

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]

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. Earle	6
Examination by Mr. Poland	18

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Identified</u>
1	Subpoena	6
2	Declaration	8
3	Supplement to Declaration	11

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

(The original deposition transcript was filed with Attorney Peter G. Earle)

1 VIDEOTAPE DEPOSITION of ADAM R. FOLTZ, called
2 as a witness of lawful age, taken on behalf of the
3 Plaintiffs, wherein Alvin Baldus, et al., are
4 Plaintiffs, and Members of the Wisconsin Government
5 Accountability Board, et al., are Defendants, pending
6 in the United States District Court for the
7 Eastern District of Wisconsin, pursuant to subpoena,
8 before Susan C. Milleville, a Court Reporter and
9 Notary Public in and for the State of Wisconsin, at
10 the offices of Godfrey & Kahn, S.C., Attorneys at
11 Law, One East Main Street, in the City of Madison,
12 County of Dane, and State of Wisconsin, on the 30th
13 day of April 2013, commencing at 7:55 in the evening.

14
15

16 A P P E A R A N C E S

17

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

21

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

25

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

1
2
3 MARIA S. LAZAR, Assistant Attorney General,
4 for STATE OF WISCONSIN DEPARTMENT OF JUSTICE,
5 17 West Main Street, Madison, Wisconsin 53703,
6 appearing on behalf of Defendant Members of
7 the Wisconsin Government Accountability Board.

8
9
10 AYAD P. JACOB, Attorney,
11 for SCHIFF HARDIN LLP, Attorneys at Law,
12 6600 Willis Tower, Chicago, Illinois 60606,
13 appearing on behalf of Michael Best &
14 Friedrich LLP.

15
16 CYNTHIA L. BUCHKO, Attorney,
17 for WHYTE HIRSCHBOECK DUDEK S.C., Attorneys at Law,
18 33 East Main Street, Suite 300, Madison,
19 Wisconsin 53701-1379, appearing on behalf of
20 the Wisconsin Senate, Wisconsin Assembly,
21 Wisconsin Senate Chief Clerk Jeff Renk,
22 Wisconsin Assembly Chief Clerk Patrick E.
23 Fuller and the Wisconsin Legislative Technology
24 Services Bureau.

25
26 JAMES T. MURRAY, JR., Attorney,
27 for PETERSON, JOHNSON & MURRAY, S.C.,
28 Attorneys at Law, 788 North Jefferson Street,
29 Suite 500, Milwaukee, Wisconsin 53202,
30 appearing on behalf of the witness.

31
32 MICHAEL J. FITZGERALD, Attorney,
33 for FITZGERALD LAW FIRM, S.C., Attorneys at Law,
34 526 East Wisconsin Avenue, Milwaukee,
35 Wisconsin 53202, also appearing on behalf of
36 the witness.

37
38 Also present: Todd S. Campbell, CLVS
39 Campbell Legal Video Company
40 417 Heather Lane, Suite B
41 Fredonia, WI 53021
42 (262) 447-2199

1 (Exhibit Nos. 1 through 3 marked for
2 identification)

3 ADAM R. FOLTZ,
4 called as a witness, being first duly sworn,
5 testified on oath as follows:

6 EXAMINATION

7 By Mr. Earle:

8 Q Mr. Foltz, I'm showing you what's been marked as
9 Exhibit No. 1.

07:55PM

10 A Uh-huh.

11 Q Have you seen this document before?

12 A I have.

13 Q Would you identify it, please.

14 A It's a subpoena compelling my attendance at
15 today's deposition.

07:56PM

16 Q And that's why you're here today?

17 A Yes, sir.

18 Q I see that you're here accompanied by Mr. Murray,
19 private counsel, and Mr. Fitzgerald, private
20 counsel.

07:56PM

21 A Uh-huh.

22 Q Is there a reason that you retained a criminal
23 lawyer in this matter?

24 MR. MURRAY: I want to object to
25 that question. You know that's an improper

07:56PM

1 question. I'm not going to instruct the
2 witness not to answer, but you're getting
3 very close to attorney-client privileged
4 communications.

07:56PM

5 MR. EARLE: I'm not asking for any
6 communications with the attorney.

7 MR. MURRAY: I understand that.
8 You know that question is improper, I know
9 it's improper, and the judge will know it's
10 improper. I'm going to allow him to answer
11 the question, but you're perilously close.

07:56PM

12 A I'm sorry. The question again was?

13 (Question read)

07:56PM

14 A Not knowing with too much detail the scope of the
15 practice of the two gentlemen here on my behalf, I
16 retained counsel as an individual after the motion
17 was filed, whenever the latest motion was filed,
18 seeking \$100,000 in fees for forensic examination.
19 I was not listed by name, but the employee, which
20 would be me in this case, was listed.

07:57PM

21 Q So it was out of concern for potential liability
22 related to the forensic costs of this matter? Is
23 that what you're saying?

07:57PM

24 A It's in response to the motion that was filed or
25 the -- I don't know if it was a motion but the

1 filing with the Court seeking \$100,000 in fees.

2 It was in response to that.

3 Q I'm showing you what's been marked as Exhibit

4 No. 2.

07:57PM

5 A Okay.

6 Q Would you identify that, please.

7 A This is a declaration of me on 4/25/13.

8 Q Did you draft Exhibit No. 2?

9 A I did not.

07:57PM

10 Q Did you edit Exhibit No. 2 in any fashion?

11 A I gave feedback on it.

12 Q What parts did you give feedback to?

13 A I don't know specifically which areas, but on the
14 document in general.

07:58PM

15 Q Would you identify those parts of Exhibit No. 2
16 that you gave feedback on.

17 A I really can't specifically pick out the areas
18 that I gave feedback on, but I gave feedback on
19 the document as a whole I would say.

07:58PM

20 Q I'm not asking you whether you gave feedback. You
21 testified and you made it clear, so we don't have
22 to revisit that, that you gave feedback on the
23 document as a whole. I'm asking you to identify
24 those parts of the document that you in fact --

07:58PM

25 the specific parts of the document that you gave

1 feedback.

2 MR. MURRAY: And he told you he
3 can't do that. He's told you that twice.

07:58PM

4 Q Is it your testimony you don't remember what parts
5 of this document you gave feedback on?

6 A My testimony is my testimony. I gave feedback on
7 the document as a whole. Yeah.

07:58PM

8 Q My question is whether you can remember which
9 specific parts of the document you gave feedback
10 on. So I'm asking you -- strike that. I'm asking
11 you whether your testimony is that you cannot
12 remember which parts of this document you gave
13 feedback on.

07:59PM

14 A My testimony is that I gave feedback on the
15 document as a whole.

16 Q That's not the question I'm asking. We're not
17 going to move on until you answer the question.

18 MR. MURRAY: He has answered your
19 question.

07:59PM

20 MR. EARLE: The question is whether
21 he can remember or not those parts of the
22 document, specific parts of the document,
23 that he gave feedback on.

07:59PM

24 MR. MURRAY: He told you the whole
25 document.

1 You may answer the question again.

2 A Yeah. I don't recall specific areas where
3 I focused in on, but, again, I gave feedback on
4 the document as a whole.

07:59PM

5 Q Did you ask that any part of the document be
6 edited?

7 A I'm sure I did at some point.

8 Q Would you identify those parts of the document
9 that you asked to be edited.

07:59PM

10 A Again, are you referring to the supplemental
11 declaration here or are you talking about in the
12 drafting of this original? If that's where we're
13 going, yes, there was a supplemental declaration
14 to clarify one aspect of the declaration.

07:59PM

15 Q I understand that. I'm asking you about Exhibit
16 No. 2. Which parts of it were the result of an
17 editing request by you?

18 A I don't know.

19 Q Can you identify those, please.

08:00PM

20 A No. Same answer as before. I gave feedback on
21 the document as a whole.

22 Q Did you ask that any part of the document be taken
23 out?

08:00PM

24 MR. MURRAY: Just a minute. Let me
25 advise you that if any of these questions

1 implicate conversations you had with your
2 attorneys, you should invoke the
3 attorney-client privilege and not respond.

08:00PM

4 A Well, all of these conversations involving the
5 editing of this would have involved legal counsel.

6 Q Was there any part of the draft of this document
7 that was given to you that was removed?

8 A Not that I can recall.

08:00PM

9 Q So the entire first generation of this document,
10 Exhibit No. 2, that was given to you remains in
11 Exhibit No. 2? Is that what your testimony is?

12 A No. I testified that there were edits.

13 Q What?

14 A I testified that there were edits.

08:01PM

15 Q Did you ask that any part of the original draft
16 that you saw be removed?

17 A Possibly. Part of the editing process. I don't
18 recall specifically.

19 Q What parts did you want removed?

08:01PM

20 A I didn't say that I wanted parts removed. I said
21 that there was an editing process and changes were
22 made.

23 Q Showing you what's been marked as Exhibit No. 3.
24 Can you identify that, please.

08:01PM

25 A It's a supplemental declaration to the declaration

1 filed on the 25th, this being -- the supplemental
2 being filed on the 26th it appears.

3 Q Mr. Foltz, you testified during the 30(b)(6)
4 portion of this deposition that the Autobound text
08:02PM 5 files were produced to the plaintiffs, correct?

6 A Yes. I believe so. Yes.

7 Q And you testified that prior iterations of the
8 maps reflected in Act 43 could be derived from the
9 text files that were provided to the plaintiffs;
08:02PM 10 is that correct?

11 MS. BUCHKO: Objection,
12 mischaracterizes his previous testimony in
13 the 30(b)(6) deposition.

14 A I want to take issue with the word iterations.
08:02PM 15 Doug and I had gone back and forth a little bit on
16 that. You have the saved maps that I had. If
17 there was a process in the creation of -- in the
18 production of one of those maps -- iterations I
19 take issue with because there were portions of
08:02PM 20 time where you moved five districts forward and
21 you rolled those five back and you started over
22 again.

23 Q Would the plaintiffs have gotten any data from you
24 that would have allowed them to see the process by
08:03PM 25 which you went from one configuration for a

1 district to another configuration that you ended
2 up with in Act 43?

3 A I don't know if there's any way to do that.

4 Q And the reason the plaintiffs would not be able to
08:03PM 5 understand what the prior configurations that had
6 been considered during the process of remapping --
7 why they wouldn't be able to understand those or
8 see those is because you did not provide any
9 historical data that would allow them to see that;
08:03PM 10 isn't that correct?

11 MS. BUCHKO: Object to form.

12 A I'm not sure what you're looking for there.
13 There's nothing to my knowledge that creates a
14 click-by-click assignment-by-assignment progress
08:03PM 15 of a map.

16 Q Okay. So when you create a map -- let's take
17 hypothetically Racine and Kenosha.

18 A Uh-huh.

19 Q Okay. What Senate district is that?

08:04PM 20 A That would be -- well, 21 and 22 are the two
21 districts in question there.

22 Q You considered various configurations of Senate
23 Districts 20 and 21, correct?

24 A Yes.

08:04PM 25 Q And you analyzed them across multiple dimensions,

1 correct?

2 A I would say that's a fair statement.

3 Q And when you create a potential configuration of
4 Senate Districts 20 and 21, you would save that
08:04PM 5 for a period of time, correct?

6 A Not necessarily. Again, that's getting kind of
7 into the weeds about how the software actually
8 works.

9 Q We got to get there.

08:04PM 10 A Well, again, it seems that you're driving towards
11 a point-by-point -- in an individual map file a
12 point-by-point click-by-click process. I'm not
13 aware of anything that would reflect that. You
14 have the maps as they were saved at the date of
08:05PM 15 production. Now, there were various clicks and
16 various iterations within that given map file
17 where something would have gone -- going five
18 districts through, something didn't work out for
19 whatever reason, you roll that back and you start
08:05PM 20 over again. That's just the nature of the
21 process.

22 Q There were concerns about disenfranchisement of
23 voters as between those two Senate districts,
24 correct?

08:05PM 25 A I would say the concerns about disenfranchisement

1 may have been over that specifically, but there
2 was more of the top line number of the
3 disenfranchisement.

08:05PM

4 Q And you and the rest of the team sought to
5 understand the impact on the degree of
6 disenfranchisement that was occurring as between
7 those two districts as you considered the
8 alternatives, correct?

08:05PM

9 A It would have been part of the report that you can
10 then look at to determine disenfranchisement.

11 Q So at various points in time you arrived at
12 potential configurations for those two districts
13 using the Autobound program, correct?

14 A Correct.

08:06PM

15 Q And you considered, the team considered, its
16 options as between those alternative
17 configurations, correct?

18 A Uh-huh.

08:06PM

19 Q And you ultimately produced to us in response to
20 discovery the text files associated with the
21 Autobound file, the Autobound program, but we
22 would not be able to reconstruct that evaluative
23 process that you went through. Isn't that true?

24 MS. BUCHKO: Object to form.

08:06PM

25 A The evaluative process. So the changes that

1 happened within a given file?

2 Q Yes.

3 A I don't believe there's any way to produce that.

4 Q So you did not produce to the plaintiffs in this

08:06PM

5 case the maps that you considered as options for

6 Senate Districts 20 and 21. Isn't that true?

7 MR. MURRAY: Objection;

8 argumentative and asked and answered.

9 Q I'm sorry. 21 and 22.

08:07PM

10 A No. They were produced.

11 Q The earlier versions of Senate Districts 21 and 22

12 that were not reflected in Act 43 were not

13 produced. Isn't that true?

14 A No. They were produced.

08:07PM

15 Q When were they produced?

16 A Supplemental document production.

17 Q It's your testimony that you did not delete any

18 map configuration and all map configurations were

19 produced to the plaintiffs?

08:07PM

20 A Well, I want to be clear again because there is no

21 way to produce the ongoing process within a given

22 file. You have all of the map files. You have

23 what I can produce. To the best of my knowledge,

24 there is no way to produce a click-by-click

08:08PM

25 tracking of how a map went from zero districts

1 assigned to 99 districts assigned. To the best of
2 my knowledge, there is no way of doing that. The
3 only way to share these files, again going back to
4 what Mr. Poland and I were discussing, is that
08:08PM 5 working between proprietary platforms there are
6 only two ways to share these, and that's text
7 assignment files and shape files neither one of
8 which is perfect. They both have their
9 shortcomings.

08:08PM 10 Q For example, in the Latino community of Milwaukee
11 the Voces de la Frontera organization got involved
12 in the city aldermanic redistricting process.

13 There were various points in time where different
14 map configurations were considered. They were
08:08PM 15 printed out, they were compared, and they were
16 analyzed, and they were debated. People who
17 participated in the process were able to
18 understand the differences between the various
19 configurations and ultimately the common council
08:09PM 20 in Milwaukee adopted one of those maps.

21 A Okay.

22 Q But everybody was able to see what was considered
23 before the map was adopted.

24 A Uh-huh.

08:09PM 25 MR. MURRAY: I know there's going

1 to be a question coming along here.

2 MR. EARLE: We're there.

3 Q In deference to Mr. Murray's interest in the
4 question, it's coming. The question is we have
08:09PM 5 not been able to understand the comparative
6 process that you and the rest of the team went
7 through in creating these maps; isn't that
8 correct?

9 MS. BUCHKO: Objection to form.

08:09PM 10 MR. MURRAY: Go ahead.

11 A With regard to the Hispanic districts in
12 particular, there were three versions. There was
13 the map as introduced in SB 148 and then there
14 were the two amendments. I guess that parallels
08:09PM 15 the process you described with the aldermanic.

16 MR. EARLE: I'm done. I told you I
17 was going to be short. Maybe you will
18 believe me next time.

19 THE WITNESS: How much did Doug's
08:10PM 20 20 minutes get eaten into?

21 MR. MURRAY: Doug yielded part of
22 his time to Peter.

23 EXAMINATION

24 By Mr. Poland:

08:10PM 25 Q Mr. Foltz, would you take a look at Exhibit No. 2,

1 please, that's in front of you. That's your
2 declaration.

3 A That's right.

08:11PM

4 Q I would like you to take a look, please, at
5 Paragraph Number Two on the top of page 3.

6 A Uh-huh.

7 Q It's actually at the bottom of 2 and continues on
8 to 3. Here you're talking about your review of
9 documents and production of documents.

08:11PM

10 Specifically you're referencing documents that
11 post dated the enactment of Acts 43 and 44 and
12 those that relate to SB 150. Do you see that?

13 A I do.

08:11PM

14 Q You say, "That was the advice and direction I had
15 received at the time from the Assembly attorney."
16 Do you see that?

17 A I do.

18 Q We talked about that a little bit in your 30(b)(6)
19 deposition, correct?

08:11PM

20 A Yes, sir.

21 Q You have used generically Assembly's attorney.
22 That was Michael Best & Friedrich, correct?

23 A Yes.

24 Q Any specific attorneys at Michael Best?

08:11PM

25 A Again, it would have probably been either

1 Joe Olson or Eric McLeod not recalling
2 specifically which one.

3 Q In the sentence that follows you say, "I simply
4 followed the attorney's direction." Again, is
08:11PM 5 that the same attorneys?

6 A Yes.

7 Q You state, "I did not withhold any documents based
8 on their content." Do you see that?

9 A I do.

08:12PM 10 Q Was there any other reason that you withheld
11 documents other than SB 150 or the date
12 restriction after the enactment of Acts 43 and 44?

13 A No.

08:12PM 14 Q Paragraph Three on page 3, about the middle of the
15 page, you say, "I was directed by the Assembly's
16 attorney to continue to retain files based on the
17 preservation notice" and then that sentence
18 continues on. Do you see that?

19 A I do.

08:12PM 20 Q By Assembly's attorney again there you mean
21 Michael Best & Friedrich?

22 A And specifically with this one it goes back to
23 what I believe was the E-mail I received from
24 Eric McLeod. So a little bit more specific on
08:12PM 25 that.

1 Q And that was in April 2012?

2 A The notice of preservation was April. Yes.

3 Q And the direction that you received was
4 approximately April of 2012?

08:12PM 5 A Roughly around there.

6 Q I would like to turn your attention to Paragraph
7 Number Six.

8 A Okay.

9 Q This involves a topic we were discussing a short
10 while ago in your 30(b)(6) deposition,
11 Mr. Lanterman's declaration and specifically the
12 discussion of documents that Mr. Lanterman or I
13 should say files Mr. Lanterman saw had been
14 deleted.

08:13PM 15 A Uh-huh.

16 Q I would like to look at the last sentence of that
17 paragraph. You state, "While Mr. Lanterman's
18 description is accurate, with the exception that I
19 do not believe the Draft Plans for Printing and
20 Hispanic Amendments sub file were created and
21 deleted one minute apart."

08:13PM

22 A Yes.

23 Q I want to ask you why do you not believe that they
24 were created and deleted one minute apart?

08:13PM 25 A Practicality would be the first. I don't see what

1 function it would serve to create and delete that
2 or I should say copy over since the files remained
3 in the Projects folder. Practicality and then
4 what I had been told via analysis done.

08:14PM

5 Q And by analysis done, was that done by PLA?

6 A I believe so.

7 Q What did PLA tell you about the creation and
8 deletion of those folders?

08:14PM

9 A I can't remember if it was PLA that told me or if
10 it was -- or if it passed along by legal counsel.
11 I just want to be clear on that one.

12 MR. MURRAY: Of course if it was
13 legal counsel, then you shouldn't answer the
14 question because you would be waiving the
15 attorney-client privilege.

08:14PM

16 Q I can't ask you about the communication, but I can
17 ask you about the fact that was communicated.

18 A Okay.

08:14PM

19 Q What do you understand about when the Draft Plans
20 for Printing and Hispanic Amendment sub file were
21 created and deleted?

22 A I believe it was four days apart.

23 Q I would like to turn your attention to
24 Paragraph Seven --

08:14PM

25 A Uh-huh.

1 Q -- of your declaration. You state, "When I
2 received the subpoena, I located documents stored
3 electronically on my computer that I believed were
4 responsive to the subpoena that predated the
08:14PM 5 passage of Act 43 and 44 as described above." Do
6 you see that?

7 A Uh-huh.

8 Q Now, what I want to ask you about is the use of
9 the words in there that I believed were
08:15PM 10 responsive. Do you see that? Again, that's the
11 second line in Paragraph Seven.

12 A Okay.

13 Q Did you exercise independent judgment in
14 identifying documents for production that you
08:15PM 15 believed were responsive to the subpoena versus
16 those that were not?

17 A Ultimately the decision of responsiveness was made
18 by legal counsel.

19 Q But did you choose not to provide to legal counsel
08:15PM 20 documents that you believed were not responsive to
21 the subpoena?

22 A No. I don't believe so.

23 Q About midway down through Paragraph Seven you have
24 got a statement where you say, "I was able to do a
08:15PM 25 bulk printing of the documents to turn over to

1 plaintiffs at my deposition." Do you see that?

2 A I do.

3 Q Now, that's a statement that implicates your
4 supplemental declaration.

08:16PM 5 A That's correct.

6 Q So let's pull your supplemental declaration out
7 here.

8 A Okay.

08:16PM 9 Q In your supplemental declaration in Paragraph Two
10 in the second sentence there you say, "It is
11 correct that I did a bulk printing of the
12 documents in the files and that the documents were
13 turned over to the plaintiffs." Do you see that?

14 A Uh-huh.

08:16PM 15 Q Now, you refer to documents and you refer to
16 files, correct?

17 A Yes.

18 Q What do you mean when you say the bulk printing of
19 the documents there?

08:16PM 20 A Well, documents I think just refers to the fact
21 that bulk printing of a paper format would lead to
22 a document.

08:16PM 23 Q So when you say, "I did a bulk printing of the
24 documents in the files," what are the documents
25 specifically that you are referring to there?

1 A In the context of the Draft Plans for Printing
2 folder, it would just be simply to have that
3 plotted map of an underlying Autobound file that
4 doesn't have that, for lack of a better term,
08:17PM 5 weird appearance that Autobound would create if it
6 were used to plot the map.

7 Q It's a printing of the plot of the map that's done
8 by the Arc GIS software?

9 A That's correct. To get around that problem that
08:17PM 10 we have discussed.

11 Q You say the documents in the files, and by files
12 there do you mean the file folders?

13 A Yes. Yes.

14 Q You say the documents were turned over to the
08:17PM 15 plaintiffs. Then you go on to say, "I did not
16 mean, however, the printed paper copies were
17 provided to the plaintiffs."

18 A Uh-huh.

19 Q "Instead, the documents I had printed were
08:17PM 20 provided to the plaintiffs in an electronic
21 format."

22 A Right.

23 Q And that format was the Autobound maps?

24 A Yes. The text assignment output of the Autobound
08:17PM 25 maps.

1 Q Now let's go back to your initial declaration.

2 A Okay.

3 Q The very last sentence in Paragraph Seven.

4 A Okay.

08:18PM

5 Q You state, "In addition, I turned over all of the
6 documents to the Assembly's attorneys for use in
7 the discovery process." Do you see that?

8 A I do.

08:18PM

9 Q And if you need to orient yourself by looking at
10 previous sentences, go ahead and do that.

11 A Yes. I'm sorry. I was able to do bulk printing?
12 Where are we again?

13 Q This is the very last sentence of Paragraph Seven
14 on page 5.

08:18PM

15 MR. MURRAY: Next page.

16 Q Just above Paragraph Eight.

17 A Yes. Okay.

18 Q All right. The attorneys that you're referring to
19 there, that's Michael Best & Friedrich?

08:18PM

20 A Yes. It would be.

21 Q Again, Mr. McLeod and Mr. Olson?

22 A Most likely. Yes.

23 Q Paragraph Eight. You have two references there to
24 attorneys that I want to ask you about.

08:18PM

25 A Uh-huh.

1 Q In the third line down you say, "I was told by the
2 Assembly's attorney the subpoena did not require
3 production of those documents." And that's where
4 you're referring to the time limitation and
5 SB 150, correct?

08:19PM

6 A Yes.

7 Q Again, that's Michael Best & Friedrich?

8 A Yes.

9 Q And is it specifically Mr. McLeod?

08:19PM

10 A No. I can't recall specifically.

11 Q One of the attorneys at Michael Best?

12 A Yes.

13 Q And two lines down you say, "In the course of
14 discovery I produced large volumes of documents to
15 the Assembly's attorneys."

08:19PM

16 A Uh-huh.

17 Q Again, that's Michael Best & Friedrich?

18 A Yes.

19 Q Last sentence of Paragraph Eight you state, "I
20 never reviewed any documents and elected not
21 produce them nor did I ever delete documents from
22 my computer because I thought they might aid in
23 plaintiffs' opposition to redistricting." Do you
24 see that?

08:19PM

08:19PM

25 A I do.

1 Q The reference to my computer there, that's the
2 Assembly redistricting computer we have been
3 discussing?

4 A Yes. That's correct.

08:19PM

5 Q Did you ever delete documents from any computer
6 regardless of to whom it belonged to the extent
7 those documents related to redistricting?

8 A No.

08:20PM

9 Q In that same sentence you say you did not ever
10 delete documents because you thought they might
11 aid in plaintiffs' opposition to redistricting.
12 Other than the reasons we have talked about today
13 why you didn't produce documents to the
14 plaintiffs, did you ever delete any documents for

08:20PM

15 any reason other than that they might aid
16 plaintiffs' opposition to redistricting?

17 A Going back to what we had talked about earlier.
18 If an E-mail popped up for a committee notice on
19 aging and long-term care and things like that.

08:20PM

20 Q Any other reason that you can think of?

21 A Not that I can think of.

22 Q Paragraph Ten.

23 A Okay.

08:20PM

24 Q This is where you talk about instructions to
25 retain E-mail, electronic documents, or hard copy

1 documents, correct?

2 A Uh-huh.

3 Q You state in the second sentence of that
4 paragraph, "I recall receiving that instruction,"

08:21PM

5 that's to retain these materials, "some time after
6 the initiation of this lawsuit," correct?

7 A Uh-huh.

8 Q And we talked about that --

9 MR. MURRAY: You have to say yes.

08:21PM

10 A Yes.

11 Q We talked about that in your 30(b)(6) deposition,
12 correct?

13 A Uh-huh.

14 Q The first time you received that instruction was
15 in conjunction with the preservation notice that
16 Mr. Earle sent, correct?

08:21PM

17 A I believe so. Yes.

18 Q You say, "I did delete some E-mail and documents
19 relating to redistricting."

08:21PM

20 A Uh-huh.

21 Q What was included within the documents, E-mail
22 documents, related to redistricting that you did
23 delete?

24 A It would probably be things like setting up
25 meetings with the various members. If an E-mail

08:21PM

1 correspondence happened back and forth just
2 setting up a meeting and that meeting ended up on
3 the calendar, that may have just been deleted in
4 the normal course of business.

08:21PM

5 Q Anything else that you recall deleting relating to
6 redistricting?

7 A No. Not specifically that I can recall.

08:22PM

8 Q In the next sentence you state, "To the best of my
9 recollection, however, any deleted E-mail or
10 documents were non-substantive." What do you mean
11 by non-substantive there?

12 A Going back to setting up a meeting with a member
13 of the legislature. Something like that.

08:22PM

14 Q In parens you then say, "E.G., containing no
15 meaningful information." Do you see that?

16 A Uh-huh.

17 Q What did you mean by no meaningful information?

08:22PM

18 A Going back to the example of an E-mail back and
19 forth between myself and a legislative staffer to
20 set up a meeting with a given representative.
21 Something along those lines.

22 Q Was the language there, the references to
23 non-substantive and no meaningful information --
24 is that language that you chose to put in there?

08:22PM

25 A I don't recall who chose that specific language.

1 Q I just noticed it's the same language that was in
2 Mr. Ottman's declaration that he submitted on the
3 same date.

4 A Fair enough.

08:23PM

5 Q Did you have a discussion with anyone -- I'm
6 asking did you have a discussion with anyone in
7 preparing this declaration about the meaning of
8 non-substantive or no meaningful information?

9 A Not that I can recall.

08:23PM

10 MR. POLAND: I don't have any
11 further questions.

12 MR. MURRAY: Anybody else?

13 MS. LAZAR: I have no questions for
14 Mr. Foltz.

08:23PM

15 MR. MURRAY: I think we're done.

16 MR. POLAND: We're done.

17 THE VIDEOGRAPHER: Going off the
18 record concluding the video deposition in the
19 capacity of an individual of Mr. Adam Foltz.

08:23PM

20 The time is 8:22 p.m.

21 (Adjourning at 8:23 p.m.)
22
23
24
25

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 7:55 in the evening,
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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