

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

TAD M. OTTMAN

Madison, Wisconsin
April 29, 2013 and 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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25I N D E X

<u>Witness</u>	<u>Pages</u>
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E X H I B I T S

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8	List of paid staff of Senator Fitzgerald (6/1/12 through 2/28/13)	19
9	June 6 and June 7, 2011 E-mails	138
10	Confidentiality and Nondisclosure document	140
11	E-mails produced October 16, 2012	144
12	Documents related to SB 150	154
13	January 10, 2012 letter with attachments	164
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17	July 8, 2011 E-mails	174
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E X H I B I T S (Continued)

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(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 TAD M. OTTMAN, as a
2 30(b)(6) witness of lawful age, taken on behalf of
3 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 29th
13 and 30th days of April 2013, commencing at 3:29 in
14 the afternoon on the 29th of April 2013.

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.

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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.

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

TAD M. OTTMAN,

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

EXAMINATION

By Mr. Earle:

Q Mr. Ottman, would you state your full name for the
record and spell your last name.

03:29PM

1 A Tad Ottman, O-t-t-m-a-n.

2 Q Mr. Ottman, you have been designated by the
3 Wisconsin State Senate pursuant to Rule 30(b)(6)
4 of the Federal Rules of Civil Procedure to appear
03:30PM 5 here today and testify on behalf of the Wisconsin
6 State Senate with regards to all information known
7 by the Senate or available to the Senate regarding
8 the nine enumerated topics on the subpoena that
9 was issued to the Wisconsin State Senate. Do you
10 understand that?

11 MS. BUCHKO: Objection.

12 A Yes.

13 Q I'm showing you what's been marked --

14 MS. BUCHKO: Let me state my
03:30PM 15 objection. I realize he and I answered at
16 the same time. But I'm objecting because
17 he's not the only witness designated by the
18 Senate.

19 Q I'll show you what's been marked as Exhibit No. 1.
03:30PM 20 Have you seen that document before?

21 A I have.

22 Q What I've shown you is a subpoena that was issued
23 to the Wisconsin State Senate to appear here today
24 for this deposition; is that correct?

03:31PM 25 A Yes.

1 Q On the third page of this subpoena, Exhibit No.1,
2 there is an Exhibit A. Have you been previously
3 provided with a copy of Exhibit A?

4 A I have.

03:31PM

5 Q Who did you speak with in order to prepare for
6 your deposition here today?

7 A I spoke with the Senate chief clerk, I spoke with
8 the director of the Legislative Technology
9 Services Bureau, and I spoke with employees of
10 Senator Fitzgerald that were still working in the
11 Wisconsin State Legislature during the time
12 periods in question. I should say during the time
13 period from June or July of 2012 through the end
14 of February of 2013.

03:31PM

03:32PM

15 Q Anybody else?

16 A Outside of counsel? No.

17 Q Did you speak with Eric McLeod?

18 A I did not.

19 Q Did you speak with Jim Troupis?

03:32PM

20 A I did not.

21 Q Did you speak with Scott Fitzgerald?

22 A I did. Yes.

23 Q Did you speak with Jeff Fitzgerald?

24 A I did not.

03:32PM

25 Q Did you speak with any other sitting member of the

1 Senate?

2 A I did not.

3 Q Did you speak with any prior State senators?

4 A I did not.

03:32PM

5 Q Are there any individuals other than the people
6 you have identified and counsel from Whyte
7 Hirschboeck & Dudek that you have spoken to?

8 A Not about these matters.

03:33PM

9 Q When did you first learn that you would be a
10 designee to testify on behalf of the Wisconsin
11 Senate?

12 A I believe it was sometime last week.

13 Q When last week?

03:33PM

14 A Middle part of the week. Probably Wednesday I
15 believe.

16 Q Who did you speak with?

17 A With Senator Fitzgerald.

18 Q Did Senator Fitzgerald ask you to testify on
19 behalf of the Senate?

03:33PM

20 A I asked him if he wanted me to be the designee to
21 speak on behalf of the Senate, and he said yes.

22 Q Was there anybody else present in that meeting
23 with -- strike that. I'll withdraw that question.

24 Is it accurate to say that there was a
25 meeting between you and Senator Fitzgerald during

03:33PM

1 which this subject was discussed?

2 A It was a conversation in the office, so there may
3 have been other members who worked in the office
4 present.

03:34PM 5 Q Did it happen in Senator Fitzgerald's office?

6 A That is correct.

7 Q Was he seated at his desk?

8 A He was not.

9 Q Were you seated?

03:34PM 10 A I was not.

11 Q Who else was in the room?

12 A I believe Adam Foltz was in the room. I don't
13 know for certain if anyone else was in the room.

14 Q How long did the meeting last?

03:34PM 15 A About a minute.

16 Q If you know, why was Adam Foltz in the room?

17 A The conversation was with Senator Fitzgerald. I
18 believe he was headed out of the office, so it
19 was -- I grabbed him for a minute before he left
03:34PM 20 in the doorway.

21 Q I don't understand how that's responsive to the
22 question of why was Adam Foltz in the room.

23 A His desk is located in that room.

24 Q Adam Foltz works for Senator Fitzgerald?

03:35PM 25 A That's correct.

1 Q When did Adam Foltz start working for Senator
2 Fitzgerald?

3 A I believe he started in January, January or
4 February of this year.

03:35PM

5 Q Did you discuss with Senator Fitzgerald who else
6 should testify on behalf of the Wisconsin State
7 Senate?

8 A I believe I mentioned to him that Jeff Ylvisaker
9 would testify on behalf of the Senate.

03:35PM

10 Q Had you already spoken with Mr. --

11 MR. POLAND: Ylvisaker.

12 Q -- Ylvisaker?

13 A I spoke with him. I don't recall if it was -- it
14 was around the time of that meeting. I don't
15 recall if it was before or after.

03:36PM

16 Q Okay. Anybody else?

17 A I'm sorry. I don't understand the question.

18 Q Did you discuss the possibility of any other
19 designees on behalf of the Wisconsin State Senate
20 with Scott Fitzgerald?

03:36PM

21 A I discussed the possibility of the Senate chief
22 clerk.

23 Q What was said in that regard?

24 A In regards to that, we discussed whether or not he
25 would have any information as well as whether or

03:36PM

1 not he would be allowed to testify because of
2 concerns over legislative immunity while the
3 Senate was in session.

03:36PM

4 Q Did you discuss this topic of legislative immunity
5 with Senator Fitzgerald?

6 A I discussed it with him to the extent that I
7 understood that Patrick Fuller would not be
8 testifying for the Assembly because of similar
9 concerns.

03:37PM

10 Q Who is Patrick Fuller?

11 A He is the Assembly chief clerk.

12 Q Who raised concerns about immunity with regards to
13 potential designees?

14 A I believe that was raised by counsel.

03:37PM

15 Q When did you first speak with counsel about this
16 deposition?

17 A I spoke with them shortly after they forwarded a
18 copy of the subpoenas.

03:37PM

19 Q Did you speak with counsel before or after you
20 spoke with Senator Fitzgerald?

21 A I spoke with counsel both before and after.

22 Q In your conversations with counsel, was Senator
23 Fitzgerald present or a participant? Strike that.
24 Let me withdraw the question.

03:38PM

25 In your conversations with counsel, was

1 Senator Fitzgerald a participant?

2 A It was a phone call. I don't believe he was on
3 the phone call.

4 Q Is it accurate to say that every time you spoke
5 with counsel you spoke with counsel alone?

03:38PM

6 MS. BUCHKO: I'm actually going to
7 object. I think we're getting into more
8 substantive matters with respect to
9 discussions of counsel and conversation.

03:38PM

10 MR. EARLE: I'm not getting into
11 the substance. I want to know who was
12 present. That's all. It's completely fair
13 game.

14 A Most of the conversations were conducted over the
15 phone. There were other participants on the phone
16 call.

03:39PM

17 Q Who were the participants?

18 A Adam Foltz was a participant. I believe
19 Nick Probst from the Assembly speaker's office was
20 a participant. Jeff Ylvisaker was a participant.
21 I can't recall if there was anybody else on the
22 conference call.

03:39PM

23 Q I want you to pause and think about that and close
24 the door on it and we can move on.

03:39PM

25 A There were several conference calls related to

1 this matter. I'm not clear exactly which
2 conference call or calls you may be referring to.

3 Q I'm referring to all of them.

4 A There were conference calls related to this suit,
03:40PM 5 not necessarily to this deposition, in which
6 Representative Vos and Senator Fitzgerald were
7 participants as well as possibly Jenny Toftness
8 from Speaker Vos's office.

9 Q From who?

10 A Speaker Vos.

11 Q Jenny?

12 A Toftness.

13 Q How do you spell that last name?

14 A I believe it's T-o-f-t-n-e-s-s.

15 Q Who is she?

16 A She is Speaker Vos's chief of staff.

17 Q Anybody else?

18 A Not that I recall.

19 Q Did those conversations in which Vos, Fitzgerald,
03:40PM 20 Jenny whatever her last name is -- I'm sorry I
21 can't quite pronounce it, and you spoke with
22 counsel, did those occur before or after the
23 meeting, your conference call about this
24 deposition?

03:41PM 25 A There were certainly conference calls before this

1 deposition or before conference calls about this
2 deposition. I don't recall if they were on any
3 conference calls after this deposition came out.

03:41PM

4 Q Now, you have agreed to present yourself here in
5 order to testify about the nine enumerated topics,
6 correct?

7 A That's correct.

03:41PM

8 MS. BUCHKO: Actually, counsel, I'm
9 just going to correct one thing. He's not
10 testifying with respect to Item Number Six.
11 Only Jeff Ylvisaker was presented with
12 respect to Item Number Six.

13 MR. EARLE: That's correct. Thank
14 you.

03:41PM

15 Q What did you do to ascertain what information was
16 known by the Wisconsin Senate or reasonably
17 available to the Wisconsin Senate that's
18 responsive to the topics excluding Topic Six?

03:42PM

19 A I spoke with Jeff Ylvisaker about what information
20 he may have on all of the items. I spoke with
21 Senate Chief Clerk Jeff Renk about whether he had
22 independent information about the location of the
23 computers at any time. I also requested from
24 Chief Clerk Renk the list of employees who worked
25 for Senator Fitzgerald from the period essentially

03:42PM

1 when the second computer assigned to the Senate
2 was in the conference room between the majority
3 leader's office and the minority leader's office
4 as well as any interns who had been given logon
5 IDs over that same period.

03:43PM

6 Q Anything else? There are eight topics that you
7 have been designated for. You seem to have
8 described work that you have done to gather some
9 of the information. What did you do beyond that?

03:43PM

10 A I reviewed my own deposition and declarations to
11 see if there was anything in there that would
12 pertain to these topics.

13 Q Anything else?

14 A I believe that's it.

03:43PM

15 Q You didn't speak with Adam Foltz?

16 A Not about the Senate topics. No.

17 Q Did you speak with anybody related to Michael
18 Best?

03:44PM

19 A If I can go back just one second. I spoke to
20 Adam Foltz to the extent that he worked for
21 Senator Fitzgerald's office for a small portion of
22 the time in question to ask if he had accessed
23 that computer.

24 Q Okay.

03:44PM

25 A I'm sorry. What was your next question?

1 Q Did you speak with anybody related to Michael
2 Best & Friedrich?

3 A I did not.

4 Q When was the last time you spoke with Eric McLeod?

03:44PM

5 A I spoke with Eric two or three months ago. Maybe
6 more recently. But several weeks at least.

7 Q Did you review Eric McLeod's deposition
8 transcript?

9 A I did not.

03:44PM

10 Q Did you review any summary or abstract of
11 Erick McLeod's deposition transcript?

12 A Not that I recall.

13 Q Did you discuss Eric McLeod's deposition with
14 Eric McLeod?

03:45PM

15 A I did not.

16 Q Did you discuss Eric McLeod's deposition with
17 anybody?

18 A I don't believe so.

19 Q Which of your deposition transcripts did you
20 review?

03:45PM

21 A I read both of -- the summary of the video
22 deposition of both depositions taken I believe
23 last December or December of 2011. And I believe
24 the last one was in February of 2012.

03:45PM

25 Q Who prepared the summary that you reviewed?

1 A It was the videotape summary with the notation of
2 it. I'm not sure who prepared that.

3 Q You watched it? Is that what you're saying?

4 A No. There was a written summary of the videotape
03:46PM 5 of the video log. I'm not sure if that was
6 prepared by the videographer or the court
7 reporter.

8 MS. BUCHKO: If I could help here,
9 I think the deposition transcripts say
03:46PM 10 summary on the front of them. I'm fairly
11 certain they do.

12 Q Okay. You're referring to the transcript that
13 refers to the fact that it's a videotape, that it
14 was a videotape deposition?

03:46PM 15 A That's correct.

16 Q Did you take any notes?

17 A I did not.

18 Q In reviewing these materials and talking to these
19 people, did you create any notes?

03:46PM 20 A I made one notation on a sheet of paper I had of
21 employees who had worked in Senator Fitzgerald's
22 office during the time I mentioned when they
23 responded to me verbally if they had accessed the
24 computer in the conference room.

03:47PM 25 Q And what did you do with that piece of paper?

1 A I retained it.

2 Q Do you have it with you?

3 A I do.

4 Q May I see it, please.

03:47PM

5 MR. EARLE: Want to mark it first
6 and then --

7 Why don't we just take a quick break
8 because it will only take a second.

9 MS. BUCHKO: Sure.

03:47PM

10 THE VIDEOGRAPHER: The time is
11 3:46. We are going off the record.

12 (Recess)

13 (Exhibit No. 8 marked for
14 identification)

03:50PM

15 THE VIDEOGRAPHER: The time is
16 3:49. We are back on the record.

17 Q I'm showing you what's been marked as Exhibit
18 No. 8. Would you identify it, please.

03:50PM

19 A This is a document that the Senate chief clerk
20 provided me with employees of Senator Fitzgerald's
21 office for the time period noted at the top of the
22 paper as well as a list of unpaid interns who had
23 accounts on the State legislative system set up
24 during that same interval.

03:51PM

25 Q Is it your testimony that, and correct me if I'm

1 wrong, everybody on this piece of paper, Exhibit
2 No. 8, had an account set up with the domain
3 associated with the legislature?

4 A That is my understanding.

03:51PM

5 Q Okay. Did any of the people on Exhibit 8 have
6 access to the accounts on which the redistricting
7 material was located?

8 THE WITNESS: Could you restate or
9 repeat the question.

03:51PM

10 (Question read)

11 MS. BUCHKO: Object to form.

12 Go ahead and answer.

13 A They all had login IDs which could have been used
14 to access the redistricting computer.

03:52PM

15 Q Did any of the people on Exhibit 8 actually have
16 access -- strike that. Let me withdraw that
17 question.

18 Did any of the people on Exhibit 8 effectuate
19 access to the redistricting material on any of the
20 three computers?

03:52PM

21 A I don't know. I got one response that said they
22 may have used a computer in the conference room
23 that also housed the redistricting computer, but
24 they weren't sure which computer they accessed in
25 that room.

03:52PM

1 Q Who was that person?

2 A That was Kirsten Seeman.

3 Q Who is Kirsten Seeman?

4 A At the time she was an employee of Senator

03:53PM

5 Fitzgerald. She is now working for the State

6 Assembly for I believe Representative

7 Chad Weininger.

8 Q What was her job for Senator Fitzgerald?

9 A She was a legislative aide. Her duties were

03:53PM

10 primarily constituent related.

11 Q Did she tell you why she accessed the

12 redistricting computer?

13 A She didn't tell me that she accessed the

14 redistricting computer. She said the computer

03:53PM

15 that she did access in the conference room where

16 the redistricting computer also was located she

17 may have accessed once or twice for Internet use

18 only.

19 Q Okay. I'll come back to that. Can you think of

03:53PM

20 anything else you did to determine what is known

21 by the Wisconsin Senate or reasonably available to

22 the Wisconsin Senate on the eight topics you have

23 been designated for?

24 A I can't recall anything else.

03:54PM

25 Q I'm going to start in reverse order in terms of

1 the topics. I'm going to start with Topic Number
2 Nine. Would you read Topic Number Nine into the
3 record, please.

03:54PM

4 A "The production of any records, data, or documents
5 from the redistricting computers in the
6 redistricting lawsuit or in response to any
7 inquiry from the majority leader of the State
8 Senate."

03:55PM

9 Q Okay. What do you know about Topic Number Nine?

10 A The productions of records and data were a search
11 performed on those computers in response to the
12 deposition request at the end of 2011 and the
13 beginning of 2012 that were searched over at
14 Michael Best & Friedrich and provided to counsel
15 there.

03:55PM

16 In response to an inquiry from the majority
17 leader of the State Senate -- there were two
18 majority leaders three different times I believe
19 in the time period in question, so I don't recall
20 any inquiry from Senator Fitzgerald for production
21 of those records other than requests for maps or
22 some data for his district that resulted at the
23 conclusion of the legislature's action and the
24 lawsuit. The other majority leader during that
25 time was Senator Miller, and that was not a

03:55PM

03:56PM

1 request that was made of the State Senate for any
2 documents.

3 Q Let's go to the first part of Topic Number Nine
4 which is the production of any records, data, or
03:56PM 5 documents from the redistricting computers in the
6 redistricting lawsuit. You started to address
7 that.

8 A Okay.

9 Q How was that done?

03:56PM 10 A When the subpoenas requesting the information for
11 the depositions beginning back in December of 2011
12 were served, counsel at Michael Best asked us to
13 search our computer for potentially responsive
14 documents at which point I searched my hard drive
03:57PM 15 for any documents that were requested as well as
16 my State and my G Mail account for any records.
17 In regards to the computer search, those were all
18 searches I performed on that computer.

19 Q Okay. Tell me about how those searches were done.
03:57PM 20 We will start with the room. You had a computer
21 situated on a table or a desk in the law offices
22 of Michael Best, correct?

23 A That's correct.

24 Q You have testified a little bit about that before.
03:58PM 25 Who was present while you searched for -- strike

1 that. I'm going to withdraw that question.

2 Which attorneys from Michael Best spoke to
3 you about searching for responsive documents?

03:58PM

4 A Certainly Eric McLeod spoke to me. I believe
5 Joe Olson spoke to me about that. I can't recall
6 if Michael Screnock spoke to me specifically about
7 it certainly, but he was present at different
8 times.

03:58PM

9 Q Michael who?

10 A Screnock I believe is his name.

11 Q How do you spell his last name?

12 A I believe it's S-c-r-e-n-o-c-k. I'm not
13 100 percent certain on that, though.

03:58PM

14 Q Okay. Did Eric McLeod, Joe Olson, or
15 Michael Screnock ever give you anything in writing
16 with regards to the parameters of the search?

17 A Not that I recall. They provided us a copy of the
18 subpoena and the exhibit that was attached that
19 listed the potentially responsive documents.

03:59PM

20 Q Did Eric McLeod, Joe Olson, or Michael Screnock
21 give you any instructions as to how to determine
22 which documents were responsive to the subpoena?

23 A I don't recall -- there were general instructions
24 in terms of the time frame to search for because
25 there was discussion of through passage or

03:59PM

1 enactment. And it was elected to search through
2 enactment of the legislation. There was a
3 discussion just to kind of be overinclusive in
4 what we produced for them to review and that if
04:00PM 5 there were any questions they would make the
6 determination about what documents were produced.

7 Q Anything else?

8 A Not that I recall.

9 Q So in answer to my question about whether you were
04:00PM 10 given anything in writing, the answer is no. You
11 were not given anything in writing by any of the
12 attorneys at Michael Best with regards to
13 specifications for the search?

14 MS. BUCHKO: Objection, asked and
04:00PM 15 answered.

16 Go ahead.

17 A Not that I recall.

18 Q The instructions you received about the time
19 frame, which attorney gave you those instructions?

04:00PM 20 A I believe that was Eric McLeod.

21 Q The instruction about being overinclusive and the
22 indication that it would be the attorneys that
23 would make the determination as to what to turn
24 over and what not to turn over, who said that to
04:01PM 25 you?

1 A I don't recall if that was Attorney McLeod or
2 Attorney Olson.

3 Q Did Attorney Taffora participate in any of these
4 instructions?

04:01PM 5 A Not that I recall.

6 Q Did Attorney Troupis participate in any of the
7 instructions?

8 A No.

9 Q Did Eric McLeod help you search your hard drive?

04:01PM 10 A Occasionally, if there was a document I had in
11 electronic form, I would ask him a question, *What*
12 *do you want me to do with this?* If it was small
13 enough, he directed me to print it out. If it was
14 a large file, he said to put that in a separate
04:02PM 15 folder if it was too large to print out.

16 Q How many documents were reviewed in the fashion
17 you just described?

18 A I'm sorry. In which fashion?

19 Q The fashion you just described.

04:02PM 20 A I don't know how many, the total volume of
21 documents. It was a large number.

22 Q How long did this search take?

23 A I don't recall exactly. Probably the better part
24 of a few days.

04:02PM 25 Q Do you recall the dates during which this search

1 occurred?

2 A I do not.

3 Q How many days before the production of the
4 documents did this search occur?

04:03PM 5 A I don't recall.

6 Q Was it a week? Two weeks? Three weeks?

7 A I really can't recall what the interval was
8 between. Obviously it was between the service of
9 the subpoena and the appearance at the deposition,
10 but I don't know that I can specify any more than
11 that.

04:03PM

12 Q Was it before or after New Year's?

13 A It was before New Year's.

14 Q Did you engage in any search after New Year's?

04:03PM 15 A I may have, but I don't recall.

16 Q Was it before or after Christmas?

17 A I don't recall. I believe, because the deposition
18 was before Christmas, it would have been before
19 Christmas, the first deposition. I believe it was
20 that week of Christmas.

04:04PM

21 Q Between depositions did you search for more
22 documents that were responsive?

23 A I don't recall.

24 Q Now, you indicated that Attorney McLeod would
25 review the screen with you on occasions and would

04:04PM

1 ask you to print out certain documents if they
2 were small enough.

3 A That's correct.

4 Q Where would you print those documents out?

04:04PM

5 A There was a printer attached to my computer in the
6 same room where my computer was located.

7 Generally all of the E-mails were printed out, and
8 any other documents that were not extremely long
9 were printed out on that same printer.

04:04PM

10 Q What did you do with the documents that were
11 extremely long?

12 A Those were -- an electronic file was put -- I
13 can't remember if -- I think what I did is I made
14 a directory for those electronic documents and
04:05PM 15 just copied them to that location, and then the
16 attorneys reviewed those documents to see if they
17 should be produced.

18 Q How were the attorneys able to review the
19 documents in that location that you copied them
04:05PM 20 to?

21 A They were able to pull them up on the screen or I
22 was able to pull them up on the screen for them to
23 look at.

24 Q Mechanically how was this done?

04:05PM

25 A I would go to my computer, click on the screen,

1 and they would look at it. If they didn't
2 understand what it was, I would explain what it
3 was and they would say *Copy that onto a disc.*

4 Q How many discs did you burn in that process?

04:05PM

5 A I believe there was one disc of documents, and at
6 some point there was another disc of maps.

7 Q What happened to those discs?

8 A It's my understanding they were turned over as
9 part of the discovery.

04:06PM

10 Q What did you do with the hard copies that you
11 printed out of the smaller documents?

12 A The hard copies were printed out and put on a
13 table in the room where my workstation was at and
14 then we sat down with the attorneys and went
04:06PM 15 through them one by one and they indicated whether
16 or not they thought the document was responsive,
17 nonresponsive, or privileged and put them in
18 separate piles based on those determinations that
19 they made.

04:07PM

20 Q You were present with the attorneys through this
21 entire process as the documents that you printed
22 out were put into one of those three piles?

23 A For the initial review of the documents I was
24 present. If they had questions, I would explain
04:07PM 25 what the document was. At some point after they

1 were separated into them, some of the piles stayed
2 there for a period of time. The rest they took
3 for copying. I'm not certain if they brought
4 those back or not.

04:07PM

5 Q Which ones did they take for copying?

6 A The ones that they determined were responsive to
7 the subpoena is my understanding.

04:08PM

8 Q Now, Eric McLeod participated in this process of
9 making these three piles and taking the one pile
10 of responsive documents for copying. Did any
11 other attorneys from Michael Best participate in
12 that?

13 A Joe Olson participated in that.

14 Q Anybody else?

04:08PM

15 A I can't recall if Michael Screnock was in the room
16 or not.

17 Q Was there any other person in the room besides the
18 attorneys you mentioned and yourself?

04:08PM

19 A Adam Foltz was in the room for that as well. I
20 don't know if Joe Handrick was ever present for
21 that or not, but he may have been.

04:08PM

22 Q Did you perform that process on behalf of
23 Joe Handrick or did Joe Handrick engage in any
24 searching of documents on the computer that was
25 assigned to him?

1 A I think he looked at his computer. I don't know
2 how many documents he had. I assisted in copying
3 files from his computer, and I assisted in copying
4 maps from his computer to the electronic drive. I
04:09PM 5 believe they were copied on a CD.

6 Q Now, as I understand your testimony -- you tell me
7 if anything I say is inaccurate or wrong in any
8 way. Okay? As I understand your testimony, the
9 three piles were created in a collaborative
04:09PM 10 fashion between you and Joe Olson and Eric McLeod.
11 The three piles were responsive documents,
12 nonresponsive documents, and privileged documents,
13 correct?

14 MS. BUCHKO: Objection,
04:09PM 15 mischaracterizes his previous testimony.

16 MR. JACOB: Join in the objection.

17 Q They get to make objections. I'm characterizing
18 the testimony so that you can tell me if it's
19 wrong or accurate or not or mischaracterized in
04:10PM 20 any way. That's the point of the question.
21 Counsel's opinion is not. They want to testify
22 about that, but you get to testify about that.

23 MS. BUCHKO: No. Counsel gets to
24 make an objection. He can answer subject to
25 the objection.

1 MR. EARLE: The question was
2 whether that was a mischaracterization of his
3 prior testimony, and you answered it for him
4 by saying you thought it was a
04:10PM 5 mischaracterization of his prior testimony.
6 It's an inappropriate objection.

7 MS. BUCHKO: It's not an
8 inappropriate objection.

9 You can answer pursuant to the
04:10PM 10 objection.

11 MR. EARLE: You can object to form.

12 A I assisted in explaining to the attorneys present
13 what the documents were. They divided them up
14 into piles. In the nonresponsive pile I don't
04:10PM 15 know if they further divided that -- I'm sorry. I
16 take that back. In the privileged pile I don't
17 know if at that time they made further
18 subdivisions between what type of privilege that
19 they thought applied. I know that they had
04:11PM 20 asserted both legislative privilege and
21 attorney-client privilege.

22 Q Now, you said that they took one of the piles for
23 copying. That would be the responsive pile; is
24 that correct?

04:11PM 25 A That's my recollection.

1 Q What happened to those documents?

2 A As far as I know they were produced prior to or at
3 deposition.

4 Q Were they returned to you?

04:11PM 5 A I don't believe so.

6 Q Did you ever see them again?

7 A I believe I had electronic copies of all of those
8 that I had printed out.

9 Q Do you know if they were Bates stamped?

04:11PM 10 A I know some of them were Bates stamped. Some were
11 I believe Bates stamped individually. Others I
12 think may have been Bates stamped in a larger
13 packet.

14 Q How do you know that?

04:12PM 15 A They were presented to me at my initial
16 deposition.

17 Q Okay. What happened to the other two piles that
18 were not taken for copying?

04:12PM 19 A Eventually the attorneys took them. I don't know
20 what happened to them after that time.

21 Q So those two piles just sat there until somebody
22 took them?

23 A That's my recollection.

24 Q Do you know who took them?

04:12PM 25 A I don't recall. It would have been one of the

1 attorneys at Michael Best.

2 Q Do you have any knowledge as to what they did with
3 them?

4 A I do not.

04:12PM

5 Q How many documents were not selected on the
6 grounds that they didn't fit the time frame?

7 A I don't know.

04:13PM

8 Q You said you were asked to be overinclusive and
9 allow the attorneys to make the determination as
10 to whether they were to be produced or not. How
11 many document did you select that were not put
12 into the responsive pile?

13 A I don't know exactly. It's my recollection that
14 the nonresponsive pile was fairly large, but I
15 don't know how many documents may have been in
16 there.

04:13PM

17 Q Approximately how many documents were in there?

18 A I couldn't hazard a guess about how many
19 documents. Some were more than one page. A lot
20 were one page. I don't know how many separate
21 documents there may have been.

04:13PM

22 Q Was it more than 1,000?

23 A I don't know.

04:14PM

24 Q Well, you know what 1,000 document pages would
25 look like on a stack of paper, right?

1 MS. BUCHKO: Object to form.

2 A I know what 1,000 pages would look like, but I
3 can't remember how many pages each separate
4 document may have been.

04:14PM

5 Q I'm talking about the entire stack of
6 nonresponsive documents that were in that pile.
7 How tall was the pile?

8 MS. BUCHKO: Objection, asked and
9 answered.

04:14PM

10 A It's my recollection that the nonresponsive pile
11 would probably have been something like that.

12 MR. EARLE: The witness is
13 signaling about ten inches?

14 A I don't know.

04:14PM

15 Q We have got a video camera.

16 A I'm signaling this. I don't know how many inches
17 that is.

18 Q It's more than two reams of paper, right?

04:15PM

19 A Some of them may have been folded because we had
20 longer printouts. So, again, I can't say how many
21 documents that may have included.

22 Q Okay. You indicated that you searched your State
23 E-mail account and your G Mail account, correct?

24 A That's correct.

04:15PM

25 Q You accessed your G Mail account through your

1 computer at the Michael Best office?

2 A I did.

3 Q Have you taken care to preserve all documents, all
4 E-mails in your G Mail account?

04:15PM

5 MS. BUCHKO: Object to form.

6 A I have not.

7 Q Have you deleted G Mail communications related to
8 redistricting?

9 MR. JACOB: Object to form.

04:15PM

10 A Since the beginning of the redistricting process I
11 think it's likely I have deleted some G Mails that
12 related to redistricting.

13 Q How many?

14 MS. BUCHKO: I'm going to object

04:16PM

15 not only on form but this is material that
16 was covered in his previous two depositions
17 so it's duplicative.

18 Q Go ahead. You can answer the question.

19 A I couldn't say how many.

04:16PM

20 Q Well, was it more than 1,000?

21 MS. BUCHKO: Objection, calls for
22 speculation.

23 A I don't know. I doubt it was more than 1,000.

24 Q Was it more than 500?

04:16PM

25 A I doubt it.

1 Q Was it more than 250?

2 A I don't believe so.

3 Q Was it more than 100?

4 A Possibly.

04:16PM

5 Q When did you stop deleting G Mail E-mails about
6 redistricting?

7 MR. JACOB: Object to form.

8 A When the subpoenas were served, I was instructed
9 by Counsel McLeod not to delete anything until the
10 subpoenas and the documents requested had been
11 produced.

04:17PM

12 Q Was that as soon as you received the subpoenas or
13 was it after the Court issued its orders?

14 A I believe that was as soon as we had received the
15 subpoenas.

04:17PM

16 Q Did Attorney McLeod's instruction not to delete
17 any G Mails, any further G Mails from your
18 account, -- did he give that to you in writing?

19 A I believe that was an oral communication.

04:17PM

20 Q Did you agree not to delete any further G Mail
21 messages from your account after you were told not
22 to do so by Mr. McLeod?

23 A I did.

24 Q Did you follow that instruction?

04:18PM

25 A I believe so, yes, through the production of the

1 materials.

2 Q Have you deleted any E-mails about redistricting
3 from your G Mail account after that instruction
4 from Eric McLeod through today?

04:18PM 5 A It's possible. I can't recall of a specific
6 instance, but it's possible.

7 Q Did you delete E-mails from your G Mail account
8 during the month of January of 2012?

9 A Not --

04:18PM 10 Q Strike that. Let me strike that question. I'm
11 going to rephrase.

12 Did you delete any E-mails from your G Mail
13 account about redistricting during the month of
14 January of 2012?

04:19PM 15 A Not that I recall.

16 Q Did you delete any E-mails about redistricting
17 from your G Mail account during the month of
18 February of 2012?

19 A Possibly. But I don't recall deleting any.

04:19PM 20 Q Why do you say possibly?

21 A For example, I have a Google alert on
22 redistricting that forwards me articles on
23 redistricting. I don't retain very many of them.
24 There may have been some incidental E-mails from
04:19PM 25 others saying *Hey, what's going on with*

1 month of June of 2012?

2 A Possibly. But I don't have a specific
3 recollection.

04:21PM

4 Q Other than an E-mail that is the result of an
5 alert, a Google alert, why would you delete it
6 from your account, your G Mail account in June of
7 2012?

8 MR. JACOB: Object as to form.

04:21PM

9 A If I didn't feel that I had any use for it, that
10 it didn't contain useful information, I may not
11 have retained it.

12 Q Showing you what's been marked as Exhibit No. 7.
13 Have you seen that document before?

14 A I believe I have seen this. Yes.

04:22PM

15 Q Were you given a copy by Eric McLeod?

16 A That's my recollection.

17 Q Did Eric McLeod give you any instructions at the
18 time he gave you a copy of Exhibit No. 7?

19 A He did.

04:22PM

20 Q What were the instructions?

21 A The instructions were to preserve all materials
22 related to open meetings as a result of this
23 complaint.

04:22PM

24 Q Did he ask you to read the content of the
25 preservation letter?

1 A He forwarded a copy of the preservation letter,
2 but he did not specifically ask me to read it.

3 Q Did you read it?

4 A I may have -- I read certain parts of it.

04:23PM

5 Q Did you read the parts that describe the material
6 that was to be preserved?

7 A I don't recall specifically. I do recall reading
8 the complaint.

04:23PM

9 Q So you know the subject matter of the complaint,
10 correct?

11 A It's my understanding that it related to open
12 meetings. Yes.

13 Q You do not believe that Exhibit No. 7 related to
14 redistricting?

04:23PM

15 A The instruction of my attorney was that this
16 related only to open meetings.

17 Q Explain that to me. Exactly what did he -- how
18 did he explain that to you?

04:24PM

19 A I don't recall the exact wording, but it was
20 something to the effect of this preservation
21 demand applies to any records related to open
22 meetings or potential open meetings violations.

23 Q Did he tell you that it did not apply to records
24 related to redistricting?

04:24PM

25 A He stated in the affirmative that it only applied

1 to open meetings violations.

2 Q He didn't say anything else to you other than that
3 it only applied to an open meetings violation?

4 A That is the instruction I recall. Yes.

04:24PM 5 Q Did he instruct you to read it?

6 A He did not to my recollection.

7 Q Did he give you anything in writing about
8 Exhibit No. 7, about the scope of Exhibit No. 7?

04:25PM 9 A The only thing I recall in regards to the scope
10 was the reference to the open meetings.

11 Q Did you discuss Exhibit No. 7 with anybody else?

12 A I discussed with him and I believe Attorney
13 Screnock about open meetings violations and
14 statute of limitations on open meetings violations
04:25PM 15 if a case was not --

16 MS. BUCHKO: I'm going to instruct
17 the witness to stop testifying at this point
18 because he's disclosing attorney-client
19 privileged communication. He may not know
04:25PM 20 that, but that's what he's doing. You asked
21 who.

22 MR. EARLE: This is fair game.

23 MS. BUCHKO: Your question was who,
24 and he went into the substance of the
04:25PM 25 communication.

1 MR. EARLE: I'm asking him about
2 how the scope of the preservation demand was
3 defined to him by counsel. In this situation
4 where we have allegations of exfoliation of
04:26PM 5 evidence that go directly to that and Michael
6 Best is here represented by counsel, it's
7 inappropriate for you to make that objection
8 because I don't believe it's -- I think that
9 you should reconsider your position.

04:26PM 10 MR. JACOB: Well, I can add I don't
11 think it's appropriate for the objection to
12 be asserted by counsel. The privilege
13 obviously attaches to the Senate, and right
14 now she's representing the Senate. I would
04:26PM 15 join in her objection. He's going beyond
16 what he felt was the scope of what he was to
17 produce in getting into the underlying legal
18 advice and his questions regarding scope and
19 statute of limitations and the open meetings
04:26PM 20 act. So I would join in the objection.

21 MR. EARLE: The objection is very
22 poorly founded because both you and counsel
23 for the Senate sat in this room while
24 Eric McLeod testified at great length about
04:27PM 25 what he told Mr. Ottman about these matters

1 and you did not raise that objection. The
2 objection has been waived to the extent that
3 it existed. Eric McLeod sat in that chair
4 and testified about these communications in
04:27PM 5 great length and you were in this room and
6 you did not raise any objections to those
7 communications by Eric McLeod and you
8 represented both the Assembly and the Senate
9 at the time that you sat at this table. You
04:27PM 10 can't raise that now.

11 At this point you are I think
12 obstructing discovery. We have been directed
13 by the Court to get to the matter of who said
14 what and when they said it and what they did.
04:27PM 15 That is what all parties around this table
16 have been instructed by this Court to do.
17 I'm trying to get to the bottom of it.

18 MS. BUCHKO: Counsel, are you done?

19 MR. EARLE: Yes.

20 MS. BUCHKO: Thank you very much.

21 The objection stands. I'm instructing
22 him not to answer to the extent he was going
23 into detailed information concerning matters
24 outside the scope of designated topics here
04:28PM 25 which clearly it was and specific

1 instructions and communications with counsel
2 concerning statute of limitations and
3 exfoliation of evidence. The objection
4 stands. If you want to ask another question,
5 feel free.

6 MR. EARLE: We have Topic Number
7 One which is directly on point with regards
8 to the subject of the question I just asked.
9 We have Topic Number Eight which was directly
10 on point of the topic and within the time
11 frame of the topic.

12 It's the Senate that designated him to
13 speak about all efforts taken to preserve
14 data and records on the redistricting
15 computers between January 1 of 2011 and
16 January 31 of 2013. Topic Number Nine deals
17 with the production of those records. I'm
18 asking him about what efforts were made to
19 preserve these documents, and you're
20 instructing him not to answer what he was
21 told by counsel with regards to preservation
22 after counsel sat in this room and testified
23 himself about what he told the legislative
24 aides about how to preserve and the scope of
25 preservation.

04:28PM

04:29PM

04:29PM

04:29PM

1 MS. BUCHKO: Counsel, I'm not going
2 sit here and argue with you.

3 MR. EARLE: I just want to have a
4 really good record so that the three-judge
04:29PM 5 panel -- we don't talk over each other. I
6 just want to have a very good record that
7 you're taking this position and your
8 objection and your obstruction of my ability
9 to get to the bottom of this. I want it very
04:29PM 10 clear on the record so that the three-judge
11 panel can read this and understand what
12 you're doing.

13 MS. BUCHKO: What I stated and
14 again state -- I do not want to argue with
04:30PM 15 you. I did not instruct him to not answer a
16 question concerning the designated topics.
17 He started to testify with respect to
18 communications concerning statute of
19 limitations. I believe that's beyond
04:30PM 20 anything Eric McLeod testified to. It was
21 very specific attorney-client privileged
22 communication. That is when I stopped him,
23 counsel. That's it.

24 MR. EARLE: Okay. So your
04:30PM 25 instruction to him is he is not to answer any

1 questions about what Eric McLeod told him
2 about the statute of limitations over
3 documents -- statute of limitations for
4 certain claims over which documents related
5 to redistricting would apply.

04:30PM

6 MS. BUCHKO: Correct. I was
7 objecting because he was going way beyond
8 your initial question into very specific
9 attorney-client privileged communications.

04:30PM

10 That is correct.

11 Q Are you going to follow the advice of counsel?

12 A I am.

13 Q Did Eric McLeod give you any preservation
14 instructions with regards to information on your
15 computers or in your possession regarding
16 redistricting after the redistricting trial?

04:31PM

17 MS. BUCHKO: I'm going to object
18 that it's outside the scope of the designated
19 topics all of which relate to the three
20 redistricting computers.

04:31PM

21 MR. EARLE: Are you directing him
22 not to answer that question?

23 MS. BUCHKO: I'm objecting that
24 you're going outside of the scope of the
25 30(b)(6).

04:31PM

1 MR. EARLE: That's fine. My
2 question to you is if you're instructing him
3 not to answer.

04:31PM

4 MS. BUCHKO: I'm objecting because
5 you're going beyond the scope.

6 MR. POLAND: Could I have the
7 question read back.

8 (Question read)

04:32PM

9 MR. POLAND: How is that outside
10 the scope?

11 MS. BUCHKO: Because it went beyond
12 the computers. He's here to testify on
13 behalf of the Senate concerning the
14 designated topics all of which say three
15 redistricting computers. I understand that
16 you may follow up in his individual portion
17 of the deposition concerning something more.

04:32PM

18 MR. EARLE: Okay.

19 Q Do you understand the question?

04:32PM

20 A Yes.

21 Q Answer the question, please.

22 A The instructions that Attorney McLeod gave me had
23 to do with the potential open meetings violation.
24 I don't recall any preservation instructions aside
25 from that.

04:32PM

1 Q Has anybody told you what Eric McLeod testified
2 with regards to whether or not he gave you a
3 preservation instruction after the redistricting
4 trial?

04:33PM

5 MR. JACOB: Can you read that
6 question back.

7 (Question read)

8 MR. JACOB: Okay.

04:33PM

9 A I believe I was informed, I don't know by who,
10 that he had referenced a preservation instruction
11 related to that topic of the open meetings
12 potential claim.

13 Q Where did you learn that?

04:33PM

14 MS. BUCHKO: Objection to the
15 extent it calls for attorney-client
16 privileged communication.

17 A I don't recall who told me that.

04:34PM

18 Q Did you delete any E-mails from your G Mail
19 account during the month of July of 2012 that had
20 or pertained to redistricting?

21 A It's possible, but I don't recall specifically.

04:34PM

22 Q So the record is very clear, you have no
23 recollection of deleting any E-mails about the
24 subject of redistricting from your G Mail account
25 during the month of July of 2012?

1 MS. BUCHKO: Objection, asked and
2 answered.

3 A No specific recollection.

4 Q Do you have any general recollection?

04:34PM

5 A I generally recall deleting E-mails frequently.
6 Whether or not they had to do with redistricting
7 or, as I discussed earlier, where they may have
8 been, you know, an alert, a Google alert, or after
9 the introduction of the maps -- I may have gotten
10 some congratulatory or like what you did or some
11 E-mails like that.

04:35PM

12 Q Between the date that you assembled the three
13 piles of documents in connection with Eric McLeod
14 for production prior to your deposition and the
15 end of July of 2012, did you delete any documents
16 from your computer that had anything to do with
17 redistricting?

04:35PM

18 MS. BUCHKO: Objection, asked and
19 answered.

04:35PM

20 MR. EARLE: What?

21 MS. BUCHKO: Objection, asked and
22 answered.

23 A Possibly but not that I specifically recall.

24 Q And why do you say possibly?

04:35PM

25 A Because after the document production for the

1 attorneys' review and then after the second
2 deposition there may have been further E-mails
3 that came in. There may have been documents that
4 I worked on in production for the trial. There
04:36PM 5 may have been other documents that I created after
6 those dates that I didn't retain.

7 Q Did you understand yourself to be under a
8 preservation obligation between the date that the
9 documents were produced on your behalf for your
04:36PM 10 deposition and the end of July of 2012?

11 A Not that I understood.

12 Q What was your understanding?

13 A My understanding, as I mentioned earlier, was when
14 Attorney McLeod when the subpoenas were issued
04:36PM 15 said *Don't delete anything. Let's go through and*
16 *find all of the documents, review them, and decide*
17 *what to produce.* There wasn't to my recollection
18 any specification as to how long of any
19 preservation demand beyond that.

04:37PM 20 Q Okay. Let's talk about how you managed your
21 E-mails. You have two E-mail accounts, at least
22 two, correct?

23 A That's correct.

24 Q Well, let me ask another question then. How many
04:37PM 25 E-mail accounts do you have?

1 A That I use regularly is two. I have a couple of
2 Yahoo accounts that I send junk mail to or at
3 least one Yahoo account that I send junk mail to.
4 But nothing that I use for any work-related --

04:37PM

5 Q How many E-mail accounts did you utilize in the
6 course of your redistricting work?

7 A Two.

8 Q What is the E-mail address for your Yahoo E-mail
9 account that you utilized for the -- not Yahoo.

04:38PM

10 Your G Mail account that you utilized for
11 redistricting work?

12 A T0ttman@gmail.com.

13 Q Is that account still active?

14 A It is.

04:38PM

15 Q Did you download the messages from your G Mail
16 account on the computer you used for redistricting
17 work that were related to redistricting?

18 A I printed those off for review by the attorneys.

19 Q That wasn't the question I asked, though.

04:38PM

20 A I don't know -- I don't know if they downloaded
21 locally. I didn't do anything specific to do
22 that. I'm not entirely certain how they are
23 retained on the computer.

04:39PM

24 Q So let's hypothesize that in January of 2012 you
25 received an E-mail from Jim Troupis about

1 redistricting on your G Mail account. Would you
2 download that from your G Mail account into any
3 other location on your computer?

04:39PM

4 A If it was something I felt I needed to retain, I
5 may have marked it for a separate redistricting
6 folder.

7 Q What redistricting folder would that have been?

8 A Within my G Mail account.

04:39PM

9 Q You maintained a redistricting folder within your
10 G Mail account?

11 A I don't know if it's termed a folder or a label.
12 I believe it's referred to as a label.

13 Q Does that label still exist?

14 A Yes.

04:39PM

15 Q Have you deleted any of the E-mails that you
16 downloaded into that folder?

17 A I don't believe so.

04:40PM

18 Q So as we sit here today all of the E-mails that
19 you downloaded in that folder over the course of
20 your work on redistricting are still there?

21 A They should be.

22 Q Okay. Would you agree to make those E-mails
23 available to counsel for production in this
24 matter?

04:40PM

25 A I would have to discuss that with counsel.

1 Q Has anybody asked you to assemble and provide
2 those E-mails to them so that they could be
3 reviewed for responsiveness?

04:40PM

4 A The attorneys at Whyte Hirschboeck have asked me
5 to review that.

6 Q Have the attorneys at Whyte Hirschboeck issued any
7 preservation requests to you with regards to those
8 E-mails about redistricting in your G Mail
9 account?

04:41PM

10 A I don't recall specifically.

11 Q How many E-mail messages are in that redistricting
12 folder within your G Mail account?

13 A I don't recall exactly how many.

04:41PM

14 Q Have you downloaded them onto a disc or any other
15 electronic utensil?

16 A I have not.

17 Q What dates do they cover?

18 A I don't recall the exact dates.

04:41PM

19 Q Has anyone else other than yourself reviewed those
20 E-mails in your G Mail account?

21 MS. BUCHKO: Object to form as to
22 time period.

23 Q At any time.

04:41PM

24 A Only to the extent that those E-mails were
25 produced for review by Michael Best at the time of

1 the subpoenas.

2 Q Just so I understand, all of the E-mails related
3 to your G Mail account about redistricting that
4 were in that folder at the time that Eric McLeod
04:42PM 5 supervised your production of documents responsive
6 to the subpoena continue to be in that folder
7 today, correct?

8 A To the best of my recollection.

9 Q And it's your testimony that none of those E-mails
04:42PM 10 have been deleted, correct?

11 A I don't recall deleting any of them.

12 MS. BUCHKO: Can we take a break
13 soon?

14 MR. EARLE: What?

04:42PM 15 MS. BUCHKO: Can we take a break
16 soon?

17 MR. EARLE: Just a couple more
18 questions to finish up this topic.

19 MS. BUCHKO: That's fine.

04:42PM 20 Q Starting at the point that you produced documents
21 to Eric McLeod through January of 2013, have you
22 added additional E-mails to that folder?

23 MR. JACOB: Object as to form.

24 A It's possible.

04:43PM 25 Q Did there come a time when you stopped adding

1 E-mails to that folder?

2 A I think at the conclusion of the lawsuit I don't
3 recall receiving any E-mails related to
4 redistricting. So to that extent there may not
5 have been further E-mails added to the folder.

04:43PM

6 Q There came a time when you became aware about
7 concerns related to the adequacy of the production
8 of documents in response to your subpoena,
9 correct?

04:43PM

10 A Yes.

11 Q What did you do with the E-mails that you received
12 about that subject?

13 A I'm not sure what time frame you're referring to.

04:43PM

14 Q The moment that you became aware that there was a
15 controversy about the adequacy of your production
16 in response to the subpoena.

17 A The only concern I was aware of related to an ALEC
18 E-mail that had been sent to my State account. I
19 wasn't aware of concerns beyond that ALEC E-mail
20 about production of documents.

04:44PM

21 Q So all of this motion practice we're having in
22 federal court now, when did you become aware about
23 that?

24 A Whenever it was filed in federal court for
25 discovery or for further discovery with Michael

04:44PM

1 Best was the first I had become aware of that.

2 Q Did you receive any E-mails on your G Mail account
3 during that time period?

4 A I'm sorry. During what time period?

04:44PM

5 Q After you became aware that there had been a
6 motion filed in federal court for discovery on
7 whether or not all documents were produced.

8 MR. JACOB: Object as to form.

04:45PM

9 A I don't recall receiving any E-mails on my G Mail
10 account related to that.

11 Q I'm trying to figure out, Mr. Ottman, when the
12 last time you started -- when you stopped adding
13 E-mails into that folder that you maintain on your
14 G Mail account.

04:45PM

15 A I couldn't tell you the date the last E-mail was
16 added to that.

17 Q Has anybody asked you to review that G Mail
18 account for E-mails responsive to the subpoena
19 since the production of documents for your
20 deposition prior to the trial?

04:45PM

21 A To which subpoena?

22 Q The subpoena that was issued to you in the
23 redistricting case.

04:45PM

24 MS. BUCHKO: I think he's confused
25 if you mean the 30(b)(6) versus the prior

1 subpoenaas.

2 MR. EARLE: Good point.

3 I'll withdraw that question and rephrase
4 it.

04:46PM

5 Q You recall you received a subpoena prior to the
6 redistricting trial to produce documents
7 responsive to that subpoena. This was before your
8 deposition.

9 A Correct.

04:46PM

10 Q You recall that the counsel for the legislature
11 opposed that subpoena and moved to quash it?

12 A Correct.

13 Q You recall that the Court ordered that the
14 subpoena be enforced. Do you recall that?

04:46PM

15 A Yes.

16 Q And you were required to produce documents called
17 for by that subpoena. Do you recall that?

18 A Yes.

04:46PM

19 Q And do you recall that there was a controversy as
20 to whether all documents responsive to that
21 subpoena were produced or not, correct?

22 A Yes.

04:46PM

23 Q And you are aware that there was a controversy
24 about the scope of the subpoena with regards to
25 the time frame. Do you recall that?

1 A Yes.

2 Q I'm assuming from your testimony here today that
3 there were E-mails in that G Mail folder that were
4 not produced because they were at that time
04:47PM 5 considered by you to be outside the time frame of
6 responsive materials, correct?

7 A I believe so. Yes.

8 Q Same applies to G Mails concerning SB 150,
9 correct?

04:47PM 10 A That's correct.

11 Q Has anybody asked you to go back to that G Mail
12 folder and produce E-mails that were about
13 redistricting and responsive outside the time
14 frame that you have previously limited the
04:47PM 15 production to?

16 A Yes.

17 Q When was that request made of you?

18 A I believe that request was made last week.

19 Q Have you assembled E-mails responsive to that
04:47PM 20 request?

21 A I have begun looking through my E-mails for
22 potentially responsive documents. I have not
23 reviewed them with counsel to find out whether
24 they may actually be responsive.

04:48PM 25 Q Same question about SB 150.

1 A I followed the same process.

2 Q Have you been advised to preserve all E-mails on
3 your G Mail account that may be related to
4 redistricting?

04:48PM

5 A I don't recall that specific instruction.

6 Q Do you consider yourself to be under a
7 preservation obligation with regards to E-mails
8 about redistricting in your G Mail folder at this
9 point in time?

04:48PM

10 A I'm not certain.

11 Q I request that you not destroy any potentially
12 responsive evidence at this point in time on
13 behalf of Voces de la Frontera. Do you understand
14 the request that I'm making?

04:49PM

15 A Yes.

16 Q Do you agree to abide by my request?

17 A I do.

18 Q Now, I think I understood your testimony to be
19 that you started to look at that folder to gather
20 information responsive to the request you got last
21 week. Is that accurate?

04:49PM

22 A Yes.

23 Q How many E-mails are we talking about?

24 A Including the ones that have already been
25 produced? Probably fewer than 200.

04:49PM

1 Q How many of the E-mails in that folder were not
2 previously produced?

3 MS. BUCHKO: Objection; foundation,
4 competency.

04:49PM

5 A I don't know.

6 Q I've asked you a variation of this question. I'm
7 going to get an objection for asked and answered.
8 Just to be clear, what is the last date of an
9 E-mail in that folder that you think exists?

04:50PM

10 MS. BUCHKO: You're right.

11 Objection, asked and answered.

12 Go ahead.

13 A I don't recall.

14 Q Are all of these --

04:50PM

15 MS. BUCHKO: Peter, did you
16 remember I did request a break?

17 Q Are all of these E-mails in that folder in your
18 G Mail account in the Googlesphere or wherever it
19 is that those things are located or have they been
20 downloaded onto a hard drive?

04:50PM

21 A I'm not aware that they're downloaded on a hard
22 drive.

23 MR. EARLE: Okay. We will take a
24 break.

04:50PM

25 THE VIDEOGRAPHER: The time is

1 4:49. We are going off the record.

2 (Recess)

3 THE VIDEOGRAPHER: The time is

4 5:01. We are back on the record.

05:02PM

5 A Before we continue, I want to clarify my earlier
6 testimony. When we met with counsel at Whyte
7 Hirschboeck earlier this year and the computers at
8 that point were turned over to LTSB, counsel did
9 instruct at that point not to delete anything
10 further related to redistricting and I have not
11 made any deletions subsequent to that in my G Mail
12 or any other E-mail.

05:02PM

13 Q That was in January of 2013?

14 A I believe that's when the meeting happened. Yes.

05:02PM

15 Q Between July of 2012 and January of 2013 were
16 there any deletions?

17 A I'm going to give the same answer I gave to the
18 earlier. There may have been some non-substantive
19 deletions that came into me either through a
20 Google alert or something that I don't recall
21 being related to the case.

05:03PM

22 Q Okay. But that G Mail folder has remained intact
23 and today has everything in it that it had at the
24 time you were doing the production response to
25 initial subpoenas?

05:03PM

1 A That's my recollection.

2 Q Did you receive a preservation request from
3 anybody in September of 2012?

4 A I don't recall.

05:03PM

5 Q Now, we know you used your G Mail account for
6 redistricting. Did you also use your State
7 account for redistricting?

8 A To a lesser extent. Yes.

9 Q How much lesser of an extent?

05:04PM

10 A My primary E-mail account that I used for
11 redistricting was G Mail. There may have been a
12 few E-mails sent to my State account that had to
13 do with redistricting.

14 Q Why did you have that distinction?

05:04PM

15 A I believe I discussed this at my earlier
16 deposition. When I was at Michael Best, my access
17 to my State account was through the Internet,
18 access to the State account, which was more
19 cumbersome and harder to work with. It was easier
20 for me to use my G Mail account and through the
21 use of labels retain materials that I thought were
22 going to be useful to me for the redistricting
23 process.

05:04PM

24 Q Did you use Outlook at all?

05:04PM

25 A I'm not certain what the login is considered. I

1 know it starts with OWA that allows me to access
2 my Outlook account. I did not have a physical --
3 I don't believe there was a physical Outlook that
4 I used on the computer.

05:05PM

5 Q When do you contemplate completing your review of
6 the E-mails from your G Mail account for material
7 responsive to the subpoenas in this case?

8 A My own review should be nearly complete, should be
9 complete within -- depending on how long I'm here,
10 it should be complete sometime tomorrow. But I
11 have not reviewed it with counsel.

05:06PM

12 Q How many documents have you identified as
13 responsive in the course of that review?

14 A I don't know the number.

05:06PM

15 Q Approximately?

16 A I wouldn't want to hazard a guess.

17 Q Okay. What specifications are you working under?

18 A I'm not sure I understand the question.

05:06PM

19 Q Has anybody provided you with specifications for
20 the documents you should be gathering?

21 A They have not.

22 Q What criteria are you using for your review?

23 A I'm looking for anything that mentions SB 150 or
24 the LRB draft number before it became SB 150, and
25 then I'm also doing an E-mail-by-E-mail search

05:07PM

1 from the date of enactment through the date of my
2 second deposition.

3 Q Why are you stopping at your second deposition?

4 A That was my instruction of the search parameters.

05:07PM

5 Q Who gave you that instruction?

6 A Counsel at Whyte Hirschboeck.

7 Q What is the date of your second deposition?

8 A I believe that was February 2 of 2012.

05:07PM

9 MS. BUCHKO: Counsel, if I could
10 just impose here. If we all need to have a
11 discussion about additional documents you
12 want him to look for, let's do that off the
13 record. Let's try and come to an agreement,
14 and we will give them to you. I don't want
15 to make this more difficult than it needs to
16 be. We can come to an agreement on which
17 additional documents should be located.

05:08PM

18 MR. EARLE: When are we going to
19 get them?

20 MS. BUCHKO: Pardon me?

21 MR. EARLE: When are we going to
22 get them?

23 MS. BUCHKO: When he's done with
24 his review and once we do our review.

05:08PM

25 Q What information do you have -- do you have any

1 information that you have not discussed in
2 response to the questions I've asked you here
3 today about Topic Number Nine?

4 MS. BUCHKO: Object to form.

05:08PM

5 THE WITNESS: Could you repeat the
6 question.

7 (Question read)

8 A I don't believe so.

05:09PM

9 Q Let's look at Topic Number Eight. You have
10 testified -- I've asked you a lot of questions
11 about Topic Number Eight. Is there anything else
12 that you know about that's responsive to Topic
13 Number Eight that you have not testified about
14 here today?

05:09PM

15 A I don't believe so.

16 Q Just so I'm clear, my preservation request to you
17 applies to any document through January 31 of
18 2013. I'm not limiting it to through your second
19 deposition. You understand that, correct?

05:10PM

20 A What topics are you referring to for preservation?

21 Q Any records related to redistricting.

22 A Okay.

23 Q Okay?

24 A Okay.

05:10PM

25 Q Do you understand that?

1 A Yes.

2 Q You agree to that request?

3 A Subject to instruction of counsel. Yes.

4 Q Is there anything else on Topic Number Eight, any
05:10PM 5 information that you have to offer on behalf of
6 the Wisconsin Senate, with regards to Topic Number
7 Eight?

8 A The only thing I can think of, and I don't know if
9 Jeff Ylvisaker testified to it, is that I believe
05:10PM 10 he took possession of those computers shortly
11 before the end date listed here. So they were
12 preserved at LTSB at that point.

13 Q Did there come a time when one of the external
14 hard drives stopped working?

05:11PM 15 A Not that I'm aware of.

16 Q Is it your testimony that the external hard drives
17 for the two computers that you had over at the
18 statehouse were working on the day that you turned
19 them over to the LTSB?

05:11PM 20 MS. BUCHKO: Objection, foundation
21 and competency.

22 A I don't know.

23 Q Well, let's take a look at that. Why don't you
24 pull out -- I'll give you Exhibit No. 2. This is
05:11PM 25 a document that was provided to us by

1 Jeff Ylvisaker during his --

2 MS. BUCHKO: Ylvisaker.

3 MR. EARLE: Did I do it wrong?

4 MS. BUCHKO: You were really close.

05:11PM

5 Q During the deposition. He indicates that the LTSB
6 took custody back of the two computers that were
7 assigned to you on January 28th of 2013. Does
8 that square with your recollection?

05:12PM

9 A I don't recall the specific date, but that sounds
10 about right.

11 Q And you had custody of both the computer you
12 worked on and the computer Joe Handrick worked on,
13 correct?

05:12PM

14 A They were in the custody of Senator Fitzgerald.
15 One of the computers was on my desk. The other,
16 as I mentioned in my declaration, was in a third
17 floor office with me until we moved offices at
18 which point it moved to the conference room
19 between the majority leader and the minority
20 leader's office.

05:12PM

21 Q What date was that?

22 A I don't recall the exact date. LTSB would have
23 the date when they moved the computers.

05:13PM

24 Q Looking at Exhibit No. 2 and the left-hand column,
25 if you look at the month of July, it says

1 approximately July 31 of 2012 the LTSB assisted in
2 the office move when the Senate switched majority
3 party. The computer moved from Senate majority
4 leader's office to Senate minority leader's
5 office. Is that the day you're talking about?

05:13PM

6 A I believe so. Yes.

7 Q Does that comport with your recollection?

8 A It does.

9 Q On that date, July 31, 2012, when the two

05:13PM

10 computers were moved, were both external hard
11 drives working?

12 A I don't know.

13 Q Did you ever check to see if the external hard
14 drives were working?

05:13PM

15 A The only time I recall looking at the external
16 hard drives was during the time they were over at
17 Michael Best. When the LTSB would bring over data
18 or software updates, they would bring a separate
19 external hard drive, unplug the hard drive that

05:14PM

20 was on my computer, swap in the one they brought,
21 download the information, and then switch my hard
22 drive back on. Because it was sitting on top of
23 my computer when it was on there was a little blue
24 reflection I could see from the light. I remember

05:14PM

25 one occasion when I didn't notice it and noticed

1 that the hard drive had been turned off at which
2 point I turned it back on.

3 Q Was the little blue light working when the
4 computers were moved from the majority leader's
05:14PM 5 office to the minority leader's office?

6 A I don't know.

7 Q When was the last time you remember seeing the
8 little blue lights on those external hard drives?

9 A I don't recall.

05:14PM 10 Q Did you ever see any message on your computer that
11 there had been a backup failure?

12 A Not that I recall. No.

13 Q Do you know whether the external hard drives were
14 programmed to give you a message when they weren't
05:15PM 15 working or weren't backing up?

16 A Not that I'm aware of.

17 Q Did you use the external hard drives for any
18 purpose other than backing up the computer?

19 A LTSB configured the external hard drives to back
05:15PM 20 up selected files. I never had any other access.
21 I don't recall ever accessing the external hard
22 drives for anything.

23 Q Did you ever load any information onto the
24 external hard drives?

05:15PM 25 A Not directly. No. Only as a backup to what was

1 on the internal hard drive.

2 Q Why did the two computers stay at Michael Best as
3 long as they stayed there?

4 A I don't know.

05:16PM 5 Q Did you continue to use those two computers at
6 Michael Best through June 4th of 2012?

7 A Yes.

8 Q Why did you continue to work at Michael --

05:16PM 9 A Let me rephrase that. I continued to use the
10 computer that was at my desk through that time.

11 Q Did you access Joe Handrick's computer during that
12 time?

13 A During what time?

05:16PM 14 Q Up until June 4th. Between the redistricting
15 trial and June 4th of 2012.

16 A I don't recall accessing his computer after the
17 trial --

18 Q When you --

19 A -- while at Michael Best.

05:16PM 20 Q I'm sorry. What?

21 A I don't recall accessing his computer at Michael
22 Best from the point of the trial.

05:17PM 23 Q When you accessed Joe Handrick's computer while it
24 was at Michael Best, and I'm talking about the
25 entire time it was at Michael Best, how did you

1 access it?

2 A I'm not sure I understand the question.

3 Q How did you log on?

4 A It was typically left logged in.

05:17PM 5 Q Oh. So you didn't have to log on? You could just
6 simply turn it on?

7 A I think it was left on as well. Only if there
8 were requirement to change the password or if
9 there was a system update that required it to
10 restart did I have to log back on.

05:17PM 11 Q And when you had to log back on, how did you log
12 on?

13 A I logged on with a user name and password.

14 Q Whose user name and password?

05:17PM 15 A My user name.

16 Q Did Joe Handrick have a different user name?

17 A No.

18 Q Joe Handrick used your user name?

19 A That's correct.

05:17PM 20 Q Did Joe Handrick have access to your computer?

21 MS. BUCHKO: Object to form.

22 A It was in the same room that he worked in. I'm
23 not aware that he was ever on my computer.

05:18PM 24 Q Did Joe Handrick to your knowledge have any
25 understanding of his ability to access that

1 computer that was assigned to you that you used?

2 MS. BUCHKO: Objection, calls for
3 speculation.

4 MR. JACOB: Object as to form.

05:18PM

5 A I don't know.

6 Q Did you ever see Joe Handrick access the computer
7 that you used?

8 A I don't recall seeing him access it. No.

05:18PM

9 Q How often was Joe Handrick in the Michael Best
10 office during this time frame when the computers
11 were at Michael Best?

12 A He was there frequently from the early part of
13 June through enactment or at least -- I should say
14 through passage by the legislature. He was there
15 very infrequent after that point.

05:18PM

16 Q Was Joe Handrick there during the trial?

17 A He may have been there once or twice during the
18 trial.

05:19PM

19 Q Did you use the computer assigned to Joe Handrick
20 for any purpose during the trial?

21 A I don't believe during the trial. No.

22 Q Between the date of your second deposition and the
23 trial, did you use Joe Handrick's computer?

24 A Not that I recall.

05:19PM

25 Q Did you use Joe Handrick's computer between the

1 time that it was moved from Michael Best and the
2 time it was sent over to the LTSB?

3 A I may have logged in once or twice. The only time
4 I used it was -- that I recall using it was prior
05:20PM 5 to its being moved to the second floor conference
6 room. I logged on and removed the maps that had
7 been produced earlier for deposition.

8 Q Would you inventory everything you -- you said you
9 removed. What does that mean?

05:20PM 10 A I deleted the map folder.

11 Q You just deleted one folder with maps and that's
12 it?

13 A There may have been more than one folder labeled
14 with maps, and there may have been sub folders.
05:20PM 15 But that's all I recall deleting.

16 Q Did you make a list of what you deleted?

17 A I did not.

18 Q Did you talk to anybody before you made that
19 decision to delete those files?

05:20PM 20 A Not that I recall.

21 Q How long did it take you to delete those files?

22 A I don't recall.

23 Q How did you delete those files?

24 A I opened up the file folder directory, identified
05:21PM 25 the file with the maps in it, and hit delete.

1 Q Did you do anything else besides that?

2 A Once I was finished I emptied the recycle bin.

3 Q Did you consult with anybody about how to
4 effectuate the deletion of those files?

05:21PM 5 A Not that I recall.

6 Q Did you tell anybody you had done that?

7 A I later disclosed to counsel that I had done that.

8 Q What counsel?

9 A At Whyte Hirschboeck.

05:21PM 10 Q When did that occur?

11 A In January.

12 Q Did you tell anybody else?

13 A Not that I recall.

14 Q Did you tell Adam Foltz?

05:21PM 15 A I don't recall.

16 Q Did you tell Scott Fitzgerald?

17 A I don't believe so.

18 Q Did you tell Eric McLeod?

19 A I don't believe so.

05:22PM 20 Q Did you tell any other counsel for Michael Best?

21 A Not that I recall.

22 Q When did you make the decision to delete those
23 files?

05:22PM 24 A When I learned that as part of the office move the
25 only space for that computer was in the conference

1 room between the majority leader and the minority
2 leader's office.

3 Q Did you consider the option of password protecting
4 those folders?

05:22PM

5 MS. BUCHKO: Objection; foundation,
6 competency.

7 A I'm not aware of how to do that separately for a
8 folder outside of the system login ID for the
9 legislature.

05:23PM

10 Q I didn't ask you whether you were aware of it. I
11 asked you whether you considered that option.

12 A I did not.

13 Q Did you consider any options that could have
14 secured that computer but preserved the
15 information on the computer?

05:23PM

16 A I'm not aware of what other options there were.

17 Q The question is whether you considered that.

18 MS. BUCHKO: Objection, asked and
19 answered.

05:23PM

20 A Not that I recall.

21 Q As clearly as possible I want you to identify
22 exactly which folders you deleted on that day.

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

05:23PM

25 A They were the map folders. I don't recall the

1 specific titles if there were anything -- if it
2 said anything other than maps.

3 Q Is it your testimony that you only deleted maps
4 and you deleted no other redistricting files from
5 that computer?

6 A That's my recollection.

7 Q Did you delete any files from the backup of that
8 computer?

9 A I did not.

10 Q Did you copy any files from that computer?

11 A It was my understanding that all of the maps that
12 had been deleted were already copied, so I did not
13 make any additional copies.

14 Q Where were they copied?

15 A They were produced for deposition and provided to
16 the plaintiffs, so I knew that they existed at
17 least at Michael Best.

18 Q When were they produced for deposition and whose
19 deposition were they produced for?

20 A They were produced for the Handrick deposition. I
21 believe it was for his second deposition.

22 Q Did you verify or do anything to verify that the
23 maps that you were deleting were in fact produced?

24 A Adam and I were involved in the original
25 production of the maps from Handrick's computer.

1 We each copied a portion of them. And then when
2 we had them copied into a separate folder we each
3 went through and verified that all of the maps
4 were copied to that folder before they were burned
5 to a disc. So that was when I had verified that
6 those maps were copied.

05:25PM

7 Q Did you do anything else that day with regards to
8 any of the redistricting computers?

9 MS. BUCHKO: Object to form.

05:26PM

10 A I don't specifically recall. Typically when my
11 computer is going to be removed from the system
12 and installed somewhere else, I go through my own
13 folders and make sure that files that I want to
14 make sure I have access to including files on my
15 desktop that I need access to are in a location
16 where I can find them because the appearance isn't
17 always the same when LTSB hooks them back up. So
18 I went through my own computer and probably did
19 some of that analysis as well.

05:26PM

20 Q What do you recall about that?

21 A I don't specifically recall what I did with my own
22 computer on that day. What I often do is go
23 through the desktop. If there are PDFs for
24 example from E-mails that I've saved onto my
25 desktop for ease of printing -- if I didn't need

05:27PM

1 them anymore, sometimes I would delete those. I
2 believe at that time I removed a couple of
3 applications like a Kindle reading app and a
4 program called F.lux.

05:27PM

5 Q A program called what?

6 A F.lux I believe is the name of it. It changes the
7 brightness of your screen at different times of
8 the day to reduce eye strain. I believe I removed
9 those programs at that time because I didn't think
10 I would need them where I was moving.

05:27PM

11 Q Anything else?

12 A Not that I specifically recall.

13 Q And why is it that you removed programs before the
14 computer was moved?

05:27PM

15 A Because I often can't find them in the locations I
16 had them once LTSB hooks me back up. I know they
17 try to restore things as you have them, but it
18 seldom looks like I remembered it.

19 Q You made restoration requests from LTSB in the
20 past?

05:28PM

21 MS. BUCHKO: Objection; foundation,
22 competency.

23 A I have requested assistance with my mailbox
24 before. For example, my personal address book
25 often gets lost in the transition. I've made that

05:28PM

1 sort of request. If that's -- I don't know if
2 that's considered a restoration request.

3 Q So it's your testimony that your address book got
4 lost when the computer was moved and you sought
05:28PM 5 assistance from the LTSB to restore that? Is that
6 what you're saying?

7 A I don't know if it happened at that particular
8 time, but I have made that request of LTSB at a
9 different time in the past.

05:28PM 10 Q Did you do the same thing when the computer was
11 moved from Michael Best to the majority leader's
12 office?

13 A I may have. I don't specifically recall.

14 Q Exactly where in the majority leader's office did
05:29PM 15 the computer go to when it was removed from
16 Michael Best, the one that you used?

17 A That went to my desk in the third floor room at
18 the capitol in the south wing.

19 Q Were you the only person with access to that
05:29PM 20 computer in that location?

21 A I was the only one that used that computer. There
22 were other people in the office who had access to
23 the room.

24 Q Where did the computer that had been previously
05:29PM 25 assigned to Joe Handrick go at that time?

1 A At that time it was assigned to the same room.

2 Q Was anybody using that computer in that room
3 during that time?

4 A Not that I recall.

05:29PM

5 Q Did any of the people on Exhibit 8 have access to
6 Joe Handrick's computer?

7 A They had access to the room, but I don't recall
8 any of them having access to the computer.

9 Q Did you use either computer to view pornography?

05:30PM

10 A No.

11 Q At any time?

12 A No.

13 Q Did you ever delete pornographic images from
14 either computer at any time?

05:30PM

15 MS. BUCHKO: I'm going to object
16 that it's outside the scope of the designated
17 topics.

18 Q You may answer the question.

19 A Not that I recall.

05:30PM

20 Q I draw your attention to Number Seven, Topic
21 Number Seven. It reads, "Any forensic or other
22 analysis conducted on the redistricting computers
23 between January 1 of 2011 and January 31 of 2013."
24 What do you know about Topic Number Seven?

05:31PM

25 A I spoke with Jeff Ylvisaker, and he said that he

1 thought it was on those last two days in January
2 that the redistricting computers were imaged by
3 PLA.

05:32PM

4 Q How long did that conversation with Jeff Ylvisaker
5 last?

6 A I don't know exactly. Maybe 10 or 15 minutes.

7 Q How much time did you spend discussing Topic
8 Number Seven?

9 A Probably less than a minute.

05:32PM

10 Q How about Topic Number Eight?

11 A In terms of how much time?

12 Q Yes.

13 A I don't recall.

05:32PM

14 Q Was it similar to the amount of time you spent on
15 Topic Number Seven?

16 A Possibly. I don't recall specifically.

17 Q Do you have any knowledge of any forensic
18 examination of any of the redistricting computers
19 prior to that event described by Mr. Ylvisaker?

05:33PM

20 A Not that I am aware of.

21 Q What did you do to determine whether there were
22 any forensic examinations of those computers prior
23 to the event that described by Mr. Ylvisaker?

05:33PM

24 A I asked him about when he -- if he was aware of
25 any. And that's when he mentioned that they were

1 imaged at the end of January. Prior to that they
2 were in Senator Fitzgerald's possession, and I was
3 not aware of anybody having done any sort of
4 forensic analysis.

05:33PM

5 Q Did Senator Fitzgerald have access to either of
6 the two computers?

7 A He would have had access to them. Yes.

8 Q Are you aware of whether Senator Fitzgerald
9 actually accessed either of the two computers?

05:33PM

10 A Not to my knowledge.

11 Q What's his logon name?

12 A I'm not certain.

13 Q What's yours?

14 A T0ttman.

05:34PM

15 Q Has he ever discussed the content of those
16 computers with you?

17 A Not that I can recall.

18 Q Has he ever asked you if you deleted any documents
19 from those computers?

05:34PM

20 A Not that I recall.

21 Q Have you ever spoken with anybody at PLA?

22 A I have not.

23 Q Have you ever spoken with a fellow by the name of
24 Evans from PLA?

05:34PM

25 A No.

1 Q Is there anything else you can offer in testimony
2 on behalf of Topic Number Seven?

3 A Not that I can think of.

4 Q Going back to your E-mails. You said you used the
05:35PM 5 State E-mail account much less than you did the
6 G Mail account, correct?

7 A During the time I was at Michael Best that's
8 correct.

9 Q Did you save your redistricting E-mails that were
05:35PM 10 generated through the State E-mail account?

11 A Typically if there was an E-mail on my State
12 account related to redistricting, I would forward
13 it to my G Mail account. Then if I needed it, I
14 would save it in my G Mail.

05:35PM 15 Q So is it your testimony that any State account
16 E-mails that pertained to redistricting would have
17 been forwarded to your G Mail account and then
18 placed in the G Mail folder for redistricting?

19 A There may have been some that I left in my State
05:36PM 20 account, but likely not any that I used during the
21 redistricting process.

22 Q Have you had any contact with ALEC about
23 redistricting?

24 A I have not.

05:36PM 25 Q Have you spoken with anybody associated with ALEC

1 about redistricting?

2 A What do you mean by associated with?

3 Q Do you know what the word associated means, right?

4 A Senator Fitzgerald has been a member of ALEC. I

05:36PM

5 spoke with him about redistricting. There may

6 have been other members of the legislature who are

7 members of ALEC that I've spoken to about

8 redistricting.

9 Q Have you obtained any resource materials from ALEC

05:36PM

10 about redistricting at any point in time?

11 A Not that I recall.

12 MR. EARLE: We're done.

13 THE VIDEOGRAPHER: The time is

14 5:36. We are going off the record concluding

05:37PM

15 Disc No. 1 of the deposition of

16 Mr. Tad Ottman.

17 (Recess)

18 THE VIDEOGRAPHER: The time is

19 5:38. We are on the record. This marks the

05:39PM

20 beginning of Disc No. 2 of the deposition of

21 Mr. Tad Ottman.

22 Q Mr. Ottman, drawing your attention to Topic Number

23 Five. Would you read that topic, please.

24 A "All maintenance performed on the three

05:39PM

25 redistricting computers between January 1, 2011

1 and January 31, 2013."

2 Q What did you do to ascertain what information is
3 reasonably available to the Wisconsin Senate about
4 Topic Number Five?

05:39PM 5 A I spoke with Jeff Ylvisaker about the maintenance
6 records on those computers.

7 Q Did you do anything else?

8 A No.

05:39PM 9 Q Did you ever ask anybody at the LTSB to perform
10 maintenance on any of the computers?

11 A Not that I recall. No.

12 Q Did you ever ask anybody to help you restore
13 information that was lost from your computer?

05:40PM 14 A Like I say, outside of potentially my mailbox for
15 Microsoft I don't recall any other information.

16 Q Did you ever accidentally delete data from your
17 computer?

18 A Not that I recall.

05:40PM 19 Q Did you ever accidentally lose data on any of the
20 computers you were using for redistricting?

21 A Not that I recall.

22 Q Do you have any knowledge about Adam Foltz's
23 computer with regards to Topic Number Five?

24 A I do not.

05:40PM 25 Q Let's go to Topic Number Four. Is there anything

1 more that you know that I've not asked you about
2 with regards to Topic Number Five?

3 A I don't believe so.

4 Q Other than that conversation -- how long did that
5 conversation last with Jeff Ylvisaker about Topic
6 Number Five?

05:41PM

7 A I believe it was 10 to 15 minutes. Not
8 specifically to that. The overall conversation
9 was 10 to 15 minutes. I don't recall how long
10 specific to Number Five the conversation was.

05:41PM

11 Q Did Mr. Ylvisaker ever get back to you about Topic
12 Number Five?

13 A I believe I asked him *Do you have information on*
14 *that* and he said *Yes, that would be something that*
15 *we would have a record of.*

05:41PM

16 Q Did you ever correspond by E-mail or in writing
17 with anybody at the LTSB about maintenance issues
18 for your computer?

19 MS. BUCHKO: Object as to form.

05:42PM

20 A I did have correspondence with them during the
21 period when we were working on redistricting about
22 software difficulties primarily with the Autobound
23 software. But I think I may have mentioned that
24 my computer seemed to have more trouble than the
25 others. I don't recall if there was anything

05:42PM

1 specific that they did in response to that.

2 Q All right. Drawing your attention to Topic Number
3 Four, "All users of the three redistricting
4 computers between January 1 of 2011 and January 31
05:42PM 5 of 2011." Would you define for me the universe of
6 the users that you were aware of.

7 A The people that had access were on the list I
8 provided to you. Adam Foltz would have had access
9 to there. I don't recall him using my computer.
05:43PM 10 He may have worked on Joe's computer at some
11 point. And then Joe Handrick would have used that
12 computer.

13 Q Well, let's start with the computer that you used.
14 I'm drawing attention to Exhibit No. 2. That has
05:43PM 15 been identified by the LTSB as WRK32587. Do you
16 see that there on the first column?

17 A Okay. Yes.

18 Q Who had access to your computer during the time
19 frame indicated on Exhibit No. 2?

05:43PM 20 A The people I know that would have had access to
21 the computer were myself, Adam Foltz,
22 Joe Handrick, and the other people identified on
23 that list.

24 Q Let's break it down by time period. Starting with
05:44PM 25 July of 2010 when the computer was deployed to

1 Michael Best on I guess it was July 15, 2010.

2 A Uh-huh.

3 Q What was it being used for at that point in time?

4 A I don't believe it was being used at that point in
05:44PM 5 time.

6 Q When did you first start using that computer?

7 A At the end of that year or the beginning of
8 January 2011. Sometime around then. I may have

9 logged in once over the summer to see if it
05:44PM 10 worked, but -- once or twice over the summer. But
11 I wasn't using it for anything. There was no data
12 associated with the software at that point.

13 Q So your testimony is that you began to use it at
14 the end of 2010 and the beginning of 2011?

05:44PM 15 A That's correct.

16 Q When did you physically relocate yourself over to
17 the law offices of Michael Best?

18 A I believe that was at the end of 2010 in December.

19 Q From that point to the point that the computer
05:45PM 20 left Michael Best & Friedrich, which was June or
21 July -- I'm sorry. June 4th of 2012. Identify
22 every person who had access to that computer.

23 A Myself, Adam Foltz, Joe Handrick. The attorneys
24 at Michael Best had a key to the room. I presume
05:45PM 25 they would have had access to it.

1 Q They would have been able to use the computer?

2 A I don't know.

3 Q Did they?

4 A Not to my knowledge.

05:46PM

5 Q How often was Eric McLeod in that room with you?

6 A Fairly often, but I couldn't be very specific.

7 Q He never sat down and used the computer?

8 A Not to my knowledge.

9 Q You never walked into the room and saw him there

05:46PM

10 using it?

11 A I did not.

12 Q Did you have a desk in that room?

13 A I did.

14 Q Did you have file cabinets in that room?

05:46PM

15 A The desk had drawers and there was a hutch over

16 the desk and there was a map file drawer.

17 Q Were all of the maps in the map file drawer

18 produced in response to discovery?

19 A That's my understanding, in electronic form.

05:46PM

20 Q When those maps were produced in electronic form,

21 what form do you mean?

22 A The maps on my computer, Adam's computer, and the

23 computer that Joe Handrick was using were

24 downloaded onto a disc. Copied into a folder,

05:47PM

25 downloaded onto a disc. And then it's my

1 understanding that disc was provided to the
2 plaintiffs.

3 Q Were they produced in native format?

4 MS. BUCHKO: Objection, competency.

05:47PM

5 A They were produced as a block assignment files.

6 Q What does that mean?

7 A It's my understanding that the software that we
8 were using assigns every block in the state to a
9 district and then that software produces what's
10 called a block assignment file. From that
11 assignment file it can then be read by whatever
12 redistricting software is being used to examine
13 it.

05:48PM

14 Q Is that a form of a shape file that you're talking
15 about?

05:48PM

16 MS. BUCHKO: Objection; foundation,
17 competency.

18 A I'm not sure.

19 Q Do you know what a shape file is?

05:48PM

20 A Yes.

21 Q Is it your testimony that these maps were
22 produced -- strike that. Were these maps produced
23 in PDF format or was there data associated with
24 the maps?

05:48PM

25 A I know it was copied to a block assignment file.

1 I'm not certain what data goes along with that. I
2 think it allows all of the data that is associated
3 with that map to be reproduced in whatever
4 software is used to upload it.

05:48PM

5 Q Do you know that for a fact or are you
6 speculating?

7 A I'm not fluent, so I'm speculating on that.

8 Q Did you review what was actually turned over to
9 the plaintiffs in the redistricting case?

05:49PM

10 A I reviewed the maps that were copied to make sure
11 that they were all copied onto the disc that it's
12 my understanding was produced. That was the last
13 time I saw it.

05:49PM

14 Q Now, from the time that the computer was moved
15 into Senator Fitzgerald's office and while he
16 remained the majority leader, which I guess was
17 from June 4th of 2012 to the end of July of 2012,
18 correct?

05:49PM

19 A Yes. He was majority leader before then, but he
20 was majority leader during that time.

21 Q In terms of when the computer was there.

22 A Okay.

23 Q During that time period, who on Exhibit 8 had
24 access to any of the computers?

05:50PM

25 A Anybody working for the office during that time

1 period would have had access to the room that I
2 was in that would have housed those computers. So
3 that would have been Rob Richard, John Hogan,
4 myself, Cindy Block. Megan Cramer -- it looks
05:50PM 5 like she started prior to that time. C.J.,
6 Kirsten. Dan started after that time. Eric
7 started after that time. Lucas started after that
8 time. Adam started after that time. Tom Evenson
9 started after that time.

05:51PM 10 In terms of the interns, it looks like T.J.
11 started after that time. I don't know the rest of
12 these personally, but I assume based on the time
13 frame of when they were given logon IDs that they
14 would have had access.

05:51PM 15 Q Okay. Just so I understand this, while it was at
16 Michael Best, the computers were left on all of
17 the time, correct?

18 A Joe's computer was left on all of the time. I'm
19 not certain what Adam did. I restarted my
05:51PM 20 computer at the end of every day.

21 Q So you shut your computer down at the end of the
22 day or --

23 A I hit Restart.

24 Q You hit Restart. Why did you do that?

05:51PM 25 A It's just my practice.

1 Q Is there a reason for it?

2 A I understood it to be good computer maintenance to
3 make sure that it restarted and kept the computer
4 operating at a better speed in case there were
05:52PM 5 files that had accumulated in the short-term
6 memory.

7 Q Okay. All right. So the redistricting folders or
8 information on those computer -- were they kept in
9 a sub account of any kind or in a set of folders
05:52PM 10 or could -- strike that. Let me withdraw that.

11 What location within those computers were the
12 redistricting files kept?

13 A I believe there was a map folder within Autobound.
14 I don't know exactly the structure of the folder.

05:53PM 15 Q When somebody booted the computer on, how would
16 they get to that folder?

17 A Typically you would start up Autobound and then
18 search for the folder. You may also be able to go
19 in through the file folder directory and find it.

05:53PM 20 Q Is it your testimony that anybody with a State
21 account could log on?

22 MS. BUCHKO: Object to form.

23 A It's my understanding that anybody with a State
24 account could log on once they were returned to
05:53PM 25 the capitol and put back onto LTSB's system.

1 Q Clarify for me exactly what a person could access
2 once they logged onto the computer once it was in
3 the capitol --

05:54PM

4 MS. BUCHKO: Objection; foundation,
5 competency.

6 Q -- in the majority leader's office.

05:54PM

7 A I'm not certain exactly what someone else would
8 see other than my own log on other -- when I
9 logged on, I know what I would see. I'm not
10 certain what someone else would see when they
11 logged on with their ID.

12 Q Well, was the information regarding redistricting
13 password protected?

14 A Not to my knowledge.

05:54PM

15 Q So you guys went out and had all of these secrecy
16 agreements and limited access and you went through
17 the effort to have the computers off premises in
18 order to limit access and then you brought them
19 back and let anybody have access?

05:54PM

20 MS. BUCHKO: Object to form.

21 Q Is that what your testimony is?

22 MS. BUCHKO: Foundation,
23 competency, compound.

05:55PM

24 A They were stored at Michael Best in order to keep
25 anybody from accessing them through the end of the

1 case as I understood it and they were not stored
2 on a network drive. After the case was over, they
3 were in a room that I was in on a daily basis.
4 But in terms of further protection -- there was no
05:55PM 5 further protection that I was aware of.

6 Q Please describe all security measures you
7 undertook for those computers when you moved them
8 into the Senate majority leader's office.

9 MS. BUCHKO: Object to form.

05:55PM 10 A They were kept in a room in which I sat at every
11 day. The door was typically locked although other
12 members in my office had a key to get into there
13 if need be.

14 Q Anything else?

05:55PM 15 A Nothing specific that I can recall.

16 Q Did you leave the computers on?

17 A Mine was left on during the day. When I was not
18 at my desk, I typically locked it with my own
19 password. The computer that Joe had used I don't
05:56PM 20 think was on very much if at all.

21 Q So on your computer you had the ability to lock it
22 with your own password when you turned it off?

23 A That's correct. Not when I turned it off. When I
24 left it. I hit control, alt, delete and then
05:56PM 25 there's a lock computer option. And then when I

1 come back, I would hit control, alt, delete and
2 have to type in my login password to access it.

3 Q Okay. And the same procedure with Joe's computer?

4 A I believe Joe's computer -- if it was not on
05:57PM 5 or even if it was, there's a switch user option or
6 when you start it up there's a login and ID and
7 password. I believe anybody with a legislative
8 account could log in in that manner.

9 Q What was different about the circumstances when
05:57PM 10 the computer was moved from the majority leader's
11 office to the minority leader's office?

12 A At that time there was not room for that extra
13 computer in the majority leader's office, so it
14 was placed in a conference room assigned to the
05:57PM 15 minority leader's office in between the majority
16 leader's and minority leader's office.

17 Q What was its function?

18 A I'm sorry?

19 Q What was the function of that computer in that
05:57PM 20 conference room?

21 A It was available there if we had interns that we
22 didn't have room for in the office that needed a
23 computer.

24 Q Did you make any inquiry as to how you could
05:58PM 25 secure the redistricting information on that

1 computer at that point in time?

2 A I did not.

3 Q Did you discuss with the majority leader, the
4 then-minority leader, what to do with that

05:58PM

5 computer at that point in time?

6 A Not with the minority leader. No. I believe I
7 discussed with the chief of staff.

8 Q Who was that?

9 A At the time that was John Hogan.

05:58PM

10 Q Describe that discussion for me.

11 A I think it was a discussion of *You're moving back*
12 *into the main office. Where should these*
13 *computers go. The decision was Let's put that one*
14 *in the conference room.*

05:59PM

15 Q Who made that decision?

16 A I don't know if it was me or John or if it was a
17 suggestion and we just said *Fine. Have LTSB move*
18 *it there.*

06:00PM

19 Q Why don't you grab Exhibit No. 5 here. Never
20 mind.

21 MR. EARLE: This is a good breaking
22 point. It's 6:00. We will continue tomorrow
23 morning.

24 THE WITNESS: Okay.

06:00PM

25 THE VIDEOGRAPHER: The time is 5:59

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p.m. we are going off the record concluding
testimony for April 29, 2013.
(Adjourning at 6:00 p.m. on April 29, 2013)

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TAD M. OTTMAN,

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

EXAMINATION

By Mr. Poland:

Q Mr. Ottman, good morning.

A Good morning.

Q This is a continuation of the 30(b)(6) deposition
that we were taking of you yesterday when we broke
yesterday evening. Do you understand that?

A I do.

Q All right. I'm going to ask you if you would
please get Exhibit No. 1 out. Here. I'll hand it
to you. This is a copy of the 30(b)(6) deposition
subpoena that was served on the Wisconsin State
Senate. These are the topics that you were
designated to testify to as one of the witnesses
for the Senate, correct?

A That's correct.

Q I would like to move to topics that we didn't
discuss expressly yesterday. I believe when we
left off, the last topic that Mr. Earle asked you
about was Topic Number Four. I would like to move
to Topic Number Three.

A Okay.

09:12AM

09:12AM

09:12AM

09:13AM

1 Q Do you have that in front of you?

2 A I do.

3 Q That topic is the location, possession, custody,
4 and control of any of the three redistricting
09:13AM 5 computers between January 1, 2011 and January 31,
6 2013. Do you see that?

7 A I do.

8 Q I know that you gave some testimony yesterday that
9 touched on those subjects, so I'm going to try to
09:13AM 10 avoid that as best that I can and just finish up
11 on that topic. Okay?

12 A Okay.

13 Q Now, I know that you testified yesterday in
14 response to Mr. Earle's testimony that the
09:13AM 15 computers were -- when I say computers, the two
16 computers that were assigned to the Senate,
17 redistricting computers -- that those were located
18 in Michael Best & Friedrich's offices for some
19 period of time in 2011, correct?

09:13AM 20 A That's correct.

21 Q One of them was originally issued to you and was
22 deployed to Michael Best in approximately July
23 2010; is that correct?

24 A That's correct.

09:13AM 25 Q And the other was issued to you but used by

1 Mr. Handrick for redistricting work, correct?

2 A That's correct.

3 Q And that second computer was deployed in
4 approximately March of 2011; is that correct?

09:14AM

5 A That's correct.

6 Q I want to stick just with the computer first that
7 was issued to you and was deployed to Michael Best
8 in approximately July 2010.

9 A Okay.

09:14AM

10 Q Now, you had testified yesterday I believe there
11 was also a hard drive that was used to back up
12 that computer, correct?

13 A There was an external hard drive used to back up
14 selected files on that computer.

09:14AM

15 Q All right. And that was set to back up
16 automatically from your redistricting computer,
17 correct?

18 A That's my understanding.

09:14AM

19 Q Now, I believe that you testified that there were
20 times when people from the LTSB would come in and
21 I think you said they would swap out an external
22 hard drive. Did I understand your testimony
23 correctly?

09:14AM

24 A That's correct. When they had new data or
25 upgrades to the software, they would bring it over

1 on an external hard drive and then they would swap
2 out the external hard drive on mine, plug theirs
3 in, upload the data, do whatever they needed to do
4 on my computer, and then swap it back.

09:15AM

5 Q So they would replace that backup hard drive back
6 into your computer?

7 A That's correct.

8 Q Did you do anything at all to alter the backup
9 schedule that was on the hard drive attached to

09:15AM

10 your computer?

11 A I did not.

12 Q You just let it run and do its thing?

13 A That's correct.

14 Q Did you ever have any occasion in which you
15 accessed any of the backed up files that were on
16 that external hard drive attached to your
17 computer?

09:15AM

18 A Not that I recollect.

19 MR. EARLE: Excuse me just a
20 second.

09:15AM

21 MR. POLAND: Excuse me just a
22 second.

23 Q The computer that was assigned to you, once it was
24 brought to Michael Best's office in July of 2010,
25 did that computer or external hard drive ever

09:16AM

1 leave Michael Best's office before approximately
2 June 4, 2012?

3 A Not that I'm aware of.

4 Q So it was there the whole time as far as you're
5 aware?

09:16AM

6 A Correct.

7 Q I would like to ask the question about the
8 computer that Mr. Handrick used. From the time
9 that that was installed in Michael Best's offices
10 in approximately March of 2011, did that ever
11 leave Michael Best's offices until the time that
12 it was moved over to the capitol building on
13 approximately June 4, 2012?

09:16AM

14 A Not that I'm aware of.

15 Q To your knowledge did anyone other than you ever
16 access the computer that you used for
17 redistricting while it was at Michael
18 Best & Friedrich's offices?

09:17AM

19 A Outside of LTSB -- they accessed it for the
20 purposes I've described previously. Adam or Joe
21 may have sat down and looked at something on it,
22 but I don't know that they accessed it at all.

09:17AM

23 Q I know Mr. Earle had asked you yesterday if
24 Mr. McLeod ever used that computer or if you ever
25 saw him using it. My recollection is your

09:17AM

1 testimony was that he did not; is that correct?

2 A That's correct.

3 Q Did you ever see any other lawyers or paralegals

4 or staff from Michael Best & Friedrich ever

09:17AM

5 sitting at or working on the redistricting

6 computer that you used while it was at Michael

7 Best & Friedrich?

8 A Not that I saw.

9 Q I would like to ask you about the computer that

09:18AM

10 was assigned to you but used by Mr. Handrick for

11 the redistricting. Okay?

12 A Okay.

13 Q That also had an external hard drive attached to

14 it, correct?

09:18AM

15 A That's correct.

16 Q Do you know whether that was used for the same

17 purpose, backing up that computer?

18 A That's my understanding.

19 Q Do you know whether Mr. Handrick did anything to

09:18AM

20 change the back up schedule for that particular

21 computer and hard drive?

22 A Not to my knowledge.

23 Q Did you ever do anything to change the back up

24 system for that hard drive or that computer?

09:18AM

25 A I did not.

1 Q My understanding is that the hard drive that was
2 attached to Mr. Handrick's computer is the hard
3 drive that is no longer operable. Is that your
4 understanding as well or do you know that at all?

09:18AM

5 A I don't know which one is inoperable.

6 Q Did you ever have any reason to access or check on
7 the integrity of the backup on that external hard
8 drive that was attached to Mr. Handrick's
9 computer?

09:19AM

10 A I did not.

11 Q Were you ever aware that the hard drive attached
12 to Mr. Handrick's computer was not working?

13 A No.

09:19AM

14 Q When was the very first time that you heard that
15 that hard drive was no longer operable?

16 A I believe after the computers were turned over to
17 LTSB and were imaged. At some point after that
18 somebody informed me that one of the backup drives
19 was inoperable. But I didn't know which one.

09:19AM

20 Q During the time that the computer that
21 Mr. Handrick used was at Michael Best & Friedrich,
22 did -- let's talk about the people who used that
23 computer. Obviously Mr. Handrick used it,
24 correct?

09:19AM

25 A That's correct.

1 Q Did you use it as well? Did you ever log on to
2 it?

3 A I did. Yes.

4 Q For what purposes did you log on to the computer
5 Mr. Handrick used?

6 A I logged on to it if it needed a password change
7 because the password had expired or sometimes
8 after updates. I don't know if I was required to
9 log on to that. And then there were occasions if
10 I needed to review a plan of Joe's at the time of
11 the final map preparation. I believe we may have
12 looked at that computer at times to verify all of
13 the blocks were assigned. On all of our computers
14 we did that. I think there were copies on all of
15 them, that there were no unassigned blocks that
16 the plan was essentially complete and ready for
17 drafting.

18 MR. EARLE: Off the record.

19 THE VIDEOGRAPHER: The time is
20 9:19. We are going off the record.

21 (Discussion off the record)

22 THE VIDEOGRAPHER: We are on the
23 record at 9:20.

24 Q Mr. Ottman, with respect to Mr. Handrick's
25 computer, in addition to you and Mr. Handrick, did

1 anyone else access Mr. Handrick's computer?

2 A Adam Foltz accessed it.

3 Q When did Mr. Foltz access Mr. Handrick's computer?

4 A At various times throughout the redistricting

09:21AM

5 process. Sometimes Joe was uncertain how to use

6 certain functions. Adam would get on his computer

7 and either show him how to do it or set it up for

8 him. He and I both accessed it when we did the

9 map production for discovery. He was on there.

09:22AM

10 There may have been other times that he accessed

11 it.

12 Q You have just mentioned that you and Mr. Foltz

13 accessed Mr. Handrick's computer when you did the

14 productions; is that correct?

09:22AM

15 A That's correct.

16 Q What did you do with that computer when you

17 accessed it for document productions?

18 A When we accessed it for document productions, we

19 opened up Autobound, copied all of the maps that

09:22AM

20 were not -- that were able to be copied. Some of

21 them were corrupt and wouldn't open. So

22 everything we could copy we put into a folder,

23 saved into a folder. It's a long process because

24 each map takes a long time to do that. Then we

09:22AM

25 verified that we had all of the maps in that

1 folder and then -- I don't know if it was Adam or
2 myself who then copied that to a disc.

3 Q Was it a folder that was set up on Mr. Handrick's
4 computer that you copied those maps into?

09:23AM

5 A I believe so.

6 Q Do you recall what the name of that folder was?

7 A I don't. It had maps in the title I imagine, but
8 I don't know exactly what the title was.

09:23AM

9 Q When was it that you and Mr. Foltz went through
10 that process that you just described?

11 A I don't know exactly. I think it was sometime in
12 between the first and the second deposition I
13 believe.

09:23AM

14 Q Do you recall whether that might have been as a
15 result of the order that the Court issued on
16 January 3, 2012?

17 A Was that the order about privilege?

09:24AM

18 Q I don't have a copy of that with me. I can get
19 one. There was an order that the Court issued on
20 January 3, 2012 and then subsequent to that there
21 was a production of records, production of CDs.

22 We will get there in a minute. We can go back
23 over that. I can ask you for more details about
24 that. In addition to you and Mr. Handrick and

09:24AM

25 Mr. Foltz, was there anyone else that you're aware

1 of who had access to Mr. Handrick's computer while
2 it was at Michael Best & Friedrich?

3 A LTSB.

4 Q And that was for the purpose of putting on new
09:24AM 5 data and doing any maintenance they might have
6 needed to do; is that correct?

7 A Right. And upgrading the software which I believe
8 happened once.

9 Q What was the software that was upgraded?

09:24AM 10 A Autobound.

11 Q That was Autobound. Okay. Any other software
12 that you're aware of that was upgraded on
13 Mr. Handrick's computer?

14 A I don't know.

09:24AM 15 Q Did you ever see or are you aware of any attorneys
16 or staff for Michael Best & Friedrich using
17 Mr. Handrick's redistricting computer?

18 A Not that I observed.

19 Q Now, after the computers -- withdraw that
09:25AM 20 question. When did the computer that was assigned
21 to you and that you used leave the Michael
22 Best & Friedrich offices?

23 A I believe that was at the end of May or early part
24 of June in 2012.

09:25AM 25 Q Mr. Ylvisaker had indicated on a document that he

1 had created that it was approximately June 4,
2 2012. Does that sound about right to you?

3 A That sounds about right.

4 Q Who made the request to move the computer out of
5 Michael Best & Friedrich's offices?

09:26AM

6 A I called LTSB and asked them to move it over to
7 the capitol.

8 Q Do you recall when you made that telephone call to
9 them?

09:26AM

10 A I don't.

11 Q Do you know -- strike that. Why did you call LTSB
12 and make that request?

13 A Because LTSB handles all of the movement of
14 computers whenever they move from one location to
15 another.

09:26AM

16 Q What prompted you to make the request at that
17 specific time?

18 A In talking with Senator Fitzgerald -- I talked to
19 him and said *It doesn't look like there's any more*
20 *activity over here. I was going to, you know,*
21 *move back into the capitol. What do you think*
22 *about the end of the month?* He said *That sounds*
23 *fine.*

09:26AM

24 Q Did you talk with anyone at Michael
25 Best & Friedrich at the time that you made the

09:26AM

1 request to move the computer back from Michael
2 Best's offices to the capitol building?

3 A I notified them that I would be moving it out.

4 Q Who did you notify at Michael Best & Friedrich?

09:27AM

5 A I believe I notified Eric McLeod. I don't know if
6 I talked to anyone else or left him to talk to the
7 office manager and so forth.

8 Q How did you notify Mr. McLeod?

09:27AM

9 A I saw him in the hallway and told him. That's my
10 recollection.

11 Q In the hallway at Michael Best's offices?

12 A That is correct.

13 Q Did you ever send any kind of a written
14 communication whether it was in writing or whether
15 it was typed or whether it was by E-mail?

09:27AM

16 A Not that I recall.

17 Q It was all done verbally?

18 A That's my recollection.

09:27AM

19 Q What did Mr. McLeod say to you when you told him
20 that you intended to move the computer back over
21 to the capitol building?

22 A I don't recall he said anything other than okay.

23 Q Did he tell you at that time not to do anything to
24 alter or delete any of the data that was on the
25 redistributing computer or the hard drive?

09:28AM

1 A Not that I recall.

2 Q Did you talk to anybody else at Michael
3 Best & Friedrich about moving the computer from
4 Michael Best back over to the capitol building?

09:28AM

5 A Not that I recall. If I ran into Ray Taffora, I
6 may have mentioned that I was moving. But I don't
7 recall specifically if I talked to him about that
8 or not.

09:28AM

9 Q You mentioned that you had talked to Senator
10 Fitzgerald about moving the computer back over
11 from Michael Best to the capitol building --

12 A I talked to --

13 Q -- at that time?

09:28AM

14 A I talked to him that I was moving back. I don't
15 know that we specifically mentioned the computer.

16 Q Did you talk to any other members of the
17 legislature or Senator Fitzgerald's staff about
18 moving the computer back over at that time?

09:28AM

19 A Not specifically about the computer. I talked to
20 chief of staff at the time, John Hogan, that I was
21 going to be moving back at such and such a date.

22 Q At the time that you requested LTSB to move your
23 computer back from Michael Best over to the
24 capitol building, was Mr. Foltz's computer still
25 at Michael Best at that time?

09:29AM

1 A I believe his was already gone at that time.

2 Q Do you know when it left Michael Best's offices?

3 A I don't know exactly.

4 Q Were you present at Michael Best & Friedrich when

09:29AM

5 LTSB came to move your computer back over to the
6 capitol building?

7 A I was for some portion of it. I was going back
8 and forth between the capitol and Michael Best.

9 Q Were you moving other things from the office back
10 over to the capitol building as well?

09:29AM

11 A That's correct.

12 Q What day of the week was it that you moved that
13 equipment?

14 A I don't recall.

09:29AM

15 Q Do you remember whether it was during the workweek
16 or if it was on a weekend?

17 A It was not on the weekend.

18 Q So it was during the workweek?

19 A That's correct.

09:30AM

20 Q Do you remember what time of day it was?

21 A I don't recall.

22 Q Were there other people at Michael Best in the
23 office there who were present when you were moving
24 the computer equipment out?

09:30AM

25 A I don't know. I don't know if Eric McLeod was

1 there or not. I don't recall.

2 Q Did you have to carry or did the equipment have to
3 move through the lobby at Michael Best's offices
4 to get to an elevator?

09:30AM

5 A Where the computers were located was on the
6 opposite side of the main entrance to Michael Best
7 where you entered into it, so there were -- there
8 was at least one office and a conference room or
9 two it had to pass by to get to the elevator but
10 not through the lobby proper.

09:30AM

11 Q So if you come up to the seventh floor of the U.S.
12 Bank building where Michael Best's offices are and
13 you get out of the elevator and you go to the
14 right, the reception area is to the right?

09:31AM

15 A That's correct.

16 Q Are you saying that the offices that you occupied
17 were over to the left?

18 A That's correct.

09:31AM

19 Q So you didn't go through the lobby to wheel the
20 computer equipment to the elevators?

21 A That's correct.

22 Q Did you have to sign out at all either at Michael
23 Best's front desk or down in the lobby when the
24 computer equipment was being taken out?

09:31AM

25 A Not that I recall.

1 Q Where was your redistricting computer and hard
2 drive set up at the Senate building when it went
3 back over to the capitol?

09:31AM

4 A When it left Michael Best, it was set up in a room
5 on the third floor of the south wing that also
6 housed some media equipment for Senate
7 republicans.

8 Q And at that time that was the Senate majority
9 leader's office; is that correct?

09:31AM

10 A It was assigned to the Senate majority leader's
11 office. Yes.

12 Q I believe that Mr. Earle asked you some questions
13 yesterday about access and who had access to it,
14 so I'm not going to go back over those questions.

09:32AM

15 The computer that was assigned to Mr. Handrick,
16 that left Michael Best's offices at the same time;
17 is that correct?

18 A That's correct.

19 Q Did you talk with Mr. Handrick at all on or about
20 June 4, 2012 when the equipment left Michael Best
21 about the fact that it was being transferred from
22 Michael Best over to the capitol building?

09:32AM

23 A Not that I recall.

24 Q Did you have any discussions with Mr. Handrick
25 about files he might need to retrieve from that

09:32AM

1 computer at all?

2 A No.

3 Q Where was Mr. Handrick's computer and hard drive
4 taken when they left Michael Best & Friedrich's
09:32AM 5 offices?

6 A To the same office I described where my computer
7 was taken.

8 Q Did you have any discussions with anyone from the
9 Reinhart law firm about the fact that this
09:33AM 10 computer Mr. Handrick had worked on was being
11 taken back over to the capitol building?

12 A I did not.

13 Q When the computers were -- both your redistricting
14 computer that you worked on and the redistricting
09:33AM 15 computer Mr. Handrick worked on -- when those were
16 brought back over to the capitol building, was
17 there any kind of work that was done on them as
18 part of the setup process?

19 A LTSB does what I think they call an imaging of
09:33AM 20 your old workstation and then they re-upload that
21 to your new workstation. There may have been
22 other software upgrades that they did. I know our
23 office was selected to try a newer version of
24 Microsoft Exchange. I don't know at what point
09:34AM 25 that was installed on the computers. If they did

1 anything else, I don't know what it was.

2 Q I'm going to ask you to take a look at Exhibit
3 No. 5. I can just hand it to you. This is from
4 Mr. Ylvisaker's deposition yesterday.

09:34AM

5 A Okay.

6 Q As you page through Exhibit No. 5, you will see it
7 consists of a number of documents that are clipped
8 together. The first three of them are deposition
9 subpoenas. There are some items --

09:34AM

10 MS. BUCHKO: Counsel, I don't think
11 he has any of the clips.

12 MR. EARLE: Pardon me?

13 MS. BUCHKO: I'm sorry for
14 interrupting. I thought you meant the clips
15 for the configuration items separate from the
16 service calls. I'm sorry.

09:34AM

17 Q You will see a few printouts that are labeled
18 Configuration Items. Do you see those? Up at the
19 top it will say Configuration Items.

20 MR. POLAND: It's all mixed up?

21 MS. BUCHKO: Yes.

22 Q Let me take that back, and I will put it back in
23 the right order here. Okay. That should be the
24 correct order.

09:35AM

25 A Okay.

1 Q You will see there are a number of items that are
2 labeled Configuration Item. Do you see that?

3 A Okay.

4 Q And then behind those you will see some printouts
5 that say Service Call on them.

09:35AM

6 A Okay.

7 Q Do you see those?

8 A Uh-huh.

9 Q And then behind those, just to finish it off, you
10 will see there are two documents labeled Work
11 Order. Then there's a summary chart at the end,
12 at the very end of the stack. I would like to

09:36AM

13 focus your attention on the service call items and
14 specifically there is one -- you will see there's
15 a number up at the top that says ID, and there's a
16 number up at the top.

09:36AM

17 A Okay.

18 Q I'm looking at the one that's 56,377.

19 A Okay.

20 Q Do you see that?

09:36AM

21 A Uh-huh.

22 Q You will see about five or six lines down from
23 that ID number you will see it says Caller:
24 Ottman, Tad.

09:37AM

25 A Uh-huh.

1 Q And then if you look down at the bottom, you will
2 see a description and the Ticket History.

3 A Yes.

4 Q Do you see that?

09:37AM

5 A Uh-huh.

6 Q And you see the reference to the date June 4,
7 2012?

8 A Yes.

09:37AM

9 Q There is a statement there in the Ticket History
10 that says, "Copied over desktop downloads and
11 documents." Actually, just up from that under
12 Description it says, "Tad logged on with WISLEG
13 account and all of his stuff is missing." Do you
14 see that?

09:37AM

15 A Yes.

16 Q What happened that prompted you to make this call,
17 this service call to LTSB?

09:37AM

18 A I believe this was after they had set up my
19 account. As I was discussing, they image your old
20 computer and then re-image it on the computer
21 that's going online. I believe what this was is
22 my desktop items that I had had on my old computer
23 didn't appear when I logged in.

24 Q So you called LTSB?

09:38AM

25 A Yes.

1 Q And then they came over to help you with this?

2 A I don't know if they came over or if they handled
3 it remotely.

4 Q All right. Did you do anything to try to copy
09:38AM 5 things over or change the computer in some way at
6 this time?

7 A Not that I recall.

8 Q Left it in the hands of LTSB?

9 A That's correct.

09:38AM 10 Q The next line down from there is where it says,
11 "Copied over desktop, downloads, and documents.
12 If he notices anything else missing, he will let
13 us know." Do you see that?

14 A Yes.

09:38AM 15 Q Once they had gone through the process of copying
16 the desktop, downloads, and documents, did you see
17 anything that was missing?

18 A As it mentions there, I had had Chrome on my old
19 computer, and that was not on there. I may not at
09:39AM 20 that time have been able to find my personal inbox
21 in Microsoft Exchange. I can't remember or not.
22 I don't know if there was anything else I noticed
23 missing right away.

24 Q You had had Chrome on your old computer?

09:39AM 25 A Uh-huh.

1 Q What was the computer that you had Chrome on?

2 A I had it both on the computer that I had used
3 prior to leaving for redistricting and on the
4 redistricting computer.

09:39AM

5 Q Now, this is the same computer that we're talking
6 about in this service call -- it's the same one
7 that you had when it was over at Michael
8 Best & Friedrich, right?

9 A Correct.

09:39AM

10 Q And you had been using Chrome on it when it was at
11 Michael Best & Friedrich; is that correct?

12 A That's correct.

13 Q But Chrome didn't show up once the computer was
14 back in the capitol building?

09:39AM

15 A That's right.

16 Q Had you installed Chrome on the computer when it
17 was at Michael Best & Friedrich?

18 A I did.

09:40AM

19 Q Did you just download it yourself from the
20 Internet and install it that way?

21 A Yes.

22 Q How was that computer connected to the Internet
23 when you were at Michael Best & Friedrich?

09:40AM

24 A I think it was just plugged in directly to
25 whatever Internet access was available over at

1 Michael Best.

2 Q There was just a data jack in a wall that the
3 computer plugged into or something like that?

4 A I believe so. I didn't hook it up myself over
5 there.

09:40AM

6 Q Do you know who did hook it up so it would have
7 Internet access at Michael Best & Friedrich?

8 A They have some technical support people over
9 there. I don't recall who it was.

09:40AM

10 Q So it was the Michael Best people who did it --

11 A Yes.

12 Q -- as opposed to LTSB?

13 A For the Internet access. Correct.

14 Q When you logged in for Internet access, do you
15 know whether you had any access to Michael Best's
16 servers or systems themselves?

09:40AM

17 A I did not.

18 Q You had access to the Internet but not to Michael
19 Best's servers, right?

09:40AM

20 A That's correct.

21 Q Have you ever heard of a term called virtual
22 private network or VPN?

23 A I have.

24 Q Do you know what a VPN is?

09:41AM

25 A Yes.

1 Q Was there a VPN connection that you also had to
2 LTSB or State servers?

3 A Yes.

4 Q Was that a connection that you maintained
5 throughout the time that the redistricting
6 computers were at Michael Best & Friedrich?

09:41AM

7 A It was on the computer. I rarely used it. There
8 may have been a time or two where we were looking
9 for some specific census data and LTSB directed us
10 to a site through the VPN. I think they had some
11 redistricting files that they maintained or census
12 files perhaps that they maintained on a server
13 that on occasion they may have asked us to access.

09:41AM

14 Q Now, you mentioned Chrome had been on your
15 computer when it was at Michael Best & Friedrich,
16 correct?

09:41AM

17 A That's correct.

18 Q And it was also on the other computer that you
19 used for work; is that correct?

09:41AM

20 A The one I had used prior to starting working on
21 redistricting.

22 Q And where was that computer located?

23 A That was in that same third floor office in the
24 south wing.

09:42AM

25 Q Was that computer still there at the time when

1 your redistricting computer was moved back to the
2 capitol building?

3 A I believe so.

4 Q Did you do any regular work on that computer that
5 you previously used?

09:42AM

6 A Maybe occasionally but very rarely.

7 Q So you started to use the redistricting computer
8 as your primary computer when it was moved back
9 over to the capitol building?

09:42AM

10 A That's correct.

11 Q What about Mr. Handrick?

12 A Let me clarify.

13 Q Yes.

14 A Prior to beginning on redistricting, I had used
15 the non-redistricting computer. After moving back
16 to the capitol, I don't believe I ever used that
17 computer again.

09:42AM

18 Q Looking back at the service calls, the next one is
19 56,386. The next one in the stack, I should say,
20 56,386.

09:43AM

21 A Okay.

22 Q Do you see there's a description at the bottom
23 that says, "Google Chrome install." And it says,
24 "Chrome is not in his advertised programs list."

09:43AM

25 A Yes.

1 Q And it says, "Had to add him to the collection
2 since his PC was built as static as possible." Do
3 you see that?

4 A Yes.

09:43AM

5 Q Is it your recollection that Chrome was installed
6 on or about June 5 of 2012 on the redistricting
7 computer?

8 A That sounds about right.

09:43AM

9 Q The next service call ticket, the ID number is
10 56,393. Do you see that?

11 A 56 --

12 Q 393.

13 A Yes.

14 Q At the bottom it has a date June 5, 2012?

09:43AM

15 A Uh-huh.

16 Q It says, "Walked over with Tony and got Tad all
17 set up." Do you see that?

18 A Yes.

09:44AM

19 Q Do you recall -- the Tony is Mr. Van Der Wielen;
20 is that correct?

21 A I believe so. Yes.

22 Q Do you recall Mr. Van Der Wielen and Mr. Gentry
23 coming over and working with you on the
24 redistricting computer?

09:44AM

25 A I recall them being over there. I can't remember

1 exactly what we worked on.

2 Q Do you see the next sentence, and this is on
3 page 2 of 3, it says, "Tony helped him with the
4 GIS stuff." Do you see that?

09:44AM

5 A Yes.

6 Q What was the GIS stuff that Mr. Van Der Wielen
7 helped you with?

09:44AM

8 A I don't know if this was the incident. I remember
9 at one point working at Michael Best when you
10 would go to access the plans. You would click on
11 a button, and they would all drop down. I think
12 at one point I would go to that button or I looked
13 for that button and I couldn't find it or couldn't
14 find the plans. I think Tony just added the
15 button back to where it had been.

09:45AM

16 Q Once the computer was back over at the capitol
17 building, he added that again?

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

09:45AM

19 Q Do you recall anything else that was done with any
20 of what's referred to as GIS "stuff" on this
21 particular document?

22 A I don't recall this particular event with any
23 great deal of specificity.

09:45AM

24 Q The next service call item is Number 56,608. Do
25 you see that?

1 A Yes.

2 Q And that has a date of June 20, 2012.

3 A Yes.

4 Q If you look on the second page, you will see a
09:45AM 5 reference to Outlook 2010 and a reference to an
6 uninstall for 2007. Do you see that?

7 A Yes.

8 Q What's the 2007 that was being uninstalled?

9 A I believe that's what I was talking about earlier
09:46AM 10 when they upgraded us to a newer version of
11 Microsoft Outlook.

12 Q So was it Outlook or was it Office as a whole that
13 was being uninstalled from your computer? Do you
14 know?

09:46AM 15 A I believe it was just Outlook.

16 Q As a result of the uninstallation of 2007 and the
17 installation of 2010, do you recall losing any
18 kind of folders or files or data at all?

19 A The personal address book which is what I believe
09:46AM 20 is the PAB. I remember that. I remember losing
21 that. I don't know if there were any other
22 folders that may have gone missing at that time.

23 Q The next service call item is 56,991. Do you see
24 that?

09:47AM 25 A Yes.

1 Q And you see there's a reference at the bottom --
2 it says, "I worked with Tad Ottman to get the VDI
3 viewer installed on his legislative workstation."
4 Do you see that?

09:47AM

5 A Yes.

6 Q All right. I understand from Mr. Ylvisaker's
7 testimony yesterday that that allows remote access
8 to the workstation, is that correct, or replicates
9 a desktop so you can see your desktop at the
10 remote computer; is that correct?

09:47AM

11 MS. BUCHKO: Objection, competency.

12 A I didn't know that that was the name of it.

13 Q Do you remember when Liz Aschebrook came over or
14 at least worked with you to get the VDI viewer
15 installed on your work station?

09:47AM

16 A If the VDI viewer is what I'm thinking about, I
17 was sent a link to download a program on my
18 computer that would create a virtual desktop, a
19 new version of the virtual desktop that they
20 wanted me to try out.

09:48AM

21 Q There is also a reference on there, "Got Google
22 Chrome installed." Do you recall that at all?

23 A I believe once I installed that new program with
24 the remote desktop Google Chrome was not part of
25 it, and I wanted it installed within that

09:48AM

1 environment.

2 Q There are two work orders in Exhibit No. 5. One
3 is 26,096. This is dated June 4, 2012. Do you
4 see that?

09:48AM

5 A Yes.

6 Q And that reflects the movement of equipment, the
7 redistricting computers, from Michael
8 Best & Friedrich over to the State capitol
9 building?

09:49AM

10 A I believe so.

11 Q And then the last work order is a 29,180. Do you
12 see that?

13 A Yes.

09:49AM

14 Q If you go to the bottom of the entries, there's a
15 statement. It says, "I retrieved WRK32587, Tad
16 was using this one, and WRK32864." It says in
17 parens "From their conference room." Then it also
18 mentions the two hard disc drives, correct?

19 A That's correct.

09:49AM

20 Q Do you recall somebody coming over and taking
21 these two computers from Senator Fitzgerald's
22 offices?

23 A I do.

24 Q That was on January 28th of this year?

09:49AM

25 A That sounds right.

1 Q Between the time that we had seen the last service
2 call, which I believe was July 16, 2012, and the
3 time of this work order on January 28, 2013, was
4 there ever a service call placed or made to LTSB
09:50AM 5 having to do with either of the redistricting
6 computer you worked on or the redistricting
7 computer that Mr. Handrick worked on?

8 A I don't recall. I don't believe there was one for
9 Mr. Handrick's computer. Whether there might have
09:50AM 10 been one for mine -- it's possible, but I don't
11 recall anything.

12 Q Between the time that the redistricting computers
13 were moved over to the capitol building and set up
14 there, you continued to use the redistricting
09:51AM 15 computer that you had worked on as your primary
16 workstation in doing your work for Senator
17 Fitzgerald's office; is that correct?

18 A That's correct.

19 Q And that lasted up until January 28th when LTSB
09:51AM 20 took that computer, retrieved that computer; is
21 that correct?

22 A That's correct.

23 Q And then the redistricting computer that
24 Mr. Handrick used from the time that it was set up
09:51AM 25 in the capitol building until the time that it was

1 retrieved on January 28th, did you use that
2 computer for any ongoing work that you had?

3 A I don't believe so. No.

4 Q I believe that you described yesterday some of the
5 people who had access, and they were listed on the
6 sheet, to the redistricting computer Mr. Handrick
7 had used. Did you ever observe anyone
8 specifically working on that computer?

9 A I don't recall seeing anyone working on that
10 computer.

11 Q I would like to ask you about Topic Number Two.
12 It's on Exhibit No. 1.

13 A Okay.

14 Q It says, "The recovery of restoration of any
15 records or data from or to any of the three
16 redistricting computer between January 1, 2011 and
17 January 31, 2013." This topic is getting to the
18 question of whether any data that might have been
19 deleted -- whether it was recovered or restored.

20 I'm going to start out with your redistricting
21 computer, the one that you worked on, and ask was
22 there ever any data that you recovered or restored
23 to that computer during that time frame?

24 A Outside of those service calls we just talked
25 about -- I don't know if that's considered a

1 recovery or if it was merely them finding --
2 pointing to the place where they still existed.
3 In terms of -- the only other thing I can think
4 of, and, again, I don't know that I would
09:53AM 5 necessarily consider this a recovery, but if I was
6 working on a map that just failed, LTSB instructed
7 me on how to make a copy of that map to continue
8 working on it. But the original map that had
9 become corrupted wasn't actually recovered. It
09:53AM 10 was just there and remained corrupted.

11 Q For any of the maps that became corrupted, did you
12 attempt to restore them in any way or did you seek
13 any assistance in trying to restore those maps?

14 A When the map became corrupted, I would call LTSB.
09:53AM 15 They would say *It doesn't look like it's*
16 *recoverable. Here is how you make a copy and then*
17 *you can work on the copy.*

18 Q So you would work on the copy. You would continue
19 forward with the copy. The one that had become
09:53AM 20 corrupted just sat there and it was -- it wasn't
21 worked on?

22 A It was inaccessible. Correct.

23 Q Other than what you have described, did you ever
24 personally either attempt to recover or actually
09:54AM 25 recover any records or data from the redistricting

1 computer that you had worked on?

2 A The only thing I can possibly think about is if
3 I'm going through my E-mail and I accidentally
4 delete something and I go back and put it back in
09:54AM 5 my in box. I don't recall anything outside of
6 that.

7 Q Do you have any specific recollections of doing
8 that with the redistricting computer that you
9 worked on?

09:54AM 10 A There were E-mails that I'm clicking through and
11 hit the wrong button. Yes. I have recollections
12 of that. Nothing specific. I don't think it was
13 related to any redistricting be matter but just
14 E-mails that came in on that computer.

09:54AM 15 Q And was that using your G Mail account or using
16 your E-mail on the legislature system?

17 A The legislative E-mail.

18 Q What about from the time that the redistricting
19 computer you worked on once it was back over in
09:55AM 20 the capitol building? Was there ever any time
21 that you either recovered or restored any records
22 or data to the redistricting computer you worked
23 on?

24 A Not that I recall.

09:55AM 25 Q Again, it's outside of the process that we have

1 already talked about here.

2 A Yes.

3 Q With respect to Mr. Handrick's computer, the one
4 that he worked on, at any time that that commuter
09:55AM 5 was at Michael Best & Friedrich, was there any
6 data or records that were restored to that
7 computer?

8 A Outside of LTSB's work on the computer. I don't
9 know if that involved any restoration of records.
09:55AM 10 I don't have any recollection of that.

11 Q What about once Mr. Handrick's computer was over
12 in the capitol building? Was there any data or
13 records that were recovered or restored to that
14 computer?

09:56AM 15 A Not that I'm aware.

16 Q I would like to move to the first topic which is
17 the deletion or attempted deletion of any records
18 or data from any of the three redistricting
19 computers. Let's talk, first of all, about your
09:56AM 20 redistricting computer that you used. When the
21 computer was issued in July of 2010, were there
22 any data or any records relating to redistricting
23 that were on the computer at that time?

24 A If there were any data on the computer at that
09:56AM 25 time, I think it only would have been sample

1 census data.

2 Q When was the first time that redistricting data or
3 records were loaded onto that computer?

4 A We used the computer beginning in January of 2011
09:57AM 5 more as a familiarization with how the software
6 worked. I think the first time data was loaded on
7 it was when the State of Wisconsin received the
8 census data.

9 Q When was that?

10 A I don't recall exactly. I want to say it was
09:57AM 11 sometime in March.

12 Q Of 2011?

13 A Of 2011. Yes.

14 Q At the time that that data was loaded on, did
09:57AM 15 anyone at Michael Best & Friedrich, whether it was
16 Mr. McLeod or anyone else, ever instruct you not
17 to delete any of the data or records from the
18 redistricting computers that you were working on?

19 MS. BUCHKO: Objection, asked and
09:57AM 20 answered yesterday under testimony by
21 Mr. Earle.

22 A The instructions I recall receiving regarding
23 retention of data -- the first time I recall
24 receiving that was when the subpoenas were issued
09:58AM 25 at the end of 2011. The only other instruction I

1 remember is later the following year when we were
2 instructed not to delete any information related
3 to open meetings during the redistricting process.

09:58AM

4 Q Did anyone ever tell you in the beginning of 2011
5 that the process that you were going through and
6 the documents that you were creating as part of
7 the redistricting were attorney-client privileged
8 or subject to some kind of privilege?

09:58AM

9 A There was a discussion or an admonition from
10 counsel not to share anything outside of counsel
11 or legislative leadership or there was a potential
12 loss of privilege.

09:59AM

13 Q Did they ever say anything in those conversations
14 about the possibility of litigation regarding the
15 new legislative district plans?

16 A I believe they said something to the effect that
17 litigation could be expected.

18 Q Do you remember when they said that?

09:59AM

19 A I don't remember the discussion on litigation. I
20 remember the admonition of don't talk to anybody.
21 That came very early in the process. Probably
22 December of 2010 or January of 2011.

09:59AM

23 Q Beyond what you just articulated, did they explain
24 to you any of the implications that there might be
25 litigation?

1 A I don't recall with specificity.

2 Q You became aware at some point that the plaintiffs
3 in this lawsuit had filed a complaint, correct?

4 A A lawsuit. Yes.

10:00AM

5 Q Do you remember when that was that you became
6 aware of that?

7 A I don't recall when.

8 (Exhibit No. 9 marked for
9 identification)

10:00AM

10 Q Mr. Ottman, the court reporter has handed you a
11 copy of a document that we have had marked as
12 Exhibit No. 9. Do you have that in front of you?

13 A Yes.

10:01AM

14 Q If you look up at the top, you see that it states
15 that there is an E-mail from Jim Troupis. It's
16 dated Tuesday, June 7, 2011. Do you see that you
17 are copied on this E-mail?

18 A I do.

10:01AM

19 Q Do you see up at the top it says Attorney Client
20 Privilege Litigation Preparation?

21 A Yes.

22 Q Do you recall receiving this E-mail? You can take
23 a minute to look it over if you like.

24 A Yes. I recall seeing this.

10:01AM

25 Q I want to focus specifically up at the top where

1 it says Attorney Client Privileged Litigation
2 Preparation. Do you see that?

3 A Yes.

4 Q Did anyone ever explain to you at the time what
10:01AM 5 that designation, Attorney Client Privileged
6 Litigation Preparation, meant?

7 A Not specifically. No.

8 Q Did anyone ever tell you, and I'm talking about
9 Mr. McLeod or any other attorney at Michael
10:02AM 10 Best & Friedrich -- did they ever tell you that if
11 you are preparing for litigation or anticipate
12 litigation that there's an obligation to preserve
13 any of the documents or records?

14 A Not that I recall.

10:02AM 15 Q Did Mr. Troupis ever tell you that?

16 A Not that I recall.

17 (Exhibit No. 10 marked for
18 identification)

19 Q Mr. Ottman, the court reporter has handed you a
10:02AM 20 copy of a document that's marked as Exhibit No. 10
21 to this deposition. As you will see, we had also
22 marked it at your deposition last year. Do you
23 see that?

24 A Yes.

10:03AM 25 Q I'm not going to ask you about the substance of

1 the document. Again, I just want to focus on the
2 top of it. Do you see where it says Privileged
3 Attorney Client Communication up at the top?

4 A Yes.

10:03AM

5 Q And then you will see there's a signature date on
6 there, April 12, 2011; is that correct?

7 A It's either a 4 or a 7. Yes. I see the date.

8 Q But you see again it says Privileged Attorney
9 Client Communication up at the top?

10:03AM

10 A Yes.

11 Q Did you see this document on or about the time
12 that it was created?

13 A Yes.

10:03AM

14 Q Did anyone explain to you at the time the
15 implications behind using the language Privileged
16 Attorney Client Communication?

17 A I don't recall a specific explanation.

10:03AM

18 Q Did they tell you at that time that this was
19 created that any and all documents relating to
20 redistricting needed to be preserved?

21 A Not that I recall.

10:04AM

22 Q Beginning from the time that the redistricting
23 computer that you worked on was set up at Michael
24 Best & Friedrich and limiting ourselves just to
25 the time that it was at Michael Best & Friedrich's

1 offices now -- actually, let's make the time
2 period before the subpoenas were served in
3 December of 2011. Okay?

4 A Okay.

10:04AM

5 Q Did you ever delete any files relating to
6 redistricting from the computer that you worked
7 on?

8 A I likely did. Yes.

10:04AM

9 Q Do you remember what those records were that you
10 deleted?

11 A Some of them maybe for example -- when you run a
12 report from a map in Autobound, it creates a
13 report. It creates a PDF that you can print out.
14 I would often delete those particularly if we had
15 moved on to a different map because it was easily
16 reconstructible from within there. So I didn't
17 always retain that. I don't know. There may have
18 been other documents that I had or that I created
19 that I didn't need or that Adam or Joe had a
20 better version or whatever that I may not have
21 retained. But I can't recall anything specific.

10:05AM

10:05AM

22 Q What about E-mails? Did you ever delete any
23 E-mails relating to redistricting? And this is
24 again before the time that the subpoenas were
25 served.

10:05AM

1 A There may have been some E-mails that I deleted
2 related to redistricting. I don't recall any
3 substantive. Basically if I thought I was going
4 to need any reference to it, I hung onto it.

10:06AM

5 Q Did you ever speak with Mr. McLeod about the fact
6 that you weren't saving any files or that you were
7 deleting any of the files?

8 MR. JACOB: Object as to form.

9 A Not that I recall.

10:06AM

10 Q Did you ever speak with anyone else at Michael
11 Best about that?

12 MR. JACOB: Object as to form.

13 A Not that I recall.

10:06AM

14 Q Let's talk about Mr. Handrick's computer and the
15 hard disc drive. From the time that those were
16 installed at Michael Best & Friedrich up until the
17 time that the deposition subpoenas were served in
18 December of 2011, did you ever delete any
19 documents or files at all from Mr. Handrick's
20 computer?

10:06AM

21 A Not that I recall.

22 Q Do you know whether Mr. Handrick did?

23 A I don't know.

10:07AM

24 Q Did anybody other than you delete documents or
25 records from your redistricting computer or

1 Mr. Handrick's redistricting computer before the
2 time the subpoenas were served in December of
3 2011?

4 MS. BUCHKO: Object to form.

10:07AM

5 A Not that I --

6 MR. JACOB: Can you read back the
7 question.

8 (Question read)

9 MR. JACOB: Join in the objection.

10:07AM

10 A Not that I recall.

11 Q I need to go back and ask this question again.
12 Did you say that you did not delete any E-mails
13 relating to redistricting between January 1st,
14 let's say, 2011 and the time that the subpoenas
15 were served in December of 2011?

10:08AM

16 MS. BUCHKO: Objection, asked and
17 answered multiple times.

18 A I don't believe I said that.

19 Q Did you in fact delete E-mails during that time
20 period?

10:08AM

21 A I believe some E-mails were deleted. Yes.

22 Q You're aware that as part of the process that we
23 have gone through here since August of last year
24 there are documents that have been identified that
25 were not produced in the litigation. Are you

10:08AM

1 aware of that?

2 A I am.

3 Q Have you reviewed any of those documents?

4 A I've reviewed with counsel some of the documents
10:08AM 5 that were attached to I believe your declarations.

6 (Exhibit No. 11 marked for
7 identification)

8 Q Mr. Ottman, the court reporter has handed you a
9 copy of a document that's been marked as Exhibit
10:09AM 10 No. 11, Deposition Exhibit No. 11. Do you have
11 that in front of you?

12 A I do.

13 Q I will represent to you that this is a collection
14 of 34 total E-mails that were provided to the
10:09AM 15 plaintiffs on or about October 1, 2012 and
16 represented to us to be E-mails that were not
17 produced during the litigation. Okay?

18 A Okay.

19 Q Have you seen this document before?

10:10AM 20 A I don't know if I've seen the entire document. I
21 may have seen some of the individual E-mails.

22 Q So let's start off on the very first page of
23 Exhibit No. 11.

24 A Okay.

10:10AM 25 Q You see this is an E-mail to you, correct?

1 A Yes.

2 Q It's from Mr. Troupis, correct?

3 A That's correct.

4 Q It's dated July 15, 2011, correct?

10:10AM

5 A That's correct.

6 Q It was sent to your G Mail account?

7 A Yes.

8 Q Now, do you know why this document was not
9 produced during the litigation?

10:10AM

10 A I don't know.

11 Q Do you know whether this is an E-mail that you
12 printed out and gave to Mr. McLeod or someone else
13 at Michael Best as part of the production process?

14 A I believe it is.

10:10AM

15 Q You believe you printed this one out and gave it
16 to Mr. McLeod or someone at Michael Best?

17 A I believe so. Yes.

18 Q Why do you believe that you did?

19 A Because when I searched through my documents for
20 the production, I kind of grabbed everything that
21 looked like it was responsive to the documents and
22 then presented it to the attorneys for them to
23 review and decide whether or not it was produced.

10:11AM

24 Q Do you know whether this might have been one of
25 the E-mails that you deleted?

10:11AM

1 A I don't know.

2 Q Let's take a look at the next page which is Bates
3 stamped 2 on the bottom. You will see that this
4 is an E-mail to Jim Troupis from Adam Foltz,
10:11AM 5 July 15, 2011. You're copied on this one as well,
6 correct?

7 A Correct.

8 Q Do you know why this E-mail wasn't produced?

9 A I don't know.

10:12AM 10 Q Do you know whether this was an E-mail that you
11 printed out and gave to Mr. McLeod or someone at
12 Michael Best & Friedrich as part of the production
13 process?

14 A I believe it was.

10:12AM 15 Q We could go through each of these E-mails and I
16 could ask you the same questions, but, before we
17 do that, let me ask you whether you know if these
18 E-mails that are contained in Exhibit 11 were ones
19 that you printed out and gave to Mr. McLeod as
10:12AM 20 part of the production process.

21 MR. JACOB: I'm going to object as
22 to form.

23 MS. BUCHKO: Join.

24 Q Mr. Earle is actually suggesting a procedure that
10:12AM 25 might be better. I would like you to take a look

1 at the E-mails in Exhibit 11 and identify any that
2 you believe you didn't give to McLeod as part of
3 that production process.

10:13AM

4 MS. BUCHKO: Counsel, it's going to
5 take him a while. Should we go off the
6 record and not waste the videotape time?

10:13AM

7 MR. EARLE: I want the record to
8 reflect that the suggestion is being agreed
9 to that Mr. Ottman will be given all the time
10 he needs to go through that exhibit with
11 great detail and identify any E-mails that he
12 did not give to Michael Best's lawyers.

13 MS. BUCHKO: Thank you, counsel.

10:13AM

14 MR. POLAND: Let's go off the
15 record.

16 THE VIDEOGRAPHER: The time is
17 10:12. We are going off the record.

18 (Recess)

10:25AM

19 THE VIDEOGRAPHER: Time is 10:24.
20 We are back on the record.

10:26AM

21 Q Mr. Ottman, before we went off the record, I asked
22 you if you would look through the E-mails that are
23 in Deposition Exhibit No. 11 and identify any that
24 you don't believe that you gave to Mr. McLeod as
25 part of the production process. Did you look

1 through the E-mails in Exhibit No. 11?

2 A I did.

3 Q Did you find any that you don't believe you
4 provided to Mr. McLeod as part of the production
10:26AM 5 process?

6 MR. JACOB: I'm going to object as
7 to form and foundation.

8 MR. POLAND: Can I have the
9 question read?

10:26AM 10 (Question read)

11 MR. EARLE: And what was the
12 objection?

13 MR. JACOB: Form and foundation.

14 MR. EARLE: Okay.

10:26AM 15 A I found a few that I don't believe I was copied
16 on.

17 Q There are what we call Bates numbers that are down
18 on the bottom. It will say Evans and there's a
19 number next to it. Can you identify those for me.

10:26AM 20 A Evans 102.

21 MS. BUCHKO: Wait.

22 A I'm going from the back moving to the front.

23 Q Okay. That's fine. So Evans 102. Let's just
24 take a look at that for a moment there. That
10:26AM 25 appears to be an E-mail from Juan Carlos Ruiz to

1 Ray Taffora dated July 11, 2011, correct?

2 A Correct.

3 Q And you don't believe that you had received that
4 E-mail?

10:27AM

5 A That's my recollection.

6 Q Any others?

7 MR. JACOB: Just for purposes of
8 clarification, this is not the beginning of
9 the document if you recall.

10:27AM

10 MR. EARLE: It's actually -- excuse
11 me. It says Exhibit No. 20, McLeod
12 deposition.

13 MR. JACOB: No. No. I understand.

14 Q In other words -- I think I understand what
15 Mr. Jacob is saying. I'm going to ask you to turn
16 to page Evans 0098. I'm sorry. Evans 0101.

10:27AM

17 A Yes.

18 Q Do you see up at the top there is a number that's
19 handwritten that says MBCA and there are some
20 other numbers up there?

10:27AM

21 A Yes.

22 Q Do you know whether what's Bates stamped Evans 102
23 is a continuation of page 101?

24 A I wasn't sure. That's why I noted it.

10:28AM

25 Q Fair enough. You were copied on the page that's

1 Bates stamped Evans 0101, correct?

2 A Yes.

3 Q Is it possible that Evans 0102 was a continuation
4 of Evans 0101?

10:28AM

5 A It's possible.

6 Q If in fact it was a continuation, is that an
7 E-mail you would have printed and provided to
8 Mr. McLeod?

9 A That's my recollection.

10:28AM

10 Q Was there another document that you identified?

11 A Two other documents. Evans 0087.

12 Q That appears to have a handwritten number at the
13 top on its own, correct?

14 A Yes.

10:28AM

15 Q Now, is there a part of this document that you
16 believe that you did receive?

17 A That part below halfway down the page beginning on
18 July 15, 2011. I believe I received that. The
19 top portion dated Saturday, July 16th -- I don't
20 know that I received that.

10:29AM

21 Q Do you believe that the portion of Evans 0087 that
22 you were one of the recipients of the E-mail, do
23 you believe that you printed that and provided
24 that to Mr. McLeod as part of the production
25 process?

10:29AM

1 A To the best of my recollection.

2 Q Is there another document you have identified?

3 A Yes. Evans 0072.

4 Q And that has a handwritten number on the top of
10:30AM 5 it, correct?

6 A Correct.

7 Q And you were not copied or you were not a
8 recipient on that E-mail; is that correct?

9 A That's my understanding.

10:30AM 10 Q So you don't believe you would have been in
11 possession of this E-mail at any time?

12 A That's my recollection.

13 Q Any other E-mails or documents contained within
14 Exhibit No. 11 that you do not believe that you
10:30AM 15 printed out and provided to Mr. McLeod as part of
16 the production process?

17 A Not to the best of my recollection.

18 Q Mr. Ottman, was anyone else involved in the
19 document production process from Michael
10:30AM 20 Best & Friedrich along with Mr. McLeod?

21 MS. BUCHKO: Objection, asked and
22 answered yesterday under the questioning of
23 Mr. Earle.

24 A Joe Olson was involved and I believe -- I'm not
10:30AM 25 sure if Mike Screnock was involved or not.

1 Q You testified yesterday that there were piles of
2 documents that you printed and that you left in
3 the conference room at Michael Best that had the
4 redistricting computers in them, correct?

10:31AM

5 A That's correct.

6 Q Did you see any of the Michael Best attorneys ever
7 looking through any of the piles of documents that
8 were there?

9 A Yes.

10:31AM

10 Q Which attorneys did you see looking through those
11 piles of documents?

12 A The ones that I specifically recollect were
13 Eric McLeod and Joe Olson.

14 Q Did Mr. Screnock ever look through them?

10:31AM

15 A I can't recall.

16 Q Do you recall an attorney at Mike Best & Friedrich
17 name Aaron Kastens?

18 A Yes.

10:31AM

19 Q Did Mr. Kastens have anything to do with the
20 redistricting process and the work that you were
21 doing?

22 A I believe I spoke with him by phone once or twice.
23 If my recollection is correct, it was in
24 conjunction with the declaration, my declaration
25 before the first deposition.

10:31AM

1 Q Did Mr. Kastens have any role in looking through
2 documents as part of the production process?

3 A Not to my knowledge.

4 Q Did you delete any of the E-mails that are
5 contained within Exhibit No. 11 from your G Mail
6 account?

10:32AM

7 MR. JACOB: Object as to form and
8 foundation.

9 A Not that I recall.

10:32AM

10 Q Is it your belief that if we were to go to your
11 G Mail account and look on there now we would find
12 those E-mails?

13 A I don't know. I would assume so.

10:32AM

14 Q Mr. Earle asked you yesterday some questions about
15 documents pertaining to Senate Bill 150. Do you
16 recall those questions?

17 A Generally. Not specifically.

18 Q Generally you recall the topic being discussed?

19 A Yes.

10:32AM

20 Q I believe you testified that it is your intention
21 to look for documents relating to Senate Bill 150;
22 is that correct?

23 MS. BUCHKO: Object,
24 mischaracterizes his previous testimony. It
25 was limited to his G Mail account I believe.

10:33AM

1 MR. EARLE: What?

2 Q Is it your intention to look for documents
3 pertaining to Senate Bill 150 in any location
4 other than in your G Mail account?

10:33AM

5 MS. BUCHKO: Object to form.

6 A Counsel has asked me to look through my G Mail
7 account. I have not been requested to search
8 anywhere else.

10:33AM

9 Q And you are no longer in possession of the
10 redistricting computers themselves, correct?

11 A That's correct.

12 Q So those would have to be returned to you for you
13 to be able to do that, correct?

14 A I assume so.

10:33AM

15 Q I'm going to mark as Exhibit No. 12 a collection
16 of documents that pertains to Senate Bill 150.
17 I'm going to ask you to take a look through this
18 for just a minute.

19 (Exhibit No. 12 marked for
20 identification)

21 Q Mr. Ottman, you have had an opportunity to look
22 through Exhibit 12; is that correct?

23 A Yes.

10:38AM

24 Q And I noticed that you put Post-its on a number of
25 pages in Exhibit 12?

1 A Correct. Yes.

2 Q Those reflect documents which you were not copied
3 or otherwise involved in the E-mail process?

4 A That's correct.

10:38AM

5 Q I'm going to draw your attention to a couple of
6 these pages specifically, and I would like you to
7 take a look at pages Evans 123, 124, and 125. Do
8 you see what appears to be a chain of E-mails
9 there on 123, 124, and 125?

10:38AM

10 A Yes.

11 Q And you are copied at least on the very first
12 E-mail on 123 that was sent from Jim Troupis on
13 July 13, 2011 to you and some others, correct?

14 A That's correct.

10:38AM

15 Q That was sent to your G Mail address?

16 A That's correct.

17 Q If you look below that, there is an E-mail from
18 Ray Taffora of Michael Best & Friedrich sent on
19 July 13, 2011. And that also was sent to you,
20 correct?

10:39AM

21 A That's correct.

22 Q And that attached another E-mail below it from
23 Zeus Rodriguez to Ray Taffora on July 12, 2011,
24 correct?

10:39AM

25 A That's correct.

1 Q Now, do you recall receiving this particular
2 E-mail?

3 A Yes.

10:39AM

4 Q Do you believe that this is an E-mail that you
5 printed and gave to Mr. McLeod for production
6 during the litigation as part of the production
7 process?

8 MR. JACOB: Object as to form and
9 foundation.

10:39AM

10 A I don't believe so.

11 Q Why do you believe that you didn't print and
12 provide this to Mr. McLeod?

13 A Because we were not directed to print anything
14 related to SB 150.

10:39AM

15 Q Did this relate solely to 150 or did it
16 potentially relate to legislative redistricting
17 generally?

18 MS. BUCHKO: Object to form.

19 A My understanding was that it was about SB 150.

10:40AM

20 Q How did you gain that understanding?

21 A By the initial subject matter.

22 Q As you looked through documents in deciding
23 whether to produce them, did you read through the
24 entire E-mail or did you just look at the subject
25 matter?

10:40AM

1 A I usually only looked at the top line or I should
2 say the top E-mail.

3 Q Did you discuss this particular E-mail with
4 Mr. McLeod or anyone else at Michael Best as to
10:40AM 5 whether it should be produced?

6 A I don't recall.

7 Q Did you discuss generally with Mr. McLeod or any
8 other attorney at Michael Best the topic of SB 150
9 and whether any documents pertaining to SB 150
10 should be produced?

11 MS. BUCHKO: Object, asked and
12 answered yesterday under examination of
13 Mr. Earle. Duplicative.

14 A I did discuss it with them. Yes.

10:40AM 15 Q What was the nature of the discussion that you had
16 with Mr. McLeod about that subject?

17 A When we were discussing what documents to be
18 searching for, he said search for anything related
19 to the legislative redistricting acts but that
10:41AM 20 there was no request to his understanding related
21 to SB 150.

22 Q And so what was his instruction to you with
23 respect to SB 150?

24 MS. BUCHKO: Objection, asked and
10:41AM 25 answered.

1 A That documents related to that did not need to be
2 produced.

3 Q Did he leave it to you to decide whether a
4 document related to SB 150?

10:41AM

5 A I think it was something to the effect of *If*
6 *you're not sure, print it out. We will look at*
7 *it.*

10:41AM

8 Q Do you know whether this document we're looking at
9 here, Evans 123, 124, and 125, was one that you
10 printed for him to look at?

11 A I don't recall.

10:42AM

12 Q Do you recall printing any documents that in any
13 way referenced SB 150 for Mr. McLeod or any other
14 Michael Best attorney to review to see if they
15 should be produced?

16 A I believe so. Yes.

17 Q Do you have a specific recollection of what those
18 documents were or what they said?

19 A I don't recall specifically. No.

10:42AM

20 Q Did you talk about any of those documents with any
21 lawyer at Michael Best & Friedrich?

22 A When we went through the stacks of documents to
23 review, the attorneys who were reviewing them
24 would look at them. If they didn't understand
25 what the document was or had questions, they would

10:42AM

1 ask us questions, *What is this talking about here?*

2 Q And were there any such documents that mentioned
3 SB 150 in them that you actually discussed with
4 the Michael Best attorneys?

10:42AM

5 A I don't recall specifically.

6 Q Have you deleted from any of the redistricting
7 computers documents relating to SB 150?

8 A Not that I recall.

10:43AM

9 Q Did you install any software on your redistricting
10 computer that had the effect of deleting any kind
11 of files or data from your redistricting computer?

12 MR. JACOB: Object as to form.

13 A I installed a program called CCleaner.

14 Q When did you install CCleaner on your computer?

10:43AM

15 A I don't recall exactly. Early part of 2011 I
16 believe.

17 Q Why did you install CCleaner?

18 A My computer often ran particularly slow, and
19 CCleaner is a program that cleans out remnants of
20 files that reside in the short-term memory and can
21 slow down the computer.

10:44AM

22 Q How often did you run CCleaner on your computer?

23 A I don't know that I had a regular schedule. If
24 the computer seemed to be running slow, sometimes
25 I would just run CCleaner to see if it sped it up.

10:44AM

1 Q Do you remember the number of times that you ran
2 CCleaner on your computer?

3 A I don't.

4 Q Was it something that you did on a weekly basis or
5 monthly basis do you recall?

10:44AM

6 A There was no regular basis to it that I recall.

7 Q When was the last time that you recall running
8 CCleaner on your computer?

9 A I don't recall specifically.

10:44AM

10 Q Do you know whether CCleaner cleans up artifacts
11 that are left over from accessing files on the
12 Internet?

13 A I believe so. Yes.

14 Q Do you know whether it would do anything to
15 eliminate any of the artifacts left over by the
16 use of G Mail that might be on your computer?

10:45AM

17 A I don't know.

18 Q Was that anything you investigated before you
19 installed CCleaner on your computer?

10:45AM

20 A No.

21 Q Did you ever discuss that topic with anyone at
22 LTSB?

23 A No.

24 Q Did you ever discuss that topic with anyone at
25 Michael Best & Friedrich?

10:45AM

1 A I think I discussed CCleaner in general with Adam.

2 Q With Mr. Foltz?

3 A With Adam Foltz. Yes.

4 Q And what was the discussion you had with

10:45AM

5 Mr. Foltz?

6 A I just asked him if he used it or if he used a
7 program like that. And I think I recall he said
8 he had it on his computer at home.

9 Q His computer at home?

10:45AM

10 A Uh-huh.

11 Q Did he have it on his redistricting computer?

12 A I don't know.

13 Q Did you run CCleaner on your computer after the
14 time that the computer was moved back over to the
15 capitol building?

10:45AM

16 A I believe so. Yes.

17 Q Do you recall how many times you ran CCleaner on
18 your computer once it was back at the capitol
19 building?

10:46AM

20 A I don't.

21 Q Do you recall the last time that you ran CCleaner
22 on your computer?

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

10:46AM

25 A I don't recall.

1 Q Can CCleaner be configured by the user in a way to
2 eliminate certain things and not eliminate other
3 things?

10:46AM

4 A You can select it -- there's like separate setting
5 for Internet Explorer and Google Chrome. You can
6 check or uncheck whether you want it to clear out
7 cookies, for example, in each of those or both of
8 those.

10:47AM

9 Q Did you use Chrome or Explorer or both while the
10 computer was at Michael Best & Friedrich?

11 A Primarily Chrome, but I think I probably did use
12 Explorer on occasion.

10:47AM

13 Q Did you do anything to configure the settings on
14 CCleaner to eliminate certain files or specify
15 certain files that would be cleaned?

16 A I may have unchecked the box on some of the
17 cookies on Google Chrome.

10:47AM

18 Q So it would leave some of the cookies on the
19 computer?

20 A Some of them. Yes.

21 Q Did you change any other specific settings about
22 things specifically that were to be deleted by
23 CCleaner?

24 A Not that I recall.

10:47AM

25 Q Was CCleaner installed on the computer that

1 Mr. Handrick used for redistricting?

2 A Not that I'm aware of.

3 Q Do you know whether there was any other kind of
4 similar software that was installed on

10:47AM

5 Mr. Handrick's computer?

6 A The only software I'm aware of that was installed
7 on his computer was software installed by LTSB.

8 Q I want to go back and touch on just a couple of
9 the topics that Mr. Earle covered yesterday. I've

10:48AM

10 got some cleanup on a couple of those. Mr. Earle

11 had asked you some questions yesterday about

12 documents or maps especially that had been

13 deleted. I believe your testimony on those was

14 that they were copied and they were produced to

10:49AM

15 plaintiffs for Mr. Handrick's deposition. Do you

16 recall that question and answer?

17 A Yes.

18 Q That would have been for Mr. Handrick's second
19 deposition?

10:49AM

20 A I believe that's correct.

21 Q Do you recall that there were two CDs that were
22 produced at Mr. Handrick's deposition?

23 A I don't recall how many were produced.

24 Q Did you have an opportunity ever to see those CDs?

10:49AM

25 A I saw the CD with the maps on it. I don't know if

1 I saw any other CD.

2 Q All right. I'm going to mark as Exhibit No. 13 --

3 A I should take that back. I saw the copy of the CD
4 that I gave to Michael Best. I don't know if that
10:50AM 5 was the same CD that was produced.

6 Q Fair enough.

7 (Exhibit No. 13 marked for
8 identification)

9 Q Mr. Ottman, the court reporter has handed you a
10:50AM 10 copy of a document that we have had marked as
11 Exhibit No. 13. Do you have that in front of you?

12 A Yes. I do.

13 Q Have you seen this document before?

14 A I don't know if I have or not.

10:51AM 15 Q The particular letter, I guess the cover letter is
16 what I'm referring to at first, the cover letter.

17 A I may have seen it. I don't recall specifically.

18 Q Do you see that it's a letter from Eric McLeod and
19 I'm one of the recipients, correct?

10:51AM 20 A Yes.

21 Q That was sent on January 10, 2012, correct?

22 A Yes.

23 Q You see that the first paragraph says, "Enclosed
24 please find the supplemental document production
10:51AM 25 in response to subpoenas issued by plaintiffs to

1 Joe Handrick, Adam Foltz, and Tad Ottman." Do you
2 see that?

3 A Yes.

4 Q And then the next sentence states, "As noted in
10:51AM 5 the enclosed pleading, the documents are contained
6 on a DVD which is titled Handrick, Foltz, and
7 Ottman Supplemental Document Production,
8 January 10, 2012." Do you see that?

9 A Yes. I do.

10:51AM 10 Q In the next paragraph down, it refers to
11 16 electronic files. Do you see that?

12 A I do.

13 Q Now, I want to ask you a question. Is it your
14 understanding that the maps that you referred to
10:52AM 15 yesterday when Mr. Earle was asking you questions
16 were contained on this particular production to
17 the plaintiffs?

18 MS. BUCHKO: Objection; foundation,
19 competency.

10:52AM 20 A I'm not certain what was on that disc.

21 Q As a part of this process you provided documents
22 to Mr. McLeod on a CD; is that correct?

23 A That's correct.

24 Q Did you give them personally to Mr. McLeod?

10:52AM 25 A Either I or Adam Foltz would have or to his

1 assistant.

2 Q Was anyone else from Michael Best & Friedrich
3 involved in that process to your knowledge?

4 A I don't know.

10:53AM

5 Q Would you expect that any files that you gave to
6 Mr. McLeod on that CD, that you or Mr. Foltz gave
7 him, would have been produced to plaintiffs on or
8 about January 10, 2012?

10:53AM

9 MS. BUCHKO: Object to form,
10 foundation, competency, calls for
11 speculation.

12 A I don't know. I assumed they were being produced.

13 (Exhibit No. 14 marked for
14 identification)

10:53AM

15 Q Mr. Ottman, the court reporter has handed you a
16 copy of a document that we have marked as Exhibit
17 No. 14. Do you have that in front of you?

18 A I do.

10:54AM

19 Q Do you see it's a letter from Mr. McLeod to me
20 dated January 11, 2012, correct?

21 A Yes.

10:54AM

22 Q And you see there's a reference in that
23 essentially one paragraph that says, "Enclosed
24 please find a DVD containing the additional
25 16 electronic files that we were unable to

1 download and produce yesterday due to technical
2 problems." Do you see that?

3 A Yes.

4 Q Were you involved with the attempted download that
10:54AM 5 had technical problems?

6 A I don't recall. I don't know if that was me or
7 Adam.

8 Q Do you remember trying to provide Mr. McLeod or
9 any other lawyer at Michael Best with electronic
10:54AM 10 files and they couldn't get downloaded or copied
11 for some reason?

12 A After seeing this, I remember somebody saying
13 there was a problem with some of the files and
14 that they needed to be recopied.

10:54AM 15 Q Were you involved in that process of recopying?

16 A Again, I'm not sure if it was me or Adam.

17 Q One of the two of you gave the electronic files to
18 Mr. McLeod; is that correct?

19 A That's correct.

10:55AM 20 Q And that was on a disc?

21 A Yes. A disc.

22 Q Who had given you the instructions to look at
23 those electronic files and to put them onto a disc
24 for Mr. McLeod?

10:55AM 25 MR. JACOB: Object as to form.

1 A I believe that was either Mr. McLeod or Joe Olson.

2 Q When did they give you those instructions?

3 A I don't recall exactly.

4 Q Do you remember what the instructions were?

10:55AM

5 A Just generally copy these onto a DVD and then we
6 will make copies for production.

7 Q Did they tell you why they were asking you --
8 strike that question. Do you remember when they
9 made that instruction or request to you?

10:55AM

10 MS. BUCHKO: Objection, asked and
11 answered.

12 A I don't recall specifically.

13 Q Do you recall whether it was after the Court
14 issued an order on January 3, 2012?

10:56AM

15 A I believe the map production electronically was
16 after that.

17 Q Do you remember the instructions that Mr. McLeod
18 or Mr. Olson gave you regarding the map
19 production?

10:56AM

20 MS. BUCHKO: Objection, asked and
21 answered.

22 A Nothing specific other than copy them
23 electronically.

24 Q Did they tell you where to search or what to
25 search or what to search for?

10:56AM

1 A I don't recall specifically.

2 THE VIDEOGRAPHER: Mr. Poland, is
3 now a good time?

4 MR. POLAND: Yes. Let's change the
5 tape right now.

10:56AM

6 THE VIDEOGRAPHER: The time is
7 10:55. We are going off the record
8 concluding Disc No. 2 of the deposition of
9 Tad Ottman of the 30(b)(6) testimony.

10 (Recess)

11 THE VIDEOGRAPHER: The time is
12 11:03. We are on the record. This marks the
13 beginning of Disc No. 3 in the 30(b)(6)
14 testimony of Mr. Tad Ottman.

15 (Exhibit No. 15 marked for
16 identification)

17 Q Mr. Ottman, the court reporter is handing you a
18 copy of a document that's marked as Exhibit
19 No. 15. Do you have that in front of you?

11:05AM

20 A Yes.

21 Q I will represent to you that this was a document
22 that was not produced during the litigation. I'm
23 going to ask you to look just at the very top part
24 of it.

11:05AM

25 MR. JACOB: I'm going to object to

1 the form of the question just because it's
2 noted on the document that by and large it
3 was previously produced except at the top.

4 MR. POLAND: I was just about to go
5 into that.

11:05AM

6 Q I would ask you just to look at the top portion.
7 Mr. Jacob is correct. You will see printed across
8 the bottom two-thirds of page 1 of Exhibit 15 and
9 then the back of Exhibit 15 -- you will see it
10 says Previously Produced on it, correct?

11:05AM

11 A Yes.

12 Q I want to focus your attention just at the very
13 top part of Exhibit No. 15. It's an E-mail. It
14 appears to be from you to Mr. Taffora dated
15 June 30, 2011. Do you see that?

11:06AM

16 A Yes.

17 Q And the subject matter says MKE Hispanics,
18 correct?

19 A Yes.

11:06AM

20 Q And MKE, that refers to Milwaukee?

21 A I'm not certain.

22 Q You wrote the E-mail, right?

23 A It looks like it.

24 Q You don't know what you were referring to there
25 when you say MKE Hispanics?

11:06AM

1 A I don't recall.

2 Q Do you know why this E-mail wasn't produced?

3 A I don't know.

4 Q Do you know whether this was an E-mail that you

11:06AM

5 printed out and gave to Mr. McLeod or someone at
6 Michael Best & Friedrich as part of the production
7 process?

8 MR. JACOB: Object as to form and
9 foundation.

11:06AM

10 A I believe so, but I don't know for certain.

11 (Exhibit No. 16 marked for
12 identification)

13 Q Mr. Ottman, the court reporter has handed you a
14 copy of a document that's been marked as Exhibit
15 No. 16. Do you have that in front of you?

11:07AM

16 A Yes.

17 Q This is an E-mail that you sent to Mr. McLeod and
18 others on July 5, 2011, correct?

19 A Yes.

11:07AM

20 Q This is a document that also was not produced to
21 us during the litigation.

22 MS. BUCHKO: Object as to form.

23 MR. JACOB: Object as to form.

24 Q Do you know why it wasn't produced?

11:07AM

25 A I don't know.

1 Q Was this a document that you printed and gave to
2 Mr. McLeod or someone at Michael Best & Friedrich
3 during the production process?

4 A I don't recall specifically.

11:08AM

5 Q Look at the text of the E-mail. It says, "This is
6 the amendment with the alternative configuration
7 for the Hispanic districts." Do you see that?

8 A Yes.

11:08AM

9 Q That relates to the Hispanic districts in
10 Milwaukee, correct?

11 A Yes. That's correct.

12 Q Which districts were those?

13 A Assembly Districts 8 and 9.

11:08AM

14 Q And those were the districts that were the topic
15 of or a topic of the lawsuit, correct?

16 A That's correct.

17 Q Those are the districts that the Court ended up
18 holding violated the Voting Rights Act, correct?

11:08AM

19 A I don't recall the exact grounds. I remember they
20 were not upheld by the Court.

21 Q You don't recall printing out Exhibit No. 16 and
22 providing it to Mr. McLeod during the production
23 process in the litigation?

11:08AM

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

1 MR. JACOB: Objection as to form.
2 Again, this document contains portions that
3 are designated as previously produced
4 including both of the attachments noted.

11:09AM

5 MR. POLAND: That's fine. Limiting
6 it just to the first page.

7 A I don't recall specifically.

8 (Exhibit No. 17 marked for
9 identification)

11:09AM

10 Q Mr. Ottman, the court reporter has handed a copy
11 of a document that's been marked as Exhibit 17.
12 Do you have that in front of you?

13 A Yes.

11:09AM

14 Q I would note there's no indication on this
15 document that any part of it was previously
16 produced. I will represent to you that this is
17 document that was not produced to the plaintiffs
18 during the litigation.

19 A Okay.

11:10AM

20 MR. JACOB: One moment.

21 MS. LAZAR: We have two. We have
22 something that was marked McLeod 21 and 22.

23 MR. JACOB: Which one are you
24 looking at?

11:10AM

25 MR. POLAND: Give me 21 back. This

1 was the one that we just went through. I
2 guess those were just extra copies.

3 MR. EARLE: 21 was 15, Exhibit 15.

4 MR. POLAND: Yes. Right. Sorry.

11:10AM

5 Did everybody get a copy of Exhibit 15?

6 MS. LAZAR: Yes.

7 MR. POLAND: They were just extra
8 copies.

11:10AM

9 Q Mr. Ottman, do you have Exhibit No. 17 in front of
10 you?

11 A I do.

12 Q Do you see this is an E-mail that or at least the
13 very first E-mail on Exhibit 17 is an E-mail that
14 you sent to Ray Taffora on July 8, 2011, correct?

11:11AM

15 A Yes.

16 Q Do you know why this document wasn't produced?

17 A I don't. No.

18 MR. JACOB: Object as to form.

11:11AM

19 A Did you print out a copy of this E-mail and
20 provide it to Mr. McLeod or any of the lawyers at
21 Michael Best & Friedrich as part of the production
22 process?

23 MR. JACOB: Object as to form and
24 foundation.

11:11AM

25 A I don't recall specifically.

1 Q Do you believe to the best of your recollection
2 that you did?

3 A I believe so.

4 Q Do you know why you would not have?

11:11AM

5 MS. BUCHKO: Object to form.

6 A I can't recall specifically at this time why it
7 may not have.

8 (Exhibit No. 18 marked for
9 identification)

11:12AM

10 Q Mr. Ottman, you have been given a document that's
11 been marked Exhibit 18, correct?

12 A Correct.

13 Q I will represent to you this is an E-mail that was
14 not produced to the plaintiffs as part of the
15 production process. Do you see this as an E-mail
16 that you sent to Mr. Taffora on Saturday, July 9,
17 2011?

11:12AM

18 A Yes.

19 Q Do you see that the subject line is Hispanic Maps?

11:13AM

20 A Yes.

21 Q Do you know what that referred to?

22 A I don't recall what I was asking him specifically
23 to call me about. I don't have a specific
24 recollection of it.

11:13AM

25 Q Do you believe it pertained to the Hispanic

1 districts in Milwaukee?

2 A It may have. It may have had to do with some of
3 the supplemental maps that Zeus Rodriguez had
4 asked me to produce that was discussed at my
5 earlier deposition.

11:13AM

6 Q And, again, those were alternative configurations
7 that Mr. Rodriguez was coming up with, correct?

8 A No. He had asked -- I don't know if he had asked
9 anything about alternative configurations. He had
10 asked for heat maps of cities outside of Milwaukee
11 in addition, so I don't know if that was in
12 relation to that or not.

11:13AM

13 Q Understood. It still had to do with the
14 configuration or drawing of new legislative
15 districts, correct?

11:14AM

16 A I don't know that his requests related to heat
17 maps outside of the city of Milwaukee had anything
18 to do with the configuration of the maps in
19 Milwaukee.

11:14AM

20 Q But it might have had to do with configuration of
21 districts outside of Milwaukee, correct?

22 A That was not my understanding.

23 Q Why would Mr. Rodriguez have been asking you for
24 heat maps for any districts that -- strike that.

11:14AM

25 Did it have to do with legislative -- did it

1 pertain to legislative redistricting?

2 A My recollection is that he wanted to know what the
3 density of Hispanic populations were in some
4 selected cities that he identified for me so that
11:14AM 5 he would know that when talking to potentially --
6 people who may want to testify. I don't know if
7 that was the timeline or not.

8 Q And the testimony that you're talking about was at
9 the hearing where the new legislative districts
11:15AM 10 were going to be presented to the public, correct?

11 A That's correct.

12 Q Do you know why Exhibit 18 wasn't produced?

13 A I don't know.

14 Q Do you recall printing it and providing it to
11:15AM 15 Mr. McLeod or any of the other attorneys at
16 Michael Best & Friedrich?

17 A I don't recall the specific documents. I printed
18 everything that I believed potentially to be
19 responsible, and then they made the decision.

11:15AM 20 Q To be responsive?

21 A Correct. Yes. Responsive.

22 (Exhibit No. 19 marked for
23 identification)

24 Q Mr. Ottman, you have been handed a copy of a
11:16AM 25 exhibit that's been marked No. 19. Do you have

1 that in front of you?

2 A I do.

3 Q You see this is an E-mail from you to Mr. Taffora,
4 correct?

11:16AM

5 A Yes.

6 Q It's dated July 12, 2011, correct?

7 A Yes.

8 Q And the subject line is Jesus Rodriguez, correct?

9 A Yes.

11:16AM

10 Q That's Mr. Rodriguez who we were just talking
11 about a minute ago?

12 A Yes.

13 Q There's a telephone number and nothing else in
14 this E-mail. Do you see that number?

11:16AM

15 A Yes.

16 Q Whose number is that?

17 A I can't remember for certain. I assume it's
18 Mr. Rodriguez's.

19 Q Do you know why you were sending this to
20 Mr. Taffora on July 12, 2011?

11:16AM

21 A I don't specifically recall. I suspect he asked
22 me for Zeus's number.

23 Q Do you know, did Mr. Rodriguez -- strike that
24 question. Mr. Rodriguez at that time was

11:17AM

25 interested in finding somebody to testify at the

1 hearing where the new districts were going to be
2 presented; is that correct?

3 MS. BUCHKO: Objection; foundation,
4 competency.

11:17AM 5 A Could you restate the question?

6 Q Withdraw that question. I was trying to follow up
7 on what we were talking about before. Do you know
8 what Mr. Rodriguez -- what his role with respect
9 to redistricting was at this particular time?

11:17AM 10 A I believe he was considering testifying at that
11 time.

12 Q What was the date of the hearing?

13 A I'm not certain. I think it was the 13th.

14 Q Do you know why this E-mail was not produced to
11:17AM 15 the plaintiffs during the litigation?

16 A I don't know.

17 Q Is this a document that you printed out and gave
18 to Mr. McLeod or any of the Michael
19 Best & Friedrich attorneys?

11:17AM 20 MR. JACOB: Objection as to form
21 and foundation.

22 A I don't recall specifically.

23 Q One more document here.

24 (Exhibit No. 20 marked for
11:18AM 25 identification)

1 Q Mr. Ottman, the court reporter has handed you a
2 copy of a document that's been marked as Exhibit
3 No. 20. I'm going to give you a minute to take a
4 look at the document. Mr. Ottman, have you seen
5 Exhibit No. 20 before?

11:19AM

6 A I believe so. Yes.

7 Q I would like to turn your attention to page 4 of 5
8 on the printout. If you look in the upper
9 right-hand portion of the page --

11:19AM

10 A Okay.

11 Q Do you see this appears to be the first E-mail in
12 this chain, correct?

13 A It appears to be.

14 Q And that's an E-mail dated Friday, October 7,
15 2011, an E-mail from you to Mr. McLeod,
16 Mr. Troupis, Mr. Taffora, and Mr. Foltz, correct?

11:19AM

17 A Yes.

18 Q The subject line reads Amendment on Effective Date
19 of Redistricting. Do you see that?

11:19AM

20 A Yes.

21 Q I will represent to you that this is an E-mail
22 that was not produced to the plaintiffs in the
23 litigation. Can you tell me why this was not
24 produced?

11:19AM

25 A I don't know.

1 Q Do you know, does it have anything to do with the
2 date, the fact that this was from October of 2011?

3 A I'm sorry. I don't understand the question.

4 Q The date of this particular E-mail is October of
5 2011. Do you see that?

11:20AM

6 A Yes.

7 Q The fact that it wasn't produced, does it have
8 anything to do with the date of the E-mail?

9 A Oh, that could certainly be the case. We looked
10 through documents through enactment.

11:20AM

11 Q And what was the date of enactment?

12 A Early August.

13 Q Who told you only to look for documents through
14 the date of enactment?

15 A That was instruction from counsel at Michael Best.

11:20AM

16 Q Did any lawyer in particular give you that
17 instruction?

18 A I don't know if it was Attorney McLeod, Attorney
19 Olson or both.

11:20AM

20 Q Do you recall the conversation specifically with
21 them when they gave you that instruction?

22 MS. BUCHKO: Objection, asked and
23 answered multiple times.

24 A Yes. We talked about what to search for and what
25 dates.

11:20AM

1 Q Did they give you any kind of a written
2 instruction where they identified that particular
3 date as the cutoff?

4 MS. BUCHKO: Objection, asked and
5 answered multiple times.

11:21AM

6 A Not that I recall.

7 Q Did there come a time after the trial in the
8 redistricting litigation when you became aware
9 that there were documents that weren't produced?

11:21AM

10 A Yes.

11 Q I believe that Mr. Earle had asked you yesterday
12 and you had testified about an ALEC E-mail,
13 correct?

14 A That's correct.

15 (Exhibit No. 21 marked for
16 identification)

17 Q Mr. Ottman, the court reporter has handed you a
18 copy of a document that's been marked as
19 Exhibit 21. Do you have that in front of you?

11:22AM

20 A Yes.

21 Q It's a two-page document. The first page is a
22 letter from me to Mr. McLeod dated March 1, 2012.
23 And on the back is an E-mail, correct?

24 A Correct.

11:22AM

25 Q I would like to ask you about the first page, this

1 March 1, 2012 letter. Have you seen this letter
2 before?

3 A I believe so.

4 Q Do you recall when you saw it?

11:22AM

5 A I believe I saw it around the date.

6 Q Who gave it to you?

7 A I believe it was given to me by either Attorney
8 McLeod or Joe Olson.

11:22AM

9 Q I would like you to turn over the document and
10 look at the E-mail. Do you see that E-mail?

11 A Yes.

12 Q It looks like it was an E-mail that was
13 subsequently forwarded, correct?

14 A That's correct.

11:22AM

15 Q So the original E-mail came from ALEC, that's
16 A-L-E-C, to Senator Fitzgerald on Thursday,
17 January 20, 2011, correct?

18 A That's correct.

11:23AM

19 Q And the subject matter of that is ALEC Conference
20 Call on Redistricting?

21 A That's correct.

22 Q Senator Fitzgerald then forwarded that to you on
23 the same date, correct?

24 A Yes.

11:23AM

25 Q And there's nothing in the -- there's no body, no

1 text to the E-mail, correct?

2 A That's correct.

3 Q Do you know why Senator Fitzgerald sent this
4 E-mail to you?

11:23AM

5 A I believe this was forwarded by the person in our
6 office who checks his inbox, and she was just in
7 the habit of forwarding to me anything that had
8 redistricting -- that mentioned redistricting.

11:23AM

9 Q In the To line it says Ottman, Tad. It doesn't
10 actually say which E-mail account that is,
11 correct?

12 A Correct.

13 Q Do you know which E-mail account this was sent to?

14 A I believe this was sent to my State account.

11:23AM

15 Q Now, I believe you have testified yesterday that
16 when you received redistricting E-mails in your
17 State account, you would forward them to your
18 G Mail account, correct?

19 A If I retained them. Yes.

11:24AM

20 Q Do you know whether this particular document was
21 forwarded to your G Mail account?

22 A No.

23 Q You don't know or --

24 A It was not forwarded.

11:24AM

25 Q It was not forwarded? Why did you not forward it

1 to your G Mail account?

2 A Because I didn't participate in the conference
3 call, Senator Fitzgerald didn't participate in the
4 conference call, and I had no need to retain it.

11:24AM

5 Q Did you ever have any conversations or
6 communications whatsoever with anyone from ALEC
7 about redistricting?

8 MS. BUCHKO: Objection, asked and
9 answered multiple times in pretrial discovery
10 and yesterday. We're getting to the point
11 where it's so duplicative.

11:24AM

12 MR. EARLE: Counselor, I don't
13 think so.

14 MS. BUCHKO: Yes. It was. It's
15 getting so duplicative that I think it's
16 becoming burdensome on the witness. This is
17 the third or fourth time.

11:24AM

18 MR. EARLE: ALEC?

19 MS. BUCHKO: ALEC was discussed in
20 pretrial discovery.

11:24AM

21 MR. EARLE: We didn't know about
22 it.

23 MS. BUCHKO: Counsel, you're not
24 doing the questioning right now. Thank you
25 very much. I want to state my objection for

11:24AM

1 the record that you're asking the same
2 question so many times for this witness that
3 I believe it's getting to the point where
4 it's an undue burden.

11:25AM

5 MR. POLAND: This witness has never
6 been asked on this document.

7 MS. BUCHKO: He was questioned with
8 respect to ALEC.

11:25AM

9 MR. POLAND: He was never
10 questioned with respect to this document.

11 MS. BUCHKO: He was questioned with
12 respect to ALEC and again yesterday and he
13 was --

11:25AM

14 MR. POLAND: That's fine. You
15 stated your objection.

16 MS. BUCHKO: -- asked about this
17 document yesterday.

18 Q You can answer the question.

19 THE WITNESS: Can you repeat the
20 question, please.

21 (Question read)

22 A I did not.

23 Q Did anyone in the Senate as part of the
24 redistricting process have any communications with
25 ALEC regarding redistricting?

11:25AM

1 MS. BUCHKO: Objection, outside the
2 scope of the list of designated items in the
3 subpoena.

4 A Not to my knowledge.

11:25AM

5 Q At the time that Mr. Olson or McLeod gave you the
6 March 1st letter and the attached E-mail, did you
7 have a discussion with Mr. McLeod or Mr. Olson
8 about that E-mail?

9 A Yes.

11:26AM

10 Q What did you discuss about that E-mail?

11 A They asked if I remembered it. They asked or I
12 informed them that I did not participate in the
13 call and that it was my recollection that I
14 produced this as part of an open records request
15 earlier in the year and then subsequently deleted
16 it from my State E-mail account.

11:26AM

17 Q Did they ask you at that time whether there were
18 any other documents, whether they pertain to ALEC
19 or any other aspect of redistricting, that were
20 not produced as part of the litigation?

11:26AM

21 A They indicated that they didn't think it was
22 responsive, but they did not ask me any particular
23 questions about other documents.

11:27AM

24 Q Did they tell you why they didn't think it was
25 responsive?

1 A I don't recall any specificity.

2 Q Did they ask you not to delete any other E-mails
3 from your State account?

4 MS. BUCHKO: Objection, asked and
5 answered.

11:27AM

6 MR. JACOB: Object as to form.

7 A Not that I recall.

8 (Exhibit No. 22 marked for
9 identification)

11:27AM

10 Q Mr. Ottman, the court reporter has given you a
11 copy of what's been marked as Exhibit 22. Do you
12 have that?

13 A I do.

14 Q This is a letter from Mr. McLeod to me dated
15 March 5, 2012. Do you see that?

11:28AM

16 A Yes.

17 Q If you will notice, the second paragraph of this
18 E-mail makes a statement about the ALEC E-mail we
19 just went over, says it wasn't produced and gives
20 an explanation. Do you see that?

11:28AM

21 A Yes.

22 Q Have you seen this explanation before?

23 A Yes.

24 Q That explanation in the statement there, is that
25 accurate?

11:28AM

1 A Yes.

2 (Exhibit No. 23 marked for
3 identification)

11:29AM

4 Q Mr. Ottman, the court reporter has handed you a
5 document that's been marked as Exhibit 23. Do you
6 have that in front of you?

7 A I do.

8 Q Do you see it's a letter dated March 8, 2012 from
9 me to Mr. McLeod? Do you see that?

11:29AM

10 A Yes.

11 Q Have you seen this particular document before?

12 A I believe so. Yes.

13 Q Did you have a discussion with Mr. McLeod or
14 Mr. Olson or anyone else at Michael

11:29AM

15 Best & Friedrich on or after March 8, 2012 about
16 the completeness of the production of documents
17 during the litigation?

18 A I don't recall specifically.

19 Q How do you recall seeing Exhibit No. 23?

11:30AM

20 A Somebody at the Michael Best firm provided me with
21 a copy of this. The discussion that I recall was
22 solely related to that E-mail.

23 Q The E-mail that we went over just a minute ago,
24 the ALEC E-mail?

11:30AM

25 A That's correct.

1 Q Did anyone at Michael Best & Friedrich raise with
2 you at that time the question of whether there
3 were any other documents, E-mails that weren't
4 produced?

11:30AM

5 A Not at that time.

6 Q Did they ask you to search for anything at that
7 time to see if there was anything that wasn't
8 produced?

11:30AM

9 A I don't know. At some point, and I don't know
10 when, they asked me to search or to see what open
11 records requests were made of Senator Fitzgerald's
12 office related to ALEC. I contacted the office
13 and got a record of that.

14 (Exhibit No. 24 marked for
15 identification)

16 Q Mr. Ottman, the court reporter has handed you what
17 we have marked as Exhibit 24. Do you have that in
18 front of you?

19 A Yes.

11:31AM

20 Q I'll give you a minute to look over that. Have
21 you had a chance to look at Exhibit No. 24?

22 A Yes.

23 Q And you had testified just a minute ago that you
24 believed that you had been asked to look for open
25 records requests; is that correct?

11:32AM

1 A That's correct.

2 Q Did you in fact look for open records requests?

3 A Yes. I contacted the office and asked for what
4 open records requests that mentioned ALEC they had
5 received over the course of the previous year.

11:32AM

6 Q And did you receive those from the office?

7 A I did.

8 Q When you says the office, you mean Senator
9 Fitzgerald's office?

11:32AM

10 A That's correct.

11 Q Did you provide those open records requests to
12 someone at Michael Best & Friedrich?

13 A I did.

14 Q Who did you give them to?

11:32AM

15 A I don't know if it was Eric or Joe Olson.

16 Q But it was one of the two?

17 A I believe so. Yes.

18 Q Are those open records requests attached to
19 Exhibit No. 24?

11:33AM

20 A Yes.

21 Q Other than open records requests, did Mr. Olson or
22 Mr. McLeod or any other lawyer at Michael
23 Best & Friedrich ask you at that time to look
24 through any of the materials in your possession to
25 determine whether there was something that should

11:33AM

1 have been produced but was not produced?

2 A Not that I recall.

3 Q Right around that time in March of 2012 did they
4 instruct you that you should preserve all

11:33AM

5 redistricting materials in your possession at that
6 time?

7 MS. BUCHKO: Objection, asked and
8 answered multiple times.

9 A Not that I recall.

10 (Exhibit No. 25 marked for
11 identification)

12 Q Mr. Ottman, the court reporter has handed you a
13 document that we have marked as Exhibit No. 25.
14 Do you have that in front of you?

11:34AM

15 A Yes.

16 Q Have you seen this particular document before?

17 A I believe so. Yes.

18 Q Do you recall when you received it?

11:34AM

19 A Not exactly. I suspect shortly after the date of
20 the letter.

21 Q Do you recall whether it was handed to you as a
22 physical copy or whether it was E-mailed to you?

23 A I don't recall.

11:34AM

24 Q Around this time of March 15th do you recall
25 talking with anyone at Michael Best & Friedrich

1 about the concerns that are raised in Exhibit
2 No. 25?

3 A Not specifically or not anything different than
4 the previous conversations I described.

5 (Exhibit No. 26 marked for
6 identification)

7 Q Mr. Ottman, the court reporter has handed you a
8 document that we have marked as Exhibit No. 26.
9 Do you have that in front of you?

11:35AM

10 A Yes.

11 Q If you look at the top, you will see that there's
12 an E-mail from Joe Olson of Michael Best to me
13 copied to Eric McLeod and the date is Saturday
14 March 17th. Do you see that?

11:35AM

15 A Yes.

16 Q Looking at the very first paragraph, Mr. Olson
17 states, "Sorry I missed your call. I have been in
18 touch with Tad and will have a better
19 understanding of these issues early next week.

11:36AM

20 I've asked him to put together a description of
21 his search. Obviously I'll need to work through
22 that once I have it. We should be in a position
23 to get back to you next week." Do you see that?

24 A Yes.

11:36AM

25 Q Did you speak with Mr. Olson on or about

1 March 17th about putting together a description of
2 the search you conducted?

3 A Some time after that date I recall talking to him
4 about it.

11:36AM

5 Q Did you ever in fact put together a description of
6 the search you conducted?

7 A I did.

8 Q Did you provide that to Mr. Olson?

9 A I did.

11:36AM

10 Q Was that in a written form?

11 A I typed up a document. I can't remember if I
12 copied and pasted it into an E-mail or forwarded
13 him the document.

14 Q Do you remember when you would have sent that to
15 Mr. Olson?

11:36AM

16 A I don't remember exactly.

17 Q Was anyone else copied on that transmission when
18 you sent it to Mr. Olson?

19 A I don't recall.

11:37AM

20 Q Do you know whether Mr. McLeod received a copy of
21 that?

22 A I don't recall.

23 Q Did anyone else assist you in preparing that
24 document that you typed up for Mr. Olson?

11:37AM

25 A No.

1 Q You did it entirely on your own?

2 A That's correct.

3 Q After you sent that document to Mr. Olson, did you
4 have any further discussions with him about it?

11:37AM

5 A I may have. I don't recall specifically.

6 Q Did he ask you to do any kind of editing of it in
7 any way?

8 A I don't recall.

11:37AM

9 Q Did you ever see any other kind of a summary of
10 that document?

11 A Not specifically that document. There was a
12 summary of a proposed declaration that I believe
13 you had typed up and forwarded to Joe Olson that
14 he forwarded to me that I think described some of
15 the same topics in there.

11:38AM

16 Q And that was a document that you did review?

17 A I looked at it. Yes.

18 Q All right. Who asked you to look at it?

19 A Joe Olson.

11:38AM

20 Q Why did Mr. Olson ask you to look at it?

21 A He represented that it was a document containing a
22 declaration that you had requested. I believe
23 there was a declaration from both me and Tony
24 Van Der Wielen attached to that document that he
25 represented that you had forwarded to him and

11:38AM

1 wanted us to consider.

2 Q Did you ever do anything to mark up that draft
3 declaration?

4 A I did not.

11:38AM

5 Q Did you do anything to alter it or change it in
6 any way, modify it?

7 A Not that I recall.

8 Q You did not end up signing a declaration, correct?

9 A That's correct.

11:38AM

10 Q Why did you end up not signing a declaration?

11 A I believe there were several inaccuracies in
12 there.

13 Q Did you identify those inaccuracies to anyone?

14 A I did not. I don't know at what time we

11:39AM

15 terminated representation with Michael Best. That
16 may have been why.

17 Q Do you recall memorializing what you thought was
18 inaccurate about the declaration?

19 MS. BUCHKO: Objection, asked and
20 answered.

11:39AM

21 A I don't recall.

22 (Exhibit No. 27 marked for
23 identification)

24 Q Mr. Ottman, the court reporter has handed you a

11:40AM

25 document that's been marked as Exhibit No. 27. Do

1 you have that in front of you?

2 A I do.

3 Q Have you seen Exhibit No. 27 before?

4 A I believe so.

11:40AM

5 Q Do you recall when you saw Exhibit No. 27?

6 A Not exactly.

7 Q Do you recall who gave you Exhibit No. 27?

8 A I don't recall specifically. I believe it was
9 Attorney Olson.

11:40AM

10 Q Now, I note the date of this letter is June 13,
11 2012. Do you see that?

12 A Yes.

13 Q The date of the letter postdates the movement of
14 your redistricting computer back over to the
15 capitol building, correct?

11:40AM

16 A I believe so. Yes.

17 Q Do you recall whether you were in office over at
18 the capitol building at the time that you saw this
19 letter?

11:40AM

20 A I don't recall.

21 Q What about the draft declaration? Do you recall
22 ever talking with Mr. Olson or Mr. McLeod about
23 the draft declaration when you were over at
24 Michael Best & Friedrich?

11:41AM

25 MS. BUCHKO: Objection, asked and

1 answered.

2 A I don't recall talking to them at Michael
3 Best & Friedrich.

11:41AM

4 Q Did Mr. McLeod or Mr. Olson ask you to look at
5 Exhibit No. 27 and point out anything that might
6 be inaccurate in it?

7 A Not specifically. No.

8 Q You put the word specifically in there, so I have
9 to follow up and ask. Did they ask you generally?

11:41AM

10 A I think it was something to the effect of *Take a*
11 *look at it.*

12 Q Did they ask for your feedback on it?

13 A I don't recall.

14 Q Did you provide them with any feedback or
15 commentary on Exhibit No. 27?

11:41AM

16 A I don't recall.

17 MR. POLAND: I'm going to look at
18 my notes for just one minute, but I might be
19 done with this portion.

11:43AM

20 I'm done with the 30(b)(6) portion of
21 the deposition.

22 MR. EARLE: You want me to go first
23 or --

24 MR. JACOB: Go ahead.

25

RE-EXAMINATION

1
2 By Mr. Earle:

3 Q You testified in response to Mr. Poland's
4 questions a little bit ago and to some extent
11:43AM 5 yesterday as well about how the external hard
6 drive assigned to your computer that was kept at
7 Michael Best was configured to back up certain
8 files, correct?

9 A That's correct.

10 Q What files?

11 A I believe it was set to back up the map files. I
12 don't know if it was set to back up anything else.

13 Q What is the basis of your belief that it was
14 configured to back up the map files and nothing
11:44AM 15 else?

16 A Those were obviously the largest files and the
17 ones we were most concerned about using. It's my
18 understanding that LTSB said that that's what it
19 would be configured to back up.

11:44AM 20 Q Did it back up any E-mail files, Outlook?

21 A Not that I'm aware of.

22 Q Did it back up any correspondence or non-database
23 files related to redistricting?

24 MS. BUCHKO: Object to form.

11:44AM 25 A I'm not certain.

1 Q Was there any paperwork that you're aware of
2 generated in the course of determining what files
3 would be backed up?

4 A Not that I recall.

11:44AM

5 Q Now, you worked pretty closely with Eric McLeod,
6 right?

7 A During the time of the redistricting. Yes.

11:45AM

8 Q I recall in your prior depositions before the
9 trial you had testified that that conference room
10 where your computer was set up was in close
11 proximity to Mr. McLeod's office, correct?

12 A That's correct.

13 Q So on a daily basis you had back and forth with
14 Mr. McLeod?

11:45AM

15 A Not every day. But if there were questions that
16 came up or if he had questions, he would either
17 walk down or I would walk down to his office.

11:45AM

18 Q Would you agree that the proximity of him to your
19 work practices enabled him to be familiar with the
20 manner in which you conducted your work on the
21 redistricting project?

22 MS. BUCHKO: Object to form.

23 MR. JACOB: Object to form.

24 A I'm not certain.

11:45AM

25 Q Did he ever give you any advice as to what to do

1 and what not to do?

2 MR. JACOB: Object as to form.

3 MS. BUCHKO: Join.

4 A As I have discussed previously, there was

11:46AM

5 discussions about don't talk to people outside of
6 privilege, but there was like no specific
7 instructions of draw the map this way or that way.
8 So there was general legal advice.

9 Q There was more than just general legal advice,
10 wasn't there? He was directing your work in a
11 very close manner, wasn't he?

11:46AM

12 MS. BUCHKO: I'm going to object on
13 multiple grounds. The first ground is this
14 is outside of the 30(b)(6).

11:46AM

15 MR. EARLE: I'll give you every
16 ground on the record that you can conceivably
17 object to. We will just go back to the
18 testimony.

19 MS. BUCHKO: I would actually like
20 to state my objection.

11:46AM

21 MR. EARLE: I don't think it's
22 necessary. You can conjure up any ground you
23 want to after the deposition is over.

24 MS. BUCHKO: I would like to state
25 the grounds for my objection for the record.

11:46AM

1 Outside of the scope of designated topics in
2 the subpoena for the 30(b)(6) deposition
3 today. Object to form, competency,
4 foundation.

11:47AM

5 MR. EARLE: Okay.

6 MR. JACOB: I will object to form
7 and foundation.

8 MR. EARLE: Could we read the
9 question to the deponent, please.

11:47AM

10 (Question read)

11 A He was directing us on the legal aspect. On the
12 physical processes of drawing the map I don't
13 recall him directing us.

11:48AM

14 Q Did you sign an agreement with Mr. McLeod related
15 to your work on redistricting?

16 A There was a non-disclosure agreement that I
17 signed.

11:48AM

18 Q Did that non-disclosure agreement say anything
19 about the nature and manner in which Mr. McLeod
20 would supervise your work?

21 MS. BUCHKO: Objection, outside the
22 scope of the designated topics of the
23 30(b)(6) notice.

24 A I don't recall the wording of the document.

11:48AM

25 MR. EARLE: Can we take a brief

1 break? I want to -- we will come back to
2 that. We are going to track down a copy of
3 it.

11:48AM

4 THE VIDEOGRAPHER: The time is
5 11:47.

6 MR. EARLE: Let's stay on.

7 Q Did you terminate the relationship with Michael
8 Best?

11:48AM

9 MS. BUCHKO: Objection, outside the
10 scope of the designated topics. He's not
11 authorized to bind the Senate on this topic.

12 MR. JACOB: Object as to form.

13 A The Senate terminated the relationship with
14 Michael Best.

11:49AM

15 Q Were you the conveyer of the information?

16 MS. BUCHKO: Same objection.

17 Q That the relationship was being terminated?

18 MS. BUCHKO: Same objection.

19 A I believe I delivered the letter to Michael Best.

11:49AM

20 Q Do you recall the date that you delivered that
21 letter?

22 A I don't recall the date.

23 Q What did the letter say?

11:49AM

24 MS. BUCHKO: Objection, same
25 objection; outside the scope of designated

1 topics in the 30(b)(6) notice. He's not
2 authorized to speak on these topics.

3 A I don't recall what exactly the letter said.

4 Q What do you recall about what the letter said?

11:49AM

5 MS. BUCHKO: Same objection.

6 A I recall basically that it said the legal
7 relationship between the State Senate and Michael
8 Best was no longer in effect.

11:50AM

9 Q Do you know why the relationship with Michael
10 Best, that relationship with Michael Best, was
11 terminated?

12 MS. BUCHKO: Same objection.

13 A I don't know for certain. I believe it's because
14 they thought all redistricting related work was
15 concluded.

11:50AM

16 Q What do you remember about when that occurred?

17 MS. BUCHKO: Same objection.

11:50AM

18 Counsel, at some point I'm going to stop the
19 line of questioning. He is not authorized
20 and has not been given authority to speak on
21 this topic and it's outside the scope of
22 designated topics in the 30(b)(6).

23 THE WITNESS: I'm sorry. What was
24 the question?

11:50AM

25 (Question read)

1 A I believe it was in the summer of 2012.

2 Q What month?

3 MS. BUCHKO: Same objection. He's
4 not binding the Senate right now.

11:50AM 5 A I believe it was June or July, but I'm not
6 positive.

7 Q Did you have any discussion with Mr. McLeod when
8 you delivered the letter?

9 MS. BUCHKO: Same objection. He's
11:51AM 10 not binding the Senate.

11 MR. EARLE: You can have a standing
12 objection on that grounds for this. I'm
13 almost done with the line of questioning.

14 MS. BUCHKO: Okay.

11:51AM 15 MR. EARLE: So we will be done
16 faster if we just --

17 MS. BUCHKO: That would be great.
18 Thank you.

19 A I don't recall a specific conversation.

11:51AM 20 Q But you have no recollection of anything that was
21 said?

22 A No.

23 Q Did you discuss the termination of the
24 relationship with Michael Best with anybody else?

11:51AM 25 A I discussed it with Ray Taffora.

1 Q What was said in that discussion?

2 A We discussed accounting for the final bill to
3 conclude the representation.

4 Q Did you discuss the reason for the termination of
5 the relationship?

11:51AM

6 A Not to my recollection.

7 Q Did you discuss the preservation of documents that
8 were generated in the course of the
9 representation?

11:52AM

10 A Not to my recollection.

11 Q Were you given any instructions with regards to
12 preservation of documents that you had that were
13 generated during the course of the representation?

14 MS. BUCHKO: Objection, asked and
15 answered multiple times.

11:52AM

16 A Not to my recollection.

17 Q Did Michael Best provide the Senate with any
18 document as a result of the delivery of that
19 letter terminating the relationship with Michael
20 Best?

11:52AM

21 A At some point there was a final invoice.

22 Q Anything else other than that final invoice?

23 A Not that I recall.

24 Q Did the final invoice go to you?

11:52AM

25 A I don't know if it was addressed to Senator

1 Fitzgerald or to the Senate chief clerk.

2 Q I think I asked you this question, remind me if I
3 did. The record will show if I did or didn't.

4 Did you discuss the termination of Michael Best
5 with Mr. Fitzgerald?

11:53AM

6 A Yes. Well, the answer to your question is no, you
7 didn't ask it. I don't recall you asking it
8 before. But yes I did discuss it with him.

9 Q What was said in that discussion?

11:53AM

10 A I don't recall specifically. Generally it was is
11 there any need to keep Michael Best on. It looks
12 like everything is over. Should we go ahead and
13 send the letter to terminate the relationship.

14 Q Did there come a time after the termination of the
15 relationship but before the engagement of Whyte
16 Hirschboeck that Michael Best provided legal
17 advice to the Senate or you about issues related
18 to preservation of records and adequacy of
19 document production?

11:54AM

20 MR. EARLE: I'm sorry. Could you
21 read that back.

22 (Question read)

23 MS. BUCHKO: Okay.

24 MR. JACOB: I'm going to object as
25 to form, as to foundation, and the question

11:54AM

1 also presupposes a legal relationship.

2 Maybe you can ask if any conversation
3 occurred first, and then I'll know whether I
4 need to object on the grounds of privilege.

11:55AM

5 Q Let's do this. I will withdraw that question, and
6 I will take advice of Michael Best's lawyer and
7 ask you that question. Between the time that you
8 terminated the relationship -- you communicated
9 the termination of the relationship between the
10 Senate and Michael Best regarding redistricting
11 and the date that Whyte Hirschboeck was retained,
12 were there any other conversations with lawyers at
13 Michael Best about issues related to
14 redistricting?

11:55AM

11:55AM

15 A There was a conversation about the final payment,
16 and there was some -- I believe they had
17 overcharged, so there was a conversation about
18 figuring out what was properly billed to the
19 Senate. And then they ultimately cut a check back
20 to the Senate for the overpayment.

11:56AM

21 Q How much was the overpayment?

22 A I don't recall exactly. I want to say it was less
23 than \$1,000.

24 Q Who discovered the overpayment?

11:56AM

25 MS. BUCHKO: Is my standing

1 objection still --

2 MR. EARLE: Yes.

3 MS. BUCHKO: Thank you.

4 A I believe it was the Senate chief clerk.

11:56AM

5 Q Did Michael Best dispute the overpayment?

6 A No. It's my understanding they wrote a check to
7 the State for the disputed amount.

8 Q During this time period between the time you
9 communicated the termination of the relationship

11:56AM

10 with Michael Best and the retention of Whyte
11 Hirschboeck, were there any discussions about
12 motions filed or communications issued by the
13 plaintiffs in this case about the adequacy of the
14 production in response to discovery?

11:57AM

15 A Not that I recall.

16 Q Remind me. What was the date that the Senate
17 retained Whyte Hirschboeck?

18 A I don't recall the exact date.

19 Q What month was it?

11:57AM

20 MS. BUCHKO: My standing objection
21 is still in place?

22 MR. EARLE: Sure.

23 MS. BUCHKO: It's outside the
24 designated topics. He's not authorized.

11:57AM

25 MR. EARLE: He's not authorized to

1 state the date?

2 MS. BUCHKO: It is outside the
3 designated topics. The Senate may choose who
4 they want to designate on such a topic. He
11:57AM 5 is not currently authorized to bind the
6 Senate on this line of questioning.

7 A I don't recall the exact day.

8 Q Do you recall the month?

9 A I don't recall the month.

11:57AM 10 Q Do you recall the time of year?

11 A Winter.

12 MR. EARLE: We can take a brief --
13 I think that's it for my questions in terms
14 of follow-up on the designated subjects and
11:58AM 15 matters related to the designated subjects.

16 You can go ahead.

17 MR. JACOB: Were you waiting on a
18 document?

19 MR. EARLE: I was. Do you want to
11:58AM 20 take a quick break?

21 MS. BUCHKO: Sure.

22 MR. JACOB: That's fine.

23 MR. EARLE: It's 11:58. We could
24 just take lunch.

11:58AM 25 MS. BUCHKO: I would like to finish

1 with Mr. Ottman before lunch.

2 MR. JACOB: Maybe just check on
3 Doug. I should only be a few minutes.

4 MR. EARLE: Maria, how much do you
5 have?

6 MS. LAZAR: No questions for you,
7 Mr. Ottman.

8 THE VIDEOGRAPHER: Are we going off
9 the record now?

11:58AM

10 MR. EARLE: Yes.

11 THE VIDEOGRAPHER: Time is 11:57.
12 We are going off the record.

13 (Recess)

14 (Exhibit No. 28 marked for
15 identification)

16 THE VIDEOGRAPHER: The time is
17 12:10. We are back on the record.

18 Q Mr. Ottman, showing you Exhibit No. 28. Have you
19 seen this document before?

12:11PM

20 A Yes.

21 Q Would you tell me what this document is.

22 A This is the confidentiality agreement I signed
23 with Michael Best prior to beginning work on
24 redistricting.

12:11PM

25 Q This document describes how you are to manage

1 documents related to redistricting during the
2 course of the redistricting, correct?

3 MS. BUCHKO: Object to form.

4 A I don't understand it that way.

12:11PM

5 Q Okay.

6 MR. EARLE: Did we mark any of the
7 secrecy agreements? Which exhibit number is
8 that?

12:12PM

9 MR. POLAND: In this deposition?
10 No. I didn't mark those in this deposition.
11 I marked one.

12 MR. EARLE: Just the one that we
13 marked. Which one was it?

14 MS. LAZAR: It would be 10.

12:12PM

15 Q I would like you to take Exhibit No. 10 out.

16 MS. BUCHKO: Just so we're clear,
17 my continuing objection with respect to this
18 being outside the scope of the 30(b)(6)
19 deposition still stands?

12:12PM

20 MR. EARLE: Yes. I think it is
21 within the scope because it goes to the
22 preservation and supervision or preservation
23 of records and supervision of document
24 production and retention by the attorneys at
25 Michael Best. We disagree about that

12:12PM

1 obviously.

2 MR. POLAND: He has 10.

3 Q You have 10 in front of you?

4 A Yes.

12:13PM

5 Q You previously testified about Exhibit No. 10. I
6 won't go over the testimony about that other than
7 to draw your attention to the fact that in Exhibit
8 No. 10 Mr. McLeod writes that in connection with
9 the representation he has instructed or he, we,
10 Michael Best, have instructed certain individuals,
11 meaning you, at their direction working at the
12 direction of Michael Best to meet with certain
13 members of the Senate for purposes of discussing
14 matters within the scope of the representation.

12:13PM

15 Do you see that clause?

12:13PM

16 A Yes.

17 MR. EARLE: Object to form.

18 Q That's an accurate statement, correct?

19 MS. BUCHKO: Object to form.

12:13PM

20 MR. JACOB: Objection as to form
21 and foundation.

22 A I believe so.

23 Q So Mr. McLeod was directing your work in meeting
24 with members of the Senate to discuss the
25 redistricting process, correct?

12:13PM

1 MS. BUCHKO: My standing objection.

2 MR. JACOB: Object as to form.

3 A Only to the extent that we would need to meet with
4 members; not to the extent of the conversation
5 with members.

12:14PM

6 Q It says in the next sentence, "Such discussions
7 shall be conducted for the sole purpose of
8 assisting Michael Best in rendering legal advice
9 to the Senate and therefore are subject to
10 attorney-client privilege and work product
11 privileges." Do you see that sentence?

12:14PM

12 A Yes.

13 Q Is that an accurate statement?

14 MS. BUCHKO: Objection; foundation,
15 competency.

12:14PM

16 MR. JACOB: Objection.

17 A I believe so.

18 Q And what I mean is that an accurate statement --
19 is that an accurate statement as to what you
20 understood you were doing when you were meeting
21 with the members of the Senate to discuss the
22 redistricting plan?

12:14PM

23 MS. BUCHKO: Same objection and
24 also my standing objection that it's outside
25 of the scope of the designated topics in the

12:14PM

1 30(b)(6) notice.

2 MR. JACOB: Join.

3 A My understanding of the meetings with legislators
4 was to in the initial meetings explain to them how
5 their district had to change and in the subsequent
6 meeting prior to enactment of the map explain to
7 them what the proposed district would look like
8 and get any feedback or questions to them and if
9 there were any problems to relay them to

12:15PM

10 leadership and legal counsel. So that was the
11 extent of my understanding of that relationship
12 described here.

12:15PM

13 Q Now, in Exhibit No. 28 Mr. McLeod writes to you in
14 the second paragraph, the first full sentence,
15 that you are not to -- he's directing you that
16 you're not to discuss or disclose to anyone or any
17 entity other than Michael Best or the republican
18 leaders without the written authorization of
19 Michael Best the nature or content of any oral or
20 written communications or any information or work
21 performed related to the representation and the
22 representation being the redistricting process,
23 correct?

12:15PM

12:16PM

24 MS. BUCHKO: Objection, outside the
25 scope of designated topics. This has nothing

12:16PM

1 to do with the post-trial discovery dispute.

2 MR. EARLE: You've got the standing
3 objection.

4 MR. JACOB: Object as to form.

12:16PM 5 Q Go ahead.

6 A I believe so.

7 Q So you would agree that Mr. McLeod was supervising
8 and directing your work on a daily basis, isn't
9 that correct, sir?

12:16PM 10 MS. BUCHKO: Object to form, asked
11 and answered.

12 A I would not agree to that.

13 Q Was this agreement, Exhibit No. 28, in effect
14 throughout the time that you worked at Michael
15 Best on the redistricting project?

12:16PM

16 A That's my understanding.

17 Q Exhibit 28 coincided in time with the deployment
18 of your computer to the law offices of Michael
19 Best; isn't that correct?

12:17PM 20 MS. BUCHKO: Same objection.

21 A That's my understanding.

22 Q You got permission to send your computer over to
23 Michael Best from Eric McLeod; isn't that correct?

24 MS. BUCHKO: Object to form.

12:17PM 25 A No.

1 Q Who did you get permission from?

2 A Jim Troupis.

3 Q Was Jim Troupis working at Michael Best on July 15
4 of 2010?

12:18PM

5 A I believe so. When we first talked to Michael
6 Best, Jim Troupis was there and he was the one --
7 I believe he was the one who we talked to about
8 locating the computer there. I'm not certain at
9 what point Eric McLeod kind of took over that
10 role.

12:18PM

11 Q When did Eric McLeod take over that role?

12 A When Jim Troupis left the firm.

13 Q So you understood Jim Troupis to be the lead
14 lawyer for Michael Best & Friedrich when he was at
15 Michael Best & Friedrich?

12:18PM

16 MR. JACOB: Objection, foundation.

17 A That was my understanding.

18 Q And when Jim Troupis left Michael
19 Best & Friedrich, you understood that Eric McLeod
20 was taking the role of lead attorney on this
21 matter?

12:18PM

22 MR. JACOB: Same objection.

23 MS. BUCHKO: And also outside the
24 scope of the designated topics.

12:18PM

25 A That was my understanding.

1 MR. EARLE: I have nothing further.

2 Thank you. Wait a second.

3 Q On Exhibit 28. You signed Exhibit 28 in the form
4 of a contractual agreement, correct?

12:19PM

5 MS. BUCHKO: Objection; foundation,
6 competency.

7 A I signed the form. I don't know how it's
8 represented.

12:19PM

9 Q Well, it says above your signature Approved and
10 Agreed Upon, correct?

11 A Correct.

12 Q So you understood that you were signing an
13 agreement to abide by the contents of Exhibit 28,
14 correct?

12:19PM

15 MS. BUCHKO: Objection, foundation,
16 competency.

17 A I'm not certain that's my -- my understanding is
18 it was a confidentiality agreement.

19 MR. EARLE: That's all I've got.

12:19PM

20 Thank you.

21 EXAMINATION

22 By Mr. Jacob:

23 Q Good afternoon, Mr. Ottman. I believe you
24 testified during the course of your deposition on
25 a number of instances that when the subpoenas were

12:20PM

1 issued by plaintiffs you had a conversation with
2 Mr. McLeod in which he instructed you to preserve
3 documents relating to redistricting; is that
4 correct?

12:20PM

5 A That's correct.

6 Q And you followed those instructions. Is that an
7 accurate statement?

8 A I did.

12:20PM

9 Q So you made efforts to preserve documents that
10 related to redistricting?

11 A That's correct.

12 Q And those efforts on your part were ongoing. You
13 maintained documents relating to redistricting
14 throughout the litigation; is that correct?

12:21PM

15 MR. EARLE: I'm going to object to
16 the form of that question.

17 A Yes.

18 Q And in fact you're continuing to maintain
19 documents related to redistricting; isn't that
20 correct?

12:21PM

21 A I still have documents relating to redistricting.
22 Yes.

23 Q And in fact you have even maintained documents
24 relating to redistricting that at the time that
25 the subpoenas were initially being responded to

12:21PM

1 were deemed nonresponsive?

2 A That's correct.

3 Q And an example of that would be documents relating
4 to SB 150 for example?

12:21PM

5 MR. EARLE: I would object to the
6 form of that question and the form of the
7 prior question.

8 A That's correct.

12:21PM

9 Q And that would also extend, for example, to
10 documents post enactment. Would that be accurate?

11 A I still have documents relating to redistricting
12 post enactment.

12:22PM

13 Q So your efforts at maintaining documents relating
14 to redistricting has been and continues to be
15 ongoing?

16 A That's correct.

12:22PM

17 Q I believe you also testified that you were
18 provided with a copy of an April 10, 2012 notice
19 of preservation demand. I believe it's Exhibit 7
20 if you want to take a quick look at it.

21 A Okay. Yes.

22 Q And this was provided to you or you received a
23 copy of this notice of preservation demand sent by
24 Mr. Earle by Mr. McLeod; is that correct?

12:23PM

25 A That's correct.

1 Q And I believe you testified that you understood
2 the notice to apply to open meeting violations,
3 correct?

4 A That's correct.

12:23PM

5 Q Now, despite that understanding, is it accurate to
6 say that you nevertheless continued to preserve
7 documents that related to redistricting?

8 A I did.

12:23PM

9 Q Now, you had testified and I believe it's
10 reflected in your recent affidavit that you
11 deleted some copies of certain map files from one
12 of the redistricting computers that were used by
13 Mr. Handrick. Is that accurate?

14 A On the computer that Mr. Handrick used. That's
15 correct.

12:23PM

16 Q And these were copies of documents that were
17 previously produced. Is that accurate?

18 A That's correct.

12:24PM

19 Q At the time that you deleted the copies of those
20 previously produced documents, did you notify
21 Mr. McLeod that you were deleting those files?

22 A I did not.

23 Q Did you notify anyone at Michael Best that you
24 were deleting those files?

12:24PM

25 A We were not represented by Michael Best at the

1 time, so I didn't notify anyone there.

2 Q Now, Mr. Poland showed you a series of documents
3 and E-mail communications that he had asked
4 whether you had printed as part of the review
5 process. Do you recall that?
12:24PM

6 A Yes.

7 Q And my question is to you do you have a specific
8 recollection as to those documents that he showed
9 you actually printing them or are you assuming you
10 printed them based on the substance of the
11 communication itself?
12:25PM

12 A There was a large volume of documents that we
13 printed out. I don't remember specifically each
14 document. Based on the content and based on what
15 I searched for, I assumed that that was part of
16 what I printed out for review.
12:25PM

17 Q So it may have been the type of document that you
18 would have printed? You have no specific
19 recollection one way or another?
12:25PM

20 MR. EARLE: I'm going to object to
21 the form of that question.

22 A I don't recall each individual E-mail that I
23 printed out.

24 MR. JACOB: That's all I have.

25 MS. BUCHKO: I have nothing.
12:25PM

1 MR. POLAND: I have one follow-up
2 question.

3 RE-EXAMINATION

4 By Mr. Poland:

12:26PM

5 Q Mr. Ottman, Mr. Jacob asked you whether the
6 documents you deleted were produced, correct?

7 A I'm not certain which --

8 Q Mr. Jacob asked you if you deleted documents,
9 correct?

12:26PM

10 A Yes.

11 Q And you did delete some documents, correct?

12 A Yes.

13 Q But those were documents you said that had been
14 produced to the plaintiffs, correct?

12:26PM

15 A The map documents. That's correct.

16 Q How do you know those documents were produced to
17 the plaintiffs?

18 A Because I sat at Joe's computer and helped copy
19 those documents for the production disc to the
20 plaintiffs and verified after all of the maps had
21 been set in a folder and copied to the disc that
22 all of them were on the disc.

12:26PM

23 Q And that was a disc that you gave to Mr. McLeod or
24 to Mr. Olson?

12:26PM

25 A That's correct.

1 Q Did you ever go back and look at the disc that was
2 actually given to the plaintiffs to verify that
3 the documents you deleted were actually produced
4 to the plaintiffs and not just given to the
5 Michael Best attorneys?

12:27PM

6 MR. JACOB: Objection as to form
7 and foundation.

8 A I don't recall.

9 Q You don't recall ever having done that?

12:27PM

10 A I don't recall.

11 Q Is that something that you could do now? I don't
12 mean sitting here today. But I mean at this point
13 in time.

12:27PM

14 A I think between myself and Joe Handrick and
15 probably Adam we could probably look at that.

16 Q Is that something that your current counsel has
17 asked you to do?

18 A No.

19 MR. POLAND: Nothing further.

12:27PM

20 Okay.

21 We're done.

22 THE VIDEOGRAPHER: We are off the
23 record. The time is 12:26 p.m.

24 This concludes the testimony of the

12:27PM

25 30(b)(6) witness of Tad Ottman consisting of

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three DVDs.

(Adjourning at 12:27 a.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 29th and 30th days of April 2013, at the offices
9 of Godfrey & Kahn, S.C., Attorneys at Law, One East
10 Main Street, the City of Madison, County of Dane, and
11 State of Wisconsin, the following named person, to
12 wit: TAD M. OTTMAN, who was by me duly sworn to
13 testify to the truth and nothing but the truth of his
14 knowledge touching and concerning the matters in
15 controversy in this cause; that he was thereupon
16 carefully examined upon his oath and his examination
17 reduced to typewriting with computer-aided
18 transcription; that the deposition is a true record
19 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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