

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.

Civil Action
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]

30(b)(6) VIDEOTAPE DEPOSITION

ADAM R. FOLTZ

Madison, Wisconsin
April 30, 2013

Susan C. Milleville, Court Reporter

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.

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I N D E X

<u>Witness</u>	<u>Pages</u>
ADAM R. FOLTZ	
Examination by Mr. Poland	6/171
Examination by Mr. Earle	134/174
Examination by Mr. Jacob	169
Examination by Ms. Buchko	171

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Identified</u>
29	Third Declaration of Mark Lanterman	97

(The original exhibit was attached to the original transcript and copies were provided to counsel)

(The original deposition transcript was filed with Attorney Douglas M. Poland)

1 VIDEOTAPE DEPOSITION of ADAM R. FOLTZ, called
2 as a 30(b)(6) witness of lawful age, taken on behalf
3 of the 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 30th
13 day of April 2013, commencing at 2:14 in the
14 afternoon.

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,
Wisconsin 53703, appearing on behalf of
Plaintiffs Alvin Baldus, et al.

22

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

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

MARIA S. LAZAR, Assistant Attorney General,
for STATE OF WISCONSIN DEPARTMENT OF JUSTICE,
17 West Main Street, Madison, Wisconsin 53703,
appearing on behalf of Defendant Members of
the Wisconsin Government Accountability Board.

AYAD P. JACOB, Attorney,
for SCHIFF HARDIN LLP, Attorneys at Law,
6600 Willis Tower, Chicago, Illinois 60606,
appearing on behalf of Michael Best &
Friedrich LLP.

CYNTHIA L. BUCHKO, Attorney,
for WHYTE HIRSCHBOECK DUDEK S.C., Attorneys at Law,
33 East Main Street, Suite 300, Madison,
Wisconsin 53701-1379, appearing on behalf of
the Wisconsin Senate, Wisconsin Assembly,
Wisconsin Senate Chief Clerk Jeff Renk,
Wisconsin Assembly Chief Clerk Patrick E.
Fuller and the Wisconsin Legislative Technology
Services Bureau.

JAMES T. MURRAY, JR., Attorney,
for PETERSON, JOHNSON & MURRAY, S.C.,
Attorneys at Law, 788 North Jefferson Street,
Suite 500, Milwaukee, Wisconsin 53202,
appearing on behalf of the witness.

MICHAEL J. FITZGERALD, Attorney,
for FITZGERALD LAW FIRM, S.C., Attorneys at Law,
526 East Wisconsin Avenue, Milwaukee,
Wisconsin 53202, also appearing on behalf of
the witness.

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

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ADAM R. FOLTZ,

called as a witness, being first duly sworn,
testified on oath as follows:

EXAMINATION

02:14PM

By Mr. Poland:

02:14PM

Q Mr. Foltz, you have in front of you a document that has already been marked as Exhibit No. 3. If you would look at the exhibit stickers on the bottom right of the document, you will see one that's marked No. 3.

02:14PM

A Okay.

Q I'm going to ask you if you would pull that out of the stack and put it in front of you. You can push the others to the side for now or push them up.

02:14PM

A Okay.

Q Have you seen Exhibit No. 3 before?

A Yes.

Q What is Exhibit No. 3?

02:15PM

A A subpoena for the Wisconsin State Assembly.

Q And this is a specific kind of a subpoena. It's a subpoena to testify at a deposition taken pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedures, and that means that you're here in a representative capacity testifying on behalf of

1 the Wisconsin State Assembly. Do you understand?

2 A Yes.

3 Q When did you first see Exhibit No. 3?

4 A Early last week.

02:15PM

5 Q Who gave Exhibit No. 3 to you?

6 A Either Tom Pyper or Cindy Buchko.

7 Q Now, Exhibit No. 3 calls for a representative of
8 the Wisconsin State Assembly.

9 A Uh-huh.

02:15PM

10 Q Do you see that?

11 A Yes.

12 Q Do you know how you came to be the person who is
13 designated to testify on behalf of the State
14 Assembly?

02:15PM

15 A Related to my prior duties involved in
16 redistricting for the State Assembly when I worked
17 for Speaker Fitzgerald last legislative session.

18 Q Do you know who made the decision that you would
19 be the designee?

02:15PM

20 A I believe it was a group decision not attributable
21 to a single person.

22 Q Who was involved in making that decision?

23 A Speaker Vos's office, legal counsel.

24 Q When you say legal counsel, do you mean Mr. Pyper
25 and Ms. Buchko?

02:16PM

1 A That's correct.

2 Q Anyone else involved in making that decision that
3 you know of?

4 A Not that I know of.

02:16PM 5 Q What did you do to prepare for your deposition
6 here today?

7 A Met with legal counsel.

8 Q Again, that's Ms. Buchko?

9 A Yes. And Mr. Pyper.

02:16PM 10 Q And Mr. Pyper? Did you meet with any other legal
11 counsel?

12 A Yes. Mr. Fitzgerald and Mr. Murray.

13 Q When did you first meet with Mr. Fitzgerald and
14 Mr. Murray in connection with the 30(b)(6)
02:16PM 15 deposition notice?

16 A I don't know if it's accurate to say that I met
17 with -- let me back up. I don't know if it's
18 accurate to say that I met with Mr. Murray and
19 Mr. Fitzgerald regarding the 30(b)(6) but under my
02:16PM 20 deposition as an individual. I should be clear
21 about that. The lines obviously get a little
22 blurred given kind of the dual nature, but I would
23 say it's accurate to say that I met with
24 Ms. Buchko and Mr. Pyper regarding the 30(b)(6)
02:17PM 25 specifically.

1 Q And when you met with Mr. Pyper and Ms. Buchko,
2 what did you do to prepare for your deposition?

3 A Just a general conversation. Reviewed some
4 documents.

02:17PM

5 Q What documents did you review?

6 A A series of E-mails that -- or a series of
7 documents, I should say not limited to E-mails
8 necessarily, involving this ongoing action.

02:17PM

9 Q Do you recall what documents specifically you
10 reviewed?

11 A I believe they were documents that were included
12 as exhibits in some of the motions that have been
13 filed with the Court.

02:17PM

14 Q Did you review the motions themselves that have
15 been filed with the Court?

16 A I did not.

17 Q These were exhibits that were attached to the
18 documents?

19 A I believe so.

02:17PM

20 Q Do you recall any specific documents that you
21 reviewed?

22 A The documents as listed -- the ones that I believe
23 were attached as exhibits to the filings with the
24 Court.

02:18PM

25 Q Did you review any data or files on any CDs or DVD

1 as part of your preparation for today's
2 deposition?

3 A I reviewed my prior depositions which came off of
4 a DVD or CD.

02:18PM 5 Q The transcripts themselves you reviewed?

6 A That's correct.

7 Q Did you review any of the exhibits to your
8 depositions as well?

9 A No.

02:18PM 10 Q Did you review any CDs or DVDs of documents that
11 were produced in the litigation before the trial?

12 A No.

13 Q Did you have conversations, discussions, or
14 communications with anyone else associated with
02:18PM 15 the Wisconsin State Assembly about the deposition
16 today?

17 A Speaker Vos's office. I also did speak to --
18 well, are you talking currently employed by the
19 State Assembly?

02:18PM 20 Q Correct.

21 A Speaker Vos's office.

22 Q Who at Speaker Vos's office did you speak with?

23 A Nick Probst.

24 Q Who is Mr. Probst?

02:19PM 25 A He works for Speaker Vos as a legal counsel and

1 policy advisor.

2 Q What did you and Mr. Probst discuss about your
3 deposition today?

02:19PM

4 A He just wanted to make sure that I was going to be
5 appearing on behalf of the State Assembly for the
6 30(b)(6).

7 Q Did you work with Mr. Probst at all to prepare for
8 your deposition today?

9 A No.

02:19PM

10 Q Did Mr. Probst give you any documents to review?

11 A No.

12 Q Did anyone else in Speaker Vos's office give you
13 any documents to review?

14 A No.

02:19PM

15 Q Were you asked to do any independent research or
16 investigation regarding the topics for testimony
17 today?

18 A I read the deposition. I don't know if that was
19 exactly under anyone's instruction, but I read my
20 prior depositions.

02:19PM

21 Q How many times did you meet with Ms. Buchko and
22 Mr. Pyper to prepare for your deposition today?

23 A One that I can recall.

24 Q Was that last week?

02:20PM

25 A Yes.

1 Q You're correct. I think there may be some -- we
2 will have to be careful how we distinguish here
3 between the 30(b)(6) and the individual
4 deposition.

02:20PM

5 A Right.

6 Q But I want to specifically focus right now on the
7 30(b)(6) portion of the deposition. Did you ever
8 meet with Mr. Murray or Mr. Fitzgerald
9 specifically to prepare for your 30(b)(6)

02:20PM

10 testimony today?

11 A No. But, again, blurring of the lines and
12 overlapping of topics.

13 Q Understood. Have you had an opportunity to review
14 the topics that are identified in Exhibit No. 3
15 for your deposition today?

02:20PM

16 A Yes.

17 Q Are you prepared to testify to all nine topics
18 today?

19 A I don't know if I can say all nine, but the ones
20 that I'm capable of answering.

02:20PM

21 Q Let me shortcut the process. My understanding is
22 that Topic Number Six is a topic that you are not
23 designated to testify on.

24 MR. POLAND: Is that correct,

02:21PM

25 Ms. Buchko?

1 MS. BUCHKO: That's correct.

2 Q Is that your understanding as well, Mr. Foltz?

3 A I believe so. Yes.

4 Q Is it your understanding that as to the remaining

02:21PM

5 topics you are one of the witnesses who's been

6 designated to testify on behalf of the Wisconsin

7 State Assembly?

8 A To the best of my knowledge. Yes.

9 Q Let's talk about the very first topic that's

02:21PM

10 identified in Exhibit No. 3.

11 A Uh-huh.

12 Q The topic is the deletion or attempted deletion of

13 any records or data --

14 A Uh-huh.

02:21PM

15 Q -- from any of the three redistricting computers

16 between January 1, 2011 and January 31, 2013. Do

17 you see that topic?

18 A I do.

19 Q We're going to try to get a little bit better

02:21PM

20 oriented here. I'm going to ask you to take a

21 copy of what's been marked as Exhibit No. 2 and

22 have that in front of you.

23 A All right.

24 Q I'll represent this is a document that was

02:21PM

25 prepared by Jeff Ylvisaker. Do you know who

1 Mr. Ylvisaker is?

2 A Yes. I do.

3 Q You will see if you look at Exhibit No. 3 there
4 are three different columns.

02:22PM

5 A Uh-huh.

6 Q The first column is identified -- at the top it
7 says HDD32575. Do you see that?

8 A 3257 -- I'm sorry. Which one?

9 Q The first column.

02:22PM

10 A The first column. Yes.

11 Q Do you see that?

12 A Yes.

13 Q You see underneath it says WRK32587?

14 A Yes.

02:22PM

15 Q And then in parens it says Tad Ottman, HP 4600?

16 A Yes.

17 Q I will refer to that generally as Mr. Ottman's
18 redistricting computer. Okay?

19 A Uh-huh.

02:22PM

20 Q The middle column is identified at the top with a
21 designation HDD32574. Do you see that?

22 A Yes. Uh-huh.

23 Q Underneath it says WRK32586 and then in parens it
24 says Adam Foltz HP 4600. Do you see that?

02:22PM

25 A Uh-huh.

1 Q I will generally refer to that as your
2 redistricting computer. If we ever need
3 clarification, we will make sure we are clear.

4 A Uh-huh.

02:23PM

5 Q And then the third column is headed HDD32579.
6 Below that it says WRK32864 and then says
7 Tad Ottman HP -- it looks like Z200 or a 2200. Do
8 you see that?

9 A I do.

02:23PM

10 Q My understanding from Mr. Ylvisaker is that was a
11 redistricting computer that was used by
12 Mr. Handrick.

13 A Uh-huh.

02:23PM

14 Q So I'll refer to that as Mr. Handrick's
15 redistricting computer --

16 A Understood.

02:23PM

17 Q -- to orient ourselves. Are you familiar -- I
18 want to start with the middle column which is the
19 redistricting computer it's my understanding was
20 issued to you.

21 A Uh-huh.

22 Q I'm going to start by asking you -- I'm going to
23 jump down here to Topic Number Three.

24 A Okay.

02:23PM

25 Q Which is the location, possession, custody, and

1 control --

2 A Okay.

3 Q -- of any of the three redistricting computers.

4 A Uh-huh.

02:24PM

5 Q Between January 1, 2011 and January 31, 2013. We
6 will get ourselves oriented first with the custody
7 and control and work our way back.

8 A Okay.

02:24PM

9 Q Looking at Topic Number Three, there's an
10 indication on Mr. Ylvisaker's exhibit here, No. 2,
11 that the computer that was assigned to you for
12 redistricting purposes was deployed to Michael
13 Best & Friedrich on July 15, 2010. Do you see
14 that?

02:24PM

15 A I do.

16 Q When was the first time that you saw or used the
17 redistricting computer that was assigned to you?

18 A Saw or used? I don't recall.

02:24PM

19 Q Do you recall whether it was on or about July 15,
20 2010?

21 A It may have been to get the office set up, but
22 that's -- probably. Probably around then.
23 Probably when we set up the office over there.

02:24PM

24 Q Do you recall going over to Michael
25 Best & Friedrich's offices in the summer of 2010?

1 A I don't specifically recall going over there, but
2 I'm sure when the office was getting set up I was
3 over there at some point.

02:25PM

4 Q Who made the decision to put that particular
5 redistributing computer, the Assembly redistributing
6 computer, in Michael Best & Friedrich's offices?

7 A I don't recall who the decision would have been
8 made by.

02:25PM

9 Q Were you involved in the discussions about where
10 to locate the Assembly's redistributing computer?

11 A Not that I can recall.

12 Q When I say the Assembly's redistributing computer,
13 I'm referring to the one that's referred to here
14 in Mr. Ylvisaker's chart.

02:25PM

15 A Understood.

16 Q What did you do to set up the computer, the
17 Assembly redistributing computer, at Michael
18 Best & Friedrich's offices?

02:25PM

19 A I don't recall having any role in actually setting
20 up the computer. I may have been there when LTSB
21 deployed it. Maybe there was some person with
22 Michael Best to frankly open the door for us and
23 let us in the room. As far as the actual set up
24 in the computer, I don't recall having any role in
25 actually setting it up.

02:26PM

1 Q So it was LTSB who set up the computer?

2 A To the best of my knowledge. Yes.

3 Q Do you remember who from LTSB was responsible for
4 setting up that computer?

02:26PM

5 A No. Probably a combination of the GIS team, folks
6 we have discussed in the past. Tony Van Der
7 Wielen, Ryan Squires, the other Ylvisaker at LTSB.
8 Joel I think is his first name. I'm sure it was
9 some combination of those folks.

02:26PM

10 Q Where is the office at Michael Best & Friedrich's
11 offices where the Assembly redistricting computer
12 was set ?

13 A How do you mean?

14 Q What office was it physically located in?

02:26PM

15 A I don't know if there was a room number or
16 anything like that.

17 Q My understanding is to get to the office that you
18 accessed at Michael Best & Friedrich where the
19 redistricting computer was located you would take
20 the elevator of the U.S. Bank building up to the
21 seventh floor, correct?

02:26PM

22 A I believe that's their floor.

23 Q You get out of the elevator and go to the left.

24 In other words, not toward the reception desk but
25 the opposite direction?

02:27PM

1 A Yes.

2 Q Was it a conference room that the redistricting
3 computer was kept in?

4 A I don't know if it's intended to be a conference
02:27PM 5 room. It was a larger room but didn't have really
6 any frills. There was no projector. There was
7 nothing. It was just an empty room. I don't know
8 if its intended purpose was a conference room or
9 what the intended purpose of the room was when we
02:27PM 10 weren't there.

11 Q Did you need any kind of key card or key to access
12 the conference room?

13 A Yes. There was a key.

14 Q A physical key that you would turn in a door?

02:27PM 15 A To get into the room. Yes.

16 Q As opposed to a key card?

17 A Yes. Well, let me back up. There was an outer
18 door when you took a left out of the elevator that
19 required a fob to get past. Then once you got to
02:27PM 20 the actual room there was a key.

21 Q So you were issued a key fob at some point to be
22 able to access that room?

23 A As well as the key.

24 Q Do you recall when you were issued the key fob?

02:28PM 25 A No.

1 Q How many other people had a key fob to be able to
2 access that room?

3 A The room specifically was a key, just to make sure
4 we're not mixing. The key itself, myself and
02:28PM 5 Tad Ottman at minimum. I would assume Michael
6 Best attorneys or attorney. I don't know how many
7 keys they had floating around with their staff.
8 Beyond that I can't think of anyone that would
9 have had the key.

02:28PM 10 Q How was the Assembly computer set up in terms of
11 its ability to communicate with any kinds of
12 networks?

13 A I really don't know what the internal functions of
14 the Michael Best IT team were to enable that.
02:28PM 15 Frankly, I just know that it was plugged into a
16 wall and it had Internet access.

17 Q Are you familiar with the term ethernet? Do you
18 know what an ethernet cable is?

19 A Uh-huh.

02:28PM 20 Q Did it have an ethernet cable that was plugged
21 into one end of the computer and the other end
22 into a jack in the wall?

23 A I believe so. Yes.

24 Q Was there any kind of wireless access that you're
02:29PM 25 aware of?

1 A Not that I'm aware of.

2 Q You said that was Michael Best's IT team that set
3 that up?

02:29PM

4 A Well, I don't know is the short answer. The
5 interplay between LTSB with their responsibilities
6 to the workstation and how Michael Best may have
7 interplayed with that to provide access to the
8 outside world I don't know.

02:29PM

9 Q So it's your testimony that the Assembly
10 redistricting computer was present in the Michael
11 Best offices sometime beginning in around July 15,
12 2010; is that correct?

13 A I believe so. I believe this document.

02:29PM

14 Q I'm going to jump down to sort of the end of the
15 process now.

16 A Right.

02:29PM

17 Q I would like you to look at -- there's a column or
18 there's a row that corresponds with May of 2012
19 where it says, "Approximately 5/1/2012 service
20 call related to network connection 121W." Do you
21 see that?

22 A I do.

02:30PM

23 Q What is your understanding about the time when the
24 Assembly redistricting computer left Michael
25 Best's offices?

1 A All I know is that at this 5/1/2012 point -- the
2 computer would have been back in the capitol. I
3 don't know if it actually physically arrived on
4 that date or if it were before that. But this
02:30PM 5 service call relating to a network connection in
6 the capitol shows that it was there at that point.
7 Whether it was there a day before or a week before
8 I don't know.

9 Q Who decided to move the Assembly redistricting
02:30PM 10 computer from Michael Best's office back over to
11 the capitol building?

12 A That would have been one of my bosses whether it
13 be Speaker Fitzgerald or chief of staff. I'm not
14 sure exactly who made the decision.

02:30PM 15 Q Were you involved at all in the decision to move
16 the computer back over to the capitol building?

17 A Not that I can recall. I was just told to come
18 back.

19 Q I'm sorry?

02:31PM 20 A I was just told to come back. I don't recall
21 actually being part of the conversation as to
22 giving me those marching orders.

23 Q Did you personally contact LTSB and ask them to
24 move the computer back over?

02:31PM 25 A I don't recall.

1 Q Did you communicate with anyone at Michael
2 Best & Friedrich about the move of the Assembly
3 redistricting computer from Michael Best's offices
4 back over to the State capitol building?

02:31PM 5 A I don't recall a specific conversation about that,
6 but I'm sure I informed someone at Michael Best,
7 Ray Taffora or Eric McLeod, that I was packing up.

8 Q Do you know whether there was any kind of a
9 written communication to Michael Best at the time
02:31PM 10 that the computer was moved back over from Michael
11 Best to the State capitol?

12 A No written communication that I'm aware of.

13 Q So nothing that was sent to them saying LTSB is
14 going to come in, they're going to pack up the
02:32PM 15 computer equipment, and they're going to take it
16 away?

17 A Not to my knowledge.

18 Q Do you know how somebody would have gained access
19 to that computer and basically walked out the
02:32PM 20 front door of a law firm with computers in arms
21 without having some kind of preauthorization to do
22 it?

23 MS. BUCHKO: Object to form.

24 A I guess I'm not following the question. There was
02:32PM 25 no written document that I'm aware of. As far as

1 gaining access, it would just simply be that we
2 let them into the room.

3 Q Were you there when they came to take the computer
4 from Michael Best's offices over to the capitol?

02:32PM

5 A Yeah. I don't recall. I don't recall exactly how
6 that process worked with getting them back over.

7 Q Between the time -- strike that question. It's
8 your testimony that you don't know exactly when
9 the computer went back over from Michael Best's

02:32PM

10 offices to the State capitol?

11 A That's correct. I think the May 1st timeline is a
12 ballpark give or take. Whether it be a day or a
13 week, I don't know.

14 Q Do you know the last time that you were at Michael
15 Best's offices working on the Assembly
16 redistricting computer?

02:33PM

17 A At the Michael Best offices it would have been
18 before that 5/1/2012. Beyond that I don't know.

19 Q Between the day that the Assembly redistricting
20 computer was deployed to Michael Best's offices in
21 July of 2010 --

02:33PM

22 A Uh-huh.

23 Q And the day that it was transferred back over from
24 Michael Best's offices to the State capitol
25 building --

02:33PM

1 A Uh-huh.

2 Q Was that computer ever away from Michael
3 Best & Friedrich's offices?

4 A Yes.

02:33PM 5 Q Where was it?

6 A A conference room at Reinhart's offices in
7 Milwaukee.

8 Q When was it in a conference room at Reinhart's
9 offices in Milwaukee?

02:33PM 10 A The week of trial.

11 Q Who made the decision to bring the Assembly
12 redistricting computer to Reinhart's conference
13 room in Milwaukee?

14 A I don't recall exactly who made the decision.

02:34PM 15 Q Were you working on that computer in Reinhart's
16 conference room in Milwaukee during the trial?

17 A Yes.

18 Q Were any of the other redistricting computers
19 taken over to Reinhart's conference room in
02:34PM 20 Milwaukee during the trial?

21 A No.

22 MR. EARLE: Can we take a break or
23 do you want to wait a little bit?

02:34PM 24 Q How long was the Assembly redistricting computer
25 in the conference room in Reinhart's offices in

1 Milwaukee?

2 A It would have been during the week of trial.

3 Whether it went over on Monday or Tuesday I'm not

4 sure. Five days give or take depending on what

02:35PM

5 day it actually went over there.

6 Q Why was the computer taken over there?

7 A To provide assistance.

8 Q During the trial?

9 A Yes.

02:35PM

10 Q Who had access to the Assembly redistricting
11 computer while it was at Reinhart's office in
12 Milwaukee during the trial?

13 A Myself. Beyond that I don't know.

14 Q Was there anyone else who worked on the computer
15 during that week?

02:35PM

16 A Not to my knowledge.

17 Q Did Mr. Ottman work on the computer during that
18 week?

19 A He may have, but I don't recall him specifically
20 working on it.

02:35PM

21 Q Did Mr. Handrick work on it during that week?

22 A Not to my knowledge.

23 Q Did any of the expert witnesses who testified on
24 behalf of the defendants work on that computer
25 during that week?

02:35PM

1 A I don't believe so.

2 Q What about reviewing files up on a screen that was
3 generated from that computer? Was there anyone
4 other than you or Mr. Ottman who viewed files on
02:36PM 5 the screen of that computer during that week?

6 A There may have been.

7 Q What about any of the counsel for the defendants?
8 Were any of the counsel for defendants -- did any
9 of them use the computer during the week?

02:36PM 10 A Not that I can recall.

11 Q Did any of them access the computer during the
12 week?

13 A I don't believe so.

14 Q Did any of them view any of the files on the
02:36PM 15 screen of that computer during that week?

16 A They may have, but I don't recall a specific
17 instance.

18 Q How was the Assembly redistricting computer
19 connected to -- strike that question. Was the
02:36PM 20 Assembly redistricting computer connected to a
21 network while it was in Reinhart's offices in
22 Milwaukee?

23 A I don't believe so.

24 Q Did you have Internet access on that computer?

02:36PM 25 A I don't believe so for that week. No.

1 Q Was there also a hard disc drive that was
2 connected to the Assembly redistricting computer?

3 A I don't recall if the -- are you referring to --
4 just to be clear, there was a disc drive, yes, the
02:37PM 5 internals. Are you referring to the external
6 specifically in this context?

7 Q That's a good distinction for make. Yes. Let's
8 talk about the external hard drive.

9 A I don't recall if the external made the trip to
02:37PM 10 the Reinhart conference room.

11 Q Did you personally transport the Assembly
12 redistricting computer from Michael Best's offices
13 in Madison over to Reinhart's offices in
14 Milwaukee?

02:37PM 15 A That's correct.

16 Q And did you physically bring the computer back
17 over from Reinhart's offices in Milwaukee back to
18 Michael Best's offices in Madison?

19 A Yes. That's correct.

02:37PM 20 Q Did you hook it back up when you brought it back
21 to the office here?

22 A I believe I hooked it up. Yes.

23 Q Other than being in Reinhart's office in Milwaukee
24 for the week during trial, was the Assembly
02:38PM 25 redistricting computer in any other location than

1 Michael Best's offices before it was moved back
2 over to the capitol building?

02:38PM

3 A There may have been a period of time before it was
4 deployed to Michael Best where it was at LTSB. I
5 don't know that. Or if they just pulled it
6 straight out of the box. I don't know. From the
7 time it went to Michael Best, it was Michael Best,
8 the week at Reinhart, back into the capitol.

02:38PM

9 Q Let's talk about the Assembly redistricting
10 computer during the time that it was located at
11 Michael Best before the trial.

12 A Before the trial.

13 Q So before it was moved over to Reinhart's offices
14 for the week.

02:38PM

15 A Uh-huh.

16 Q Who had access to that computer while it was in
17 Michael Best's offices?

02:38PM

18 A I did of course. LTSB. Beyond that -- I don't
19 recall specific instances where Tad or Joe may
20 have been working on it. They may have. They may
21 not have. But I can't recall specific instance
22 where they may have jumped on.

23 Q Did any of the Michael Best & Friedrich attorneys
24 have access to the computer?

02:39PM

25 A Well, how do you define access in that case?

1 Q Was the computer password protected?

2 A Yes.

3 Q Who had the password to be able to log on to the
4 computer?

02:39PM

5 A I don't know the sum of the user names that were
6 associated with that computer. I know I had one.
7 I believe there may have been a separate account
8 for LTSB for technical support reasons. I don't
9 know that for a fact. They may have just done

02:39PM

10 service under my user name. I believe that's the
11 case. Beyond that I don't know of any other log
12 in name on that computer.

13 Q Okay. So we have got a log in name. How about
14 password? Was there a password associated with
15 your log in name?

02:39PM

16 A Yes.

17 Q Who had that password?

18 A I did.

19 Q Did anyone else have that password?

02:39PM

20 A Not to my knowledge.

21 Q If Mr. Ottman or Mr. Handrick needed to work on
22 that computer, how would they access it if they
23 didn't have your password?

02:40PM

24 A I would have just stepped aside and let them work
25 on it.

1 Q Did you ever step aside and let anyone other than
2 Mr. Handrick or Mr. Ottman work on your computer?

3 A Again, I don't recall any instance where
4 Mr. Handrick or Mr. Ottman were working on the
02:40PM 5 computer. Just to go back to that. Beyond that,
6 it would be LTSB that I can think of that would
7 have sat down on the computer and done various
8 technical support functions.

9 Q Aside from accessing the computer, let's talk
02:40PM 10 about viewing files that could be displayed on the
11 computer screen itself.

12 A Uh-huh.

13 Q Clearly you viewed files that were displayed on
14 the computer screen that was attached to the
02:40PM 15 monitor that was attached to your computer,
16 correct?

17 A Uh-huh.

18 Q Did Mr. Ottman ever view any files that you
19 brought up on the screen, the monitor attached to
02:40PM 20 your computer?

21 A I am sure he did. Again, not specifically
22 recalling a specific instance where that may have
23 happened, but it seems very likely given the
24 collaborative nature of the process.

02:40PM 25 Q How about Mr. Handrick? Did Mr. Handrick ever

1 view any files that were displayed on the monitor
2 attached to your computer?

3 A I would probably say the same answer as with Tad.
4 I don't recall a specific instance. I'm sure it
5 happened. Yes.

02:41PM

6 Q How about the lawyers for Michael
7 Best & Friedrich? Did any of them view the files
8 that you brought up on your computer monitor?

9 A I'm sure they did.

02:41PM

10 Q Do you know which attorneys for Michael
11 Best & Friedrich would have done that?

12 A Not with absolute certainty. It would have been a
13 combination of various attorneys at Michael Best
14 that may have been working on this at one point or
15 another.

02:41PM

16 Q Which attorneys at Michael Best & Friedrich worked
17 on the redistricting with you?

18 A Eric McLeod, Ray Taffora, Joe Olson. There may
19 have been some others, but those are the three
20 that jump to mind.

02:41PM

21 Q Was there a lawyer named Screnock who also
22 assisted as part of the redistricting process?

23 A I don't know what his involvement was with
24 redistricting specifically. I know him and met
25 with him. Well, I shouldn't say met with him. I

02:41PM

1 know him from being around there. I don't
2 remember any specific involvement that Screnock
3 had with the redistricting process. He may have,
4 though.

02:42PM

5 Q What about -- Aaron Kastens is another attorney
6 who did appear on behalf of the legislature in
7 this lawsuit. Was Mr. Kastens involved with the
8 redistricting process at all?

02:42PM

9 A I know that he appeared on some filing at some
10 point. From my perspective, I've never met
11 Aaron Kastens I don't believe.

02:42PM

12 Q I want to you ask you about the external hard disc
13 drive that was attached to the Assembly's
14 redistricting computer. Are you familiar with the
15 hard drive?

16 A Yes.

17 Q The external hard drive. I'll try to be careful
18 to remember to say that.

19 A Understood.

02:42PM

20 Q What was the purpose of the external hard drive?

21 A My understanding of the external hard drive is
22 that it provided a second redundancy of work file
23 product that would run in a backup I believe it
24 was nightly. I don't know exactly when those
25 backups occurred. They were automated, and they

02:43PM

1 were set up by LTSB.

2 Q Did you do anything to start or stop the backup
3 process on the external hard drive that was
4 connected to your computer at any point?

02:43PM

5 A No. My understanding of how LTSB set it up is
6 they set it up for some hour where normally you're
7 not working, the middle of the night and that type
8 of thing, and the process, the protocol which
9 dumped files onto the external hard drive, I
10 believe was a fully automated process.

02:43PM

11 Q Did you ever have any reason to access the
12 external hard drive that was attached to your
13 computer?

14 A No.

02:43PM

15 Q Did you ever save anything on that external hard
16 drive intentionally as opposed to the --

17 A As opposed to the internal drives? No. I did
18 not.

19 Q And as opposed to the automated process.

02:43PM

20 A Right. Right.

21 Q Is there anybody that we haven't talked about who
22 had possession, custody, or control of the
23 Assembly redistributing computer during the time
24 that it was at Michael Best's office?

02:44PM

25 A Possession, custody, or control of the computer

1 when it was at Michael Best's office?

2 Q Correct.

3 A I don't believe so.

4 Q What about for the one week that it was at

02:44PM

5 Reinhart's office?

6 A Not that I can think of.

7 Q Now I want to move to the time that the computer
8 moved from Michael Best & Friedrich's offices back
9 over to the capitol building.

02:44PM

10 A Okay.

11 Q Exhibit No. 2, which Mr. Ylvisaker prepared,
12 identifies the service call related to a network
13 connection. Do you see that?

14 A I do.

02:44PM

15 Q And there's a room number or there's a number I
16 should say that he gives, 121 W. Do you see that?

17 A I do.

18 Q Is that a room at the capitol building?

19 A Yes. It is.

02:44PM

20 Q What room is that?

21 A 121 West would be the room.

22 Q Who occupied that room at the time?

23 A It's a room known as the speaker's annex or at
24 least under the way the offices were set up last
02:45PM 25 session in the legislature the speaker's annex

1 which is basically an overflow room for storage.

2 Q Is that where the Assembly redistricting computer
3 was located at that time?

4 A That's correct. Post Michael Best time.

02:45PM

5 Q Post Michael Best. So when it was moved from
6 Michael Best & Friedrich to the capitol building,
7 that's the location where it was put?

8 A That's correct.

02:45PM

9 Q Do you know who decided that it would be put in
10 that location?

11 A I don't know who made that actual decision.

12 Q Do you know who made the service call that's
13 related to that network that is identified on
14 Exhibit No. 2?

02:45PM

15 A I don't remember the call with absolute certainty,
16 but I'm assuming it's me.

17 Q All right. I'm going to ask if you can take a
18 look at Exhibit No. 5. It's a stack of documents
19 that's clipped together.

02:45PM

20 A Okay.

21 Q What you're going to see as you page through
22 Exhibit 5 -- you will see a few subpoenas that are
23 on the top, and then you're going to see some
24 documents that are identified as Configuration

02:46PM

25 Items. Then you will see some documents that say

1 Service Call at the top.

2 MS. BUCHKO: It might be easier if
3 you unclip it. Try to keep it in order.

4 Sorry, counsel. I hope you don't mind.

02:46PM

5 MR. POLAND: That's okay.

6 A So Configuration Item.

7 Q Just so that we're clear, we are going to dip into
8 another topic here for a brief time. There's a
9 Topic Number Five, all maintenance performed on
10 the three redistricting computers. We're going to
11 get into that a little bit. I'll come back to it
12 specifically as a topic. We're going to touch on
13 a couple of the issues.

02:46PM

14 A Uh-huh.

02:46PM

15 Q I would like to turn your attention in the service
16 call documents, the very first one is
17 identified -- there's an ID number at the top and
18 it says 46,484. Do you see that?

19 A I'm sorry. Where am I looking?

02:47PM

20 Q Right underneath where it says Service Call. It
21 says Main.

22 A I see Configure. Am I not in the right spot?

23 MS. BUCHKO: Do you mind?

24 MR. POLAND: That's fine.

02:47PM

25 Q There are service calls.

1 A Sorry about that. Okay. 46,484.

2 Q Do you see that ID?

3 A I do.

4 Q I'm going to stop you there. If you look a little

02:47PM

5 further down, you will see it says Caller:

6 Adam Foltz. Do you see that?

7 A I do.

8 Q All right. And then a little further down from

9 that it says Classification: Outlook Exchange.

02:47PM

10 Do you see that?

11 A Okay.

12 Q Now, jump all of the way down to the bottom of the

13 page, and you're going to see it's got a

14 Description and a Ticket History. Do you see

02:47PM

15 that?

16 A Ticket History. Yes.

17 Q So there's a description there. Okay?

18 A Okay.

19 Q I'm just looking at this to orient you with the

02:47PM

20 kind of information that's in these documents.

21 A Okay.

22 Q I'm going to take you to a different one, a

23 service call. I should ask you the foundational

24 question. Have you seen these kinds of documents

02:48PM

25 before, Mr. Foltz?

1 A I have not.

2 Q You haven't. Okay. I'm going to ask you to look
3 two documents behind that. There's a service call
4 with an ID 55,738.

02:48PM

5 A Okay.

6 Q If you look on that, it says Caller: Adam Foltz.

7 A Uh-huh.

8 Q And look all of the way down at the bottom of that
9 page.

02:48PM

10 A Uh-huh.

11 Q You will see it says 35,112. There's an entry by
12 a Michael Winger?

13 A Okay.

14 Q It says -- the description says, "GIS machine now
15 in 121W. Needs help." Do you see that?

02:48PM

16 A Where is that again? Okay.

17 Q Under Description.

18 A Yes.

19 Q It then goes and says, "Helped him find a network
20 drop that worked. Turned off static IP
21 addressing." And it continues on the next page.

02:48PM

22 Do you see that?

23 A Yes.

24 Q Does that help refresh your recollection that you
25 were the person who placed the service call?

02:49PM

1 A Yes. That appears to be the case.

2 Q Did this computer continue to be assigned to you
3 after it was moved back over to the capitol
4 building?

02:49PM

5 A I don't know what you mean by assigned to me. The
6 computers in the capitol you can log in on your
7 user name or you can log out. It's not
8 necessarily fixed to one person in the capitol
9 context. So I guess I don't know exactly what you

02:49PM

10 mean by assigned to me.

11 Q Maybe I'm just using the LTSB speak --

12 A Uh-huh.

13 Q -- about assignments. Was this a computer that
14 you continued to use once it was moved back over
15 to the capitol building?

02:49PM

16 A That's correct.

17 Q Did you ask for the computer to be put in 121
18 West?

19 A Did I ask for it?

02:49PM

20 Q Correct.

21 A Not to my knowledge. No.

22 Q Did you have a separate office that you maintained
23 over in the capitol building at that time?

24 A I was in -- well, the speaker's office.

02:50PM

25 Q What's the number of the speaker's office or the

1 room number or what was it at the time?

2 A It's the same office that it is now. It's off the
3 chambers. I don't remember the exact number of
4 it, but it's the speaker's office fixed to the
02:50PM 5 position.

6 Q So it's not the person who occupies it?

7 A It's the speaker's office regardless of who the
8 speaker is. Now, granted, the configuration has
9 changed a little bit this session to just be clear
02:50PM 10 on that. The speaker's office is the speaker's
11 office.

12 Q Got it. And you were in the speaker's office. At
13 that time in May of 2012 it was Speaker Fitzgerald
14 at the time and now it's Speaker Vos, correct?

02:50PM 15 A Yes.

16 Q What was the number of the office or you said you
17 don't recall?

18 A Of the speaker's office?

19 Q Correct.

02:50PM 20 A I don't remember. It's second floor west.

21 Q So it's one floor up from 121 West; is that
22 correct?

23 A Yes.

24 Q Did you have a primary computer that you worked on
02:50PM 25 beginning in May of 2012 separate and apart from

1 this redistricting computer?

2 A I would bounce back and forth. I would primarily
3 be on the computer in 121 West, the GIS station.
4 I may have logged in to computers located actually
02:51PM 5 in the speaker's office from time to time as well.
6 I just kind of bounced back and forth.

7 Q Why were you using a computer, the redistricting
8 computer that was in 121 West, as opposed to using
9 exclusively a computer that was up in the
02:51PM 10 speaker's office?

11 A I don't really know why.

12 Q Had you used the redistricting computer for
13 purposes other than redistricting?

14 A Yes.

02:51PM 15 Q Did you continue to use that computer for purposes
16 other than redistricting?

17 A Yes.

18 Q Now, going back to the service call that we were
19 just looking at. This is the one on May 1st.

02:51PM 20 A Yes.

21 Q That ticket history says, "Helped him find a
22 network drop that worked." Do you know what that
23 is referring to there?

24 A I don't.

02:52PM 25 Q Were you able to access any kind of a network with

1 the computer when it was first put over in 121
2 West?

3 A I don't recall, but it seems as though -- first
4 able to? No. And that was what prompted the
02:52PM 5 service call is the way it reads.

6 Q And someone from LTSB came over and helped you
7 with that?

8 A I don't know if this was an in-person or on the
9 phone. The way it reads is it sounds -- it sounds
02:52PM 10 like it was just on the phone. I should say it
11 reads that way.

12 Q There is a reference in here that says, "Remap
13 network drives with his new password since it
14 changed yesterday." Do you see that?

02:52PM 15 A Uh-huh.

16 Q Do you know what was involved with the remapping
17 of the network drive?

18 A No. A technical support issue.

19 Q Do you know what was involved with the change of
02:52PM 20 your password?

21 A The only thing I know about that is that you're
22 required to change your password. There's
23 security protocols that LTSB sets up that requires
24 rotation of the password after a certain number of
02:53PM 25 days.

1 Q There's a reference, "Also linked up Outlook 2007
2 with his .pst files on his Y drive." Do you see
3 that?

4 A I do.

02:53PM

5 Q What's the Y drive?

6 A Y drive I believe is assigned to the -- the Y
7 drive I believe is assigned to the office and
8 that's where office, legislative office files, are
9 stored. But I'm not 100 percent sure on that.

02:53PM

10 Q Do you know why they were linking up the Outlook
11 2007 with your .pst files on your Y drive?

12 A I believe it was just to facilitate -- not knowing
13 exactly, I believe it was just to facilitate
14 Outlook being able to function.

02:53PM

15 Q Do you know what kind of data are stored in .pst
16 files?

17 A No.

18 Q The next paragraph says, "Adam is using a local
19 user account to log in, still." Do you see that?

02:54PM

20 A Uh-huh.

21 Q What's the local user account?

22 A Without knowing the exact answer, what I would say
23 that is is probably the difference between being
24 over at Michael Best where to my understanding we
25 weren't actually part of the Michael Best network

02:54PM

1 logging in as a user at Michael Best versus being
2 in the capitol where you're part of that work
3 group, part of that IT infrastructure. I really
4 don't know the technical terms behind that, but I
02:54PM 5 believe that's what it's referring to.

6 Q The next sentence says, "He knows the difference
7 between his local user account and his network
8 account." Do you see that?

9 A Uh-huh.

02:54PM 10 Q Have you ever heard the term domain account used?

11 A No.

12 Q The network account, that's the account that you
13 would have used when you accessed the State's
14 network; is that correct?

02:54PM 15 A I believe so. Yes.

16 Q And local user account is just to get on the
17 computer?

18 A I believe so, but, again, technical terms that I'm
19 not completely familiar with what they mean in the
02:55PM 20 IT context.

21 Q Did you ever use a network account while the
22 computer was located at Michael Best & Friedrich?

23 A I want to be clear on that because there were
24 times where you would VPN in to establish a
02:55PM 25 connection with the Outlook server for lack of a

1 better term. I don't know how that falls in what
2 you're asking, but to the extent that VPN access
3 may have been used to get Outlook E-mail, yes.

02:55PM

4 Q And VPN is an acronym for virtual private network;
5 is that correct?

6 A I believe so.

7 Q VPN is something that LTSB set up your computer to
8 be able to do; is that correct?

9 A I believe that's the case. Yes.

02:55PM

10 Q I would like you to turn to the very first of the
11 service calls. It's Number 46,484.

12 A 46,484 service call.

13 Q Correct.

14 A Okay.

02:56PM

15 Q All right. If you look down under Caller, you
16 will see it identifies Adam Foltz.

17 A Uh-huh.

18 Q And then Classification says Outlook Exchange. Do
19 you see that?

02:56PM

20 A Under Classification?

21 Q Correct.

22 A Yes.

23 Q If we jump down to the bottom, we will see
24 January 26, '11.

02:56PM

25 A Uh-huh.

1 Q There's an entry by Jared Bender.

2 A Okay.

3 Q And it says, "I couldn't log on to his machine
4 despite it being provided by LTSB and on VPN so I
5 walked him through the steps."

02:56PM

6 A Uh-huh.

7 Q Do you see that?

8 A Yes.

9 Q Did Mr. Bender come over physically to Michael
10 Best & Friedrich and assist you with that?

02:56PM

11 A No. I don't believe so. To the best of my
12 knowledge, all of the in-person technical support
13 was performed by that roster that I had rattled
14 off to you earlier, the GIS team. I don't believe
15 Jared Bender is part of the GIS team.

02:57PM

16 Q There are two dashes, and it says, "He is now
17 connected to Outlook and can access the rep's
18 mailboxes as requested." Do you see that?

19 A I do.

02:57PM

20 Q Who is the rep that is referred to there? Do you
21 know?

22 A It would be my appointing authority which would
23 have been Representative Fitzgerald.

24 Q Whose mailbox would you be able to access then by
25 Outlook?

02:57PM

1 A That would be the rep.fitzgerald@legis.wi.gov mail
2 box which is kind of the publicized if you want to
3 E-mail your State representative send your E-mail
4 here.

02:57PM

5 Q Did you also have access to your own State E-Mail
6 account then through the VPN?

7 A Yes.

02:58PM

8 Q Did you continue to use the Assembly redistricting
9 computer beginning in May of 2012 until some
10 definite time or definite date?

11 A Definite -- well, yes. Yes.

12 Q When was the last time that you used the Assembly
13 redistricting computer in the capitol building?

02:58PM

14 A I don't recall the specific date, but it is some
15 time before Pat Fuller put it in the inventory
16 cage.

17 Q So if we take a look at the column on Exhibit
18 No. 2, in that middle column, you will see an
19 entry that says, "Approximately 9/13/2012."

02:58PM

20 A Right.

21 Q "Computer returned to LTSB per Patrick Fuller
22 assembly chief clerk. Locked in inventory cage."
23 Do you see that?

24 A I do.

02:58PM

25 Q When was the last time that you worked on the

1 Assembly redistricting computer?

2 A I don't recall the specific day, but it would have
3 been before 9/13 of '12.

4 Q How was a decision made to return that computer to
5 LTSB?

02:59PM

6 A I don't know who was involved in the
7 decision-making process of that.

8 Q Were you told that that was going to happen?

9 A I was told that it had happened.

02:59PM

10 Q So it was already -- had it been accomplished by
11 the time that you were told about it?

12 A That's correct.

13 Q Were you still working for the Assembly at that
14 time?

02:59PM

15 A No. Not at that point I would not have been.

16 Q At some point in time you went to work for Senator
17 Fitzgerald's office, correct?

18 A Correct.

19 Q When did you begin working for Senator
20 Fitzgerald's office?

02:59PM

21 A January of '13 would have been Senator Fitzgerald.

22 Q When did you stop working for the Assembly?

23 A Sometime late August or early September I left
24 State service.

02:59PM

25 Q Were you employed at all by the State after that

1 time until you came to be employed by Senator
2 Fitzgerald's office?

3 A I'm sorry. Say that again.

4 Q It was a bad question. When you left the
03:00PM 5 employment of the State Assembly, what did you do
6 after that?

7 A I went to work for the Republican Party of
8 Wisconsin.

9 Q And did you leave the employment of the Republican
03:00PM 10 Party of Wisconsin when you began working for
11 Senator Fitzgerald?

12 A No.

13 Q So you're still employed by the Republican Party
14 of Wisconsin currently?

03:00PM 15 A No.

16 Q You're not? Okay. When did you stop being
17 employed by the Republican Party of Wisconsin?

18 A Would have been after the election.

19 Q So turning back in time then to September 13th or
03:00PM 20 September of 2012.

21 A Uh-huh.

22 Q You don't know why the decision was made to give
23 the Assembly redistricting computer to the chief
24 clerk?

03:01PM 25 A No. I believe the prior testimony was that I did

1 not know who made that decision.

2 Q Do you know why it was done?

3 A I believe it was a response to the filings that
4 plaintiffs' attorneys had filed with the Court.

03:01PM 5 Q What leads you to that conclusion?

6 A The timing. I believe it was matched up with when
7 your first motion and kind of the ongoing
8 discovery issues perked up to the Court's
9 attention. Again, I believe that's what was going
10 on there.

03:01PM 11 Q Did you ever discuss that with anyone?

12 A I was informed of it after.

13 Q I should let you finish. Go ahead.

14 A I was informed of it.

03:01PM 15 Q Who informed you of it?

16 A Not knowing for sure, it would have probably been
17 either Speaker Fitzgerald himself or the chief of
18 staff to the speaker's office.

19 Q So after you came to be employed by -- I'm sorry.
20 You said Speaker Fitzgerald?

03:01PM 21 A It would have been him or his chief of staff most
22 likely but again not recalling that specifically.

23 Q Between the time that you last worked on the
24 computer -- strike that question. Assume the time
03:02PM 25 that you last worked on that computer was before

1 the time you left the employment of the Assembly.

2 Is that fair to say?

3 A Yes. That would be accurate. I would say that's
4 fair. Yes.

03:02PM

5 Q So it would have been sometime in August or early
6 September?

7 A Yes.

03:02PM

8 Q Between the time that the computer came back over
9 to the capitol building on or about May 1, 2012
10 and then September 13th when it was returned to
11 LTSB --

12 A Uh-huh.

13 Q -- who in addition to you actually used that
14 computer?

03:02PM

15 A I don't know. I can't think of anyone, but I
16 don't know that with an absolute certainty.

17 Q Do you know who had access to the computer, who
18 could have used it?

03:03PM

19 A It was in the speaker's annex and the key --
20 there's only a couple of keys to the speaker's
21 annex, and I believe they're kept by the chief of
22 staff. Others may have had copies of that key.
23 I'm not aware of that, though.

03:03PM

24 Q Is the door generally kept open during business
25 hours or does it usually remain closed?

1 A In that room it tends to be locked more than
2 opened given that it's typically a storage room.

3 Q Do you know of any users, and, again, I'm kind of
4 moving into another topic now.

5 A Okay.

6 Q Topic Number Four asks the identity of all users
7 of the computers.

8 MS. BUCHKO: Counsel, should we
9 see --

03:03PM 10 MR. POLAND: Let me finish this one
11 question, and then we will go off.

12 Q Other than you, who else used the Assembly
13 redistricting computer between May of 2012 and
14 September of 2012?

03:03PM 15 A No one that I can recall.

16 MR. POLAND: Let's take a break
17 there. We're going to see if our other
18 witness is here.

19 THE VIDEOGRAPHER: The time is
03:04PM 20 3:03. We are going off the record.

21 (Recess)

22 THE VIDEOGRAPHER: The time is 4:45
23 p.m. We are back on the record.

24 Q Mr. Foltz, before we broke, we were talking about
04:46PM 25 some of the topics in the Assembly's 30(b)(6)

1 deposition subpoena. Do you recall that?

2 A Yes.

3 Q I was primarily trying to stick with one topic
4 although I was delving into some others.

04:46PM 5 A Uh-huh.

6 Q I'm going to try to go back and just complete this
7 on a topic-by-topic basis so we can stay organized
8 here.

9 A Okay.

04:46PM 10 Q We were talking about the redistricting computer
11 at the time that it was over back in the State
12 capitol --

13 A Uh-huh.

14 Q -- and it was in Room 121 West. Do you recall
04:47PM 15 that discussion that we were having?

16 A Yes. I do.

17 Q You testified that there came a point in time when
18 you left the employment of the Wisconsin State
19 Assembly, correct?

04:47PM 20 A That's correct.

21 Q You testified that it was sometime in late August
22 or early September; is that correct?

23 A That's correct.

24 Q Do you recall with any more specificity when it
04:47PM 25 might have been? Was it before Labor Day, after

1 Labor Day?

2 A No.

3 Q And you don't recall the last time that you used
4 that computer; is that correct?

04:47PM 5 A That's correct.

6 Q Do you know whether between the time that you left
7 the State Assembly and the September 13, 2012 date
8 that's identified in Exhibit No. 2, when the
9 computer was turned over to LTSB --

04:47PM 10 A Uh-huh.

11 Q Do you know whether there was any one else to whom
12 use of that computer was assigned?

13 A Not that I know of.

14 Q And once it was turned over to LTSB on or about
04:48PM 15 September 13, 2012, do you know anything else
16 about what that computer was used for or its
17 storage or handling at all?

18 A No. My understanding is that it was locked in
19 their inventory cage and was to the best of my
04:48PM 20 knowledge not accessed again until the forensic
21 imaging process began.

22 Q And that includes both the computer itself as well
23 as the attached external hard drive?

24 A Yes. That's correct.

04:48PM 25 Q We had a little bit of a time lag here, so I will

1 apologize in advance if I asked this before. When
2 the computer was over in the 121 West room, did
3 you observe anyone else using the computer --

4 A No.

04:49PM

5 Q -- that redistricting computer?

6 A No.

7 Q As far as you know, were you the only user of that
8 computer at that time?

04:49PM

9 A I never observed anyone and I don't know of anyone
10 else that had accessed it.

11 Q Did you ever access and see files that were
12 changed or switched around in a way that would
13 indicate to you someone else had been on that
14 computer?

04:49PM

15 A Not that I can recall.

16 Q Do you know whether that computer was used for any
17 purposes other than redistricting between the July
18 2010 time frame when it was installed at Michael
19 Best & Friedrich and the time that you started the
20 redistricting process in 2011?

04:49PM

21 A No. I'm sorry. What was the question again? In
22 that time period?

23 Q Correct. If it was used for any purposes other
24 than redistricting.

04:49PM

25 A Not to my knowledge.

1 Q In other words, it was just sort of sitting over
2 at Michael Best's office during that time frame?

3 A That's correct. As far as I know.

04:50PM

4 Q Did you do your other types of Assembly work on
5 the redistricting computer during the time that it
6 was at Michael Best & Friedrich?

7 A Yes. If an issue were to come up. Yes.

04:50PM

8 Q Did you have any other computer available to you
9 over in Speaker Fitzgerald's office at that same
10 time?

11 A Potentially, yes. I could have gone over there
12 and logged in on one of the workstation there is.

04:50PM

13 Q Did you have any specific computer that was
14 assigned to you personally or specifically in
15 Speaker Fitzgerald's office?

16 A No.

17 Q As you said before, you could log on to just about
18 any computer and access your account and do work
19 on it.

04:50PM

20 A The State account when on the State network.

21 Q Right. Were there other types of legislation that
22 you were working on during the same time that you
23 were doing work on your redistricting computer?

24 A Not that I can recall.

04:51PM

25 Q Were there any other Assembly bills you were

1 working on at the same time?

2 A Not that I can think of. I'm sorry. What time
3 frame are we referring to here?

4 Q Let me back it down then and ask you. During the
04:51PM 5 time that the computer -- from January of 2011
6 when you began the redistricting work until May
7 when the computer was moved back over to the State
8 capitol building, were there any other Assembly
9 bills you were working on during that time?

04:51PM 10 A Not that I can recall. No.

11 Q What about from the time the computer moved from
12 Michael Best & Friedrich over to the State capitol
13 building, so from roughly May of 2012 through
14 September 13, 2012? Was there any other

04:51PM 15 legislation that you were working on on that
16 computer?

17 A Not that I can recall. And at that point the
18 legislature is out of session. So very likely
19 not, but, again, I don't recall specifically.

04:52PM 20 Q When did the legislature go out of session?

21 A I don't know what the date is on that for the 2010
22 calendar.

23 Q 2012?

24 A I'm sorry. You're right. I'm not sure exactly
04:52PM 25 when the session officially ended in that calendar

1 year.

2 Q Another one of the topics is Topic Number Five --

3 A Okay.

4 Q -- which talks about all maintenance performed on

04:52PM

5 the three redistricting computers between

6 January 1, 2011 and January 31, 2013. Do you see

7 that?

8 A Number Five. Correct.

9 Q Correct. Topic Number Five.

04:52PM

10 A Yes.

11 Q And we saw some of those examples in the service

12 items that Mr. Ylvisaker had provided, correct?

13 A Uh-huh. Yes.

14 Q Was there any maintenance that was performed on

04:52PM

15 the Assembly redistricting computer while it was

16 at Michael Best & Friedrich that wasn't reflected

17 in the service call items we saw in Exhibit No. 5?

18 A I didn't review all of the service call items I

19 believe. But in the ones I saw, those were not

04:53PM

20 reflected. Those visits were not reflected in

21 those specific tickets.

22 Q What kinds of service calls were made or service

23 that was requested that wasn't reflected in those

24 tickets?

04:53PM

25 A The-in person visits from the GIS team to update

1 the software, upgrade -- update geographic data
2 sets for a better term. To upgrade the Autobound
3 software and provide service and maintenance on
4 the GIS specific software.

04:53PM

5 Q Did you make those requests or did they do that on
6 their own initiative?

7 A Both. You can have issues that arise by the
8 software not functioning, but LTSB may have
9 received a patch or a software update where they
10 proactively would have come over and brought those
11 files and updated the software.

04:53PM

12 Q Do you recall having any specific performance
13 problems with the Assembly redistricting computer
14 during the time that it was at the Michael
15 Best & Friedrich offices?

04:54PM

16 A Yes.

17 Q What kinds of performance problems did you
18 encounter?

04:54PM

19 A Basically the Autobound software was awful for
20 lack of a better term. It was very buggy, very
21 unstable software. It required a lot of work just
22 to get it up and running and keep it up and
23 running. It was quite horrible.

04:54PM

24 Q Was LTSB or the GIS team able to solve the
25 problems that you experienced with the Autobound

1 software?

2 A I would say so.

3 Q Mr. Ottman had testified earlier that his computer
4 worked very slowly and he installed a product
04:54PM 5 called CCleaner on his computer in an attempt to
6 make it work more quickly. Did you encounter any
7 kinds of similar problems with your computer
8 working slowly?

9 A Yes. The computers -- well, I should say the
04:54PM 10 Autobound software worked very slowly. I can
11 remember that happening where that was just
12 inefficient. It was very unstable. Very slow.

13 Q Did you install any kinds of programs or
14 applications like CCleaner to try to make the
04:55PM 15 computer work more quickly?

16 A Not to my knowledge.

17 Q Did you connect to the Internet through your
18 redistributing computer?

19 A Yes.

04:55PM 20 Q What browser did you use to connect to the
21 Internet.

22 A Internet Explorer. I may have -- I really don't
23 recall. Probably something other than Internet
24 Explorer as well. Firefox I believe. But, again,
04:55PM 25 not recalling exactly. But probably using an

1 alternative to Internet Explorer.

2 Q Did you install whatever alternative browser it
3 was yourself or did LTSB install that for you?

4 A I don't recall who installed that.

04:55PM

5 Q Do you remember downloading any software from the
6 Internet and installing it yourself on the
7 computer?

8 A I don't recall any instance where I had done that,
9 but I may have.

04:56PM

10 Q Were you given any kind of administrative
11 privileges with respect to the computer to your
12 knowledge?

13 A I don't know.

14 Q Were there any restrictions that were placed on
15 your use of the computer by LTSB?

04:56PM

16 A I don't know.

17 Q Was there ever anything that you tried to do with
18 your computer that you weren't able to do?

19 A Not -- I guess in what context do you mean?

04:56PM

20 Q That's a broad question. Was there ever a time
21 that you tried to install some software and the
22 computer said you don't have adequate privileges
23 or you can't do that?

24 A I don't recall.

04:56PM

25 Q Did you ever perform any kind of maintenance on

1 the files themselves on the computer?

2 A What do you mean by that?

3 Q Did you ever move any folders around or rename
4 folders?

04:56PM 5 A I'm sure that happened as part of the process.

6 Q Did you add folders to the computer?

7 A Yes.

8 Q Did you delete any folders from the computer?

04:57PM 9 A Not to my knowledge. Obviously the line from my
10 declaration alludes to a duplicative folder that
11 was on there, but I don't recall specifically.

12 Q What about other than the folders? What about
13 files themselves? Did you delete any files from
14 the redistricting computer while it was over at
04:57PM 15 Michael Best & Friedrich?

16 A I may have. I don't recall any specific instances
17 of that.

04:57PM 18 Q Was there ever a time where LTSB performed any
19 maintenance of the redistricting computer for you
20 that after they were done you looked on it and
21 said *I can't find something that was there before,*
22 *there was something I wanted to use and now it's*
23 *gone?*

24 A Not that I can think of.

04:57PM 25 Q Now let's talk about the time after the computer

1 went back from Michael Best & Friedrich's offices
2 to the State capitol building. Again, we saw a
3 couple of examples of maintenance calls that LTSB
4 made from the service calls that Mr. Ylvisaker had
04:58PM 5 printed out. Were there other instances in which
6 LTSB came and provided assistance for maintenance
7 purposes on the redistricting computer?

8 A Not that I can recall on that. Again, not saying
9 it didn't happen. I just don't recall any
04:58PM 10 instance. You're saying instances where they
11 physically came over like they did at Michael
12 Best; is that correct?

13 Q Yes.

14 A Not that I can recall, but I don't remember that
04:58PM 15 for sure.

16 Q Did you consult with them by telephone?

17 A The service tickets would indicate yes. The
18 GIS -- I can't say for certain because sometimes
19 the GIS was such an in depth and technically
04:58PM 20 specific process that it required LTSB to come
21 over and move a massive number of files that an
22 Autobound software update would include. I'm sure
23 there were other times where the issues were
24 smaller in scope and didn't require massive
04:58PM 25 movement of data where I could just get walked

1 through the process. So I would say it's both.

2 Q Did they also have the ability to take over your
3 computer remotely so that they could move the
4 cursor around on your computer and manipulate
04:59PM 5 things on your computer?

6 A In the capitol that's a common way that LTSB
7 services the computer. I don't recall an instance
8 in the capitol where they did that takeover that
9 you refer to. I don't know if it's an option when
04:59PM 10 I was over in the Michael Best offices, and I
11 can't recall an instance where they would have
12 done that again with the networks not being on the
13 State network. I don't believe that's the case.
14 I don't believe they have that capability.

04:59PM 15 Q I would like to ask you about Topic Number Two
16 which is on the first page of Exhibit A. That's
17 the topic of recovery or restoration of any
18 records or data from or to any of the three
19 redistricting computers.

05:00PM 20 A Uh-huh.

21 Q Was there ever a time that data was -- let's talk
22 about the time that the Assembly redistricting
23 computer was at the Michael Best & Friedrich
24 offices.

05:00PM 25 A Okay.

1 Q Was there ever a time that data had to be
2 recovered from that computer?

3 A Not that I'm aware of. I would say the best
4 answer I could give you on that one is that I
05:00PM 5 can't recall any specific instance where I would
6 run say a Windows recovery, and, frankly, on these
7 machines I would never do something like that
8 because we had more technically advanced people
9 available to us. Now, in LTSB's servicing of the
05:00PM 10 computer I don't know if at any point that was
11 required to restore or roll back a system to a
12 prior setting. I don't know if at any point in
13 the updating or fixing of the very buggy Autobound
14 software if that was ever part of their process.

05:01PM 15 Q Did you personally ever do anything to recover or
16 restore any files on the redistricting computer
17 while it was at Michael Best & Friedrich's office?

18 A Not that I can recall.

19 Q Did there ever come a time where you inadvertently
05:01PM 20 deleted something and restored it in some way?

21 A Possible but again not recalling a specific
22 instance.

23 Q Is there any specific instance that you're aware
24 of that LTSB did that?

05:01PM 25 A Did what exactly, the restoration?

1 Q Restored or recovered any data on that computer.

2 A I can't speak to that not knowing what they were
3 doing when they were trying to get Autobound back
4 up and running whether they had to roll back the
05:01PM 5 system to a prior configuration to get it working
6 again I really don't know.

7 Q How about anybody other than LTSB? Are you aware
8 of any situation in which anyone other than you or
9 LTSB did anything to restore or recover data to
05:02PM 10 the Assembly redistricting computer while it was
11 at Michael Best's offices?

12 A Not that I can think of.

13 Q Did anyone from Michael Best & Friedrich, any of
14 their IT people, ever assist you in the use of
05:02PM 15 your redistricting computer?

16 A The only instance where that may have happened
17 would have been probably setting up the network
18 connection. Now, I don't specifically recall them
19 sitting down at the computer and working some type
05:02PM 20 of configuration on my end or if it was something
21 they were able to do on the back end IT server end
22 for lack of a better description. I can't think
23 of a specific instance where they sat down. They
24 may have. I'm not saying that they didn't. I
05:02PM 25 just don't recall them. But the only situation

1 where that probably would have been possible is
2 when they came in to -- I shouldn't say came in.
3 When they established the connection for the
4 redistricting computer to the outside world, to
05:02PM 5 the Internet.

6 Q Now let's talk about the time when the Assembly
7 redistricting computer was moved back over to the
8 capitol building. Was there ever any time where
9 you personally recovered or restored any records
05:03PM 10 or data to that computer?

11 A Not that I can recall.

12 Q We talked a little bit before about the time when
13 somebody from LTSB was working with you when the
14 computer was first moved back over.

05:03PM 15 A The call that I saw the ticket for.

16 Q Correct. Yes. Do you know whether as a result of
17 that process any data was restored or recovered
18 onto the computer?

19 A I don't know that, but from reading the ticket it
05:03PM 20 doesn't seem as if that is the case for that given
21 service ticket.

22 Q Is it your understanding that whoever provided
23 that service at LTSB would know more about that
24 than you would?

05:03PM 25 A Yes. They would absolutely know more about the --

1 I guess if you're asking would they know more
2 about the mechanics of what they did on that
3 service ticket? Absolutely.

4 Q Correct. And the affect of it on the computer?

05:03PM

5 A Yes. I would say that's accurate.

6 Q After they made that service call, were you able
7 to access what you couldn't previously access on
8 that computer?

05:04PM

9 A That's the way the ticket reads is that there was
10 an access I did not have that once the issue was
11 resolved I had after the service call.

12 Q And then aside from the document itself do you
13 have an independent recollection of that?

14 A Of?

05:04PM

15 Q When you asked them to come over and help you with
16 the computer.

17 A Again, I don't recall an instance where they came
18 over to work on the computer or if this was all
19 done by phone or if it was one of those where they
20 take over the computer. I don't remember specific
21 instances in those different categories.

05:04PM

22 Obviously there's the ticket there for that one
23 call about getting the computer access to whatever
24 they deemed as the mapped drive.

05:04PM

25 Q And fair enough. I do keep talking in terms of a

1 physical -- somebody coming over physically. But
2 whether it was coming over physically or doing
3 something remotely, do you have any independent
4 recollection of when they helped to restore your
05:05PM 5 access on that computer to whatever you couldn't
6 access before?

7 A No. Not specifically.

8 Q Is there any kind of recovery or restoration of
9 files on the Assembly redistricting computer that
05:05PM 10 you do recall at any time?

11 A No. Again with the caveat that I don't know
12 exactly how LTSB provided its services with a very
13 buggy computer and a very buggy redistricting
14 software.

05:05PM 15 Q I would like to move to Topic Number Eight that's
16 listed in the deposition subpoena. That's all
17 efforts taken to preserve data and records on the
18 redistricting computers between January 1, 2011
19 and January 31, 2013. Do you see that?

05:05PM 20 A I do.

21 Q Let's start with January 1, 2011. As of that
22 date, had you received any instructions from
23 anyone to preserve data and records on the
24 Assembly redistricting computer?

05:06PM 25 A No.

1 Q When was the first time?

2 A Doug, I just want to back up to that real quick.

3 Q Yes.

4 A I don't remember if I was specifically over at

05:06PM

5 Michael Best on January 1 specifically. It was

6 probably after January 1. Now, I don't know if

7 this was end of January or middle of February.

8 But it was probably sometime in that time from

9 where I actually went over there. I just want to

05:06PM

10 be clear on that.

11 Q That's fair. We do have your testimony in the

12 depositions last year and it was closer to the

13 time I think we would have asked you more

14 questions about that.

05:06PM

15 A Okay.

16 Q If we need to, we can always go back and refer to

17 that.

18 A Fair enough.

19 Q Did there come to be a point in time where

05:06PM

20 someone, and I'm just going to -- for now we will

21 just leave it broad and say someone, instructed

22 you that you should take efforts to preserve data

23 and records on the Assembly redistricting

24 computer?

05:06PM

25 A To the best of my knowledge no. Again, we're

1 talking about the January 1 to January 13
2 timeline?

3 Q January 1, 2011 to January 31, 2013.

4 A Let me back up. Can you restate the question?

05:07PM

5 Q I'm just go to ask the court reporter to read it
6 back.

7 (The following was read by the reporter:

05:06PM

8 Q "Did there come to be a point in time where
9 someone, and I'm just going to -- for now we
10 will just leave it broad and say someone,
11 instructed you that you should take efforts to
12 preserve data and records on the Assembly
13 redistricting computer?")

05:07PM

14 A Okay. This is going to get a little bit wonky
15 because I don't know exactly how some of these
16 internal systems work. To the best of my
17 recollection, when the open meetings complaint was
18 filed, we were given an instruction to maintain
19 records that involved open meetings, the meetings
20 in the open meetings violation. If that makes
21 sense. Other than that preservation, I think it
22 would go back to the 9/13/12 where the computer
23 was taken out of State service and put in the
24 cage.

05:07PM

05:08PM

25 Q All right. So you have given me two time frames

1 now. You referred to the filing of an open
2 meetings complaint, correct?

3 A That's correct.

4 Q Do you recall when that date was?

05:08PM 5 A It was after trial. I don't know at what point
6 after trial, though.

7 Q I'll share with you --

8 A I don't recall at what point after trial.

05:08PM 9 Q Fair enough. I'll show you a document in a minute
10 that will I think refresh your recollection on
11 that.

12 A Okay.

13 Q That was one time frame you gave me.

14 A Uh-huh.

05:08PM 15 Q And then you also mentioned as of September 13,
16 2012 when LTSB physically took custody of the
17 computers, correct?

18 A That's correct. Yes.

05:08PM 19 Q Any other time other than those two that you have
20 mentioned where you were given an instruction to
21 preserve data and records on the redistricting
22 computers?

23 A Not that I can recall.

05:08PM 24 Q Let's talk about the open meetings complaint, and
25 I believe it's Exhibit No. 7 in the stack in front

1 of you.

2 A Okay.

3 MR. POLAND: I'm sorry. Which
4 number?

05:09PM

5 MS. BUCHKO: Exhibit 7.

6 Q Okay. Have you seen Exhibit 7 before, Mr. Foltz?

7 A Portions I think would be the accurate answer to
8 that.

9 Q What portions have you seen?

05:09PM

10 A For sure the complaint itself. I would say
11 probably not this cover E-mail.

12 Q So the very first page of Exhibit 7?

13 A Right. Not saying I have not, but I don't recall
14 seeing it. I believe I've seen the letter on

05:09PM

15 page 2, the second page, the letter to McLeod and
16 Kelly from Mr. Earle.

17 Q All right. And then you believe that you saw a
18 copy of the complaint itself?

19 A I probably did at some point.

05:10PM

20 Q If you noticed the date of the letter from
21 Mr. Earle to Mr. McLeod and Mr. Kelly, it's dated
22 April 10, 2012. Do you see that?

23 A I do.

24 Q If you look at the very first page of Exhibit 7,
25 you will see an E-mail that's already dated

05:10PM

1 April 10, 2012, correct?

2 A I do see that. Yes.

3 Q Does that refresh your recollection as to when you
4 were given instruction to preserve documents
05:10PM 5 pertaining to this complaint?

6 A Not to a specific time frame, but I think it helps
7 narrow it down. I would guess it would be after
8 April 10th.

9 Q Who gave you an instruction on or about April 10,
05:10PM 10 2012 to preserve documents pertaining to the open
11 meetings complaint?

12 A I believe it was Eric. I'm pretty sure it was
13 Eric McLeod.

14 Q Were you still working over at the Michael
05:10PM 15 Best & Friedrich offices at that time?

16 A At that point probably. Again not knowing exactly
17 when the computers went back over. But between
18 that kind of April and May -- was it May 1?

19 Q Correct.

05:11PM 20 A The May 1 timeline with the network connection? I
21 may have been. I may not have been at that point.
22 I really don't know.

23 Q What instruction did Mr. McLeod give you?

24 A To the best of my recollection, the instruction
05:11PM 25 was to preserve anything pertaining to meetings,

1 open meetings.

2 Q Did Mr. McLeod say anything more than that or was
3 it just limited to open meetings?

4 A That's my recollection of it. But, again, I don't
05:11PM 5 recall word for word what was said.

6 Q Did you talk with any of the other attorneys at
7 Michael Best & Friedrich about preserving files on
8 the redistricting computer pertaining to the open
9 meetings complaint?

05:11PM 10 A Not that I can recall. Again, I'm not saying that
11 those conversations did not happen, but I don't
12 remember a specific instance.

13 Q Then on September 13, 2012 the computer, we have
14 gone over a number of times, was put into the
05:12PM 15 custody of LTSB, correct?

16 A That's correct.

17 Q And that's who has custody of the hard drives from
18 the computer currently, correct?

19 A To the best of my knowledge.

05:12PM 20 Q Before approximately April 10, 2012 had you been
21 given any instruction to preserve data and records
22 on the Assembly redistricting computer?

23 A Not that I can specifically recall. No.

24 Q Did anyone -- I should go back and ask you this
05:12PM 25 question. When Mr. McLeod gave you the

1 instruction to preserve records and data
2 pertaining to the open meetings complaint, did he
3 give that to you verbally or did he give that to
4 you in writing?

05:12PM

5 A I believe it was an E-mail.

6 Q Do you know if you still have that E-mail?

7 A I don't know. I may.

8 Q Was that an E-mail that was sent to your G Mail
9 account?

05:13PM

10 A I don't remember.

11 Q Was anyone else copied on that E-mail that
12 Mr. McLeod sent?

13 A Again, I'm not 100 percent that it was even an
14 E-mail. But following kind of the structure of
15 it, very likely Tad Ottman as well. Not knowing
16 that, but it's a safe assumption.

05:13PM

17 Q Did you speak with Mr. Ottman at all on or about
18 April 10, 2012 about the preservation of records
19 or data pertaining to the open meetings complaint?

05:13PM

20 A Not that I can recall.

21 Q When you began working at the Michael
22 Best & Friedrich offices in approximately January
23 2011, were you told that there was any kind of
24 privilege that covered the work that you were
25 doing?

05:14PM

1 A I don't recall a specific time where I was told
2 that there was privilege, but -- obviously with
3 motions that were filed after the first round of
4 subpoenas, it was pretty clear that Michael Best
05:14PM 5 was operating under the -- I don't want to say
6 assumption -- but was operating under there is the
7 existence of an attorney-client privilege and
8 possibly a legislative privilege.

9 Q And you just referred to subpoenas. What did you
05:14PM 10 mean when you made that reference?

11 A When the first round of subpoenas went out and
12 then there was the following motion practice,
13 there was a series of a few motions back and forth
14 and obviously a Court ruling and the sanctions.

05:14PM 15 Q And that was in the roughly December 2011 time
16 frame, correct?

17 A I believe that. Yes.

18 Q So I want to talk about an earlier time frame.

19 A Okay.

05:14PM 20 Q I want to talk about the time frame when you first
21 went over and were working in the Michael
22 Best & Friedrich offices --

23 A Okay.

24 Q -- in approximately January of 2011. Is it your
05:15PM 25 understanding that a complaint had not been filed

1 in this case as of that time?

2 A That's my understanding.

3 Q Do you remember when the first complaint was filed
4 in this litigation?

05:15PM

5 A I don't remember specifically when that complaint
6 was filed.

7 Q So again turning your attention to beginning in
8 January 2011 --

9 A Uh-huh.

05:15PM

10 Q At that time do you recall being instructed by
11 Mr. McLeod, Mr. Olson or any other counsel at
12 Michael Best & Friedrich that there was a
13 privilege that applied to the work that you were
14 doing for the legislative redistricting?

05:15PM

15 A Not that I can specifically recall.

16 Q Were you ever told that there's an attorney-client
17 privilege over your communications with Mr. McLeod
18 and Mr. Olson?

05:15PM

19 A I don't specifically remember being told that at
20 that time frame.

21 Q Did you ever have a discussion, and I'm going to
22 be specific about the time frame here, between
23 January of 2011 and then June of 2011 where you
24 ever -- did you ever discuss the possibility of
05:16PM 25 any litigation over the legislative redistricting?

1 A I'm sure it was discussed at some point.

2 Q Was there ever any kind of a discussion about the
3 need to preserve documents and data because they
4 might be at issue in the litigation?

05:16PM

5 A No.

6 MS. BUCHKO: Objection, asked and
7 answered.

05:16PM

8 Q At the time that the complaint was filed, were you
9 instructed that now that a complaint had been
10 filed you had an obligation to preserve documents
11 and data on the redistricting computer?

12 A Not that I can recall.

05:17PM

13 Q I'll draw your attention to a document that's been
14 marked as Exhibit No. 9 in your stack. Do you
15 have that in front of you?

16 A Yes. Okay.

05:17PM

17 Q If you look at the top, you will see it's an
18 E-mail from Jim Troupis to you and Mr. McLeod with
19 copies to Mr. Ottman and Mr. Handrick. The date
20 is June 7, 2011. Do you see that?

21 A I do see that.

22 Q Is this a document that you have seen before?
23 I'll give you a minute to look at it.

05:17PM

24 A I'm sure I have. I was an author of part of this
25 E-mail chain, so I'm sure I've seen it at some

1 point.

2 Q I want to draw your attention to right underneath
3 the address block there you see in capital letters
4 it says Attorney Client Privilege Litigation
5 Preparation?

05:17PM

6 A Uh-huh.

7 Q Did anybody ever explain to you what that meant?

8 A I think it's fairly self-explanatory, but, again I
9 didn't author this part of the E-mail.

05:17PM

10 Q What did you understand it to mean?

11 A Well, again, not recalling the specific E-mail, I
12 think it's pretty self-explanatory; that this
13 particular E-mail is protected by attorney-client
14 privilege according to Mr. Troupis.

05:18PM

15 Q Did the words litigation preparation on this
16 E-mail have any significance for you?

17 A Not particularly.

18 Q Did anybody ever tell you that as of June 7, 2011
19 there was an obligation to preserve any documents
20 because of litigation?

05:18PM

21 MR. POLAND: Objection.

22 A Not. Not that I can recall.

23 THE WITNESS: Sorry.

24 Q I would like you to take a look at Exhibit No. 10
25 that's in the stack there.

05:18PM

1 A 10.

2 Q Now, you can take a minute to look at it.

3 A And this is the yellow label that's states 10,
4 correct?

05:18PM

5 Q They yellow label. I know there are a lot of
6 labels on there. It's the yellow label that says
7 10. I'll give you a minute to look at it. Is
8 this a document that you have seen before?

9 A I believe so.

05:18PM

10 Q And this is a document that refers to the
11 Wisconsin State Senate and it refers to
12 Scott Fitzgerald. Do you see that?

13 A I do see the reference to the Senate and the
14 majority leader.

05:19PM

15 Q Is it your understanding that there were similar
16 agreements with respect to the Wisconsin State
17 Assembly?

18 A That's correct.

19 Q And you had seen those documents?

05:19PM

20 A Yes.

21 Q Do you know whether the State Assembly documents
22 that you had seen also said at the top Privileged
23 Attorney Client Communication?

05:19PM

24 A I don't specifically recall that being in the
25 Assembly's version of this, but it is a safe

1 assumption given that -- I'm assuming the language
2 matches minus the Fitzgerald that is referenced
3 and the house of the legislature that's
4 referenced.

05:19PM

5 Q Do you recall the time frame when these documents
6 were signed?

7 A I would go based off of the date on here, but --

05:20PM

8 Q Right. And the date on the first page -- it
9 appears to be -- that appears to be a senator with
10 poor handwriting. And it's either April 12, 2011
11 or July 12, 2011? Is that your understanding?

12 A Yes. Again, not being able to make the difference
13 out between the 7 and the 4 here.

05:20PM

14 Q If you turn the page over, you will see that
15 there's a date on there of May 3, 2011. Do you
16 see that?

17 A I do.

18 Q Do you recall these types of agreements being
19 signed on or about April or May of 2011?

05:20PM

20 A That seems to fit. Yes.

21 Q At that particular time did anyone tell you that
22 there was an obligation to preserve any kinds of
23 records pertaining to redistricting?

05:20PM

24 MS. BUCHKO: Objection, asked and
25 answered.

1 A Not that I can think of.

2 THE WITNESS: I better slow down on
3 my answers.

4 MS. BUCHKO: Give me a minute.

05:20PM

5 Q At the time the subpoenas were served in December
6 2011, were you given any instructions about
7 preserving records and data on the redistricting
8 computer?

9 A Not that I can recall.

05:21PM

10 Q At the time that the computers left Michael Best
11 and -- the Assembly's redistricting computer left
12 Michael Best & Friedrich's office and went over to
13 the capitol building, were you given any
14 instruction other than what you have already
15 testified to on the open meetings complaint?

05:21PM

16 A Uh-uh.

17 Q Were you given any instructions to preserve
18 records and data pertaining to redistricting?

19 A Not that I can recall.

05:21PM

20 Q Did you personally take any efforts, affirmative
21 efforts, to preserve any data and records on the
22 redistricting computers? I'll just give you an
23 example. For example, by password protecting or
24 somehow restricting access to the computers.

05:21PM

25 A No. I don't believe I could do that even if I

1 wanted to because of LTSB's role in servicing the
2 computers.

3 Q Did you ever consult with anyone on steps that
4 might be taken to preserve data and records on the
5 redistricting computers?

6 A Not that I can recall.

7 Q I would like to ask you about the production of --
8 this is Topic Number Nine now, the production of
9 any records, data, or documents for the

10 redistricting computers in the redistricting
11 lawsuit or in response to any inquiry from the
12 majority leader of the State Senate. I don't know
13 why it says the State Senate. It should say the
14 speaker of the State Assembly. But we will talk
15 about that.

16 MR. POLAND: Before I get into that
17 topic in more detail, it's my understanding,
18 Ms. Buchko, that Mr. Foltz is the only
19 witness who is testifying on behalf the State
20 Assembly as to Topic Number Nine, correct?

21 MS. BUCHKO: That's correct.

22 Q There came a time, Mr. Foltz, where the State
23 Assembly's redistricting computer was searched for
24 materials that were requested in discovery,
25 correct?

1 A That's correct.

2 Q When was the first time that that occurred?

3 A I don't recall specifically when that would have
4 happened, but it would have followed some point
05:23PM 5 after the subpoenas went out in December of --

6 Q 2011?

7 A Yes.

8 Q Your deposition was taken in December of 2011,
9 correct?

05:23PM 10 A I believe so.

11 Q Do you remember whether the subpoena was marked as
12 an exhibit at that deposition and you were asked
13 about it?

14 A Probably.

05:23PM 15 Q At that time who undertook the search of records
16 and data on the State Assembly's redistricting
17 computer?

18 A Most likely me.

19 Q Did anyone else participate in that process?

05:23PM 20 A Yes.

21 Q Who else participated in that process?

22 A Primarily Joe Olson.

23 Q How did you go about searching the State
24 Assembly's redistricting computer for documents
05:24PM 25 that were responsive to the subpoenas?

1 A I don't specifically recall the process. I know
2 that there was clicking through the various
3 documents and printing out various documents and
4 then attorneys making determinations as to their
05:24PM 5 responsiveness to the subpoena.

6 Q So when you say clicking through various
7 documents, what do you mean by that?

8 A If memory serves, I would pull up files that
9 were -- because primarily my files were mostly
05:24PM 10 clumped into one folder. Going through them and
11 getting the determination from attorneys if that
12 file was responsive or not.

13 Q Did the one folder that the files were mostly
14 clumped in have a name?

05:25PM 15 A Projects I believe.

16 Q Did the Projects folder have any sub folders in
17 it?

18 A It may have. I don't know, though. I don't
19 recall.

05:25PM 20 Q So you pulled up documents on your screen and
21 looked at them; is that correct?

22 A Yes.

23 Q Was anyone else present when you opened up
24 documents or pulled them up on your screen to
05:25PM 25 review them?

1 A Yes.

2 Q Who else was present?

3 A It would have been legal counsel.

4 Q Which legal counsel?

05:25PM

5 A I believe it's primarily Joe Olson, but
6 Eric McLeod obviously was part of the process as
7 well.

8 Q Did Mr. Olson or Mr. McLeod actually look at the
9 documents as you pulled them up on your monitor?

05:25PM

10 A Some. But there were also some that I believe
11 were printed. So there were paper forms available
12 to them.

13 Q Let's stick with the ones for now that you pulled
14 up on your monitor.

05:25PM

15 A Okay.

16 Q Did they sit down at the station? Did they look
17 over your shoulder? How were they arrayed when
18 they were looking at these documents?

05:26PM

19 A I believe over the shoulder, next to. Something
20 along those lines.

21 Q And you would pull up a document and you would
22 view it and they would view it; is that correct?

23 A That's -- yes.

05:26PM

24 Q Why were they looking at the documents along with
25 you?

1 A To determine the responsiveness.

2 Q So did they make a determination as you pulled
3 documents up as to whether a document was or
4 wasn't responsive?

05:26PM 5 A I believe that's the case.

6 Q If they determined a document was responsive, what
7 did you do with that document on your computer?

8 A If memory serves, what happened then was that they
9 moved -- the document in question if it was deemed
10 responsive would get moved into -- I shouldn't say

11 moved. I believe copied, just to draw the
12 distinction between a physical movement and a
13 copying in dual location. I believe that that
14 file was copied into a separate folder which was

05:26PM 15 then burned to a disc. Again, I believe that's
16 how it worked, but it was a long time ago.

17 Q Do you recall the name of the folder into which
18 the documents were copied?

19 A I do not.

05:27PM 20 Q If a document was determined to be nonresponsive,
21 what was done with that document?

22 A I believe it just sat there.

23 Q Was there any kind of a log created or a list
24 created of documents that were deemed to be not
05:27PM 25 responsive?

1 A Not that I can recall. Not responsive versus
2 privileged?

3 Q Nonresponsive versus privileged. Correct.

4 A I don't believe so.

05:27PM

5 Q And those weren't copied to a separate folder or
6 somehow segregated?

7 A I don't believe so. I think they just stayed in
8 the source, most likely the Projects folder,
9 but --

05:27PM

10 Q Now, you just raised a distinction I was going to
11 ask about. What if a document was determined to
12 be privileged by Mr. McLeod or Mr. Olson? What
13 happened to that document?

05:28PM

14 A I believe they made a note of it for the drafting
15 of the privilege log. Again, not 100 percent
16 sure, but I believe that was the process.

17 Q Was there a separate folder that you created on
18 your computer to copy privileged documents into
19 and segregate them out that way?

05:28PM

20 A I don't believe so but don't specifically recall.
21 But I don't think there was a folder.

22 Q Did you have any discussion with Mr. McLeod and
23 Mr. Olson as you were going through and clicking
24 through documents about whether documents were
05:28PM 25 responsive that you were viewing on the screen?

1 A I'm sure there were conversations.

2 Q Any specific conversations that you can recall?

3 A No. Not really.

05:28PM

4 Q Did the topic of Senate Bill 150 ever come up as
5 you were looking at documents?

6 A Not that I can recall, but obviously we -- I
7 shouldn't say we. The way that the attorneys at
8 Michael Best read that attachment to the subpoena
9 was that SB 150, which later became Act 39, was
10 not within the scope of the subpoena.

05:29PM

11 Q Did they tell you that at some point in time?

12 A I'm sure they did, but I don't recall the specific
13 instance where that was mentioned.

14 Q Were there any other restrictions or limitations
15 that you're aware of that the Michael Best lawyers
16 put on the review of the documents?

05:29PM

17 A Uh-huh. There was a time certainty.

18 Q And what was the time certainty?

05:29PM

19 A I believe it was -- again regarding Acts 43 and
20 44. Again, since we didn't produce or were told
21 not to produce SB 150, Act 39, I believe it was
22 either publication or enactment of Acts 43 and 44
23 and before I believe was the time frame that we
24 were given.

05:29PM

25 Q Do you remember the date of enactment of Acts 43

1 and 44?

2 A No. I don't recall specifically. I want to say
3 it was August, maybe late July.

4 Q Of 2011?

05:30PM

5 A Yes.

6 Q Now, you also mentioned that as part of the
7 process of producing documents in addition to
8 clicking through them and viewing them on the
9 monitor you printed some as well; is that correct?

05:30PM

10 A I can't remember if they were printed or if they
11 had already been printed and just happened to be
12 there. So I don't specifically recall.

13 Q If they would have already been printed and
14 happened to be there, who would have done that
15 printing?

05:30PM

16 A Probably me.

17 Q So there came a time where rather than having
18 Mr. Olson and Mr. McLeod standing over your
19 shoulders watching you click through documents you
20 printed documents out for them?

05:30PM

21 A I can't remember -- I can't remember if they were
22 printed out for them or if they had already been
23 printed out and then were subsequently reviewed by
24 attorneys.

05:30PM

25 Q I'm not understanding, so let me try to

1 understand. As part of this process did you
2 review documents on your computer and say *That*
3 *looks like something that the attorneys should*
4 *look at*, print that document out, and then collect
5 a stack of them to give them to look at?

05:31PM

6 A I don't recall if that was the -- again, all
7 determinations on responsiveness were made by the
8 attorneys. I don't remember if these were files
9 that happened to be printed out for just the
10 day-in day-out functions of my job or if there was
11 an effort to batch print them and then have them
12 reviewed. Does that make --

05:31PM

13 Q Understood. Let me see if I can understand this.
14 So you had some documents that were already
15 existing in hard copy.

05:31PM

16 A That's possible. I don't remember which direction
17 it went, if there was printing for the purposes of
18 reviewing by the attorneys or if it just happened
19 to be a stack of paperwork that I had from just
20 day-in day-out activities over there that they
21 reviewed at that time. I don't remember exactly
22 how that process worked.

05:31PM

23 Q I understand. But in any event, regardless of
24 whether they were preexisting in hard copy format
25 or whether you printed them out, you provided

05:32PM

1 Mr. Olson and Mr. McLeod with some kind of a stack
2 of documents?

3 A Yes. I would say that's accurate.

05:32PM

4 Q Did you make any decisions before you gave them
5 that stack of documents on your own about what
6 should be given to them and what shouldn't be
7 given to them?

8 A No.

05:32PM

9 Q You let Mr. Olson and Mr. McLeod make the decision
10 about whether documents should be produced?

11 A Correct.

12 Q Did you also produce any information in data form
13 in its native format?

14 A I'm not following.

05:32PM

15 Q For example, you can have a document that you
16 print out that's an Excel spreadsheet and you
17 could print it and hand it to somebody or you
18 could provide it to them in its native format,
19 it's Excel spreadsheet file. Do you understand
20 the distinction?

05:33PM

21 A I do.

22 Q Do you know whether any of the materials that were
23 produced from the Assembly redistricting computer
24 in response to that first subpoena were provided
25 in a native format?

05:33PM

1 A I don't recall specifically. No.

2 Q Do you recall burning any kinds of data or data
3 files to a CD or a DVD?

4 A That would have -- I believe that was the process
05:33PM 5 when responsiveness was determined and those files
6 were copied over to -- again, I believe that's how
7 the process worked; that there was a folder to
8 copy the documents over as deemed responsive by
9 the attorneys, throw that on a disc. I believe
05:33PM 10 that was the process.

11 Q Now, earlier you testified that there were a
12 series of motions and then there was ruling by the
13 Court --

14 A Uh-huh.

05:34PM 15 Q -- on motions in the December 2011 time frame,
16 correct?

17 A Yes.

18 Q Do you recall that there was -- strike that
19 question. You testified before there was an order
05:34PM 20 where the Court actually sanctioned Michael
21 Best & Friedrich, correct?

22 A Yes. I remember that.

23 Q Do you remember the date of the order?

24 A I do not.

05:34PM 25 Q If I told you it was January 3, 2012, would that

1 refresh your recollection?

2 A I'll take your word on it.

3 Q As a result of that order, did there come to be a
4 time when you were asked again to produce
05:34PM 5 additional records?

6 A Yes.

7 Q How did that come about?

8 A I'm not following.

9 Q Who asked you to produce additional records?

05:34PM 10 A It would have been legal counsel at Michael Best.

11 Q So it would have been Mr. McLeod or Mr. Olson?

12 A Most likely at that point. Yes.

13 Q Do you remember when that was?

14 A No. Not specifically. But following the order.

05:34PM 15 Q What did they tell you?

16 A I don't recall specifically what they told me.

17 Q Did they give you any instructions?

18 A I don't remember specific instructions, but I do
19 remember going -- we went through the process

05:35PM 20 again, for lack of a better, of going through

21 documents, and, as I testified to before, that

22 since the documents weren't already pre-segregated

23 for lack of a better term into a privileged

24 folder, it probably just went through the same

05:35PM 25 process again of clicking through the files,

1 moving them to that disc and then producing that
2 disc.

3 Q Okay. Now, you had talked before -- we're going
4 to dip a little bit here into the deletion of
05:35PM 5 files.

6 A Okay.

7 Q You had talked earlier about the declaration that
8 Mr. Lanterman filed, correct?

9 A That's correct.

05:35PM 10 Q Did you read Mr. Lanterman's declaration?

11 A I did.

12 (Exhibit No. 29 marked for
13 identification)

14 Q Mr. Foltz, the court reporter has handed you a
05:36PM 15 document we have marked as Exhibit No. 29. Do you
16 have that in front of you?

17 A I do.

18 Q Have you seen this document before?

19 A I have.

05:36PM 20 Q When did you receive this document?

21 A Following it being filed by plaintiffs' attorneys.

22 Q On or about April 18, 2013, correct?

23 A I believe so.

24 Q I don't know why attorneys always say on or about.

05:36PM 25 I can tell you it was April 18th. It says so on

1 the page. It's a bad habit we have.

2 A There we go.

3 Q I would like to turn your attention to Paragraph
4 Number Eight of Mr. Lanterman's third declaration.

05:37PM

5 In that paragraph Mr. Lanterman states, "Evidence
6 of deletions in 2012 also appears on ASM
7 Republican WRK32586." I just want to stop there
8 for a minute. Do you see that?

9 A I do.

05:37PM

10 Q Do you understand that to be the Assembly
11 redistricting computer?

12 A That's my understanding.

13 Q That's the computer that you had been working on,
14 correct?

05:37PM

15 A That's correct.

16 Q Now, I'm going to jump down to the next sentence.
17 It says, "Among the items deleted was a folder
18 titled Draft Plans for Printing as well as its sub
19 folder titled Hispanic Amendment and all of the
20 folders' contents." Do you see that?

05:37PM

21 A I do.

22 Q Do you recall deleting a folder titled Draft Plans
23 for Printing?

24 A I don't recall.

05:38PM

25 Q Do you recall deleting a sub folder titled

1 Hispanic Amendment?

2 A I do not.

3 Q The next sentence says, "This folder was created
4 on January 6, 2012 and then deleted less than one
05:38PM 5 minute later by user logged onto the system as
6 A. Foltz." Do you see that?

7 A I do.

8 Q Do you recall creating that folder?

9 A I don't.

05:38PM 10 Q The next paragraph states, "I recovered a sample
11 of ten of these deleted documents. The documents
12 appear to be the same or similar to non-deleted
13 documents that I located in the folder called
14 Projects located on the desktop of the A. Foltz
05:38PM 15 user account." Do you see that?

16 A I do.

17 Q All right. I want to ask you about the folder
18 called Projects that was on the desktop of the
19 A. Foltz user account.

05:39PM 20 A Okay.

21 Q Is that the same Projects folder that you
22 described for me a minute ago?

23 MS. BUCHKO: Objection; foundation,
24 competency.

05:39PM 25 Go ahead.

1 A I believe that to be the case.

2 Q What was that folder designed to do, the Projects
3 folder?

4 A Same as any folder. Repository of data.

05:39PM

5 Q And that was on the desktop, maintained on the
6 desktop of your computer?

7 A Yes.

05:39PM

8 Q Mr. Lanterman goes on to say that, "Without
9 further analysis I am unable to determine if all
10 of the deleted documents from this folder
11 associated with the A. Foltz account can be
12 accounted for among the non-deleted data." Do you
13 see that?

14 A I do.

05:39PM

15 Q Do you know whether all of the deleted documents
16 from the folder associated with the A. Foltz
17 account can be accounted for among the non-deleted
18 data?

19 A Yes. I believe so.

05:40PM

20 Q And what makes you believe so?

21 A If these were plans for printing, they exist
22 in multiple locations because, as Mr. Lanterman
23 alludes to, the files remain in the Projects
24 folder. Secondly, these would have been present
25 also in the Autobound maps.

05:40PM

1 Q When say they would have been present in the
2 Autobound maps, what do you mean?

3 A That the -- because these -- I'm trying to think
4 how to best phrase this. When you're printing an
05:40PM 5 Autobound redistricting plan for the State of
6 Wisconsin and you want to print 30-by-40 plot or
7 frankly even a small map, you don't do that in the
8 Autobound software. You dump that out. You dump
9 the shape file out and use ArcMap to do that and
05:41PM 10 it prints properly. It's something to do with the
11 underlying projection of the maps, some technical
12 GIS jargon I don't fully understand. What this
13 appears to be is that -- a shape file of an
14 Autobound map is put into a folder and that --
05:41PM 15 shape file is probably the proper term. That
16 shape file is then used to print. But the
17 underlying data, the actually redistricting map
18 that was drawn, remains in the Autobound software.
19 You can't do any redistricting line movement, for
05:41PM 20 lack of a better term, outside of the Autobound
21 software in a shape file that you would use for
22 printing purposes. Does that make sense?

23 Q I think so. So the plan or the contents I guess,
24 the items that were in the Draft Plans for
05:41PM 25 Printing folder and the sub folder Hispanic

1 Amendment -- were those provided to the plaintiffs
2 as part of the document production?

3 A Yes.

4 Q How were they provided to the plaintiffs?

05:42PM

5 A They would have been embodied in the Autobound map
6 outputs that plaintiffs received I believe for the
7 second round of depositions.

8 Q And that would have been in late January -- I'm
9 sorry. That would have been in January 2011?

05:42PM

10 A 2012 at that point.

11 Q January 2012?

12 A Yes.

13 MS. LAZAR: Doug, can we take a
14 break in a few minutes? I think you're
15 killing the court reporter.

16 MS. BUCHKO: Am I killing you?

17 That's fine. Let's take a break. We
18 will take a break.

19 THE WITNESS: The time is 5:41 p.m.
20 This concludes Disc No. 1 of the deposition
21 of Mr. Adam Foltz in the 30(b)(6) testimony
22 for the Wisconsin State Assembly.

05:42PM

23 (Recess)

24 THE VIDEOGRAPHER: The time is

05:53PM

25 5:52. We are back on the record. This marks

1 the beginning of Disc No. 2 of the deposition
2 of Mr. Adam Foltz in the capacity of the
3 30(b)(6) testimony.

05:53PM

4 Q Mr. Foltz, just before we broke we were looking at
5 Exhibit No. 29. That's the third declaration of
6 Mark Lanterman. We were looking at Paragraph
7 Number Nine of that. Do you recall that?

8 A I do.

9 Q Do you have that document in front of you?

05:53PM

10 A I do.

11 Q I would like to go back to these documents that we
12 were talking about --

13 A Uh-huh.

05:54PM

14 Q -- or files that Mr. Lanterman said were deleted
15 from the Assembly redistricting computer.

16 A Okay.

17 Q All right? Now, you testified a minute ago I
18 believe that those files were produced to the
19 plaintiffs; is that correct?

05:54PM

20 A That a -- again, going back to be careful with how
21 this is worded. The information contained within
22 those files was produced in a different format to
23 plaintiffs' attorneys. That's when we got into
24 the talk of the difference between formats that
05:54PM 25 are printable with GIS software versus the

1 Autobound which frankly just looked weird when you
2 tried to print it.

3 Q So those data were imported into -- was it RGIS
4 you said?

05:54PM

5 A ArcMap.

6 Q A different software application?

7 A Yes. And, again, not trying to get too far into
8 the weeds on this, Autobound is a plug -- it's an
9 independent software program, but it works with

05:55PM

10 ArcMap and Arc GIS. It's kind of a plug-in, but
11 it's also independent software. And then Arc GIS
12 is a separate standalone program.

13 Q And then there were maps that were printed or
14 generated from running Arc GIS?

05:55PM

15 A That seems accurate. Yes.

16 Q It was those maps then that were provided to
17 plaintiffs?

18 A Well, again, drawing the distinction between the
19 maps that were printed versus the Autobound maps.

05:55PM

20 The Autobound maps were produced. I don't recall
21 if these specific shape files were produced. But,
22 again, it would be duplicative because they were
23 produced in the output from the Autobound
24 software.

05:55PM

25 Q So the underlying files that Mr. Lanterman

1 identified were deleted, do you know whether those
2 specific files with the specific file extensions
3 that they had whether those were produced in that
4 format?

05:55PM

5 A I don't recall if they were produced in that
6 format, that format being the shape file not the
7 Autobound.

8 Q Correct.

05:56PM

9 A Okay. Yes. I don't recall if the shape files
10 were produced or not, but the underlying maps
11 were.

12 Q Let's take a look at -- let me find the exhibit
13 numbers here. Exhibits No. 13 and 14 that should
14 be in front of you there.

05:56PM

15 A 13 and 14?

16 Q Correct.

17 A Okay.

05:57PM

18 Q Do you recall that on January 10th and
19 January 11th of 2012 there were discs that were
20 DVDs that were produced to the plaintiffs? That's
21 a standalone question.

22 A I don't specifically recall that, but --

23 Q Let's take a look at Exhibit No. 13. Do you see
24 that there's a cover letter --

05:57PM

25 A Okay.

1 Q -- from Mr. McLeod to me?

2 A Okay.

3 Q That's dated January 10, 2012, correct?

4 A Okay.

05:57PM

5 Q Have you seen a copy of this letter before?

6 A I may have. I don't recall.

7 Q If you turn to the next page, you will see a

8 document that says Supplemental Document

9 Production in Response to Subpoenas Issued by

05:57PM

10 Plaintiffs to Joe Handrick, Adam Foltz, and

11 Tad Ottman. Do you see that?

12 A Okay. Yes.

13 Q Then it states, "Joe Handrick, Adam Foltz and

14 Tad Ottman through their attorneys hereby produce

05:57PM

15 the enclosed documents in response to the

16 subpoenas issued by plaintiffs."

17 A Yes. I do see that.

18 Q And it goes on from there, correct?

19 A Yes.

05:57PM

20 Q Is it your understanding that this cover letter

21 and then that particular document we were just

22 reading were produced to the plaintiffs by Michael

23 Best & Friedrich on your behalf on January 10,

24 2012?

05:58PM

25 MS. BUCHKO: Object to foundation.

1 A I believe so. I don't know specifically.

2 Q There is a photocopy then on the next page of a
3 DVD and label, correct?

4 A Uh-huh.

05:58PM

5 Q Do you know whether the documents that are
6 identified in Paragraphs Eight and Nine of
7 Mr. Lanterman's declaration that you said were
8 subsequently produced to plaintiffs -- whether
9 they were produced on that DVD that was produced
10 to the plaintiffs under cover of the letter in
11 Exhibit 13?

05:58PM

12 A I'm sorry. What was the question there?

13 (Question read)

14 MS. BUCHKO: Object to form,
15 foundation, and competency.

05:59PM

16 A Again, I would say that I don't know if the
17 specific shape files were produced, but I'm fairly
18 confident that the maps were produced again from
19 the Autobound output.

05:59PM

20 Q The folder that Mr. Lanterman refers to in
21 Paragraph Eight says Draft Plans for Printing and
22 then the sub folder is titled Hispanic Amendment.
23 Do you see that?

24 A I do.

05:59PM

25 Q Do you know which legislative districts that would

1 have applied to?

2 A 8 and 9. Possibly 7, 8, and 9. It could also --
3 it could potentially also be a statewide plan that
4 incorporated those districts. Does that make
06:00PM 5 sense? It may not be limited to just those two or
6 possibly three. It may be the entire State plan.

7 Q Is there any way to tell what particular districts
8 that pertained to?

9 A Not from what I have in front of me.

06:00PM 10 Q What would you need to look at to make that
11 determination?

12 A Frankly, the computer. Arc GIS and/or Autobound.

13 Q Do you know whether these were final plans or
14 whether these were draft plans for those
06:00PM 15 legislative districts?

16 A Given the title of the folder I would say draft
17 but not precluding the fact that the final plan
18 may have been in there. I don't know.

06:00PM 19 Q There were draft plans that evolved over time with
20 respect to different districts; is that correct?

21 A I would say that's accurate.

22 Q Do you know whether those draft plans as they
23 evolved over time were produced to the plaintiffs
24 during the litigation?

06:01PM 25 A To the best of my knowledge you have every

1 Autobound file.

2 Q And that's of every iteration of every draft map
3 that was created?

4 A I'm not following the question.

5 (Question read)

6 Q Let me try to restate it. The configurations, the
7 draft configurations of the districts, changed
8 over time?

9 A Uh-huh.

06:02PM

10 Q Were the plaintiffs provided with the data that
11 related to those different iterations of the
12 districts as they evolved?

13 A Yeah. Again, I'm not following. I believe you
14 have all of the Autobound maps, and that's the
06:02PM 15 only program that can draw a redistricting plan.
16 To the best of my knowledge, you have all of the
17 maps. That's the best answer I can give you on
18 that one.

06:02PM

19 Q Were the plaintiffs provided with the underlying
20 data that created the maps?

21 A What do you mean by underlying -- the census data
22 or --

23 Q No. I mean the things like the shape files and
24 the other files that were used to create the maps.

06:03PM

25 A The shape files? Again, I'm not following. Yes.

1 I'm not following the question. You have the
2 Autobound outputs in a specific format. They are
3 not shape file outputs. They are a text
4 assignment file output.

06:03PM

5 Q Were the plaintiffs provided with whatever
6 underlying data was used to create the Autobound
7 output?

06:03PM

8 A Well, the way I understand that question is that
9 would be the census data. I believe you were
10 provided with the census data, the census data set
11 as provided to us by LTSB.

06:04PM

12 Q Were there any other kinds of files, types of
13 files, other than census files that were used to
14 create various iterations of the different
15 district configurations as they evolved?

16 A Again, I'm not following the question or where
17 you're going with this one.

06:04PM

18 Q All right. Just trying to figure out -- we talked
19 about these ten specific files that were deleted
20 that Mr. Lanterman found had been deleted.

21 A Uh-huh.

06:04PM

22 Q And I asked the question of whether these had been
23 produced. My understanding from your answer is
24 that they would have been present in the Autobound
25 maps.

1 A Yes.

2 Q But these ten specific files might not have been
3 produced; is that correct?

4 A That seems fair. Yes.

06:04PM

5 Q So these ten specific files are specific types of
6 files I guess that are typically used to create
7 the Autobound output; is that correct?

8 MS. BUCHKO: Object to form.

06:05PM

9 A I would say they are the Autobound output when you
10 are attempting to print a map.

11 Q Okay. So as the configuration of the districts
12 changed or evolved over time from March of 2011
13 until the final product --

14 A Uh-huh.

06:05PM

15 Q -- were the plaintiffs provided with the Autobound
16 output for all of the different iterations of
17 those district configurations as they changed and
18 evolved?

06:05PM

19 A Again, I'm going to take issue with iteration.
20 You have all of the files. The files are the
21 files. If there was a point where I clicked on an
22 undo button or -- you were constantly changing
23 things. You would move through the process. You
24 would back it up five steps. You would redo those
06:05PM 25 five steps in a different way. When I hear every

1 iteration, I hear it as every mouse click. Going
2 back, my -- to the best of my knowledge you have
3 all of the Autobound maps that I drew in my time,
4 drawing maps.

06:06PM

5 Q Exhibit No. 14 that's in front of you --

6 A Okay.

7 Q Have you seen Exhibit 14 before?

8 A Not that I recall.

06:06PM

9 Q Were you aware that on January 11th there was
10 another DVD that was produced to the plaintiffs
11 containing additional electronic files?

12 A I may have been aware at the time. I don't recall
13 it.

06:06PM

14 Q I'll note that the label on that DVD refers to
15 Tad Ottman's supplemental production. It doesn't
16 say Adam Foltz on it. You might have been aware?

17 A Might have at the time.

06:07PM

18 Q Do you know whether the production of these files
19 that are referred to in Paragraphs Eight and
20 Nine -- whether that was produced in one of the
21 DVDs that was provided to the plaintiffs on
22 January 10th or January 11, 2012?

23 MS. BUCHKO: Objection, asked and
24 answered.

06:07PM

25 A I'll go back to the previous answer on that. I

1 don't recall specifically the shape files. But,
2 again, pointing back to the shape files are
3 duplicative output of what is contained in the
4 Autobound files.

06:07PM

5 Q When is it your understanding that those Autobound
6 files were provided to the plaintiffs?

7 A I believe it was the Autobound outputs. Again, I
8 want to be careful with this because the Autobound
9 file is different from what was produced to embody

06:07PM

10 the maps. The redistricting software -- there's
11 only two or three players, and it's highly
12 proprietary software. You received an output of
13 the Autobound maps. You did not receive the
14 specific Autobound file format. I just want to be
15 clear on that.

06:08PM

16 Q When were those produced to the plaintiffs?

17 A I believe the second round. The supplemental
18 document production.

19 Q And would that have been on January 10th and 11th
20 of 2012?

06:08PM

21 A Based on the headers on these various exhibits
22 that seems accurate.

23 Q Did you go back and take a look at those DVDs that
24 were produced to the plaintiffs on January 10th
25 and 11th to confirm that?

06:08PM

1 A No. I did not.

2 Q Did anybody go back and do that to your knowledge?

3 A Not to my knowledge.

4 Q Your belief that they were produced to the

06:08PM

5 plaintiffs, is that based on your memory?

6 A Yes.

7 Q Were there any other times that you did something

8 similar to what Mr. Lanterman identifies here

9 which is create a folder and then delete documents

06:09PM

10 from it on the Assembly redistricting computer?

11 A Not that I can recall.

12 Q Other than what's identified in Paragraphs Eight

13 and Nine of Mr. Lanterman's declaration, did you

14 ever delete any data or records from the Assembly

06:09PM

15 redistricting computer?

16 MS. BUCHKO: Object to form.

17 A Not that I can specifically recall.

18 Q What about generally?

19 A How do you mean?

06:09PM

20 Q Well, you had answered *Not that I specifically*

21 *recall*. I'm asking do you have a general

22 recollection of deleting any files from the

23 Assembly redistricting computer.

24 A Well, in the general sense say while I am sitting

06:09PM

25 there with the VPN connection to Outlook -- if an

1 E-mail came in for a notice for a committee
2 hearing, I probably just deleted it.

3 Q What about -- when you say notice to a committee
4 hearing, do you mean pertaining to redistricting?

06:10PM

5 A No. In the general sense that if the committee on
6 aging and long-term care noticed a hearing which
7 gets blasted out in E-mail.

06:10PM

8 Q Understood. I'm going to restrict my questions
9 just to redistricting data records. Did you
10 personally delete any records or data from the
11 State Assembly redistricting computer? And that's
12 records or data that pertained to redistricting.

13 A Again, not that I can specifically recall.

06:10PM

14 Q Are you aware of anyone else deleting any
15 redistricting related records or data from the
16 Assembly redistricting computer?

17 A Aware in that I've seen it in the declarations and
18 whatnot.

06:10PM

19 Q Do you have personal knowledge of that being done
20 at any time?

21 A How do you define personal knowledge?

22 Q Well, not having read it from somebody else's
23 declaration. Did you observe it?

24 A No.

06:11PM

25 Q Did you hear anybody say that they had done it?

1 A No.

2 Q Did you ever receive any information that anyone
3 had deleted -- other than in Mr. Lanterman's
4 declaration, have you ever received any
06:11PM 5 information that anyone had deleted any
6 redistricting records or data from the Assembly
7 redistricting computer?

8 A Again, the information I had received has been in
9 the form of various declarations. I'm not sure
06:11PM 10 exactly what you're asking. Various declarations,
11 filings, media stories. Things like that.

12 Q Once the computer, the Assembly redistricting
13 computer, was moved from Michael Best's offices
14 over to the State capitol building, did you delete
06:11PM 15 any of the redistricting related records or data
16 from that computer?

17 A Not that I can recall.

18 Q Did you ever decide you just don't need to keep it
19 around anymore or free up space or do anything to
06:12PM 20 delete?

21 A Not that I can think of. No.

22 Q Let's talk about E-mail. You used G Mail to
23 communicate with respect to redistricting,
24 correct?

06:12PM 25 A Yes.

1 Q Did you delete any of your G Mails relating to
2 redistricting?

3 A Not that I can think of.

06:12PM

4 Q So if we were to get your current G Mail account
5 and if we were to look through the E-mails that
6 are in your current G Mail account, we would see
7 redistricting E-mails in there?

8 A I believe so. Yes.

06:12PM

9 Q Did you have any kind of a separate folder set up
10 within G Mail that you used specifically for
11 redistricting E-mail communications?

12 A Not that I can recall.

06:13PM

13 Q Did you include your G Mails or -- strike that.
14 Did you search your G Mail account when you were
15 asked by Mr. McLeod and Mr. Olson to search for
16 documents that were responsive to plaintiffs'
17 subpoenas?

18 A Yes.

19 Q Where did you do that?

06:13PM

20 A It would have been at Michael Best.

21 Q That's a web based E-mail account, correct?

22 A Yes.

23 Q So you pulled up your G Mail account and looked
24 through those G Mails?

06:13PM

25 A Uh-huh.

1 Q Did you make any decision as you looked through
2 those G Mails about what might be responsive and
3 what might not be responsive?

4 A No. Responsiveness was left to the attorney.

06:13PM

5 Q How did the attorneys see those G Mails?

6 A I can't remember if they stood over the shoulder
7 or if it was search, print, and then go about it
8 that way. I can't remember which path that took.

06:14PM

9 Q I would like you to take a look at Exhibit No. 11,
10 please.

11 A Okay.

12 Q Do you have Exhibit No. 11 in front of you?

13 A I do.

06:14PM

14 Q I'll represent to you that this is a collection of
15 34 E-mails that were provided to the plaintiffs by
16 Mr. Evans who at the time was an expert retained
17 by Michael Best & Friedrich.

18 A Okay.

06:14PM

19 Q I'm going to give you an instruction here, and
20 then we will go off the record for a couple of
21 minutes. I'm going to ask you to take a look
22 through this exhibit, Exhibit No. 11, and identify
23 for me any E-mails that you found when you
24 conducted your search that you believe you gave to
25 the attorneys at Michael Best & Friedrich.

06:15PM

1 A I'm going to have no way of recalling what E-mails
2 specifically were produced out of this.

3 Q All right. Let's stay on the record here for a
4 minute and try a different way. Let's look at the
06:15PM 5 very first E-mail on page 1 of Exhibit No. 11. Do
6 you see that?

7 A Okay.

8 Q You see that's an E-mail from Jim Troupis and
9 you're one of the recipients, correct?

06:15PM 10 A That's correct.

11 Q And it was sent to your G Mail account, right?

12 A Yes.

13 Q And it's on or about July 15, 2011, correct?

14 A It appears that way. Yes.

06:15PM 15 Q I will tell you this is an E-mail that was not
16 produced to the plaintiffs during the litigation.

17 A Okay.

18 Q Do you know why this E-mail was not produced to
19 the plaintiffs during the litigation?

06:15PM 20 A No. I do not know why it was not.

21 Q Understanding that this was from your G Mail
22 account, do you believe that you provided this
23 G Mail to the attorneys at Michael

24 Best & Friedrich when you looked through your
06:15PM 25 computer?

1 MR. JACOB: Objection as to form
2 and foundation.

3 THE WITNESS: I'm sorry. Could you
4 read back the question. There was a little
5 cross-talk there.

6 (Question read)

7 A Again I can't recall specifically this E-mail and
8 its production or why it wasn't produced.

06:16PM

9 Q That's one of the reasons we're taking depositions
10 is to try to understand why these things weren't
11 produced.

12 A Uh-huh.

13 Q I'm asking anybody who is connected with this
14 E-mail if they know why it wasn't produced.

06:16PM

15 That's why I'm asking you.

16 A Okay.

17 Q Is it your testimony you don't know why this
18 E-mail wasn't produced?

19 A No.

06:16PM

20 Q I would like you to turn to -- there are Bates
21 stamps on here. Turn to the next page. It's
22 Evans 0002.

23 A Uh-huh.

24 Q This is an E-mail from Mr. Troupis, and it was --
25 I'm sorry. It was from you and it was to

06:16PM

1 Mr. Troupis and others. Do you see that?

2 A I do.

3 Q Do you know why this E-mail wasn't produced?

4 A No. I do not.

06:17PM

5 Q Let's go to the next page, Evans 0003.

6 A Uh-huh.

7 Q Do you see that's an E-mail from Mr. McLeod to you
8 dated July 16, 2011? Do you see that?

9 A I do.

06:17PM

10 Q Do you know why this E-mail wasn't produced?

11 A I do not. Is this the same E-mail as the -- it's
12 part of a chain.

13 Q It's a chain.

14 A Okay. No. I don't.

06:17PM

15 Q Let's go to Evans 0005.

16 A Okay.

17 Q This is an E-mail from Mr. Troupis to you and
18 others are copied on it dated Saturday, July 16,
19 2011. Do you see that?

06:17PM

20 A I do.

21 Q Do you know why that E-mail wasn't produced?

22 A I don't.

23 Q We could do this one of two ways. I could either
24 go off the record and give you a minute or two to
06:17PM 25 flip through these and let me know if you know of

1 any reason why any of these E-mails weren't
2 produced or if you think you have got a blanket
3 answer for me now, you can give it to me now.

06:18PM

4 A Well, I just -- the specific recollection of
5 individual E-mails is -- this was a process that
6 started a long time ago, so I really -- specific
7 E-mails at this point are all just a blur. Take
8 that for what it is. I don't know if that gets
9 you where you need to be on this.

06:18PM

10 Q Let's go off the record. Take just a couple of
11 minutes here or however long you need to take to
12 flip through these and familiarize yourself with
13 them. Then we will go back on and I will ask you
14 the question.

06:18PM

15 THE VIDEOGRAPHER: The time is
16 6:17. We are going off the record.

17 (Recess)

18 THE VIDEOGRAPHER: The time is
19 6:34. We are back on the record.

06:35PM

20 Q Mr. Foltz, just before we broke I asked you to
21 take a look at Exhibit No. 1. You have now had an
22 opportunity to do that.

23 A I have.

06:36PM

24 Q You have seen a number of E-mails within Exhibit
25 No. 11 that have your name on them, correct?

1 A Yes.

2 Q You either wrote them or you received them or you
3 were copied on them, correct?

4 A That is correct.

06:36PM

5 Q I want you to -- I will tell you that these are
6 E-mails that were not produced to the plaintiffs
7 in the litigation. I want to ask you with respect
8 to the documents contained in Exhibit 11 as a
9 whole, do you know of any reason that any of the

06:36PM

10 E-mails that have your name on them were not
11 produced to the plaintiffs?

12 A I do not with the caveat going back to my prior
13 testimony. I believe there's an SB 150 reference
14 in here once or twice at some point that I know
15 that at the time we were not producing anything
16 involving SB 150/Act 39.

06:36PM

17 Q Set that document to the side. I'm going to ask
18 you to take a look at Exhibit No. 12.

19 A Okay.

06:36PM

20 Q I won't ask you to go through the whole document.
21 I'm going to direct you to a specific page in it
22 once you get it out.

23 A Okay.

24 Q Exhibit No. 12.

06:37PM

25 A Okay.

1 Q I will represent to you that this is a collection
2 of E-mails that were provided to us by Mr. Jacob
3 who is counsel for Michael Best & Friedrich, and
4 these are documents relating to SB 150 that were
5 not produced to the plaintiffs in the litigation.

06:37PM

6 A Okay.

7 Q So I want to direct your attention to the second
8 page which is Evans 000108.

9 A 108. Okay.

06:37PM

10 Q And you see the E-mail header at the top says To
11 and you are listed as one of the people this
12 E-mail was sent to. Do you see that?

13 A Is it the top address block or is this the --

14 Q This is the top.

06:37PM

15 A The top address block. Okay.

16 Q Of Evans 000108.

17 A Okay.

18 Q Do you see that?

19 A I do.

06:37PM

20 Q And this is a document that pertained to SB 150.

21 A Okay.

22 Q Is it your understanding that to the extent that
23 your name is on any of the documents contained
24 within Exhibit No. 12 that the reason it wouldn't
25 have been produced is that the document pertained

06:38PM

1 to SB 150?

2 A That's fair.

3 Q And, again, you were instructed not to produce any
4 documents pertaining to SB 150?

06:38PM 5 A Yes.

6 Q That instruction came from counsel at Michael
7 Best & Friedrich?

8 A Yes.

06:38PM 9 Q I would like you to look at Exhibit No. 15,
10 please, that's in your stack.

11 A Okay.

12 Q We're going to march through a few in order here.

13 A So 15?

06:38PM 14 Q You can just get 15 to 20 actually. Just have
15 those in front of you.

16 A There's a 28. There's an 18. 20. I'm sorry,
17 Doug. You said 15 through 20 --

18 Q Correct?

19 A -- is what we were going to rifle through?

06:38PM 20 Q Yes. Do you have those in front of you?

21 A I do.

22 Q Let's look at Exhibit No. 15 first.

23 A Okay.

06:39PM 24 Q The back and the bottom three-quarters of Exhibit
25 No. 15 you will see it's got a stamp across it

1 that says Previously Produced?

2 A I do.

3 Q So I want to direct your attention only to the top
4 of Exhibit No. 15, and that's that very first

06:39PM

5 E-mail header that's dated Thursday, June 30,
6 2011. Do you see that?

7 A Yes.

8 Q And the subject is MKE Hispanics?

9 A Okay.

06:39PM

10 Q Do you see that?

11 A Yes.

12 Q And you are copied on this E-mail, correct?

13 A Yes.

14 Q The subject line says MKE Hispanics. Do you see
15 that?

06:39PM

16 A I do.

17 Q Do you know what that refers to?

18 A I believe Milwaukee.

19 Q Milwaukee Hispanics. Does it refer to the
20 Hispanic districts in Milwaukee do you know?

06:39PM

21 MS. BUCHKO: Objection on
22 competency.

23 A I'm sorry. What was the question again?

24 Q Whether the heading, the Milwaukee Hispanics
25 heading, refers to the Hispanic districts,

06:40PM

1 legislative districts, in Milwaukee.

2 A I believe so.

3 Q Do you know why that top portion of Exhibit No. 15
4 wasn't produced to the plaintiffs?

06:40PM

5 A Between the header and then the Thursday, June
6 30th?

7 Q Basically anything above the On Thursday, June 30,
8 2011.

9 A Okay. And the question again?

06:40PM

10 Q Do you know why that wasn't produced to the
11 plaintiffs?

12 A I do not.

13 Q I would like you to look at Exhibit No. 16,
14 please.

06:40PM

15 A Okay.

16 Q If you look on the second page of Exhibit 16
17 through the end, you will see a stamp across those
18 pages that says Previously Produced.

19 A Okay.

06:40PM

20 Q I want to draw your attention to the first page
21 and limit my question only to the first page of
22 Exhibit 16.

23 A Okay.

06:41PM

24 Q You see that you are a recipient of Exhibit No. 16
25 or at least -- you are a recipient, correct?

1 A That is correct.

2 Q And the subject of it is Amendment to Legislative
3 Redistricting Plan and there's a number, correct?

4 A Okay. Yes.

06:41PM

5 Q Do you know why this document wasn't produced to
6 the plaintiffs?

7 A Again referring only to the first page?

8 Q Correct.

9 A I do not know.

06:41PM

10 Q I would ask you to look at Exhibit No. 17.
11 There's no indication on Exhibit No. 17 anywhere
12 that it was previously produced to the plaintiffs,
13 so my question will pertain to the entire
14 document.

06:41PM

15 A Okay.

16 Q If you look at this document -- actually, you
17 might not be on this one. No. I don't think you
18 are on this one. You can set this one to the
19 side.

06:41PM

20 A Okay. And this was 17?

21 Q That was 17.

22 A Okay.

23 Q And you can set 18 to the side.

24 A Okay.

06:42PM

25 Q And 19 to the side.

1 A Okay.

2 Q Let's look at Exhibit No. 20. Do you see that
3 or -- do you have Exhibit 20 in front of you?

4 A I do.

06:42PM

5 Q I would like to draw your attention to the very
6 first page of Exhibit 20, page 105. Do you see
7 that this is an E-mail that was sent to you on or
8 about Monday, October 10, 2011?

9 A I do see that.

06:42PM

10 Q And you see the subject line is Amendment on
11 Effective Date of Redistricting?

12 A Uh-huh.

13 Q Do you know why this particular document wasn't
14 produced to the plaintiffs?

06:42PM

15 A On this one I would refer to the previous
16 testimony about the time certainty that we were
17 operating under in the production process with the
18 E-mail date of October 10, 2011 being after the
19 enactment or publication date that we were working
20 with.

06:42PM

21 Q And this document, Exhibit 20, fell out of the
22 date range that Mr. McLeod had instructed you to
23 look for documents and produce them?

24 A Without specifically saying that it was Eric that
25 put me under those instructions because I do not

06:43PM

1 recall who specifically gave me those
2 instructions, that is correct.

3 Q Was it somebody at Michael Best & Friedrich who
4 gave you those instructions?

06:43PM

5 A Yes.

6 Q I want to go back to -- you have got Exhibit
7 No. 29 in front of you. That's Mr. Lanterman
8 declaration.

9 A Just a second. 29 you said?

06:43PM

10 Q Correct.

11 A That's the Lanterman third declaration?

12 Q Correct.

13 A Okay.

06:43PM

14 Q I'm going to draw your attention to Paragraph
15 Number Ten.

16 A Okay.

17 Q Do you see Mr. Lanterman states in Paragraph Ten,
18 "On that same computer, ASM Republican WRK32586, I
19 have recovered four million deleted master file
20 table entries." Do you see that?

06:44PM

21 A I do.

22 Q Again, that's a reference to the Assembly
23 redistricting computer, correct?

24 A You caught me mid sip. That appears correct.

06:44PM

25 Yes.

1 Q Now, do you know what Mr. Lanterman is referring
2 to when he talks about four million deleted master
3 file table entries?

4 MS. BUCHKO: Objection, foundation
5 and competency.

06:44PM

6 A I don't know.

7 Q That's why I asked do you know.

8 A I don't.

9 Q Did you do anything to intentionally delete any
10 master file table entries?

06:44PM

11 A I don't even know what they are.

12 Q Are you aware of anything that you might have done
13 that would have deleted the master file table
14 entries?

06:44PM

15 A No.

16 Q Mr. Lanterman toward the end of that paragraph has
17 a statement where he says the only other time he
18 has seen such a pattern is when data were deleted
19 and then restored from a backup and the
20 restoration brings back the file itself leaving
21 the deleted MFT entry. Do you see that?

06:45PM

22 A I do.

23 Q Did you engage in any kind of a restoration from a
24 backup on your Assembly redistricting computer?

06:45PM

25 A Going back to my prior testimony, I don't think --

1 I can't think of any instance where I ran anything
2 in the recovery aspect of computer maintenance
3 again not knowing exactly what LTSB did when they
4 were performing their various technical support
5 functions.

06:45PM

6 Q I would like to turn your attention to Topic
7 Number Seven of the subpoena, and that's any
8 forensic or other analysis conducted on the
9 redistributing computer between January 1, 2011 and
10 January 31, 2013. Do you see that?

06:46PM

11 A Number Seven?

12 Q Correct.

13 A Okay.

14 Q Are you aware of any forensic or other analysis
15 that was conducted on the Assembly redistributing
16 computer?

06:46PM

17 A Just after it went to the LTSB inventory cage
18 there were forensic images taken by Mr. Lanterman
19 and Mr. Evans.

06:46PM

20 Q Did you participate at all in the imaging of the
21 Assembly redistributing computer by Mr. Evans?

22 A I did not.

23 Q Did you participate in the decision to retain
24 Mr. Evans to perform that work?

06:46PM

25 A I know that it had happened.

1 Q Were you made aware of it, that it happened, after
2 it actually occurred?

3 A I don't recall specifically what the series of
4 events was on that.

06:46PM

5 Q Did you have discussions with anyone before
6 Mr. Evans was retained?

7 A I'm sure.

8 MS. BUCHKO: Object.

9 THE WITNESS: Sorry.

06:47PM

10 MS. BUCHKO: That's okay. Object
11 only to the extent it calls for discussion
12 with counsel, attorney-client privilege.

13 A I'm sure there were some conversations.

06:47PM

14 Q Did you make any kind of a recommendation about
15 whether to retain Mr. Evans to conduct that
16 forensic analysis?

17 MS. BUCHKO: Same objection to the
18 extent if may disclose attorney-client
19 privileged communication.

06:47PM

20 THE WITNESS: I'm sorry. The
21 question again?

22 (Question read)

23 A I can't recall a recommendation I would have made.
24 No.

06:47PM

25 MR. POLAND: At this time then I'm

1 going to pass the witness to Mr. Earle.

2 EXAMINATION

3 By Mr. Earle:

06:48PM

4 Q I'm going to jump around a little bit, Mr. Foltz,
5 within the confines of these various topics that
6 you have been designated.

7 A Okay.

06:48PM

8 Q I want to begin by asking you if at any point
9 during the time that you had access to and used
10 the computer that was assigned to you that was
11 placed at Michael Best and including the time
12 where you apparently moved it to Reinhart --

13 A Uh-huh.

06:48PM

14 Q Whether during any of that time you engaged in any
15 non work-related misconduct on that computer?

16 MS. BUCHKO: Object; foundation,
17 competency, form.

18 Q Go ahead.

19 A I can't think of any. No.

06:49PM

20 Q Did you engage in any criminal conduct on that
21 computer?

22 MS. BUCHKO: Same objection.

23 A No.

06:49PM

24 Q Did you engage in any partisan political activity
25 on that computer?

1 MS. BUCHKO: Same objection. I'm
2 also going to object on the grounds that it's
3 outside the scope of the designated topics on
4 the 30(b)(6) rules.

06:49PM

5 A Well, partisan numbers are part of the
6 redistricting data set and various analyses were
7 conducted that had partisan numbers as part of it.

8 Q Were maps drawn to reflect those partisan numbers?

9 A I don't understand the question.

06:49PM

10 Q Did you create maps to reflect the partisan
11 numbers that you analyzed to consider those maps?

12 MS. BUCHKO: Same objection,
13 outside the scope of the designated topics
14 and unrelated to pretrial discovery.

06:49PM

15 A And the question again was?

16 Q Do you want it read to you?

17 A Yes.

18 (The following was read by the reporter:

06:49PM

19 Q "Did you create maps to reflect the partisan
20 numbers that you analyzed to consider those
21 maps?")

22 A As I understand the question, the partisan
23 analysis is a back end analysis. You draw a map,
24 and then you get a partisan number.

06:50PM

25 Q And then you evaluate the map?

1 A There were evaluations done. Yes.

2 Q And maps were changed, right?

3 A In what context?

4 Q Well, if you decide that what you see doesn't

06:50PM

5 respond to some objective that you have in
6 redistricting, some strategy that you have in the
7 redistricting, you change the map, right?

8 MS. BUCHKO: I'm going to object to
9 form. Outside the scope of the topics.

06:50PM

10 Counsel, if you don't close this out pretty
11 quickly, I'm going to instruct him to no
12 longer answer.

13 MR. EARLE: That's fine. You have
14 a standing objection to that. It's very
06:50PM 15 clearly related to the topics.

16 MS. BUCHKO: Tell me how.

17 MR. EARLE: I'm not going to do
18 that for very precise reasons.

19 Q Go ahead.

06:50PM

20 A I'm sorry. The question again?

21 (The following was read by the reporter:

22 Q "Well, if you decide that what you see
23 doesn't respond to some objective that you have
24 in redistricting, some strategy that you have
06:50PM 25 in the redistricting, you change the map,

1 right?")

2 A I guess the best answer to that question is the
3 maps were continually changed during the process
4 for months and months and you again have all of
06:51PM 5 the Autobound files that reflect all of the
6 different versions of Autobound maps that I had
7 drawn.

8 Q Did you use the computers for any non work-related
9 purpose during the time that you had access to
06:51PM 10 them?

11 A I'm sure I probably did at some point.

12 Q What kind of non work-related purpose did you use
13 the computers for?

14 A I may have jumped on Facebook.

06:51PM 15 Q Did you communicate with anybody via Facebook
16 about redistricting while you jumped on Facebook?

17 A No.

18 Q Did you do any non related work on the computers
19 beyond jumping on Facebook?

06:52PM 20 A Maybe. I don't know.

21 Q Well, tell me about it.

22 A I really don't recall.

23 Q Did you engage in electoral campaign activity on
24 those computers?

06:52PM 25 A No.

1 Q Did you produce shape files to us to reflect the
2 maps that were created and considered?

3 A No. Going back to my prior testimony, the shape
4 files were not produced. The outputs of Autobound
06:52PM 5 software the -- I shouldn't say -- let me back up.
6 I don't recall if the shape files were produced
7 and again going back to the Lanterman declaration
8 about the draft plans for printing. The Autobound
9 files were produced as a text assignment file.

06:52PM 10 Q You produced to us the shape files from the 2002
11 legislative maps, didn't you?

12 MS. BUCHKO: Object to form.

13 A I don't recall specifically that production.

14 Q You produced to us files that had file extensions
06:53PM 15 of .PRJ. Strike that. I'm going to withdraw that
16 question. Let me ask it this way. Do you know
17 what a file extension .SHP is?

18 A I believe that's the extension associated with a
19 shape file.

06:53PM 20 Q Okay. And do you know what a file extension .SHX
21 is?

22 A I do not.

23 Q How about a file extension .DBF?

24 A I believe that is a database extension.

06:54PM 25 Q How about a .PRJ?

1 A I'm not aware of what that is.

2 Q Would you dispute that from your files on
3 January 11, 2012 a vast number of shape files with
4 those file extensions were produced to the
06:54PM 5 plaintiffs related to the 2002 legislative remap?

6 A It seems entirely possible.

7 Q That's because you had that data on your computer;
8 isn't that true?

9 A I believe so. If that's the case.

06:54PM 10 Q Why wasn't that data produced to us for this
11 redistricting round?

12 MS. BUCHKO: Object; form,
13 foundation.

14 A These are the 2002 maps.

06:55PM 15 Q I can show you -- you can come over here and you
16 can look at my computer and you can see from the
17 electronic image that I have right here on this
18 computer --

19 A Okay.

06:55PM 20 Q -- that was produced from you -- I got two sets of
21 documents. I got production of hard copies and I
22 got electronic files.

23 A Okay.

06:55PM 24 Q I have the electronic files up here. I'll move
25 this stuff over so you can come over and see this.

1 MR. EARLE: I know he's going to
2 get out of the camera view for just a moment.
3 It may orient him a little bit more.

06:55PM

4 A I just want to be clear what we're discussing
5 here. You said shape files in the various --

6 Q Come over here and take a look at it.

7 A I'm good where I am.

8 Q I'll come over to you if Mr. Murray and Ms. Buchko
9 don't object.

06:56PM

10 MR. MURRAY: To you approaching the
11 witness?

12 MR. EARLE: To me approaching the
13 witness.

14 MR. MURRAY: I might object.

06:56PM

15 MR. JACOB: I just want an exhibit
16 sticker put on that.

17 MR. EARLE: I'm doing it with leave
18 of counsel here.

19 MR. MURRAY: Attach the computer to
20 the original transcript.

06:56PM

21 Q You can see we have electronic files of a folder
22 that's entitled 2002 Legislative and Court Maps
23 parens Shape Files and then we have all of these
24 different files and then we have assembly.DPB,
25 assembly.PRG, assembly.SHP, assembly.SHX?

1 A Okay.

2 Q And then we have the same equivalent for Senate.

3 A Okay.

4 Q Each of these have shape files --

06:56PM

5 A Okay.

6 Q -- of that nature as I go through these.

7 A Uh-huh.

8 Q All right?

9 A Okay.

06:56PM

10 Q I can represent to you that in all of the material
11 provided by you to us there are no shape files for
12 this current redistricting plan.

13 A For the current redistricting plan there are no
14 shape files?

06:57PM

15 Q None were produced to the plaintiffs?

16 A Okay.

17 Q Do you have an explanation for that?

18 A As I testified to earlier, the shape files are
19 duplicative of the Autobound map outputs.

06:57PM

20 Q Who made a decision not to produce the shape files
21 from the current redistricting plan?

22 A I don't recall.

23 Q You had shape files on your computer, correct?

24 A Yes.

06:57PM

25 Q For the current map.

1 A I don't know that. Current as in Act 43?

2 Q Act 43. What was ultimately codified and then
3 overruled by the Court.

4 A Uh-huh.

06:58PM

5 Q That act.

6 A Okay.

7 Q Those shape files. We didn't get those, right?

8 A I don't know if I had those shape files for the
9 final version.

06:58PM

10 Q Did you delete those files from your computer?

11 A Of the final plan?

12 Q Of any plan.

13 A I don't even know if I had the final shape file
14 output of Act 43 pre or post the Court's changes
06:58PM 15 to Districts 8 and 9.

16 Q Now, you got a map that was produced by MALDEF,
17 correct?

18 A I believe that's the case.

19 Q And you evaluated that map, correct?

06:58PM

20 A Sure.

21 Q I'll rephrase that. You participated in the
22 evaluation of that map as part of the team,
23 correct?

24 A That's accurate.

06:58PM

25 Q And was that map translated into a set of shape

1 files or did you put it in Autobound and generate
2 a map to look at?

3 A May have.

4 Q Did you preserve that?

06:59PM

5 A The Autobound file should be preserved. Yes.

6 Q Did you produce that?

7 A I believe so.

8 Q Where would that have been?

9 A What do you mean by where?

06:59PM

10 Q In what production did that map get produced?

11 A It would have been the supplemental production for
12 round two of the depositions.

13 Q And in what format would that have been produced?

06:59PM

14 A That would have -- again, going back to the
15 previous testimony, the output function of a text
16 assignment or a block assignment file.

17 Q If I told you that we did not get any electronic
18 version of any map other than the map that was
19 adopted by the Court, would you disagree with that
20 statement?

06:59PM

21 A I would.

22 Q And what would be the basis for your disagreement?

23 A Because you have the text assignment files of the
24 Autobound plans.

07:00PM

25 Q I want to talk to you about your G Mail account.

1 A Okay.

2 Q Have you taken steps to preserve everything in
3 your G Mail account?

07:00PM

4 A When we met with Whyte Hirschboeck, they made sure
5 to just inform us, you know, don't delete
6 anything.

7 Q Have you been instructed to gather all E-mail
8 messages from your G Mail account that are
9 responsive to the subpoenas that were issued?

07:00PM

10 A Yes. We have been told to start pulling together
11 the post enactment and the SB 150 E-mails.

12 Q And when will you finish that task?

13 A I will defer to legal counsel on that.

07:00PM

14 Q No. I want to know when you're going to finish
15 that task. I'm not asking you about legal
16 counsel's view of it. When did you start?

17 A I haven't yet to be honest with you.

18 Q You haven't started?

19 A No.

07:01PM

20 Q What have you done to secure that information?

21 A Not delete it.

22 Q Is there a reason you haven't started?

23 A Just busy with work.

24 Q Does it concern you that you haven't started?

07:01PM

25 MS. BUCHKO: Object to form.

1 A I really -- no.

2 Q Have you been asked to produce those by any
3 deadline?

4 A No.

07:01PM

5 Q Have any of the E-mails that existed on your
6 G Mail account related to redistricting between
7 the time that you started working on the
8 redistricting project and the trial -- were any of
9 those deleted?

07:02PM

10 A Not that I can recall.

11 Q So when we get those E-mails that are responsive
12 to the subpoenas from your G Mail account --

13 A Uh-huh.

14 Q -- we will get every single E-mail that was
15 generated on the subject of redistricting?

07:02PM

16 MS. BUCHKO: No. Object to form.

17 MR. EARLE: Let me finish the
18 question before you object to it.

19 MS. BUCHKO: Okay.

07:02PM

20 MR. EARLE: May I have it read to
21 where I was.

22 (Question red)

23 A I can't say with absolute certainty. There may be
24 things on scheduling or something along those

07:02PM

25 lines maybe.

1 Q Did you intentionally delete any responsive
2 information from anywhere?

3 A No.

07:03PM

4 Q How many draft plans were generated for the area
5 around Kenosha-Racine?

6 A I don't recall.

7 Q More than one, right?

07:03PM

8 A Yes. Again, specific -- well, are you referring
9 specifically just to me or the entire
10 redistricting process?

11 Q Through the whole redistricting process.

12 A I'm sure there was more than one alternative.

13 Yes.

07:03PM

14 Q What was the process by which alternatives were
15 considered?

16 MS. BUCHKO: I'm going to object on
17 the grounds that it is again outside the
18 scope of the designated topics for the
19 30(b)(6) deposition.

07:03PM

20 MR. EARLE: I'm trying to discover
21 deleted materials.

22 Q Go ahead.

23 A The process used when evaluating alternatives? Is
24 that --

07:03PM

25 Q Right.

1 A And this goes back to the first round of
2 depositions. There was a chunk of time there
3 where legislative leaders came in and various
4 alternatives were discussed.

07:04PM

5 Q And those alternatives were printed out, correct?

6 A I can't remember if they were printed out or just
7 displayed on the screen. I don't recall exactly
8 what format they were in.

07:04PM

9 Q You overlaid data on those map configurations,
10 correct?

11 A How do you mean?

12 Q Well, you associated data with the different
13 district lines such as turnout and --

14 A Turnout is not a census statistic.

07:04PM

15 Q You overlaid census statistics, correct?

16 A I want to be careful about overlaid because
17 overlaid implies it was actually on the map. Keep
18 in mind the Autobound software also has a matrix,
19 more or less a spreadsheet, that's sitting to the
20 side that pertinent data such as that may also be
21 pulled from.

07:04PM

22 Q So you can look at the map and you can look at the
23 data and you can interpret what is within the
24 potential district that's being considered,
25 correct?

07:05PM

1 A That seems accurate. Yes.

2 Q And it's your testimony that all of the different
3 districts that were created and considered were
4 produced to the plaintiffs in response to
07:05PM 5 discovery. Is that what your testimony under oath
6 is here?

7 MS. BUCHKO: Object to form and
8 mischaracterizes his previous testimony.

9 A Going back to -- there were alternatives from
07:05PM 10 other people involved in the process, so I can
11 only speak to myself. You have all of the
12 Autobound maps.

13 MR. EARLE: Read my question to the
14 deponent.

07:05PM 15 (Question read)

16 Q Can you answer that question?

17 A I did.

18 Q That's a yes or no answer. Were they produced or
19 weren't they produced?

07:06PM 20 MS. BUCHKO: Asked and answered.
21 He said he did.

22 MR. EARLE: You said that. He
23 didn't say that.

24 MR. POLAND: Can you read his
25 answer back, please.

1 (The following was read by the reporter:

2 A "Going back to -- there were alternatives
3 from other people involved in the process, so I
4 can only speak to myself. You have all of the
07:05PM 5 Autobound maps.")

6 Q I didn't ask if I have all of the Autobound maps.
7 I'm asking you whether all of the maps that were
8 created and considered were produced. It's a
9 simple yes or no question.

07:06PM 10 A You've got to be careful because there were
11 alternatives by other people and I can only
12 testify to myself in this and you have all of the
13 Autobound maps that I have drawn.

14 Q Do I have the maps that you created and
07:06PM 15 considered? That's the question I'm asking.

16 A I believe that would be the case because any map
17 that was considered was a map that I had drawn and
18 you have, again, all of the Autobound maps.

19 Q All right. I want to talk about this trip to
07:07PM 20 Milwaukee --

21 A Okay.

22 Q -- during the trial. Who decided to send a
23 computer and you to Milwaukee to assist in the
24 trial?

07:07PM 25 A I don't remember who made that decision.

1 Q Who told you to do it?

2 A I don't remember.

3 Q You just got up one day, grabbed your computer,
4 and ran to Chicago?

07:07PM

5 MS. BUCHKO: Object to form,
6 leading and argumentative.

7 Q Or Milwaukee?

8 A No. I'm sure somebody requested that of me. I
9 just don't recall who specifically requested that.

07:07PM

10 Q Who was paying you while you went to Chicago or to
11 Milwaukee?

12 MS. BUCHKO: Which state?

13 MR. MURRAY: Now you're trying to
14 confuse the witness.

07:08PM

15 MR. EARLE: I'm trying to get the
16 witness to share my confusion here.

17 Q Who was paying you?

18 A I would have been on the State Assembly's payroll
19 at that point.

07:08PM

20 Q Did your boss authorize it?

21 A I'm not sure if he specifically authorized, but he
22 was aware.

23 Q What do you know about the decisional process?

24 You can't tell me who told you to go. I want to
25 understand the decisional process by which you

07:08PM

1 ended up going.

2 A I don't recall the decisional process and what the
3 conversations were that led up to it. Somebody in
4 the process asked me to go. My boss was aware of
5 it. I went.

07:08PM

6 Q Did you discuss that with Eric McLeod?

7 A I'm sure I did.

8 Q Did you discuss that with Patrick Hodan?

9 A Probably not.

07:08PM

10 Q Did you discuss that with Dan Kelly?

11 A Probably not. I may have.

12 Q Did you discuss that with Maria Lazar?

13 A Not that I can recall.

14 Q Did you discuss it with anybody in the attorney
15 general's office?

07:09PM

16 A Not that I can recall.

17 Q Did you discuss it with Tad Ottman?

18 A I'm sure I did.

19 Q What did you understand to be the purpose of you
20 going to Milwaukee for that week during the trial?

07:09PM

21 A I'm not following.

22 Q What did you understand the purpose to be for you
23 to go to Milwaukee with that computer for that
24 trial?

07:09PM

25 A To observe the trial and provide anything that

1 would be asked of me.

2 Q Did you make the arrangements with the Reinhart
3 law firm?

07:10PM

4 A I don't really know if there were arrangements per
5 se. They had a conference room where folks were
6 congregated.

07:10PM

7 Q I'm sure if you just showed up one day at
8 Mr. Murray's office, although he's a very
9 hospitable guy, without announcing yourself with a
10 computer in tow and walked into his conference
11 room and set it up he would ask you a few
12 questions.

13 A Okay.

07:10PM

14 Q So you just walked into Reinhart one day with your
15 computer and plunked it down in the conference
16 room? Is that what happened?

17 MS. BUCHKO: Object to form.

18 A I don't remember who informed Reinhart that I
19 would be bringing a computer and showing up.

07:10PM

20 Q What did you do while you were there with that
21 computer?

22 A I don't recall specifically. If there was a
23 question that somebody had that was accessible
24 through the data sets or the Autobound software, I
25 could look it up for them. Or if somebody just

07:10PM

1 wanted to review a map on the screen, I could pull
2 that up for them.

3 Q So you pulled up maps onto a screen for the
4 litigation team in the trial; is that correct?

07:11PM

5 A I don't know if it was the -- well, do you
6 consider the experts to be part of the litigation
7 team at that point or is that limited to
8 attorneys?

9 Q Let's start with the attorneys.

07:11PM

10 A Okay.

11 Q Did you do that for any of the attorneys?

12 A Not that I can specifically recall.

13 Q Is it your testimony that you only did that for
14 Bernie Grofman?

07:11PM

15 A No.

16 Q Did you do that for Bernie Grofman?

17 A I may have.

18 Q Do you know who Bernie Grofman is?

19 A Yes.

07:11PM

20 Q Did you or didn't you do that for Bernie Grofman?

21 A I don't recall.

22 Q Who do you recall doing that for?

23 A Nobody in particular.

24 Q You're going to sit here and tell me that you

07:11PM

25 cannot recall showing a map to any individual over

1 the course of that week while you were in Chicago?

2 MS. BUCHKO: Object to form.

3 MR. POLAND: Milwaukee.

4 Q I mean in Milwaukee.

07:11PM

5 MS. BUCHKO: Object to form and
6 mischaracterizes his previous testimony.

7 A I'm sure I showed the map to someone. I don't
8 recall specific instances of who saw a map or
9 requested a statistic or anything like that.

07:12PM

10 Q What maps did you show?

11 A It would have been the final product.

12 Q Which maps? Which areas?

13 A I don't recall specifically, but the map itself
14 would have been Act 43. Or I should say -- yes.

07:12PM

15 Act 43.

16 Q So it's your testimony that the litigation
17 people -- is it your testimony that you only
18 showed the maps to experts?

19 A No. That's not my testimony.

07:12PM

20 Q Well, you said you didn't show it to any of the
21 lawyers. Is that what you said?

22 A No. I don't recall specifically showing it to the
23 attorneys.

24 Q Okay.

07:12PM

25 A I don't recall specifically showing it to the

1 experts. I'm sure somebody looked at it at some
2 point, but I don't specifically remember who was
3 over my shoulder at that given moment.

07:12PM

4 Q How much time did you spend at the computer
5 showing people who you can't remember stuff?

6 A I don't remember.

7 Q You were there for a week or how long?

8 A I was in the courtroom at some point. I was at
9 the Reinhart conference room at some point.

07:13PM

10 Q Did you print anything out from that computer
11 while you were at Reinhart?

12 A No. I don't believe I had -- if memory serves, I
13 did not have printer access.

07:13PM

14 Q So it's your testimony that a forensic examination
15 of the activity on that computer during those
16 dates will demonstrate what you were doing with
17 regards to redistricting?

18 MS. BUCHKO: Objection; form,
19 foundation, competency.

07:13PM

20 A I don't know how to answer that. Not recalling
21 specifically what I did, I really can't say with
22 certainty.

07:14PM

23 Q Do you recall showing anybody any maps about
24 Milwaukee's African American districts as they
25 were affected by the redistricting?

1 A Well, if they were looking at Act 43, those
2 districts would be part of that.

3 Q Is it your testimony that your purpose there in
4 moving the computer to Milwaukee during the trial
07:14PM 5 was in order to demonstrate on a screen Act 43 for
6 the litigation team? Is that what the sole
7 purpose of your presence there was?

8 MS. BUCHKO: Object to form.

9 A That's not my testimony.

07:14PM 10 Q Well, I'm inferring that from what you're saying
11 here. It seems like you're saying that the only
12 thing you did with that computer was to show
13 people the final map.

14 MS. BUCHKO: Object to form and
07:14PM 15 argumentative.

16 Q Is that what you did?

17 MS. BUCHKO: Object to form and
18 argumentative.

19 Q Is that what your activity was limited to?

07:14PM 20 A I can't say that with certainty. I may have
21 pulled a statistic as I said. I may have -- if
22 there was some number that needed to be pulled up,
23 I could have pulled that up.

24 Q Did you save all of the images that were generated
07:15PM 25 in the course of your stay in Milwaukee during the

1 week of the trial?

2 A I'm not following the question.

3 Q Did you delete any images that you created to show
4 people associated with the litigation team?

07:15PM

5 A I may have. I don't remember. Again, I don't
6 remember creating images. I may have for that
7 week of trial.

8 Q Were you asked to use that computer in a way that
9 you declined?

07:15PM

10 A Not that I can recall.

11 Q So you responded to every request given to you by
12 the litigation team?

13 A I can't think of an instance where I wouldn't
14 have.

07:16PM

15 Q Did you share with members of the litigation team
16 documents or files that were not produced to the
17 plaintiffs in the course of that week while you
18 were in Milwaukee during that trial?

19 A I don't know.

07:16PM

20 Q You may have?

21 A I don't know.

22 Q When did you pack up and leave Reinhart?

23 A Reinhart? After trial.

24 Q Did Eric McLeod join you over there at the
25 Reinhart conference room?

07:16PM

1 A No. He wasn't around.

2 Q Was anybody from Michael Best there?

3 A Not that I can think of.

4 Q Did you generate any paper in the course of your
07:17PM 5 work at Reinhart during that week?

6 A Again, I don't believe so because I didn't have
7 printer access.

8 Q Did you save all of the E-mails from your G Mail
9 account generated during that week?

07:17PM 10 A I doubt there were any E-mails at that point.

11 Q You did not receive any E-mails during the week
12 that you were at the Reinhart law firm in
13 Milwaukee during that trial?

14 A I can't say that with absolute certainty. The map
07:17PM 15 was locked in at that point.

16 Q It turns out not so.

17 A Well, fair enough.

18 Q So you didn't send any E-mails to anybody?

19 A I may have. I don't specifically --

07:17PM 20 Q I'm talking about E-mails about redistricting and
21 the remapping process.

22 A I may have. I don't recall having sent any
23 E-mails during the week of trial.

24 Q Now, you testified that with regards to
07:18PM 25 Exhibit No. 7 --

1 A Which one was 7 again?

2 MR. MURRAY: What is Exhibit 7?

3 MR. EARLE: This is the --

4 MR. POLAND: The preservation

07:18PM

5 notice.

6 Q As I understand your testimony, you interpret
7 Exhibit No. 7 as a demand for preservation of open
8 meetings information; is that correct?

9 A I would say that that was not my interpretation.

07:18PM

10 No.

11 Q What is your interpretation -- strike that. I'll
12 ask it this way: What is your understanding of
13 what was requested of you when you were given
14 Exhibit 7?

07:19PM

15 MS. BUCHKO: Objection, foundation.

16 A Again, my understanding --

17 Q Hold on. You got Exhibit 7 about the time it was
18 issued, right?

19 A I believe I got at least the complaint itself.

07:19PM

20 I'm not 100 percent sure on the other pages.

21 Q Eric McLeod has testified that he gave this to
22 you.

23 A Okay.

24 Q Tad Ottman has testified he received it.

07:19PM

25 A Okay.

1 Q Are you testifying you don't know whether you
2 received it?

3 A No. I remember the complaint. I just don't
4 remember if I saw the cover E-mail or the cover
07:19PM 5 letter specifically.

6 Q Did Eric McLeod say anything to you about what you
7 should preserve?

8 A And going back to my prior testimony on that, I
9 believe what I was instructed was to preserve
07:19PM 10 things that related to the open meetings
11 allegations for lack of a better term.

12 Q Why don't you open it up to the second page.

13 A Is this the letter with your office's letterhead?

14 Q Right.

07:20PM 15 A Okay.

16 Q Look at the first paragraph and the fourth line
17 down. Do you see your name in there?

18 A Okay.

19 Q Do you see your name in there?

07:20PM 20 A I do.

21 Q Were you told that this letter was intended to
22 have you specifically preserve documents
23 responsive to the subject matter of the letter?

24 MS. BUCHKO: Object to form.

07:20PM 25 A Well, again, going back to -- what was the

1 question again?

2 (Question read)

3 A Well, going back to the prior testimony, if memory
4 serves we received an E-mail from Eric saying
07:20PM 5 preserve things that relate to open meetings.

6 Q Would you look at the second paragraph.

7 A Okay.

8 Q The second very long sentence that starts with the
9 words "As it is likely." It's right in the middle
07:21PM 10 of the paragraph. "As it is likely that the
11 subject matter." Do you see that there?

12 A Okay.

13 Q Got it?

14 A I do.

07:21PM 15 Q Okay. Read that sentence into the record, please.

16 A Where did that begin again? "As it is likely"?
17 Is that the beginning point?

18 Q Yes.

19 A "As it is likely that the subject matter alleged
07:21PM 20 in the attached verified complaint will result in
21 litigation, this letter serves to put you and your
22 clients on notice that you and they are under a
23 duty to preserve all potentially relevant data,
24 documents, electronically stored information and
07:21PM 25 other evidence under your respective possession,

1 custody, and control including but not limited to
2 all computer hard drives, E-mail systems, both
3 public and private, data storage devices, files
4 and specifically the hard drives and backup
07:22PM 5 storage devices for the computers used by
6 Tad Ottman, Adam Foltz, and Joseph Handrick while
7 working on the redistricting process leading to
8 the adoption of Act 43 and Michael
9 Best & Friedrich."

07:22PM 10 Q Where does it mention in that sentence open
11 meetings?

12 A Well, I can't speak to the attorney's
13 interpretation of this. Not to speak for them,
14 but I believe that it must have been their
07:22PM 15 assumption that since this was an open meeting
16 allegation that the relevant data in question
17 pertained to open meetings. Again, leaving the
18 lawyering to the lawyers, I just take the
19 instructions as I'm given them by attorneys in a
07:22PM 20 matter such as this.

21 Q So if it turns out that you did not preserve
22 something that you should have been preserving,
23 it's Eric McLeod's fault?

24 MR. JACOB: Object as to form.

07:23PM 25 A Yeah. I'm not going to -- I don't know how to

1 possibly answer that.

2 Q Well, if you didn't -- if you failed to preserve
3 something that should have been preserved in
4 response to Exhibit No. 7, who's at fault?

07:23PM

5 MR. JACOB: Same objection.

6 A Yeah. Going back to -- I know what I was asked to
7 preserve by Mr. McLeod. I believe to the best of
8 my recollection it was specifically relating to
9 the open meetings violation allegation.

07:23PM

10 Q Now, you just read a sentence into the record.

11 A Uh-huh.

12 Q Did you comply with that sentence?

13 A Well, again, leaving the lawyers to interpret
14 legalese, I know what the instructions -- again, I
15 believe I know to the best of my recollection the
16 instructions given to me by Mr. McLeod as a result
17 of this letter.

07:23PM

18 Q I'm not asking you whether you complied with the
19 instructions given to you by Mr. McLeod. I'm
20 asking you whether you complied with the wording
21 of the sentence you just read into the record.
22 Answer that question, please.

07:24PM

23 MS. BUCHKO: Objection, competency.

24 A Again, leaving the lawyering to the lawyers, I
25 defer to lawyers to tell me exactly how to respond

07:24PM

1 to legal filings.

2 Q Did you preserve all potentially relevant data,
3 documents, electronically stored information and
4 other evidence under your possession, custody, and
07:24PM 5 control on storage devices, files, the hard drives
6 that you had in your computer over at Michael Best
7 while you were working on the redistricting
8 process that led to the adoption of Act 43?

9 MS. BUCHKO: Objection to form.

07:24PM 10 Q Did you do that?

11 MS. BUCHKO: Objection to form,
12 competency, compound.

13 A Yeah. Again, going back to the instructions I was
14 put under was to preserve what was relevant to
07:25PM 15 open meetings.

16 Q Mr. Foltz, you're just prolonging this deposition.
17 I'm not asking about what you did in response to
18 what you were told by Eric McLeod.

19 A What I was --

07:25PM 20 Q I'm asking whether you preserved all of the
21 material in your possession on all of the hard
22 drives, all of the electronically stored material
23 that led to the adoption of Act 43.

24 A Well, again, going back to -- I was put under a
07:25PM 25 certain understanding of what relevant was in the

1 context of this letter from Eric McLeod to the
2 best of my recollection, and that's what was
3 preserved.

07:25PM

4 Q That's fine. We have that testimony. You have
5 now repeated that twice --

6 A Uh-huh.

07:25PM

7 Q -- in an effort to avoid answering the question
8 that I'm asking you. I'm asking you a different
9 question. I'm asking you whether you in fact
10 preserved all data, all files, all ESI that was in
11 your position, custody, or control that led to the
12 adoption of Act 43. That's what I'm asking you.

07:26PM

13 MR. MURRAY: I'm going to interpose
14 an objection here. He's answered your
15 question. The question reads all potentially
16 relevant data. He's told you he preserved
17 what he thought was relevant. You're
18 belaboring this by arguing over and over and
19 over again. He's answered your question.

07:26PM

20 MR. EARLE: He has not.

21 MR. MURRAY: Your sentences uses
22 the world relevant, not his.

07:26PM

23 MR. EARLE: I'm going to have the
24 question read to him one more time and ask
25 him to answer the question and we can move

1 on.

2 A I've answered it. The definition of relevant in
3 here was what I was instructed by the attorneys
4 that it was.

07:26PM

5 Q And you're saying that if it wasn't about open
6 meetings you didn't preserve it? Is that what
7 your testimony is?

8 A I'm saying those are the instructions I was given
9 by legal counsel.

07:26PM

10 Q So you're interpreting the word relevant as being
11 limited to material related to the open meetings
12 allegations and nothing else?

13 A I'm saying that that was not my interpretation.
14 It was the interpretation I was given again
15 leaving the lawyering to the lawyers.

07:27PM

16 Q I'm just trying to figure out what you did,
17 Mr. Foltz. The inference from what you're saying
18 is that you did comply in saving everything that
19 was related to open meetings, right? But is the
20 inference that you did not save the stuff that's
21 not related to the open meetings law?

07:27PM

22 MS. BUCHKO: Objection; form,
23 compound.

24 A Like I said, there may have been some deletion
25 that I'm not thinking of. But you

07:27PM

1 have forensically examined these hard drives.
2 Mr. Lanterman has pointed to the deletions of the
3 copies of the files involving the Draft Plans for
4 Printing folder and the Hispanic Amendment folder.

07:27PM

5 Q How many Hispanic Amendment folders were there?

6 A Based on the Lanterman declaration, just the one.

7 Q I'm asking how many there were.

8 A I don't know.

07:28PM

9 MS. BUCHKO: I asked him if he
10 needed a break.

11 THE WITNESS: I'm good. I may need
12 a refill on water. It's warm in here.

07:28PM

13 Q Do you want to grab some water? Did you talk to
14 anybody at the LTSB before coming here to this
15 deposition here today?

16 A I'm sure I've talked to LTSB in the past.

17 Q I'm talking about in preparation for this
18 deposition here today.

19 A No. I did not.

07:28PM

20 Q Did you help prepare Bernie Grofman for his
21 testimony?

22 A No.

07:29PM

23 Q Do you know if the backup device, the external
24 hard drive, to the computer that was assigned to
25 you worked consistently during the time that you

1 had it?

2 A I don't know that for a fact.

3 Q Did you view pornography on the computer that was
4 assigned to you?

07:29PM

5 MS. BUCHKO: I'm going to object.

6 A No.

7 MR. POLAND: That's outside of the
8 scope of the designated topics for this
9 deposition.

07:29PM

10 Go ahead.

11 Q Which leads me to the second question.

12 A Uh-huh.

13 Q Did you delete pornographic images that may have
14 been downloaded onto the computer at any point in
15 time?

07:29PM

16 A No.

17 MR. EARLE: I think I am done.

18 THE WITNESS: Okay.

19 MR. POLAND: Ms. Lazar?

07:30PM

20 MS. LAZAR: No. The only thing I
21 wanted to do was state for the record that
22 all depositions taken today, April 30, and
23 April 29th were on the warmest days of spring
24 and that the air conditioning in this
25 conference room has not been on. I want that

07:30PM

1 for the record since they're all video
2 depositions. So I just want that noted when
3 someone views the videos.

4 I have no other questions.

5 EXAMINATION

6 By Mr. Jacob:

7 Q Mr. Foltz, real quick.

8 A Uh-huh.

9 Q I wanted to clarify something. Mr. Foltz, earlier
10 you testified that Michael Best IT staff may have
11 assisted in getting network connections to the
12 redistricting computer while they were deployed or
13 housed at Michael Best. Do you recall that?

14 A I do.

15 Q I wanted to clarify if what you meant by network
16 connection was just an Internet connection.

17 A That is correct.

18 Q So at no time were the redistricting computers
19 connected to Michael Best's network?

20 A Right. Insomuch as it was needed to facilitate
21 Internet connectivity.

22 Q Understood. Thank you. You testified that you
23 had a conversation with McLeod regarding
24 preservation of documents in conjunction with this
25 April 10, 2012 notice of preservation demand that

07:31PM

07:31PM

07:31PM

07:32PM

1 you were testifying about earlier. Do you recall
2 that?

3 A A conversation may not be the right word. I
4 believe it was an E-mail.

07:32PM

5 Q Some sort of communication?

6 A Fair enough.

7 Q Setting that aside, you testified that you
8 otherwise do not recall having any conversations
9 or communications with Mr. McLeod regarding

07:32PM

10 instructions to preserve documents. Do you recall
11 that testimony?

12 A Yes. Yes.

13 Q Would it be accurate or -- let me rephrase it
14 another way. Is it possible that Eric McLeod
15 could have had a conversation with you about
16 document preservation at various times and you
17 just don't remember it?

07:33PM

18 MR. EARLE: I'm going to object to
19 the form of the question. You're asking him
20 to speculate by the structure of the
21 question.

07:33PM

22 MR. POLAND: Join the objection.

23 A It's possible.

24 MR. JACOB: That's all I have.

07:33PM

25 MS. BUCHKO: I do have one, a

1 couple quick ones.

2 EXAMINATION

3 By Ms. Buchko:

4 Q Are you familiar with for example a photograph
07:33PM 5 having more than one electronic format jpg versus
6 another electronic format for the photograph?

7 A Yes.

8 Q When you were testifying earlier concerning shape
9 file versus Autobound file, is that a similar
07:33PM 10 analogy, different format for the same electronic
11 information?

12 A Yes.

13 MS. BUCHKO: Thank you. That's all
14 I've got.

07:34PM 15 MR. POLAND: I do have a follow-up
16 based on that.

17 RE-EXAMINATION

18 By Mr. Poland:

19 Q Ms. Buchko just asked you a question about
07:34PM 20 different formats, jpg and other formats. Do you
21 understand that?

22 A Yes. I do.

23 Q Is it your belief that the information conveyed in
24 those various electronic files is exactly the
07:34PM 25 same?

1 A I do believe that. The reason being is that when
2 you dump a redistricting plan out of Autobound in
3 a shape file format to facilitate printing you
4 can't move the redistricting lines at that point.
07:34PM 5 You're locked in for back of a better term. Once
6 something is dumped out of Autobound, that shape
7 file and the legislative district lines that are
8 dumped out into that shape file can't be moved
9 because in Arc GIS there is no way to reassign a
07:34PM 10 unit of geography that would facilitate moving
11 that line.

12 Q Is it your testimony that there's no information
13 whatsoever or usefulness that the plaintiffs could
14 have obtained from getting the shape file itself?

07:35PM 15 A Usefulness? I don't know exactly what you mean by
16 that. The thing about dumping files from a
17 proprietary redistricting software is there's no
18 clean way of doing it because you have three
19 highly competitive, highly proprietary pieces of
07:35PM 20 software. In producing those to you, I don't know
21 what software you have on the receiving end,
22 whether it be the same that I have which is
23 Autobound or Maptitude. I think there's another
24 player out there or two. I don't know what format
07:35PM 25 you have. So if I give you an AB9 file, I don't

1 know if you can do that. I don't know what you
2 have on the receiving end. On my end I need to
3 give you a format that can speak across platforms
4 if that makes sense. There's no clean way of
07:35PM 5 doing that because either you do a text assignment
6 file which quite literally goes through and
7 assigns I believe by census block all units of
8 geography to an associated legislative district --
9 you can produce them as shape files as well, but
07:36PM 10 then the problem becomes when you put that shape
11 file into the redistricting software on your end,
12 on the receiving end, you would have to go through
13 and manually assign all 99 legislative districts.
14 I know it's a long answer, but there's no clean
07:36PM 15 and quick way without knowing what you have as
16 plaintiffs' counsel on the receiving end of this
17 because of the proprietary nature of the software.

18 Q Do you know whether there was ever an offer made
19 to the plaintiffs to produce the data that you
07:36PM 20 have on the redistricting computer in one format
21 versus a different format?

22 A I'm not aware of any conversations between counsel
23 on that.

24 MR. POLAND: I don't have anything
07:36PM 25 further.

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MR. EARLE: I just have one
question.

RE-EXAMINATION

By Mr. Earle:

07:37PM

Q This might have been touched on, but I'm going to ask it directly. Did you at any time on the computer you were assigned wipe everything off of it and then restore it later?

A No.

07:37PM

Q To your knowledge did anybody else do that?

A Again, going back to my prior testimony, I don't know what LTSB had to do to facilitate some of the technical support functions. They may have. They may not have. I'm not aware.

07:37PM

Q The question is whether you know whether anybody else did that or not.

A I don't know.

MR. EARLE: Okay. I'm done.

MR. POLAND: Nothing further.

07:37PM

We're done.

(Adjourning at 7:37 p.m.)

1 STATE OF WISCONSIN)
2 COUNTY OF DANE) ss.
3

4 I, SUSAN C. MILLEVILLE, a Court Reporter
5 and Notary Public duly commissioned and qualified in
6 and for the State of Wisconsin, do hereby certify
7 that pursuant to subpoena, there came before me on
8 the 30th day of April 2013, at 2:14 in the afternoon,
9 at the offices of Godfrey & Kahn, S.C., Attorneys at
10 Law, One East Main Street, the City of Madison,
11 County of Dane, and State of Wisconsin, the following
12 named person, to wit: ADAM R. FOLTZ, who was by me
13 duly sworn to testify to the truth and nothing but
14 the truth of his knowledge touching and concerning
15 the matters in controversy in this cause; that he was
16 thereupon carefully examined upon his oath and his
17 examination reduced to typewriting with
18 computer-aided transcription; that the deposition is
19 a true record of the testimony given by the witness.

20 I further certify that I am neither
21 attorney or counsel for, nor related to or employed
22 by any of the parties to the action in which this
23 deposition is taken and further that I am not a
24 relative or employee of any attorney or counsel
25 employed by the parties hereto or financially
interested in the action.

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In witness whereof I have hereunto set my
hand and affixed my notarial seal this 4th day of May
2013.

Notary Public, State of Wisconsin

My commission expires
June 23, 2013

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