Q So those are the E-mails that we saw previously
 4 including E-mails from Mr. Troupis, correct?
 5 A Yes.
 6 Q All right. And his communications were with
 7 MALDEF, correct, or representatives of MALDEF?
 8 A Yes.
 9 Q And specifically Mr. Troupis, from the E-mails at
 10 least it appears, was communicating with
 11 Elisa Alfonso and Alonzo Rivas?
 12 A Yes.
 13 Q Did you ever have any direct discussions or
 14 communications with Elisa Alfonso or Alonzo Rivas?
 15 A No.
 16 Q Did you ever have any communications with
 17 Manny Perez?
 18 A No.
 19 Q Did you ever have any communications with
 20 Zeus Rodriguez?
 21 A No.
 22 Q Do you know whether Mr. Troupis or anyone else on
 23 the legal team had any communications with
 24 Manny Perez or Zeus Rodriguez about redistricting?
 25 A I don't remember right now.

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1 Q What about Mr. Ottman? Do you know if Mr. Ottman
2 spoke with Manny Perez or Zeus Rodriguez about
3 redistricting?
4 A I don't remember.
5 Q Have you ever seen any communications involving
6 Manny Perez or Zeus Rodriguez in connection with
7 the redistricting process?
8 A The written testimony.
9 Q And that was part of Exhibit 25 that we looked at?
10 A That's correct.
11 Q But other than that written testimony, you have
12 not seen any communications from or involving
13 Manny Perez or Zeus Rodriguez with respect to
14 redistricting?
15 A That's correct.
16 Q I would like you to take a look at Page 29 of the
17 transcript, Lines 22 to 23. This is Mr. Ottman's
18 testimony.
19 A Could you give page and line again?
20 Q Sure. Page 29.
21 A Lines?
22 Q Lines 22 and 23. Do you see Mr. Ottman is
23 testifying there, "Under any reapportionment plan
24 a certain amount of disenfranchisement is
25 inevitable and unavoidable."

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1 A Yes.
2 Q And then if you look at Page 30, and I would like
3 you to look at Lines 16 through 18, you see that
4 he states there, "What we have done here is tried
5 to the best of our ability to minimize that
6 displacement."
7 A Uh-huh.
8 Q Were you involved in any analysis about a voter
9 displacement?
10 A Yes.
11 Q What was your role in that process?
12 A It's a report that is run by autoBound.
13 Q Is that just the number of voters who are
14 displaced?
15 A Yes.
16 Q Did you do anything other than run a report on
17 autoBound regarding the number of voters
18 displaced?
19 A Not that I can recall.
20 Q Did you have any discussions with anyone about
21 voter displacement with respect to Act 43?
22 A I'm sure I did.
23 Q Do you recall who you would have spoken with?
24 A Legal counsel, Tad Ottman.
25 Q Did you speak at all with Mr. Handrick about voter

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1 displacement?
2 A I don't remember.
3 Q Do you know how many people were displaced under
4 Act 43?
5 A Not off the top of my --
6 MR. McLEOD: I'm going to assert an
7 objection to the form of the question. I
8 think it's vague and ambiguous.
9 To the extent you can answer the
10 question, please do so.
11 A Could you restate the question?
12 MR. POLAND: Could you read it
13 back.
14 (Question read)
15 A Not off the top of my head.
16 Q Do you know how many voters were disenfranchised
17 as a result of Act 43?
18 A I don't know the exact number by heart.
19 Q I would like you to take a look at the transcript.
20 A Okay.
21 Q Look at Page 31.
22 A 31. Okay.
23 Q And take a look at Lines 3 through 11.
24 A Okay.
25 Q Do you see there's a reference in Line 8 -- do you

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1 see a reference to disenfranchisement of 299,704?
2 A Yes.
3 Q And does that refresh your recollection about how
4 many voters were disenfranchised by Act 43?
5 A Yes.
6 Q How does the disenfranchisement of 299,704
7 people -- how does that -- strike that question.
8 How does the statute by disenfranchising 299,704
9 people minimize disenfranchisement?
10 A I would argue the number is significantly lower
11 now.
12 Q But at the time of passage of the act that's what
13 it was, correct?
14 A At the time, yes, but it's -- it's 160,000 less or
15 so now.
16 Q Why do you say that?
17 A There were recall elections after the time of
18 testimony.
19 Q So before those recall elections occurred and the
20 time that Act 43 was passed that was the number of
21 voters disenfranchised by Act 43, correct?
22 A Yes.
23 MR. McLEOD: Form objection. I
24 think the question is vague and ambiguous.
25 To the extent you can answer, please do

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1 so.
 2 A At the time of Act 43 -- at the time of this
 3 testimony I believe that number to be correct.
 4 Q All right. And if you turn back to Page 30 and
 5 you look at your testimony at the bottom of
 6 Page 30, and this is Lines 23 to 25, you say, "If
 7 you look at the 1992 court decision there were
 8 257,000 voters temporarily disenfranchised as a
 9 result of that map."
 10 A Uh-huh.
 11 Q And it continues over to 31, "Which at the time
 12 worked out to five and a quarter percent of the
 13 State's population." Do you see that testimony?
 14 A Uh-huh.
 15 Q And then do you see continuing in the next
 16 paragraph you say, "We used that as a benchmark
 17 and then what we did is we took that five and a
 18 quarter percent and applied it to the new
 19 population of Wisconsin of 5,600,000 and change,
 20 almost 5.7 million, and came up with a number in
 21 our disenfranchisement of 299,704." Do you see
 22 that?
 23 A Yes.
 24 Q So you used the disenfranchisement percentage from
 25 the 1992 court decision, correct?

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1 hiding?
 2 Q I believe it comes after the packet.
 3 A After the --
 4 Q After the packet that was in the clerk's
 5 possession that you testified about.
 6 A That's going to be back here more.
 7 Q It's before those E-mails.
 8 A There we go.
 9 Q So you have that sheet. This had a table 2002
 10 Court Submissions, correct?
 11 A Yes.
 12 Q If you look at the court plan in 2002, it was
 13 3.14 percent of the total population that was
 14 disenfranchised, correct?
 15 A Yes.
 16 Q And then if you look at the same table at the 1992
 17 court submissions, you see the court plan was five
 18 and a quarter percent, right?
 19 A Yes.
 20 Q In determining the number of people to be
 21 disenfranchised why did you not use the
 22 3.14 percent under the court plan in 2002 as the
 23 standard that you were shooting for?
 24 A A federal court established that this was not only
 25 an acceptable level of delay in voting but they

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1 A In the -- yes. In the testimony, yes.
 2 Q Now, in 2002 there was a court imposed plan,
 3 correct?
 4 A Yes.
 5 Q And in 2002 the percentage of the state's
 6 population that was disenfranchised was lower than
 7 that, correct?
 8 A Correct.
 9 Q Do you recall what it was?
 10 A No, but there is a memo attached to the documents
 11 produced that I believe -- I'm sorry.
 12 Q If you take out Exhibit No. 25 --
 13 A There may be a disenfranchisement. I honestly
 14 don't remember if there is or not.
 15 Q So those are the documents that you produced the
 16 morning.
 17 A There is not -- I'm sorry. I misspoke. There is
 18 not a disenfranchisement memo as part of the
 19 committee packet that is Exhibit 25.
 20 Q But there was a table that you produced, correct,
 21 on disenfranchisement?
 22 A Oh, yes. Yes.
 23 Q Let's take that out.
 24 A I got lost in all of the papers that we have been
 25 throwing back and forth today. Where is that one

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1 drew that map.
 2 Q But you want to minimize disenfranchisement to the
 3 extent possible, correct?
 4 A Ideally.
 5 Q Why would you not use 3.14 percent pursuant to a
 6 federal court plan rather than the 5 and a quarter
 7 percent pursuant to the 1992 federal court plan?
 8 A Again, the disenfranchisement number is 160,000
 9 lower than the number you're referencing, so the
 10 percentages don't quite hold.
 11 Q Now you're saying?
 12 A Yes.
 13 Q But I'm talking at the time that Act 43 was
 14 passed.
 15 A Right.
 16 Q And at the time of your testimony.
 17 A Right.
 18 Q You testified to the joint committee that you used
 19 as a benchmark the 1992 percentage --
 20 A Uh-huh.
 21 Q -- which was five and a quarter percent.
 22 A Yes.
 23 Q Why did you not use as a benchmark the
 24 3.14 percent that was adopted by the court in 2002
 25 as a benchmark?

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1 A This was a criteria established by the '92 court
 2 that they deemed to be acceptable.
 3 Q That's right. And in 2000 and 2002 the federal
 4 court decided that 3.14 percent was acceptable,
 5 correct?
 6 A Yes.
 7 Q And the goal is to minimize disenfranchisement,
 8 correct?
 9 A Ideally.
 10 Q And so ideally a 3.14 percent disenfranchisement
 11 is preferable to five and a quarter percent,
 12 correct?
 13 A It's lower.
 14 Q So why did you not use the 3.14 percent as your
 15 standard?
 16 A Again, this was determined by a federal court to
 17 be an acceptable amount of delayed voting.
 18 Q As was 3.14 percent in 2002, correct?
 19 A Correct.
 20 Q Who made the decision to use five and a quarter
 21 percent instead of 3.14 percent?
 22 A I don't recall who made the decision.
 23 Q Were you involved in that decision?
 24 A I don't remember.
 25 Q Did somebody tell you to use five and a quarter

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1 percent instead of 3.14 percent?
 2 A I don't remember.
 3 Q Was Mr. Ottman involved in that decision?
 4 A Most likely.
 5 Q Was Mr. Handrick involved in that decision?
 6 A No.
 7 Q Was legal counsel involved in that decision?
 8 A I don't remember.
 9 Q Can you articulate for me now as you sit here
 10 today a reason that the five and a quarter percent
 11 should have been used instead of 3.14 percent?
 12 A I've already explained those reasons.
 13 Q So you don't have anything in addition to what you
 14 already testified?
 15 A The only addition that I would make is that the
 16 disenfranchisement as a result of the recall
 17 elections that occurred in August is roughly
 18 160,000 people lower than the number I testified
 19 to at the time of the public hearing.
 20 Q And that occurred after the time of the public
 21 hearing?
 22 A Whenever the senate recall elections occurred. I
 23 believe sometime in early August, mid August.
 24 Q But in your testimony on July 13th you did not
 25 inform the joint committee that in 2002 the court

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1 had deemed 3.14 percent to be an acceptable
 2 disenfranchisement percentage, correct?
 3 A If that is what is reflected in the testimony.
 4 Q Okay. I would like you to take a look at Page 36
 5 of the transcript.
 6 A Uh-huh.
 7 Q If you look on Page 36, it's Mr. Ottman who is
 8 testifying there.
 9 A Uh-huh.
 10 Q He's asked a question about why the statutes are
 11 not built on ward lines.
 12 A Uh-huh.
 13 Q And are instead built on the census blocks.
 14 A Uh-huh.
 15 Q His testimony is -- if you look at Lines 10
 16 through 14, he says, "Why act now, and that's
 17 because the federal lawsuit is challenging the
 18 State that these districts are unconstitutionally
 19 mal-apportioned and that the State needs to act."
 20 Do you see that testimony?
 21 A Yes, I do.
 22 Q Do you recall that one of the reasons that the
 23 legislature did not wait to redistrict based on
 24 wards was the pendency of this particular lawsuit?
 25 A I'm sorry. Ask that again.

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1 MR. POLAND: Could you read the
 2 question back.
 3 (Question read)
 4 A Based on reading this testimony, yes. It
 5 refreshed my memory.
 6 Q Okay. If you look at Lines 20 through 22 of that
 7 same page, do you see Mr. Ottman refers to a
 8 second point and he says, "Technology has moved to
 9 the point where it is much easier to draw these
 10 maps in advance of the locals completing their
 11 process."
 12 A I do see that, yes.
 13 Q Do you agree with that statement?
 14 A I'm not sure what exactly he's referring to there.
 15 Q Do you know who made a decision to proceed with
 16 redistricting based on census blocks instead of
 17 wards?
 18 A The legislature.
 19 Q Do you know who specifically at the legislature?
 20 A No.
 21 Q Do you know when that decision was made?
 22 A No.
 23 Q Did you ever have any discussions with anyone
 24 about proceeding based on census blocks as opposed
 25 to wards?

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1 A Yes.
 2 Q And who did you discuss that issue with?
 3 A I don't remember.
 4 Q I would like you to take a look at Pages 45 and 46
 5 of the transcript.
 6 A Okay.
 7 Q Beginning down at the bottom of Page 45 you will
 8 see Senator Erpenbach asked a question of
 9 Mr. Ottman. He says, "Did you look at the
 10 partisan makeup of the districts?" Do you see
 11 that?
 12 A Yes, I do.
 13 Q And Mr. Ottman says that information was made
 14 available to all four caucuses. And then the
 15 testimony continues on the bottom of Page 46, and
 16 Mr. Ottman says, "The principles by which the map
 17 were drawn were those that I enumerated earlier,
 18 equal population, sensitivity to minority
 19 concerns, and compact and contiguous districts."
 20 That continues on to Page 47. Do you see that
 21 testimony?
 22 A Yes.
 23 Q Do you agree with that testimony?
 24 A To what part of it? There's a lot going on there.
 25 Q Do you agree that the principles by which the map

1 were drawn were those that were equal population,
 2 sensitivity to minority concerns and compact and
 3 contiguous districts?
 4 A Yes.
 5 Q Was the map that was reflected in Act 43 -- did it
 6 reflect concerns about the partisan makeup of the
 7 districts?
 8 A Based on Mr. Ottman's testimony?
 9 Q In your opinion.
 10 A State the question again.
 11 MR. POLAND: Could you read it
 12 back.
 13 (The following was read by the reporter:
 14 Q "Was the map that was reflected in Act 43 --
 15 did it reflect concerns about the partisan
 16 makeup of the districts?")
 17 Q Strike that question. Were partisan
 18 considerations a factor in the configuration of
 19 the assembly districts in Act 43?
 20 A The election results were part of the database
 21 that was provided to us by LTSB.
 22 Q In deciding where to draw the district boundaries
 23 did partisan concerns come into play?
 24 A The concerns that came into play were drawing
 25 compact, contiguous districts that were

1 substantially similar in population and sensitive
 2 to minority concerns.
 3 Q What about maximizing republican representation in
 4 the assembly?
 5 A No.
 6 Q Not at all?
 7 A No. I stated the goals that I was given earlier.
 8 Q On Page 48, and this is in Mr. Ottman's testimony,
 9 on Line 7 he refers to reapportionment plan again.
 10 Again, you would say this is not a reapportionment
 11 plan. It's a redistricting plan; is that correct?
 12 A Sure.
 13 Q Is he simply misspeaking there? Is it your
 14 understanding --
 15 A I think it's just the word he chose to use there.
 16 Q And then in Lines 13 through 15 he says, "We
 17 prepared the plan. This is the plan that we
 18 helped prepare with directional leadership."
 19 A Uh-huh.
 20 Q Do you know who he's referring to there when he
 21 says we?
 22 A I can only assume in this context since I was
 23 sitting right next to him probably me.
 24 Q And there were in fact others who were involved in
 25 preparing the plan, the redistricting plan that

1 ended up being Act 43, correct?
 2 A Yes.
 3 Q And the directional leadership that Mr. Ottman is
 4 referring to there, do you know who he is
 5 referring to?
 6 A The people I've listed earlier in the day.
 7 Q That you have identified. Is there anybody else
 8 in addition to those people who provided direction
 9 in the preparation of the plan?
 10 A No.
 11 Q Mr. Foltz, all told how many hours would you
 12 estimate you spent working on the redistricting?
 13 A No idea.
 14 Q Was it essentially a full-time endeavor for you
 15 for some period of time?
 16 A For some period of time.
 17 Q Between let's say January of 2011 and the time
 18 that Act 43 was passed by the legislature was it
 19 essentially the only thing that you were working
 20 on?
 21 A I would say that's accurate.
 22 Q What about Mr. Ottman? Do you know whether it was
 23 essentially a full-time endeavor for him?
 24 A I don't know what Tad does with his time.
 25 Q Do you generally work about 40-hour weeks?

1 A Sometimes.
2 Q Sometimes more? Sometimes less?
3 A Yes. Well, I should -- my time sheets always have
4 been 40 hours a week because I'm a salaried State
5 employee. If it is requiring comp time or
6 vacation time to get to 40 hours a week, the time
7 sheet always says at least 40. Just to be clear
8 on that.
9 Q Okay. Do you know how many different maps you
10 personally were involved in drawing before
11 settling on a final version of what was introduced
12 at the legislature as Act 43?
13 A No.
14 Q Can you give me an estimate?
15 A No.
16 Q Is it in the range of 10? 15? 50? 60?
17 A No.
18 Q Did anyone outside the state of Wisconsin ever
19 show you any proposed or existing legislative
20 redistricting plans for the state?
21 A No.
22 Q Did you ever meet with or talk to any
23 representatives or officials at the Republican
24 National Committee about the new Wisconsin
25 districts?

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1 A I don't recall.
2 Q Did you ask Mr. Jefferson and Mr. Wild for their
3 comments on that at all?
4 A No.
5 Q Did you speak with them about the block assignment
6 file after you had sent it?
7 A Yes.
8 Q What was the nature of that conversation?
9 A An explanation of Wisconsin standards for
10 municipal contiguity versus literal or geographic
11 contiguity.
12 Q And you were explaining the Wisconsin standards to
13 them?
14 A Correct.
15 Q Did they give you any feedback on those standards?
16 A They just pointed out that there were literal
17 geographic contiguities, and, as we know,
18 Wisconsin municipalities have a tendency to annex
19 non-contiguous areas within their city boundaries,
20 a sewer treatment plant, an airport or things like
21 that. So when you run a contiguity report, they
22 will show up as being discontinuous because they
23 don't directly touch. However, they are part of
24 the municipality.
25 Q And did you run any such reports, contiguity

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1 A Yes.
2 Q Who did you speak with?
3 A Mark Jefferson and Mike Wild are the two people
4 that come to mind.
5 Q When did you speak with Mr. Jefferson and
6 Mr. Wild?
7 A I don't recall.
8 Q Do you know whether it was before the passage of
9 the acts themselves?
10 A I believe before.
11 Q What was the nature of the conversations that you
12 had with them?
13 A I sent along a block assignment file.
14 Q What block assignment file did you send?
15 A Act 43. The block assignment file that eventually
16 became Act 43.
17 Q And so that was the final one that was introduced
18 to the legislature?
19 A I believe so, yes.
20 Q Do you know -- why did you send that to
21 Mr. Jefferson and Mr. Wild?
22 A It was requested of me.
23 Q Who asked you to do that?
24 A Legal counsel.
25 Q Which legal counsel in particular?

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1 reports, based on autoBound?
2 A Yes.
3 Q Did you send any of those to Mr. Jefferson or
4 Mr. Wild?
5 A No.
6 Q Are any of the contiguity reports that you ran
7 produced in the files here today?
8 A No.
9 Q Do you know whether those were saved?
10 A No. They were not.
11 Q Anything else that you sent to Mr. Jefferson or
12 Mr. Wild other than the block assignment file?
13 A Not that I can recall. There was -- I sent the
14 block assignment file for Act 44 as well to them.
15 Q And did legal counsel ask that you send that as
16 well?
17 A Yes.
18 Q Did you personally participate at all in the
19 creation of that block assignment file for Act 44?
20 A No.
21 Q Do you know who did?
22 A No.
23 Q Did you have any discussions with Mr. Jefferson or
24 Mr. Wild about Act 44?
25 A No.

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1 Q After you sent -- strike that question. Other
 2 than the conversations that you have mentioned
 3 here that you had with Mr. Jefferson and Mr. Wild,
 4 did you have any communications with them with
 5 respect to the redistricting in 2011?
 6 A No.
 7 Q Do you know whether anyone at the Republican
 8 National Committee has been tasked with tracking
 9 the redistricting process in Wisconsin?
 10 A Not to my knowledge.
 11 Q Did you ever speak with anyone at the RNC other
 12 than Mr. Jefferson and Mr. Wild regarding
 13 redistricting?
 14 A Not that I can remember.
 15 Q Did you ever communicate in any other way, E-mail,
 16 text, instant messaging with anyone at the RNC
 17 about redistricting in Wisconsin?
 18 A No.
 19 Q Did you talk with them at all by phone?
 20 A No.
 21 Q Not other than the conversations that you have
 22 mentioned?
 23 A Right. Well, I did go to a training out there.
 24 Q When did you do a training out there?
 25 A I don't remember.

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1 A No.
 2 Q As far as you know, you were the only one from
 3 Wisconsin who worked on the 2011 redistricting who
 4 attended that training?
 5 A That's correct.
 6 (Recess)
 7 Q Mr. Foltz, I'm going to hand you a copy of a
 8 document that's been marked as Exhibit No. 2.
 9 That's a document that Mr. Handrick brought with
 10 him yesterday.
 11 A Uh-huh.
 12 Q It's a collection, actually, of documents that he
 13 brought with him yesterday. I'm going to ask you
 14 to turn to two pages in particular that, I'll just
 15 show it to you, look like this.
 16 A Okay.
 17 Q It's maybe about halfway or so back in that
 18 document.
 19 A Halfway or so.
 20 Q It might be a little further. There you go.
 21 A Uh-huh.
 22 Q If you look, there are two pages. Do you see
 23 those two pages?
 24 A I do.
 25 Q Is this a document that you have seen before?

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1 Q By out there you mean Washington, D.C.?
 2 A Correct.
 3 Q Was that during the time that the redistricting
 4 process was going on?
 5 A No.
 6 Q When did you attend a training in Washington,
 7 D.C.?
 8 A I believe it was spring of 2010 ballpark.
 9 Q What did that training pertain to?
 10 A Redistricting.
 11 Q Just generally?
 12 A Yes.
 13 Q Was that a training or a seminar put on by the
 14 RNC?
 15 A That's correct.
 16 Q Did Mr. Ottman attend that as well?
 17 A No, he did not.
 18 Q Did anyone else who worked on redistricting in
 19 Wisconsin attend that training program?
 20 A No.
 21 Q Did any of the legal counsel who participated in
 22 the redistricting in 2011 attend that training
 23 program?
 24 A No.
 25 Q Any of the legislators?

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1 A I believe so, yes.
 2 Q Do you know what this document is?
 3 A Not really.
 4 Q Do you see there are references --
 5 MR. SHRINER: I'm not sure this is
 6 going to be identified on the record from
 7 what you just said that.
 8 MR. KELLY: You might want to show
 9 it to the camera.
 10 MR. POLAND: I'm going to describe
 11 it.
 12 MR. SHRINER: Go ahead.
 13 Q Do you see it has numbers 1 through 99 on it on
 14 both pages?
 15 A Yes.
 16 Q Do you know whether those pertain to 99 different
 17 assembly districts?
 18 A I would assume so.
 19 Q Some of the numbers are in red and some are in
 20 black.
 21 A Uh-huh.
 22 Q Do you see that? If we look at the first page of
 23 these two pages up at the top it says, "Districts
 24 that have been cleaned up through Thursday night
 25 are red." Do you see that?

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1 A Yes.
 2 Q Do you know what is meant by districts that have
 3 been cleaned up through Thursday night?
 4 A I do not.
 5 Q Have you seen a printout that looks like this
 6 before?
 7 A No, I haven't. Actually, I did. Yes. I did see
 8 this at one point.
 9 Q Do you know what it is?
 10 A I don't know what the reference to cleaned up is.
 11 Q Do you know generally what the printout
 12 represents?
 13 A No.
 14 Q Do you know the difference between why some
 15 districts are red and why some districts are
 16 black?
 17 A Only based on the description at the top of the
 18 page.
 19 Q And that's the fact that some are in red?
 20 A Right. Right and the description that goes with
 21 it.
 22 Q Did you ever talk with Mr. Handrick about cleaning
 23 up districts?
 24 A I don't recall.
 25 Q You can set that to the side.

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1 They have been marked as Exhibits 20, 21 and 22.
 2 A Okay.
 3 Q They are a large printout of a map?
 4 A Yes.
 5 Q I'm going to refer mostly to Exhibit No. 20 which
 6 is the top page.
 7 A Say that again.
 8 Q I'm going to refer mostly to Exhibit 20 which is
 9 the very first page.
 10 A Okay.
 11 Q I'll represent that this is a copy of Act 43 as it
 12 was passed. It was produced to us by the
 13 defendants in the case.
 14 A Uh-huh.
 15 Q I'm going to draw your attention to a few
 16 different areas of the map, and I'm going to have
 17 some questions about them.
 18 A Uh-huh.
 19 Q First I would like to draw your attention to the
 20 Beloit area. All right?
 21 A Yes.
 22 Q Do you see Beloit is split between two different
 23 legislative districts, 31 and 45?
 24 A Yes.
 25 Q Do you know why it was split in that way?

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1 A Okay.
 2 Q Through the redistricting process did you solicit
 3 comments from any legislators representing areas
 4 most significantly changed by the new districting
 5 plan?
 6 A I don't recall.
 7 Q We had talked before about -- you can actually put
 8 Exhibit 2 aside. We're done with that.
 9 You recall before we were talking about
 10 pairings of incumbents?
 11 A Uh-huh.
 12 Q In any earlier versions of the map; that is,
 13 earlier than the final version that was presented
 14 to the legislature as Act 43, were any of the
 15 republican pairings different than in Act 43 as it
 16 was passed?
 17 A I don't recall.
 18 Q For this part I'm going to get the maps out,
 19 Mr. Foltz.
 20 MR. SHRINER: That's Wisconsin,
 21 right?
 22 MR. POLAND: It's Wisconsin.
 23 MR. SHRINER: I know what it looks
 24 like.
 25 Q I'm going to hand you, Mr. Foltz, three documents.

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1 A I don't recall.
 2 Q Did you participate at all in the decision about
 3 splitting Beloit between Assembly Districts 31 and
 4 45?
 5 A I'm sorry. Say that again.
 6 Q Did you participate at all in any discussions that
 7 resulted in the splitting of Beloit into Assembly
 8 Districts 31 and 45?
 9 A I don't recall.
 10 Q Did you ever see a version of a redistricting map
 11 that included Beloit where it was all within one
 12 assembly district?
 13 A I don't recall.
 14 Q Do you know what the justification was for
 15 splitting Beloit between two different assembly
 16 districts?
 17 A I don't recall.
 18 Q I would like you to take a look at Appleton. Do
 19 you know why Appleton was split among multiple
 20 districts?
 21 A I don't recall.
 22 Q Did you participate in any discussions about
 23 splitting Appleton into multiple assembly
 24 districts?
 25 A I don't recall.

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1 Q Do you know what the justification was for
 2 splitting Appleton into multiple districts?
 3 A I don't recall.
 4 Q Did either you or Mr. Ottman have any specific
 5 responsibility for particular areas of the state?
 6 A No.
 7 Q So both of you would have worked on redistricting
 8 in and around the Beloit area?
 9 A Say that again.
 10 Q Both of you would have worked on drawing the
 11 districts in and around the Beloit area?
 12 A Yes.
 13 Q And same with respect to Appleton?
 14 A Yes.
 15 Q Do you know whether Mr. Handrick worked on those
 16 districts as well?
 17 A I don't know.
 18 Q Did you ever speak with Mr. Handrick about
 19 assembly districts in and around Beloit?
 20 A I don't recall.
 21 Q Do you recall ever speaking with Mr. Handrick
 22 about the districts that were included in
 23 -- strike that question. Did you ever speak with
 24 Mr. Handrick about the assembly districts that
 25 encompassed the city of Appleton?

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1 is split among?
 2 A I don't know off the top of my head.
 3 Q Do you know why it was decided to be put in more
 4 than two assembly districts?
 5 A I don't recall.
 6 Q Do you know who made the decision to include
 7 portions of the city of Racine and the city of
 8 Kenosha within the same assembly district?
 9 A I don't recall.
 10 Q Did anybody ever instruct you to do that?
 11 A Not that I remember.
 12 Q Did you ever overhear or see anybody instructing
 13 Mr. Ottman to include portions of the city of
 14 Racine and the city of Kenosha in the same
 15 assembly district?
 16 A Not that I recall.
 17 Q Are you aware of any justification for including
 18 them both within the same assembly district?
 19 A Could you elaborate on that?
 20 Q Are you aware of any justification for including
 21 portions of the city of Racine and the city of
 22 Kenosha within the same assembly district?
 23 A Both of those cities are too large to fit entirely
 24 within one assembly district.
 25 Q But the district lines could have been drawn so

211

1 A I don't recall.
 2 Q I would like to draw your attention down to
 3 Kenosha County.
 4 A Uh-huh.
 5 Q Do you know why Kenosha, the city of Kenosha, was
 6 split between multiple assembly districts?
 7 A I'm sorry?
 8 Q Do you know why Kenosha, the city of Kenosha, was
 9 split among multiple assembly districts?
 10 A It's too large to fit in one assembly district.
 11 Q Okay. Do you know why Kenosha was split as is
 12 shown in Act 43?
 13 A I don't recall.
 14 Q Do you know why portions of the city of Racine and
 15 the city of Kenosha were included together in the
 16 same assembly district?
 17 A I don't recall. I should also point out that
 18 Appleton is too large to fit in one assembly
 19 district as well.
 20 Q Do you know whether that was a criteria that was
 21 considered at the time?
 22 A The population of the city of Appleton?
 23 Q Yes.
 24 A It's too large to fit in one assembly district.
 25 Q Do you know how many assembly districts Appleton

210

1 that the city of Racine and the city of Kenosha
 2 were not at all included in the same assembly
 3 district, correct?
 4 A They could have been?
 5 Q Yes.
 6 A Right.
 7 Q And then why were they not?
 8 A I don't recall.
 9 Q Do you know what the justification is for
 10 including them within the same assembly district?
 11 A I don't recall.
 12 Q Turning your attention to the city of Madison.
 13 Why was the city of Madison combined into two
 14 senate districts when it historically had been
 15 three senate districts?
 16 A I don't recall.
 17 Q Were there any cities, any municipalities that you
 18 split to keep districts compact?
 19 A I don't recall.
 20 Q Was the consideration of minority interests
 21 limited to Milwaukee?
 22 A Yes.
 23 Q Do you know whether Act 43 establishes any single
 24 Latino majority district?
 25 A Yes.

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1 Q Which district or districts are Latino majority?
 2 A 8 has a Hispanic voting age population of 60 and
 3 change, and 9 has a Hispanic voting age population
 4 of 54 and change.
 5 Q And why do you consider those to be Latino
 6 majority districts?
 7 A Because it's greater than 50 percent.
 8 Q And that's the voting age population?
 9 A Yes. Those are the HVAP numbers, the voting age
 10 population numbers.
 11 Q And that did not consider citizenship, correct?
 12 A That's not part of the census.
 13 Q And so it was not considered in creating those
 14 districts, correct?
 15 A I don't know.
 16 Q Did you ever have any discussion with anyone about
 17 citizenship as being one of the criteria for the
 18 redistricting process?
 19 A I don't recall.
 20 Q How many African-American majority districts are
 21 created by Act 43?
 22 A Six.
 23 Q Did you consider creating more than six?
 24 A I don't recall.
 25 Q Do you know whether you could have created more

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1 than six African-American majority districts?
 2 A Say that again.
 3 Q Do you know whether you could have created more
 4 than six African-American majority districts?
 5 A I don't recall.
 6 Q In creating districts in the city of Milwaukee did
 7 you work with anyone with respect to the creation
 8 of Latino majority districts?
 9 A Yes.
 10 Q Who did you work with on that?
 11 A Dr. Keith Gaddie.
 12 Q What role did Dr. Gaddie play in the establishment
 13 of the Latino majority districts?
 14 A Instructed us on how to draw them in a way that he
 15 believed to be correct.
 16 Q Did the way that Dr. Gaddie instructed you to draw
 17 them end up being the final Districts 8 and 9 as
 18 incorporated into Act 43?
 19 THE WITNESS: Could you read the
 20 question back.
 21 (Question read)
 22 A No.
 23 Q There were some changes made to the districts that
 24 Dr. Gaddie had directed you to draw?
 25 A In response to MALDEF, yes.

214

1 Q Were those changes that we saw reflected in the
 2 correspondence between Mr. Troupis and MALDEF?
 3 A Yes.
 4 Q What about with respect to the African-American
 5 majority districts? Did you work with anyone in
 6 drawing the African-American majority assembly
 7 districts?
 8 A Dr. Gaddie.
 9 Q And Dr. Gaddie again directed you how to draw
 10 those districts?
 11 A Uh-huh.
 12 Q Did anyone else assist in directing you how to
 13 draw the African-American majority districts?
 14 A Not that I recall.
 15 Q Did Dr. Gaddie ever discuss with you the
 16 possibility of creating more than six
 17 African-American majority districts?
 18 A I don't recall.
 19 Q Did you have any conversations at all with
 20 Mr. Handrick about drawing the Latino majority or
 21 African-American majority districts?
 22 A I don't recall.
 23 Q Have you ever had any kinds of instructions on
 24 Voting Rights Act?
 25 A I'm sorry. What do you mean by instruction?

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1 Q Have you ever had any training at all or education
 2 in the Voting Rights Act and what it requires?
 3 A Various redistricting conferences that you will
 4 attend in training do mention it.
 5 Q Nothing that was sort of a standalone training
 6 session on Voting Rights Act?
 7 A No.
 8 Q Do you know whether the Voting Rights Act applies
 9 to Milwaukee?
 10 A I'm not qualified to answer that.
 11 Q Do you know whether there are different sections
 12 of the Voting Rights Act and what they require?
 13 A I know there are different sections of the Voting
 14 Rights Act.
 15 Q Do you know if any of those particular sections
 16 apply to Milwaukee?
 17 A I'm not qualified to answer that.
 18 Q Have you ever heard that any of the sections of
 19 the Voting Rights Act apply to Milwaukee?
 20 A Have I heard?
 21 Q Correct.
 22 A Not that I can recall.
 23 Q Did anyone ever tell you that sections of the
 24 Voting Rights Act apply to Milwaukee?
 25 A Not that I can recall.

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1 Q Were there any particular steps that you took to
 2 minimize splitting of counties and municipalities
 3 in Act 43?
 4 A Any steps we took to minimize the --
 5 Q The splitting of counties and municipalities in
 6 drawing the map that ended up as Act 43.
 7 A Not that I can recall.
 8 Q Did you do any kind of evaluation of municipal
 9 splits in the state?
 10 A Yes.
 11 Q And what was that evaluation that you undertook?
 12 A The autoBound reports that show splits based on
 13 different levels of census geography for the
 14 assembly and senate plans and also an examination
 15 of where previous courts had been on those
 16 questions.
 17 Q When you looked at examination of where previous
 18 courts had been, do you mean that you looked at
 19 the opinions that they wrote on the issue of
 20 municipal splits?
 21 A Yes.
 22 Q Was that from 2002 and then 1992, those
 23 redistricting opinions?
 24 A I believe so, yes.
 25 Q I would like to draw your attention to the city of

217

1 Marshfield.
 2 A Uh-huh.
 3 Q Do you see Marshfield is split into two different
 4 assembly districts, the 69th and the 86th?
 5 A Uh-huh.
 6 Q Do you know why Marshfield was split between two
 7 different assembly districts?
 8 A I don't recall.
 9 Q Did you ever see any versions of Act 43 or the
 10 maps that eventually became Act 43 where
 11 Marshfield was not split into two different
 12 assembly districts?
 13 A I don't recall.
 14 Q Do you know whether Act 43 could have been drawn
 15 such that Marshfield was wholly contained within a
 16 single assembly district?
 17 A Could it have potentially been drawn another way?
 18 Q Correct.
 19 A Yes.
 20 Q Do you know why it was not?
 21 A No.
 22 Q Did you ever participate in any discussions about
 23 splitting Marshfield between two different
 24 assembly districts?
 25 A Not that I recall.

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1 Q Did anybody instruct you to split Marshfield into
 2 two different assembly districts?
 3 A Not that I recall.
 4 Q Do you know what justification there is for
 5 splitting Marshfield between two different
 6 assembly districts?
 7 A Not that I'm aware of.
 8 (Discussion off the record)
 9 Q Mr. Foltz, speaking statewide, do you know how
 10 many people needed to be moved to new districts
 11 from existing districts to comply with equal
 12 population requirements?
 13 A No.
 14 Q Do you know how many were actually moved?
 15 A No.
 16 Q If I told you that seven times more people were
 17 moved than needed to be moved, can you tell me why
 18 that was done?
 19 MR. KELLY: Objection, form.
 20 You can answer that if you can.
 21 A I would have to see that analysis.
 22 Q Assuming that analysis, assuming those numbers are
 23 true, do you know overall why that many more
 24 people were moved than needed to be moved?
 25 MR. McLEOD: Object to the form of

219

1 the question.
 2 A I can't comment without seeing how that number was
 3 achieved.
 4 Q Were you involved in determining which voters
 5 should be moved or which residents should be moved
 6 from one assembly district under the 2002 plan to
 7 a new district under the 2011 redistricting plan?
 8 A It's kind of part and parcel of drawing a new map.
 9 Q And when you did move residents from one district
 10 to a new district, were there justifications that
 11 were developed for doing that?
 12 A Not that I can recall.
 13 Q So if there was a specific district where there
 14 were say 20 people who needed to be moved to
 15 comply with equal population requirements and a
 16 greater number than 20 were moved, was there any
 17 particular kind of justification that was
 18 developed for why that was done?
 19 A Again, I'm having trouble with that approach to
 20 redistricting in how you're phrasing the question.
 21 If a district is in your scenario overpopulated by
 22 20 and it needs to go out and get 20 more people,
 23 that assumes that every district is the first
 24 district drawn in the state. It has no accounts
 25 for the spacial nature of redistricting. It has

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1 no account for what happened 200 miles away.
 2 There's ripple effects in redistricting. If a
 3 district is underpopulated or overpopulated by 20,
 4 if you need to go and grab another 20 -- in a
 5 perfect world where every district was the first
 6 and only district drawn, that analysis would
 7 apply. Here it doesn't.
 8 Q Was there any kind of written explanation created
 9 for why certain numbers of residents were moved
 10 from one district to another?
 11 A No.
 12 Q Was there any kind of -- in the memorandums that
 13 were created -- there are numbers portrayed in
 14 those memos, correct?
 15 A Yes.
 16 Q They're not justifications for why things were
 17 done; is that correct?
 18 A I believe that's accurate.
 19 Q Do you know whether during the course of
 20 redistricting were there communications between
 21 the people who were involved in the redistricting
 22 process that talked about moving residents from
 23 one assembly district to a different assembly
 24 district?
 25 A To me what you're referring to is a core

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1 population retention was memorialized at all?
 2 A Not that I'm aware of.
 3 Q Are there any other tools that you know of other
 4 than the autoBound software to evaluate core
 5 population retention?
 6 A Yes.
 7 Q What other tools are there?
 8 A Maptitude redistricting software.
 9 Q I'm sorry. Maptitude?
 10 A Yes.
 11 Q Did you use Maptitude at all?
 12 A No.
 13 Q Have you used Maptitude in the past?
 14 A No.
 15 Q Did Mr. Ottman also work to generate core
 16 constituency reports?
 17 A I would assume he did.
 18 Q Did you ever see any that he produced?
 19 A I'm sure I did at some point.
 20 Q Do you know whether Mr. Handrick ever produced any
 21 core constituency reports?
 22 A I don't know.
 23 Q Did you consult with Mr. Handrick at all on the
 24 core constituency reports that you prepared?
 25 A The core constituency reports are generated by

223

1 constituency report, how many people moved from
 2 District X to District Y. Core constituency
 3 reports were produced at various times during the
 4 process as I testified to earlier.
 5 MR. SHRINER: This whole discussion
 6 is somewhat metaphorical, isn't it? The
 7 residents don't move. The legislators don't
 8 make them move. You're talking about where
 9 you draw the lines.
 10 MR. POLAND: Where you draw the
 11 lines with districts. That's correct. Not
 12 physically moving, of course. Moving them
 13 from one district --
 14 MR. SHRINER: Moving the number of
 15 the district that they're in and the shape?
 16 MR. POLAND: That's correct.
 17 That's correct.
 18 Q How did you do the evaluation of core population
 19 retention of the 2002 districts? Was that done
 20 through the autoBound software?
 21 A Yes.
 22 Q And so those analyses are contained in the core
 23 constituency reports that were produced?
 24 A That is what a core constituency report is.
 25 Q Is there any other way in which the core

222

1 autoBound.
 2 Q And a person has to actually hit a print command
 3 or has to do something to generate the printing of
 4 that report, correct?
 5 A Yes.
 6 Q And you did that at times?
 7 A Yes.
 8 Q All right. With any of those reports that you
 9 created and that you printed, did you ever discuss
 10 any of those with Mr. Handrick?
 11 A On core constituency specifically?
 12 Q Correct.
 13 A I'm sure I did. I can't recall which specific
 14 ones or specific versions, but, yes, I'm sure at
 15 some point he saw a core constituency report.
 16 Q Did you take communities of interest into account
 17 at all in drawing the legislative district
 18 boundaries?
 19 A It is a traditional redistricting criteria.
 20 Q And did you take them into account?
 21 A Yes.
 22 Q How did you take them into account?
 23 A By taking them into account in the drawing of the
 24 map.
 25 Q And how did you gather information about

224

1 communities of interest?
 2 A I don't understand the question.
 3 Q What information specifically with respect to
 4 communities of interest did you take into account?
 5 A It's difficult to say because communities of
 6 interest is such a broad term. It really has no
 7 specific definition.
 8 Q Can you identify anything for me that you took
 9 into account in maintaining communities of
 10 interest?
 11 A I'm really not following the question. Again, a
 12 community of interest can be defined as a school
 13 district, a tech college district, a county. So
 14 all of those could be classified as a community of
 15 interest.
 16 Q Did you take any of those into account in the
 17 process of drawing the assembly districts?
 18 A No. I did not draw the map based on school
 19 districts but, yes, communities of interest were
 20 taken into account.
 21 Q And which specific ones did you take into account?
 22 A I don't recall.
 23 Q Did you evaluate any specific historical data on
 24 how communities of interest across the state had
 25 been housed in senate and assembly districts in

225

1 the past when drawing Act 43?
 2 A I had access to printouts of old redistricting
 3 maps.
 4 Q Did you consult them specifically with respect to
 5 maintaining communities of interest in those old
 6 redistricting maps?
 7 A I don't recall.
 8 Q Did you receive any input from any communities of
 9 interest or local municipalities when you were
 10 drawing the maps?
 11 A If they testified, they did so at the public
 12 hearing which should be reflected in the record.
 13 Q Other than the testimony reflected in the public
 14 record, did you receive any input from communities
 15 of interest or local municipalities when drawing
 16 the maps?
 17 A No.
 18 Q Did you receive any input at all from democratic
 19 lawmakers in drawing the maps?
 20 A The public hearing.
 21 Q Other than the public hearing?
 22 A No.
 23 Q Do the 2011 legislative maps reflected in
 24 Act 43 -- strike that. Does Act 43 create a
 25 partisan advantage for republicans or democrats?

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1 A I'm not qualified to answer that.
 2 Q Does Act 43 specifically state that it doesn't go
 3 into effect until the general elections in 2012?
 4 A I don't know. If that's what the legislation
 5 says. I'm not sure.
 6 Q Do you know why that provision was included?
 7 A No.
 8 MR. POLAND: Give me just a minute.
 9 Peter, I'm just going to check my notes
 10 here for a second.
 11 MR. EARLE: Okay.
 12 Q You testified earlier, Mr. Foltz, that as a
 13 staffer you do keep time sheets of your activity;
 14 is that correct?
 15 A Yes.
 16 Q Do those reflect people that you're speaking with
 17 or working with?
 18 A No.
 19 Q Generally what kind of information is reflected in
 20 those time sheets?
 21 A Number of hours worked.
 22 Q Is there anything other more than that, a general
 23 description at all?
 24 A No.
 25 MR. POLAND: Those are all of the

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1 questions I have at this time.
 2 Peter?
 3 MR. EARLE: Thank you.
 4
 5 EXAMINATION
 6 By Mr. Earle:
 7 Q Mr. Foltz, I have just a few questions to clarify
 8 my understanding of your testimony today. The
 9 E-mail -- I have copies of the E-mails that were
 10 brought by you today that were sent to me by
 11 E-mail.
 12 A Uh-huh.
 13 Q The first one is an E-mail from -- it appears to
 14 be an E-mail from Mr. Ottman to Mr. Gaddie. It
 15 has some figures on it for the HVAP for three
 16 different options for the 8th and 9th assembly
 17 districts. Can you grab that?
 18 A I'm paging through right now. What was the header
 19 of that, the subject?
 20 Q Wisconsin Hispanic Districts. It's dated Sunday,
 21 July 17, 2011 at 11:40 a.m.
 22 A I have tracked it down.
 23 Q Got it?
 24 A Yes.
 25 Q Okay. Great. Which of those three maps was the

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1 MALDEF proposal? There are three HVAP listings
 2 there.
 3 A The MALDEF proposal was a version of a 60/53 that
 4 we modified and they were agreeable to.
 5 Q 60/53? So that would be the modified -- that
 6 modification was the map that was ultimately
 7 adopted; is that correct?
 8 A No. There was discussions between the two parties
 9 where they offered a 60/53 alternative that would
 10 have required the redrawing of at least four other
 11 assembly districts to which we responded with a
 12 proposal that held the HVAP numbers or actually
 13 slightly improved upon those numbers and prevented
 14 us from having to redraw additional assembly
 15 districts.
 16 Q That's Amendment Two?
 17 A Yes. Yes. Amendment Two is the result of the
 18 conversations with MALDEF.
 19 Q Now, let me ask you, was there an effort to draw
 20 the 8th assembly district so as to have the Latino
 21 community constitute an effective voting majority
 22 within that district?
 23 MR. McLEOD: I'm going to assert an
 24 objection to the form of the question, but
 25 you can answer.

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1 MR. EARLE: What's wrong with the
 2 form of the question?
 3 MR. McLEOD: I don't know what
 4 effective means. It's vague and ambiguous.
 5 MR. EARLE: It means effective as
 6 defined in the United States dictionary,
 7 common usage. An effective voting majority.
 8 Q Do you understand the term, Mr. Foltz?
 9 A I'm not a lawyer.
 10 Q You're a speaker of the English language, correct?
 11 A I dabble.
 12 Q I'm asking you whether there was an effort made to
 13 draw the 8th assembly district so as to have
 14 within that district an effective voting majority
 15 of Latinos.
 16 A And I'll refer you to the E-mails with MALDEF.
 17 There was a 65/40 proposal that was given to
 18 MALDEF, and MALDEF encouraged us to back that
 19 number off to a 60/53 which then ended up being a
 20 60/54 based on our conversations going back and
 21 forth with MALDEF.
 22 Q But I would like you to answer my question. Was
 23 there an effort made to draw the 8th assembly
 24 district in which you participated -- I'll
 25 rephrase the question. Was there an effort made

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1 in which you participated to draw the boundaries
 2 of the 8th assembly district so as to have within
 3 that district an effective voting majority of
 4 Latinos?
 5 MR. KELLY: I'll object to form as
 6 well with respect to the continued use of the
 7 word effective. I'm a lawyer, and I don't
 8 understand what that means and I speak
 9 English rather well.
 10 MR. EARLE: I won't comment on
 11 that, Eric.
 12 MS. LAZAR: That was Dan Kelly.
 13 MR. SHRINER: That is because Eric
 14 is not a smart ass.
 15 Q Will you please answer the question. Was there an
 16 effort made to draw the 8th assembly district so
 17 as to have within that district an effective
 18 voting majority of Latinos?
 19 A Again, I don't understand the term effective
 20 voting majority of Latinos. What I know is that
 21 we spoke to MALDEF, the preeminent group for
 22 Hispanic rights with regard to redistricting
 23 rights within the country, and they encouraged us
 24 to move our amendment from a 64/50 or 57/57 split
 25 to what was ultimately adopted as 60/54.

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1 Q We'll explore the question of MALDEF in a moment.
 2 I just want to know whether there was a conscious
 3 effort by those involved in this redistricting
 4 plan to create a district in which there was an
 5 effective voting majority of Latinos.
 6 A Well, since my understanding --
 7 Q Can you just tell me yes there was or no there
 8 wasn't? That's what I'm trying to figure out,
 9 whether there was or there wasn't. And, if there
 10 was, who was involved in it.
 11 A And I'm still trying to figure out your definition
 12 of effective voting majority.
 13 Q What do you suppose an effective voting majority
 14 means, Mr. Foltz?
 15 A You can answer that for me.
 16 Q What do you suppose it means?
 17 A I'm not going to engage in speculation on what
 18 you're trying to ask me.
 19 Q How do you interpret the word effective? How
 20 would you interpret the words effective voting
 21 majority in the context of normal usage?
 22 A I am not a lawyer, demographer or political
 23 scientist, so I don't feel I'm qualified to answer
 24 the specific definition of that.
 25 Q Okay. Did you consider at any point or are you

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1 aware of whether anybody involved in the
 2 redistricting plan considered citizenship?
 3 A I'm sorry. Say that again.
 4 Q Did anybody consider citizenship who was involved
 5 in the redistricting planning process?
 6 A I don't recall.
 7 Q Are you aware of any factors that were considered
 8 with regards to whether the Latino community has
 9 less of an opportunity to participate in the
 10 political process?
 11 A Well, I know that the federal court in 2002 passed
 12 the map at a 58 percent Hispanic voting age
 13 population and successfully performed for the
 14 decade electing both Peter Colon and
 15 JoCasta Zamarripa.
 16 Q What kinds of factors do you think would be
 17 appropriate to consider to determine whether or
 18 not Latinos have less of an opportunity to
 19 participate in the political process?
 20 A Well, I would say that the district being more
 21 Hispanic than the one the federal court drew ten
 22 years ago is a good place to start.
 23 Q Now, who actually spoke with MALDEF?
 24 A Jim Troupis.
 25 Q You never spoke with anybody from MALDEF, correct?

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1 A Correct.
 2 Q Do you know whether Mr. Ottman ever spoke with
 3 anybody from MALDEF?
 4 A I do not know that.
 5 Q Do you know whether Mr. Handrick ever spoke with
 6 anyone from MALDEF?
 7 A I do not know that.
 8 Q Is it your understanding that the only person who
 9 spoke with anybody from MALDEF is Mr. Troupis?
 10 A To the best of my knowledge, yes.
 11 Q So all the information you have about what MALDEF
 12 said about the maps comes from statements made to
 13 you by Mr. Troupis? Is that an accurate
 14 statement?
 15 MR. McLEOD: I'm going to object to
 16 the form of the question. The question is
 17 now asking for oral communications between
 18 Mr. Troupis and Mr. Foltz which constitutes
 19 attorney-client privileged information. I
 20 hate to make lengthier objections than that,
 21 but the substance of what's being discussed
 22 here relates to an E-mail communication
 23 that's been produced because it's responsive.
 24 It does not implicate conversations and it
 25 certainly does not allow for questions

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1 related to conversations between counsel and
 2 Mr. Foltz that are attorney-client
 3 privileged.
 4 MR. EARLE: So you're directing the
 5 witness not to answer that question?
 6 MR. McLEOD: If your question is
 7 what was the substance of a conversation that
 8 Mr. Troupis had with Mr. Foltz, then, yes,
 9 I'm instructing the witness not to answer.
 10 Q You're going to abide by that instruction,
 11 Mr. Foltz?
 12 A Yes.
 13 Q Yes?
 14 A Yes.
 15 Q Is the source of your information about what
 16 MALDEF said anything other than what's the content
 17 of the E-mail that has been produced today?
 18 A Nope.
 19 Q That's the entire source of your knowledge about
 20 what MALDEF said?
 21 A Yes.
 22 Q The last set of questions had to do with the
 23 attachment to the map, the E-mails. I have in
 24 front of me a map that has a blue district and a
 25 green district with some dark lines drawn around

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1 it. Can you grab that?
 2 A Yes. Got it.
 3 Q Got it?
 4 A Yes. I have it.
 5 Q Could you indicate to me how we identify that map
 6 for the record? What exhibit is that part of?
 7 MR. SHRINER: The last page of
 8 whatever exhibit it is.
 9 MS. LAZAR: The second to the last
 10 page of Exhibit 25.
 11 Q If you could help me understand this. I can see
 12 the 8th and 9th districts with a dark blue line
 13 around the 8th and a black line around the 9th.
 14 A Yes.
 15 Q Do you see that there?
 16 A Yes, I do.
 17 Q And it's my understanding -- correct me if I'm
 18 wrong here, but it's my understanding that the
 19 blue, the light blue, is what MALDEF produced as a
 20 proposed 8th assembly district; is that correct?
 21 A The light blue solid colored district, yes.
 22 Q And the light green is what MALDEF produced as a
 23 proposed 9th assembly district, correct?
 24 A That's correct.
 25 Q And the reason this proposal was rejected was that

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1 the 8th and 9th assembly districts as they
 2 proposed them went outside the boundaries of the
 3 combined districts as had been developed by you
 4 and the others working on the redistricting team,
 5 correct?
 6 A Yes.
 7 Q So in other words, the redistricting team was
 8 willing to consider alternate configurations of
 9 the 8th and 9th assembly districts as long as the
 10 outside boundaries of those two districts combined
 11 were not altered; is that correct?
 12 A Well, I don't want to say that we would not
 13 consider it. We did consider it and offered a
 14 counterproposal which MALDEF was agreeable to.
 15 Q Is it accurate to say that you and the other
 16 members of the redistricting team did not want to
 17 alter the outside boundaries of the 8th and 9th
 18 assembly districts as you had drawn them?
 19 A Well, as the E-mail will indicate, it was
 20 preferable.
 21 Q Why was it preferable to avoid altering those
 22 boundaries?
 23 A Because it would have required the redrawing of
 24 several other districts.
 25 Q Did you consider whether -- let me strike that.

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1 Let me rephrase that. In the event it was
 2 possible to draw an 8th assembly district with an
 3 effective voting majority of Latinos but as a
 4 result of drawing such a map it would be required
 5 to alter those lines -- strike that. Let me
 6 rephrase it. What I'm trying to figure out,
 7 Mr. Foltz, is whether or not the option of
 8 creating a district with an effective voting
 9 majority of Latinos was precluded because you did
 10 not want to alter the outside lines of the 8th and
 11 9th assembly districts as you had already come up
 12 with them.
 13 MR. KELLY: Objection, form.
 14 A And I will just go back to the lacking a
 15 definition from you of effective voting majority.
 16 I can't give you any more than that.
 17 Q When I say effective voting majority, Mr. Foltz,
 18 I'm talking about a voting majority of Latinos who
 19 are citizens and of voting age. Obviously you
 20 would agree with me that you have to be of voting
 21 age in order to vote, correct?
 22 A Seems reasonable.
 23 Q And you have to be a citizen in order to vote,
 24 correct?
 25 A Also seems reasonable.

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1 Q Was any effort made to determine whether or not an
 2 effective voting majority of Latino citizens of
 3 voting age was possible?
 4 A Say that again.
 5 Q Was any effort made to determine whether or not it
 6 was possible to draw a district that contained
 7 within it a majority of Latinos who are citizens
 8 of voting age?
 9 A I'm not qualified to answer that question. Again,
 10 not being a demographer, political scientist or a
 11 lawyer.
 12 Q I didn't ask you an opinion, sir. I asked you
 13 whether any effort was made to draw a district, an
 14 assembly district on the near south side of
 15 Milwaukee, that contained within it a majority of
 16 Latinos who are citizens of voting age.
 17 A Well, again, since citizenship is not part of the
 18 census data, it requires extrapolation techniques
 19 that I'm not qualified to answer. Again, I'm not
 20 a demographer, a political scientist, and CVAP is
 21 not part of the census.
 22 Q I understand that you have limited qualifications.
 23 I'm simply asking you whether an effort was made
 24 as part of the redistricting process to draw a map
 25 that contained a majority of Latinos who were

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1 citizens of voting age. That's a simple query.
 2 Was such an effort undertaken, yes or no?
 3 A Again, I'm not qualified to answer that.
 4 Q You participated in the redistricting process,
 5 correct?
 6 A Yes.
 7 Q Are you aware of whether any effort was made by
 8 anyone participating in the redistricting process
 9 over whether or not there was -- whether or not a
 10 map could be drawn in which there was a majority
 11 of Latinos who were citizens of voting age?
 12 MR. KELLY: I'll object to the form
 13 of the question. Just in case you're
 14 interested in what I think the problem of the
 15 form is, it's a compound question. It calls
 16 for knowledge that Mr. Foltz has already said
 17 that he did not have; to wit, the citizenship
 18 of the voting age population in the proposed
 19 District 8.
 20 Q Mr. Foltz, did you --
 21 MR. EARLE: I'll withdraw the
 22 question and rephrase it.
 23 Q Are you aware of whether or not any effort was
 24 made by anybody participating in the redistricting
 25 process to determine whether or not a district

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1 could be drawn in which there was a majority of
 2 Latino citizens?
 3 A Say that again.
 4 MR. EARLE: Could you read the
 5 question back.
 6 (Question read)
 7 A I do not have any reports produced by Dr. Gaddie
 8 reflecting that information.
 9 Q Did you speak with Dr. Gaddie about the 8th and
 10 9th assembly districts?
 11 A Yes.
 12 Q When you spoke with him, who was present?
 13 A I don't remember.
 14 Q Where were you when you spoke with him?
 15 A Michael Best.
 16 Q On how many occasions did you speak with him about
 17 the 8th and 9th assembly districts?
 18 A I don't recall.
 19 Q Now, I'm talking about in the planning process
 20 before Act 43 was adopted.
 21 A I don't recall.
 22 Q Was it more than once?
 23 A I don't recall.
 24 Q Your answer was yes you did speak with him, so
 25 it's at least once, correct?

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1 A Yes.
 2 Q But you don't know whether it was 5, 10, 15, 20 or
 3 30 times?
 4 A No.
 5 Q Did you take any notes at any time regarding your
 6 conversations with Mr. Gaddie about the 8th and
 7 9th assembly districts?
 8 A Not that I'm aware of.
 9 Q Did you send any E-mails about the 8th and 9th
 10 assembly districts?
 11 A You have those.
 12 Q Excuse me?
 13 A You have those.
 14 Q Those are the only ones that you generated?
 15 A Yes.
 16 Q Did Dr. Gaddie make any recommendations as to how
 17 to draw the 8th and 9th assembly districts?
 18 A Yes.
 19 Q What recommendations did he make?
 20 A I don't recall exactly what he said.
 21 Q Did he give you anything in writing?
 22 A No.
 23 Q Did he draw any maps for you?
 24 A No.
 25 Q Did he tell you what factors to consider?

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1 A Say that again.
 2 Q Did he tell you what factors to consider in
 3 drawing the 8th and 9th assembly districts?
 4 A Not that I can recall.
 5 Q Did you overhear any conversations between
 6 Dr. Gaddie and anybody else?
 7 A Not that I can recall.
 8 Q Did you meet with JoCasta Zamarripa regarding the
 9 8th assembly district?
 10 A She sits on the committee that heard the bill.
 11 Q I'm asking you whether you met with her about it.
 12 A She was at the committee hearing. She was
 13 present.
 14 MR. EARLE: I have no further
 15 questions.
 16 MR. KELLY: Then I think we're
 17 done.
 18 MR. McLEOD: I have one matter I
 19 want to follow up on.
 20
 21 EXAMINATION
 22 By Mr. McLeod:
 23 Q Mr. Foltz, you were asked earlier by Mr. Poland
 24 whether you had provided counsel with all
 25 documents that are responsive to the subpoena. Do

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1 you remember that?
 2 A Yes.
 3 Q Did you in fact to the best of your knowledge
 4 provide counsel with all documents which are
 5 responsive to the subpoena?
 6 A Yes.
 7 Q To your knowledge have you withheld any E-mail
 8 correspondence between you and Joe Handrick on
 9 grounds that any such E-mail correspondence was
 10 subject to any privilege?
 11 A No.
 12 MR. McLEOD: Thank you. Nothing
 13 else.
 14
 15 RE-EXAMINATION
 16 By Mr. Poland:
 17 Q I have one follow-up question to that. There were
 18 documents that you located that were responsive to
 19 the subpoena that you did not produce today,
 20 correct?
 21 A Correct.
 22 Q And those are documents that there is a privilege
 23 asserted over, correct?
 24 A Yes.
 25 Q And that's the reason that you didn't produce them

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1 today?
 2 **A Yes.**
 3 MR. POLAND: No further questions.
 4 MR. EARLE: One last question on
 5 that.
 6
 7 RE-EXAMINATION
 8 By Mr. Earle:
 9 **Q Did any of those documents that were not produced**
 10 **today under privilege grounds -- was Mr. Handrick**
 11 **a recipient of the any of those documents or a**
 12 **sender of any of those documents?**
 13 **A No. Not that I recall.**
 14 MR. EARLE: Are we going to be
 15 provided with a log?
 16 MR. McLEOD: Yes. Peter,
 17 Eric McLeod here. We did -- since you're not
 18 here, you didn't receive it from us. You
 19 will receive a copy of the privilege log
 20 which identifies the documents that have been
 21 withheld and the basis for the privilege.
 22 MR. EARLE: Thank you.
 23 MR. POLAND: Just to be clear about
 24 that, Eric, is that the written piece that
 25 you provided this morning?

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1 MR. McLEOD: That's correct.
 2 MR. POLAND: Peter, just to be
 3 clear about it, I believe that we scanned and
 4 sent this to you. This is the document that
 5 Eric brought this morning that says Documents
 6 Produced in Response to Subpoena Issued by
 7 Plaintiffs to Adam Foltz.
 8 MR. EARLE: Yes.
 9 MR. POLAND: And then dated today.
 10 MR. EARLE: Okay. Thank you.
 11 MR. POLAND: That's the privilege
 12 log that you're referring to, Eric.
 13 MR. McLEOD: That is correct.
 14 MS. LAZAR: It's marked as
 15 Exhibit 24.
 16 (Adjourning at 4:41 p.m.)
 17
 18
 19
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 21
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 23
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1 STATE OF WISCONSIN)
) ss.
 2 COUNTY OF DANE)
 3 I, SUSAN C. MILLEVILLE, a Court Reporter
 4 and Notary Public duly commissioned and qualified in
 5 and for the State of Wisconsin, do hereby certify
 6 that pursuant to subpoena, there came before me on
 7 the 21st day of December 2011, at 10:21 in the
 8 forenoon, at the offices of Godfrey & Kahn, S.C.,
 9 Attorneys at Law, One East Main Street, the City of
 10 Madison, County of Dane, and State of Wisconsin, the
 11 following named person, to wit: ADAM R. FOLTZ, who
 12 was by me duly sworn to testify to the truth and
 13 nothing but the truth of his knowledge touching and
 14 concerning the matters in controversy in this cause;
 15 that he was thereupon carefully examined upon his
 16 oath and his examination reduced to typewriting with
 17 computer-aided transcription; that the deposition is
 18 a true record of the testimony given by the witness.
 19 I further certify that I am neither
 20 attorney or counsel for, nor related to or employed
 21 by any of the parties to the action in which this
 22 deposition is taken and further that I am not a
 23 relative or employee of any attorney or counsel
 24 employed by the parties hereto or financially
 25 interested in the action.

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1 In witness whereof I have hereunto set my
 2 hand and affixed my notarial seal this 22nd day of
 3 December 2011.
 4
 5
 6 Notary Public, State of Wisconsin
 7 My commission expires
 8 June 23, 2013
 9
 10
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