

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

WILLIAM WHITFORD, et al.,

Plaintiffs,

vs.

Case No. 15-CV-421-bbc

GERALD NICHOL, et al.,

Defendants.

VIDEOTAPED DEPOSITION OF

TAD M. OTTMAN

Madison, Wisconsin

March 31, 2016

2:25 p.m. to 5:33 p.m.

Laura L. Kolnik, RPR/RMR/CRR

**William Whitford v. Gerald Nichol
Tad M. Ottman**

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I N D E X

TAD M. OTTMAN

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By Mr. Poland 129

(Original transcript supplied to Attorney Poland.)
(Original exhibits attached to original transcript.
Scanned copies of paper exhibits provided to attorneys.
CDs and flash drives were not reproduced.)

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1 P R O C E E D I N G S
2 (Exhibit No. 84 marked for identification.)
3 THE VIDEOGRAPHER: My name is Steve Peters,
4 videographer associated with Halma-Jilek Reporting,
5 Incorporated, Milwaukee, Wisconsin.
6 This is the beginning of the video deposition
7 of Tad M. Ottman on March 31, 2016; the time 2:25
8 p.m.
9 This is the case concerning William Whitford,
10 et al., plaintiffs, versus Gerald Nichol, et al.,
11 defendants, Case No. 15-cv-421-bbc pending in the
12 United States District Court for the Western
13 District of Wisconsin.
14 Will counsel now please state their appearances
15 starting with the plaintiff.
16 MR. POLAND: Doug Poland of Rathje & Woodward
17 appearing on behalf of the plaintiffs.
18 MR. ST. JOHN: Kevin St. John, Bell Giftos
19 St. John, appearing on behalf of the deponent,
20 Mr. Ottman.
21 MR. KEENAN: Brian Keenan from the Wisconsin
22 Department of Justice on behalf of the defendants.
23 MR. JOHNSON-KARP: Gabe Johnson-Karp, Wisconsin
24 DOJ, also on behalf of the deponent.
25 THE COURT: The court reporter, Laura Kolnik,

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1 will now swear in the witness.
 2 TAD OTTMAN, called as a witness herein, having
 3 been first duly sworn, was examined and testified as
 4 follows:
 5 MR. ST. JOHN: If I may before we begin, Doug,
 6 with your indulgence, I just want to state for the
 7 record that in the Baldus litigation, various
 8 objections were made or assertions of legislative
 9 privileges were made with respect to the testimony
 10 of legislative staffers, including Mr. Ottman, that
 11 in that case the court ruled that those privileges
 12 did not apply.
 13 Some courts have looked at the legislative
 14 privilege as providing a privilege against any
 15 disclosure or testimonial privilege. Others have
 16 looked at it in terms of evidentiary value or
 17 whether or not it can be asserted as an evidentiary
 18 matter.
 19 We are -- we are putting Mr. Ottman today up
 20 without waiver to any evidentiary objection that may
 21 be raised at trial by either Mr. Ottman, the
 22 legislature, or the defendants, but do not intend to
 23 interfere with your discovery of information.
 24 MR. POLAND: I understand. Thank you.
 25 EXAMINATION

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1 BY MR. POLAND:
 2 Q. Good afternoon, Mr. Ottman.
 3 **A. Good afternoon.**
 4 Q. Would you please state your name for the record?
 5 **A. Tad Ottman.**
 6 Q. And can you spell your last name, please?
 7 **A. O-T-T-M-A-N.**
 8 Q. Mr. Ottman, do you reside in Madison?
 9 **A. I do.**
 10 Q. And you were subpoenaed to testify at deposition
 11 here today, correct?
 12 **A. That's correct.**
 13 Q. I'm going to hand you a copy of a document that's
 14 been marked as Exhibit No. 84. I'd like you to take
 15 a look at that. I'm also going to tender to you on
 16 the record a check in the amount of \$45, which is
 17 the witness fee, statutory witness fee.
 18 Have you seen Exhibit 84 before?
 19 **A. I have. Yes.**
 20 Q. When did you receive it.
 21 **A. I -- I don't recall. I think on -- on or about the**
 22 **date it was issued, perhaps the day after.**
 23 Q. And you're represented by counsel here today,
 24 correct?
 25 **A. That's correct.**

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1 Q. All right. Who's your counsel here today?
 2 **A. Attorney St. John and Attorney Johnson-Karp.**
 3 Q. Thank you. What did you do to prepare for your
 4 deposition today?
 5 **A. I reviewed my deposition transcripts from the**
 6 **previous case, and I searched through my electronic**
 7 **and physical documents for responsive documents to**
 8 **the subpoena.**
 9 Q. Okay. We'll get to that in a little more detail in
 10 just a minute here. Who did you -- who did you meet
 11 with to prepare for your deposition?
 12 **A. I meet with the two attorneys I just named -- or I**
 13 **met with the two attorneys I just named.**
 14 Q. Did you meet with any -- any other attorneys in
 15 addition to the two that you'd named?
 16 **A. Not that I recall. No.**
 17 Q. All right. Did you talk with anyone other than your
 18 counsel about your deposition here today?
 19 **A. I spoke with Senator Fitzgerald and Adam Foltz just**
 20 **to the extent of when the deposition was going to**
 21 **happen and kind of the scheduling portion of it.**
 22 Q. Did you talk about any of the substance of what you
 23 expected to testify to at your deposition?
 24 **A. I did not.**
 25 Q. Other than your counsel and Senator Fitzgerald and

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1 Mr. Foltz, did you speak with anyone else in
 2 preparation for your deposition today?
 3 **A. I did not.**
 4 Q. Okay. If you would turn to Exhibit A to the
 5 subpoena, please. That's the last page of Exhibit
 6 No. 84. You'll see that Exhibit A requests that you
 7 produce all MS Excel spreadsheets -- and I'll just
 8 stop there and ask you is it your understanding that
 9 MS stands for Microsoft there?
 10 **A. That is my understanding.**
 11 Q. All right. "Produce all Microsoft Excel
 12 spreadsheets and MS Word documents in native format
 13 generated during the redistricting process and
 14 formation of the state assembly boundaries set out
 15 in Act 43 of 2011 that mention or evaluate potential
 16 or actual partisan performance between the dates of
 17 April 1, 2011 and August 9, 2011."
 18 Do you see that?
 19 **A. I do.**
 20 Q. All right. And did you search for documents that
 21 are responsive to Exhibit A?
 22 **A. I did.**
 23 Q. Did you locate documents responsive to Exhibit A?
 24 **A. I did.**
 25 Q. All right. Do you have those with you today?

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1 **A. I do.**
 2 MR. POLAND: Thank you. Let's mark that then
 3 as Exhibit No. 85.
 4 (Exhibit No. 85 marked for identification.)
 5 MR. POLAND: And I'll note for the record that
 6 Exhibit 85 consists of, as it did with Mr. Foltz's
 7 deposition, flash drive, which is my understanding
 8 that's the original provided by the witness, and
 9 then there are CD-ROMs that were created by --
 10 either by counsel for defendants or counsel for the
 11 witness. And I'm going to just take a quick look at
 12 the flash drive.
 13 BY MR. POLAND:
 14 Q. Mr. Ottman, I just put the flash drive that you
 15 produced into my computer and took a look at the
 16 directory. I haven't counted up the number of
 17 files, but it looks to me like it's -- it's maybe
 18 about -- and this is ballpark, maybe a couple of
 19 dozen files. It looks like there are Excel
 20 spreadsheets and a few Word documents. Is that
 21 roughly correct?
 22 **A. That's roughly correct.**
 23 Q. All right. And we'll get -- we can get into that in
 24 a little bit more detail.
 25 Where did you search for documents to respond

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1 to Exhibit A?
 2 **A. I searched for documents in my desk for -- for**
 3 **physical copies. And I searched my computer for any**
 4 **electronic documents, including a Dropbox account**
 5 **that I maintain.**
 6 Q. Did you search any email at all?
 7 **A. I -- I did search email. I searched my Gmail**
 8 **account. I did not have any of my legislative**
 9 **email. I did not have any legislative email from**
 10 **the dates covered.**
 11 Q. All right. And so Mr. -- Mr. Foltz had testified
 12 this morning that he was able to find some documents
 13 or some documents were found on the LTSB email
 14 server. Was that something that you looked into as
 15 well in responding to the request in Exhibit A?
 16 **A. I -- I looked through those. I didn't find any --**
 17 **any emails period from that time period.**
 18 Q. And nothing that fell within the parameters of what
 19 we asked for in Exhibit A; is that correct?
 20 **A. That's correct.**
 21 Q. All right. Did you -- did you search through any
 22 flash drives or -- or portable electronic storage
 23 media that you had?
 24 **A. I don't believe I had any media like that.**
 25 Q. Now, you mentioned -- you mentioned a Dropbox

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1 account that you -- that you've got; is that
 2 correct?
 3 **A. I have a Dropbox account. Yes.**
 4 Q. All right. Were there any files that you located in
 5 the Dropbox account?
 6 **A. Yes, there were.**
 7 Q. All right. How many files did you locate in the
 8 Dropbox account?
 9 **A. I believe in the neighborhood of 30.**
 10 Q. Are the -- are the files that you produced today, do
 11 they all come from one source or are they from
 12 different sources that you looked at?
 13 **A. I believe all the responsive documents I found were**
 14 **from the same source.**
 15 Q. All right. And what source was that?
 16 **A. That was my Dropbox account.**
 17 Q. All right. So nothing that you found that was in
 18 your Gmail, correct?
 19 **A. Correct.**
 20 Q. And then nothing, as you said, in -- nothing in
 21 paper copy?
 22 **A. That's correct.**
 23 Q. All right. Who's your current employer?
 24 **A. Senator Scott Fitzgerald.**
 25 Q. And what's your current position?

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1 **A. I'm a legislative aide.**
 2 Q. All right. So it's the same -- same employer and
 3 same title that you had in 2012?
 4 **A. That's correct.**
 5 Q. Do you have access -- other than the files that you
 6 have produced today, do you have access still to the
 7 redistricting computer that you used in 2011?
 8 **A. I do not.**
 9 Q. And we'll talk about this a little bit more when we
 10 go over your deposition testimony that you gave in
 11 the Baldus case, but do you generally recall the
 12 last time you had access to your -- the computer
 13 that you used for redistricting in 2011?
 14 **A. The -- the last time I had access to the computer I**
 15 **used for redistricting was shortly before the last**
 16 **deposition in this case, at which point the computer**
 17 **was surrendered to LTSB. And then once the computer**
 18 **was released back to LTSB, there was one occasion**
 19 **where I went over to LTSB to look through and see if**
 20 **there were any files I wanted to copy and move to**
 21 **the computer I was using in my legislative office.**
 22 Q. All right. Have you produced today on the flash
 23 drive that you gave to me or that your counsel gave
 24 to me all responsive documents to -- documents
 25 responsive to the subpoena that are in your

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1 possession, custody, or control?

2 **A. To the best of my recollection, yeah, that is**

3 **everything that I found that was responsive.**

4 Q. Do you know whether the documents you produced today

5 are documents that you-- that also were produced

6 during the Baldus litigation?

7 **A. I -- I believe that some of the -- some if not all**

8 **of them were produced in previous litigation. I**

9 **couldn't state for certainty that every one of them**

10 **was produced.**

11 Q. Do you know whether the documents that you produced

12 today were all documents that you provided to

13 counsel during the redistricting litigation -- well,

14 strike that question.

15 Do you know whether the documents that you

16 produced today are all documents that you had

17 provided to counsel during the Baldus litigation?

18 **A. To the best of my recollection they are.**

19 Q. Did you do anything to go back and double check and

20 see whether they had been produced during the Baldus

21 litigation?

22 **A. I -- I looked through some of the previous -- I**

23 **looked through the previous documents in the**

24 **deposition, but I did not do a document-by-document**

25 **comparison to verify that every one of them was part**

Page 15

1 **of -- of that.**

2 Q. Now, as you testified a few minutes ago, you have

3 had your deposition taken before, correct?

4 **A. That is correct.**

5 Q. And you had your deposition taken three different

6 times during the Baldus litigation, correct?

7 **A. That is correct.**

8 Q. If I refer to the Baldus litigation, you'll

9 understand I'm talking about the lawsuit that was

10 filed in 2011 in the Eastern District of Wisconsin,

11 and that case was tried in February of 2012?

12 **A. Okay.**

13 Q. And will we have a common understanding about --

14 about what we mean if we talk about the Baldus

15 litigation?

16 **A. Yes.**

17 Q. Great. Do you recall being deposed on December

18 22nd, 2011 in the Baldus litigation?

19 **A. Was that the 30(b)(6) deposition?**

20 Q. No. This is the first deposition.

21 **A. Oh, the first deposition.**

22 Q. The first deposition that was taken in the Baldus

23 case.

24 **A. Yes, I do recall that.**

25 MR. POLAND: Let's go ahead and mark this.

Page 16

1 (Exhibit No. 86 marked for identification.)

2 Q. Mr. Ottman, I'm handing you a copy of the document

3 that the court reporter has marked as Exhibit No.

4 86, ask you to take a look at that, please.

5 **A. Okay. (Witness reading.)**

6 Q. Have you seen Exhibit 86 before?

7 **A. I have. Yes.**

8 Q. And can you identify it?

9 **A. It is a transcript of my deposition in December of**

10 **2011.**

11 Q. And in the Baldus case, correct?

12 **A. In the Baldus case.**

13 Q. Have you read the transcript of your deposition in

14 the Baldus case before?

15 **A. I have.**

16 Q. When did you read the transcript of your deposition

17 in the Baldus case?

18 **A. I believe I read it both prior to my second and**

19 **third depositions, and then I read it again prior to**

20 **this deposition.**

21 Q. So you've read it recently; is that correct?

22 **A. That's correct.**

23 Q. All right. Is your testimony in Exhibit 86 true and

24 correct?

25 **A. To the best of my recollection everything I**

Page 17

1 **testified in here was true and correct.**

2 Q. Is there anything in your testimony that you believe

3 needs to be changed to make it true and correct?

4 **A. I don't believe so, no.**

5 Q. And you recall then you were deposed a second time

6 in the Baldus case as well?

7 **A. That's correct.**

8 Q. Do you remember when that was?

9 **A. It was a couple of months later. I don't recall the**

10 **exact date.**

11 MR. POLAND: Let's go ahead and mark this.

12 (Exhibit No. 87 marked for identification.)

13 Q. Mr. Ottman, I'm handing you a document that the

14 court reporter has marked as Exhibit No. 87. Please

15 take a look at it.

16 **A. (Witness reading.)**

17 Q. Have you seen Exhibit No. 87 before?

18 **A. I have.**

19 Q. Have you -- well, can you identify it for the

20 record?

21 **A. This is a copy of my deposition on February 2nd of**

22 **2012 in the Baldus litigation.**

23 Q. Have you read Exhibit 87 before?

24 **A. I have.**

25 Q. When was the last time that you read Exhibit 87?

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1 **A. Last weekend.**
 2 Q. In preparation for this deposition?
 3 **A. That's correct.**
 4 Q. Is your testimony in Exhibit 87 true and correct?
 5 **A. To the best of my recollection it is true and**
 6 **correct.**
 7 Q. Is there anything in your testimony in Exhibit 87
 8 that you believe needs to be changed to make it true
 9 and correct?
 10 **A. I don't believe so.**
 11 Q. And then you were deposed a third time in the Baldus
 12 case, correct?
 13 **A. That's correct.**
 14 Q. Do you remember when that deposition occurred?
 15 **A. Not exactly. I believe it was later that year.**
 16 Q. It was -- do you recall being -- having your
 17 deposition taken long after the trial had ended?
 18 **A. Yes.**
 19 **(Exhibit No. 88 marked for identification.)**
 20 Q. Mr. Ottman, I'm handing you a copy of a document the
 21 court reporter has marked as Exhibit No. 88.
 22 **A. (Witness reading.)**
 23 Q. Can you identify Exhibit 88 for the record?
 24 **A. Yes, this is a copy of a transcript of my deposition**
 25 **from April of 2013 in the Baldus case.**

Page 19

1 Q. Have you read Exhibit 88 before?
 2 **A. I have.**
 3 Q. When was the last time that you read Exhibit 88?
 4 **A. This last weekend.**
 5 Q. And again that was in preparation for this
 6 deposition?
 7 **A. That's correct.**
 8 Q. Is all of the testimony in Exhibit 88 true and
 9 correct to the best of your knowledge?
 10 **A. To the best of my recollection it is.**
 11 Q. All right. Is there anything in your testimony you
 12 believe needs to be changed to make it true and
 13 correct?
 14 **A. I don't believe so.**
 15 Q. Set that document to the side.
 16 Now, you understand that the -- that the case
 17 for which you're appearing for deposition today is a
 18 different case than the Baldus case?
 19 **A. Yes.**
 20 Q. It's a different action, in other words, correct?
 21 **A. That's my understanding.**
 22 Q. So the plaintiff here, the last name of the first
 23 named plaintiff in the caption is -- is Whitford,
 24 and so if I refer to this case as the Whitford case,
 25 will you understand what I'm talking about in

Page 20

1 comparison to the Baldus case?
 2 **A. Yes.**
 3 Q. All right. Do you understand you've been named as a
 4 potential witness to testify at trial in the
 5 Whitford action?
 6 **A. Yes.**
 7 Q. When did you become aware that you were named as a
 8 potential witness in the Whitford case?
 9 **A. I don't recall exactly when. I think it was before**
 10 **the first of the year, but I'm not exactly certain**
 11 **when.**
 12 Q. All right. I'm going to ask your counsel if he
 13 could pull out for you there Exhibit No. 78 that we
 14 marked in Mr. Foltz's deposition this morning and
 15 ask you to take a minute to look at that document.
 16 **A. (Witness reading.)**
 17 Q. Have you seen Exhibit 78 before?
 18 **A. I don't believe I have seen it.**
 19 Q. If you look on the first page of Exhibit 78, you'll
 20 see that it says Defendants' Rule 26(a)(1) Initial
 21 Disclosures. Do you see that?
 22 **A. I'm sorry, could you say that again?**
 23 Q. Sure. The -- on about the middle of the first page
 24 it, says Defendants' Rule 26(a)(1) Initial
 25 Disclosures?

Page 21

1 **A. Okay.**
 2 Q. Do you see that?
 3 **A. Right. Yes.**
 4 Q. And then if you look at the very last page on page
 5 3, you'll see the document is dated October 7th. Do
 6 you see that?
 7 **A. Yes.**
 8 Q. And that it's signed by Brian Keenan, assistant
 9 attorney general with the Wisconsin Department of
 10 Justice?
 11 **A. Yes.**
 12 Q. And I'd like you to take a look at the -- back to
 13 the first page. There is a letter A, and next to
 14 that it says, "Individuals potentially having
 15 knowledge regarding this matter." Do you see that?
 16 **A. Yes.**
 17 Q. All right. If you turn to the second page, you see
 18 that your name is listed there, correct?
 19 **A. That's correct.**
 20 Q. All right. And then just below that there's a
 21 paragraph that states, "To the extent it may become
 22 relevant if the case survives the motion to dismiss,
 23 Tad Ottman, who was involved in the 2012 districting
 24 process, may provide testimony regarding that
 25 process and the bases for districting."

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1 Do you see that?

2 **A. I do.**

3 Q. Were you aware as of October of 2015 that you might

4 be called to testify as a witness in the Whitford

5 case?

6 **A. I -- I became aware that I might be called to**

7 **testify -- testify at some point. I'm not sure of**

8 **the date when I became aware of that.**

9 Q. Do you recall who told you you might be called to

10 witness -- testify as a witness in the Whitford

11 case?

12 **A. I'm not positive. I think it may have been Attorney**

13 **Keenan, but I'm not positive who told me.**

14 Q. Have you seen a copy of the complaint filed in the

15 Whitford -- Whitford case?

16 **A. I believe so, yes.**

17 Q. Do you recall when you saw the complaint filed in

18 the Whitford case?

19 **A. I believe it was sometime in October or early**

20 **November.**

21 Q. Do you recall how you got the copy of the complaint

22 in the Whitford case?

23 **A. I -- I don't. It may have been forwarded to me by**

24 **somebody from within the Department of Justice.**

25 Q. Have you seen copies of any other documents filed in

Page 23

1 the Whitford case other than the complaint?

2 **A. I -- I have seen some other documents, yes.**

3 Q. All right. What other documents have you seen that

4 were filed in the Whitford case?

5 **A. I'm -- I'm not certain what the title of the**

6 **documents were, but I think they were some of the**

7 **motions that were filed in this case or questions**

8 **that were -- were filed.**

9 Q. Did you -- and when you say "questions," lawyers

10 have fancy names for everything, and the kind of

11 questions we call interrogatories, that's part of a

12 bigger category called discovery requests. Other

13 than the subpoena that came to you, have you seen

14 any other discovery related documents, whether they

15 asked questions or they asked for documents to be

16 produced?

17 **A. I -- I believe I saw a document that -- that was**

18 **asking questions.**

19 Q. All right. Do you remember what that document was

20 called?

21 **A. I don't recall the title on the top of the document.**

22 Q. Do you remember when you saw it?

23 **A. I -- I don't. It was -- again it was prior to the**

24 **first of this year is -- is my best recollection.**

25 Q. Do you recall how you -- how you received or

Page 24

1 obtained that document?

2 **A. I believe I was shown it at DOJ.**

3 Q. All right. Do you remember who showed it to you at

4 DOJ?

5 **A. I believe it was Attorney Keenan.**

6 Q. Why were you meeting with Attorney Keenan at DOJ?

7 **A. There was a request to meet with DOJ to look at some**

8 **of the questions and see if I had any input.**

9 Q. All right. I'm going to ask you some questions

10 about that meeting. I anticipate there will be an

11 objection from your counsel. So we'll -- we'll see.

12 Was anyone else present at the meeting that you

13 had with Mr. Keenan at the DOJ?

14 **A. Yes. Adam Foltz was present.**

15 Q. What was the purpose of the meeting?

16 **A. To the best of my recollection it was to gather**

17 **input or comment on some of the questions that were**

18 **in the document.**

19 Q. And just you and Mr. Foltz and Mr. Keenan were

20 present; is that correct?

21 **A. That's my recollection.**

22 Q. How long did that meeting last?

23 **A. I don't know exactly. Maybe around an hour.**

24 Q. Did you discuss anything with Mr. Keenan and

25 Mr. Foltz other than the questions that Mr. Keenan

Page 25

1 was asking you about?

2 MR. ST. JOHN: I'm going -- I'm going to assert

3 that to the extent that you interpret counsel's

4 question to go into what exactly you discussed, that

5 that would be covered by attorney-client privilege.

6 To the extent that the question is simply were there

7 other things which are discussed -- so with that

8 former category, I'd instruct you not to answer. To

9 the extent that you interpret that question to be

10 were other things discussed, yes or no, you may

11 answer that part of the question.

12 THE WITNESS: There -- there were some other

13 things that were discussed.

14 BY MR. POLAND:

15 Q. What's -- what's the general topic? I'm not --

16 right now at least I'm not going to ask about the

17 substance, just the general topic of what else was

18 discussed. I mean, you know, maybe it was a Badgers

19 game. I mean I don't know what it was, and so I

20 need to inquire about the topics of what was

21 discussed.

22 **A. Can you restate that question then, please?**

23 Q. Sure. What other topics did you discuss with

24 Mr. Keenan and Mr. Foltz at this approximately

25 hour-long meeting you had with them?

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1 **A. General redistricting topics.**
 2 Q. And did those general redistricting topics have to
 3 do with the Whitford litigation?
 4 **A. I don't recall specifically.**
 5 Q. All right. So now I am going to ask a question
 6 about the substance of what was discussed. Again I
 7 anticipate an objection from your counsel so you
 8 might want to pause a moment before answering.
 9 What was the substance of the discussions that
 10 you had with Mr. Foltz and with Mr. Keenan about the
 11 questions that -- that were -- you met with them to
 12 talk about?
 13 MR. ST. JOHN: I'm going to assert the
 14 attorney-client privilege and instruct the witness
 15 not to answer. The witness as a legislative
 16 employee has an attorney, the attorney general, and
 17 his attorneys include those subordinate assistant
 18 attorneys general within the Department of Justice.
 19 And during the time of that conversation those
 20 conversations would be covered by that privilege and
 21 were in furtherance of the attorney-client
 22 relationship.
 23 MR. KEENAN: And I'll join that objection, but
 24 then also state a separate work product objection to
 25 the extent it calls for my mental impressions about

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1 the case.
 2 MR. POLAND: And Kevin, does your objection
 3 include an instruction not to answer?
 4 MR. ST. JOHN: Yes, it does.
 5 BY MR. POLAND:
 6 Q. Mr. Ottman, are you going to follow your counsel's
 7 instructions not to answer the question?
 8 **A. I am.**
 9 Q. Other than the -- the discussions that you had with
 10 Mr. Keenan and Mr. Foltz about the questions, what
 11 was the substance of the discussion that you had
 12 with Mr. Keenan and Mr. Foltz about general
 13 redistricting topics?
 14 MR. ST. JOHN: I'm going to assert the
 15 attorney-client privilege with respect to the
 16 substance of those communications with Mr. Keenan
 17 and Mr. Foltz for the reasons stated.
 18 MR. KEENAN: I'll make the same objections I
 19 made before, too.
 20 MR. ST. JOHN: I'm going to instruct the client
 21 not to answer.
 22 BY MR. POLAND:
 23 Q. And are you going to follow your counsel's advice?
 24 **A. I am.**
 25 Q. Other than your own counsel and Mr. Keenan, have you

Page 28

1 discussed the Whitford case with anyone else?
 2 **A. Yes.**
 3 Q. Who?
 4 **A. Senator Fitzgerald.**
 5 Q. All right. When did you first discuss the Whitford
 6 case with Senator Fitzgerald?
 7 **A. I believe it was shortly after the first time I**
 8 **learned that the case had been filed.**
 9 Q. And what was your conversation with Senator
 10 Fitzgerald about the Whitford case?
 11 **A. The conversation was limited to the fact that**
 12 **there -- there was a case filed.**
 13 Q. Have you had -- since that time, have you had
 14 additional conversations with Senator Fitzgerald
 15 about the Whitford case?
 16 **A. I have.**
 17 Q. Have you -- is it a running topic of discussion
 18 or -- or are there a certain number of times that
 19 you've discussed the case with him?
 20 **A. There have been ongoing I would say infrequent**
 21 **discussions.**
 22 Q. What's the -- what's the substance of the
 23 discussions that you've had with Senator Fitzgerald
 24 about the Whitford case?
 25 MR. ST. JOHN: I'm going to assert an

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1 attorney-client privilege with respect to any
 2 conversations that you may have had with Senator
 3 Fitzgerald which also included your counsel as part
 4 of those conversations and instruct you not to
 5 answer to the extent of disclosing those
 6 communications. But to the extent that you've had
 7 communications with Senator Fitzgerald that did not
 8 involve an attorney, you may answer Mr. Poland's
 9 question.
 10 THE WITNESS: The conversations I had with
 11 Senator Fitzgerald were largely related to timing,
 12 my understanding of the schedule of the case.
 13 BY MR. POLAND:
 14 Q. Did you discuss with Senator Fitzgerald -- and this
 15 is outside the presence of your counsel. Did you
 16 discuss with Senator Fitzgerald the substance of any
 17 of the allegations in the plaintiffs' claims in the
 18 Whitford case?
 19 **A. I discussed it with him kind of in broad terms.**
 20 Q. And what was the discussion that you had with
 21 Senator Fitzgerald in broad terms?
 22 **A. In broad terms I discussed with him my understanding**
 23 **of the nature of the complaint and how it had to do**
 24 **with partisanship.**
 25 Q. What is your understanding of the nature of the

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1 complaint with respect to partisanship?

2 **A. My understanding is that there's an allegation of a**

3 **partisan -- I don't know if it's -- it's termed -- I**

4 **don't know how it's termed, but that there is a**

5 **standard measure -- a measurement of partisanship**

6 **that is being alleged that this map exceeds.**

7 Q. Have you discussed the Whitford case with any other

8 legislators?

9 **A. I have not. No.**

10 Q. What about any other legislative aides?

11 **A. I have had some discussions with Adam Foltz.**

12 Q. Any other legislative aides other than Adam Foltz?

13 **A. I have had discussions with Senator Fitzgerald's**

14 **chief of staff, Dan Romportl.**

15 Q. I'm sorry, Dan?

16 **A. Dan Romportl.**

17 Q. Can you spell the last name for the court reporter?

18 **A. R-O-M-P-O-R-T-L.**

19 Q. What have you discussed with Mr. Romportl about the

20 Whitford case?

21 **A. My discussions with Mr. Romportl have been limited**

22 **to scheduling and times I may be out of the office**

23 **for purposes of this case.**

24 Q. All right. And then how about Mr. Foltz, what's

25 the -- what discussions have you had with Mr. Foltz

Page 31

1 about the Whitford case?

2 **A. I've had discussions with him generally about the**

3 **nature of the case and trying to -- trying to**

4 **discuss what the allegations are in general.**

5 **Nothing -- nothing real specific.**

6 Q. So the -- you did -- you have discussed with

7 Mr. Foltz your understanding of the general nature

8 of the allegations in the Whitford case?

9 **A. That's correct.**

10 Q. Have you discussed with Mr. Foltz the general nature

11 of the defendants' arguments or positions in the

12 Whitford case?

13 MR. ST. JOHN: Let me just assert a limited

14 objection. To the extent that those conversations

15 with Mr. Foltz took place in the presence of your

16 counsel, I'm going to instruct you not to answer as

17 to the substance of those communications, as to the

18 nature of the defense, et cetera. You may testify

19 as to the fact of -- that that would have been a

20 subject matter. And I ask that you -- that you do

21 tell Mr. Poland what the substance of communications

22 you had with Mr. Foltz that were outside of the

23 presence of counsel.

24 THE WITNESS: The subject of the discussions I

25 had outside of counsel with Mr. Foltz were again in

Page 32

1 broad terms about the nature of the complaint as we

2 understood it and some discussion of other -- other

3 potential allegations in other cases across the

4 country.

5 Q. Did you have discussions with Mr. Foltz about the --

6 about the Whitford case that were within the

7 presence of counsel other than the meeting that you

8 testified to before where you met for about an hour

9 or so to discuss questions?

10 **A. Yes, there were conversations with counsel present.**

11 Q. How many times have you had discussions with

12 Mr. Foltz about the Whitford case where counsel was

13 present?

14 **A. I -- I don't recall exactly. Two or three perhaps.**

15 Q. And when did those conversations occur?

16 **A. I -- I don't re -- I don't recall.**

17 Q. In sort of broadbrush terms, were they before the

18 first of the year, after the first of the year?

19 **A. I think there might have been some on either -- you**

20 **know, one or two on either side of the first of the**

21 **year.**

22 Q. Who were the attorneys who were present for those

23 conversations?

24 **A. At various times all three attorneys represented**

25 **here were in those conversations.**

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1 Q. Did you have any conversations with Mr. Foltz where

2 only Mr. Keenan was present? And this is other than

3 the -- other than the meeting that you already

4 testified to.

5 **A. I don't believe outside of that meeting, no.**

6 Q. Have you had any discussions in the Whitford case

7 with any expert witnesses or consultants?

8 **A. Not that I recall. I should -- I should amend that**

9 **answer. I did have one brief conversation with Joe**

10 **Handrick who was a consultant in the initial case to**

11 **the extent that I mentioned that this case existed.**

12 Q. And when did that conversation with Mr. Handrick

13 occur?

14 **A. I -- I don't recall.**

15 Q. What was your discussion with Mr. Handrick about the

16 Whitford case?

17 **A. The discussion was limited to notifying him that**

18 **this case had been filed. I don't know if you will**

19 **have any involvement in it.**

20 Q. Did you discuss with Mr. Handrick the -- the nature

21 or substance of the allegations that the plaintiffs

22 have raised in the Whitford case?

23 **A. I don't believe so.**

24 Q. Did you talk with Mr. Handrick at all about the

25 Whitford case as it related to the claims in the

Page 34

1 Baldus case?
 2 **A. Not that I recall.**
 3 Q. Now, you had testified a little bit earlier that you
 4 believe it was sometime I think around the first of
 5 the year that you were approached about possibly
 6 being a witness in the Whitford case; is that
 7 correct?
 8 **A. That is to the best of my recollection about the**
 9 **time I discovered that I was. I don't know -- I**
 10 **don't know if -- I don't know who notified me.**
 11 Q. You've anticipated my next question. I was going to
 12 ask do you recall who notified you about that?
 13 **A. I do not.**
 14 Q. Do you -- were you -- have you been asked to testify
 15 at trial as a witness in the Whitford case?
 16 **A. I have -- I have not.**
 17 Q. Have you been told that you will be called as a
 18 witness in the Whitford case?
 19 **A. I have not.**
 20 Q. Have you discussed with anyone what you would
 21 testify to if called as a witness to testify at
 22 trial in the Whitford case?
 23 **A. I have not.**
 24 Q. If called to testify at trial in the Whitford case,
 25 do you know what you'd testify to?

Page 35

1 **A. I do not.**
 2 Q. I'd like to switch gears here now and talk a little
 3 bit about some testimony that you gave in the Baldus
 4 case. Do you recall -- you recall being deposed in
 5 the Baldus case a number of times, correct?
 6 **A. That's correct.**
 7 Q. Do you recall being asked during your depositions in
 8 the Baldus case about the redistricting process in
 9 2011 that you participated in?
 10 **A. I do.**
 11 Q. Do you recall being asked about the application of
 12 traditional redistricting criteria as part of the
 13 work that you did on Act 43?
 14 **A. I do.**
 15 Q. And do you recall that you testified that you were
 16 one of three people who drew the draft and final
 17 legislative districts that ended up as part of Act
 18 43?
 19 **A. I recall testifying that I was one of three people**
 20 **who prepared the draft maps and prepared**
 21 **alternatives for the legislators who decided what**
 22 **would make up the final map.**
 23 Q. And the two others who participated in that process
 24 with you were Adam Foltz and Joe Handrick, correct?
 25 **A. That's correct.**

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1 Q. That's in terms of actually doing the creation of
 2 the maps themselves, correct?
 3 **A. In terms of creating the map alternatives that were**
 4 **selected.**
 5 Q. Now, you testified in the Baldus case that in
 6 drawing the -- the districts for Act 43, you took
 7 into consideration a concern of drawing districts
 8 similar in population, correct?
 9 **A. I -- I recall testifying that equal population was**
 10 **one of the criteria.**
 11 Q. And let's just take a look. So we can pull out your
 12 deposition. This is Exhibit 86 if I've got the
 13 right one. Yes, that's the right one.
 14 And so if you look at on page number 198.
 15 Actually the end of page 197 and top of page 198.
 16 **A. Okay.**
 17 Q. Are you there?
 18 **A. I am.**
 19 Q. All right. And just to set the context, in this
 20 deposition you were being asked about testimony that
 21 you gave to the legislature on the passage of Act
 22 43. And so there is a page reference here. At the
 23 bottom of page 197 of Exhibit 86, you'll see there's
 24 a question that's asked, and it says -- and this is
 25 the question. The question reads: "And then down

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1 at the bottom of page 46 your testimony in the
 2 transcript says, 'That information was available. I
 3 do not have that information here with you' or with
 4 me. 'It was available, but the principles by which
 5 the map were drawn were those that I enumerated
 6 earlier, equal population, sensitivity to minority
 7 concerns, and compact and contiguous districts.' Do
 8 you see that?"
 9 The answer is, "I do."
 10 You were asked the question, "Is that a correct
 11 statement?"
 12 And your answer is, "It is."
 13 Do you see that?
 14 **A. I do.**
 15 Q. And it's still your testimony here today that the
 16 principles by which Act 43 was drawn were equal
 17 population, sensitivity to minority concerns, and
 18 compact and contiguous districts; is that correct?
 19 **A. That is correct.**
 20 Q. So did you -- did you personally analyze the
 21 similarity in population among the districts that
 22 you drew as part of Act 43?
 23 **A. I -- I'm not clear on what you're asking.**
 24 Q. Okay. How did you go about creating equal
 25 population among districts when you were drawing the

Page 38

1 senate districts for Act 43?

2 **A. As we were drawing, we drew on a assembly district**

3 **basis. So we drew assembly districts. The software**

4 **tallied the population in each of those districts as**

5 **well as in the senate district that those assembly**

6 **districts would fall into. So as we were drawing**

7 **them and either adding or subtracting territory to**

8 **those districts, we could see a total population in**

9 **the district as well as how close that number came**

10 **to the ideal population based on dividing total**

11 **population of the state by the number of either**

12 **senate or assembly districts.**

13 Q. And the software you're referring to is autoBound;

14 is that correct?

15 **A. That's correct.**

16 Q. Was there any -- any kind of -- of output from

17 autoBound that would show the similarity in

18 population among districts at any given time as

19 your -- as you're drawing or reconfiguring

20 districts?

21 **A. I'm not clear what you mean by similarity between**

22 **districts.**

23 Q. In terms of the population differences among

24 districts.

25 **A. The -- the information that I referred to in terms**

Page 39

1 **of the total population was available as a report**

2 **that could be printed out from within autoBound.**

3 Q. In terms of -- well, strike that question.

4 The reports that were -- that could be produced

5 from autoBound to show equal population or

6 differences in population among districts, are those

7 reports that you typically would have created and

8 printed as part of your work?

9 **A. Those type of reports I don't think were typically**

10 **printed out unless it was a completed statewide map.**

11 Q. Is there -- is there anything that was printed or

12 otherwise generated that would reflect the attempts

13 that you made to equalize population among

14 districts?

15 **A. I'm -- I'm not aware of any printout.**

16 Q. In other words, this is -- this is, if I understand

17 it correctly, the software, like you said,

18 autoBond -- autoBound basically made the changes on

19 the fly as you're -- as you're drawing or

20 reconfiguring districts; is that correct?

21 **A. As you added or subtracted territory to the**

22 **districts, the software would update the population**

23 **totals.**

24 Q. All right. So those population deviations or the

25 differences in population among districts is

Page 40

1 something that would only be reflected then either

2 in a report if it were printed or in the -- in the

3 final numbers once you got a district set; is that

4 correct?

5 MR. ST. JOHN: Object to form. Go ahead and

6 answer.

7 THE WITNESS: That's -- that's the only way

8 that I am familiar with. I don't know if there were

9 other tools that were available.

10 BY MR. POLAND:

11 Q. Are there any -- are there any documents or files

12 that you're aware of that would show the concerns

13 for population deviations or equal population

14 concerns outside of the autoBound software itself?

15 **A. Not that I can think of.**

16 Q. Would any of the -- the autoBound -- well, strike

17 that question.

18 Do you recall whether the autoBound -- the

19 native autoBound files were produced in the Baldus

20 litigation?

21 **A. My recollection is that the -- the maps from -- from**

22 **autoBound were produced as block assignment files.**

23 **I don't know what information from autoBound is**

24 **included with those.**

25 Q. Other -- other than those files, are you aware of

Page 41

1 any documents or data or files that were produced in

2 the Baldus case that would reflect population

3 deviations among districts?

4 **A. I believe there were -- there were documents**

5 **produced that -- on the map that was passed by the**

6 **legislature that reflected the deviation in each**

7 **district and the total statewide deviation.**

8 Q. But there essentially was nothing that would have

9 been created as you walked through the process of

10 creating the districts that would show those

11 deviations over time as new districts were created;

12 is that correct?

13 **A. Not -- not that I recall seeing.**

14 Q. Now, you also testified in your previous deposition

15 that the -- one of the principles by which Act 43

16 was drawn was sensitivity to minority concerns,

17 correct?

18 **A. That's correct.**

19 Q. Did you do personal -- strike that question.

20 Did you yourself do any analyses of minority

21 concerns that caused you to draw districts or

22 configure districts in certain ways?

23 **A. I -- I did not perform that analysis.**

24 Q. Who did perform that analysis?

25 **A. I believe Professor Gaddie performed that analysis.**

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1 Q. Did you incorporate any of Professor Gaddie's
2 analysis or results into the work that you were
3 doing to draw districts in Act 43?
4 **A. We -- we did work -- work with him on what concerns
5 he saw and that legal -- if the legal counsel and he
6 saw and made changes to the districts to try and
7 address those.**
8 Q. Are there any specific documents or files that you
9 can recall that would reflect the concerns that
10 Dr. Gaddie expressed to you relating to the minority
11 concerns that you mentioned in your testimony?
12 **A. I -- I don't recall what documents specifically
13 might reflect that.**
14 Q. To the extent such documents exist, do you believe
15 that they were produced in the Baldus litigation?
16 **A. I -- I don't know. If I had any documents like
17 that, I would have produced them. Beyond what
18 documents that I have, I'm not certain.**
19 Q. Do you believe that to the extent any such documents
20 existed, you provided them to counsel in the Baldus
21 case if you were asked for them?
22 **A. Any -- any documents that I -- I had were produced
23 to counsel, yes.**
24 Q. Now, you also testified you took into account
25 capac -- compact -- compactness of the districts in

Page 43

1 drawing maps for Act 43, correct?
2 **A. That's correct.**
3 Q. Did you personally conduct analyses of the
4 compactness of the districts that you -- that you
5 were drawing?
6 **A. There was a compactness report that the autoBound
7 software generated that we did produce and looked
8 at. Also there was some just kind of visual
9 analysis looking at the maps to see if there were
10 opportunities to make them more compact.**
11 Q. In terms of the compactness report that was
12 generated, was that something that you looked at by
13 yourself, or did you look at that with someone else
14 to assess whether a district was sufficiently
15 compact?
16 MR. ST. JOHN: Object to form. You can answer.
17 THE WITNESS: I -- I looked at the report. I
18 believe that report was also shared with Professor
19 Gaddie. I don't -- I don't recall beyond that.
20 BY MR. POLAND:
21 Q. Do you -- do you recall as you sit here today
22 actually sharing a compactness report with
23 Dr. Gaddie?
24 **A. I -- I believe it was something he had requested to
25 look at, but I -- I can't recall exactly if that's**

Page 44

1 **something I did or maybe Adam or Joe may have done.**
2 Q. And when you say Adam or Joe, you mean Adam Foltz or
3 Joe Handrick, correct?
4 **A. That's correct.**
5 Q. Do you recall discussing with Dr. Gaddie any
6 compactness reports that were generated?
7 **A. I -- I don't recall any discussions.**
8 Q. Do you recall Dr. Gaddie providing you with any
9 guidance on compactness of districts that caused you
10 to change a configuration of a district in a draft
11 map?
12 **A. Not that I recall.**
13 Q. Other than the compactness reports, are there any
14 documents or data or analyses that you can identify
15 that you used to analyze compactness of the
16 districts that you drew as part of Act 43?
17 **A. I don't recall any other documents.**
18 Q. And then finally, you also testified you took --
19 took into account contiguity of districts in
20 creating Act 43, correct?
21 **A. That's correct.**
22 Q. All right. And I'm going to ask you the same
23 question about work that you personally did to
24 assess contiguity of districts. What did you do as
25 part of that exercise?

Page 45

1 **A. Again contiguity is a report that the autoBound
2 software would generate, and for any completed map
3 that we had, I would print out a report -- I
4 shouldn't say print out. I would generate a report.
5 I don't know if I always printed it out. And it
6 would identify each area of discontinuity on the
7 map, and I would go through each instance and look
8 at and see okay, this is either something I need to
9 fix or this is an allowable discontinuity. A town
10 island, for example, was legal counsel's advice that
11 town islands were a legal discontinuity. So each
12 instance of discontinuity in a map, I reviewed every
13 one of those on -- on the maps that I generated.**
14 Q. Is that an iterative process that you essentially
15 went through with the software itself; you'd see a
16 discontinuity and you'd take some step to rem -- to
17 remedy that using the software at that time?
18 **A. Yes. As I mention you generate the report. I'd go
19 through each instance in the report and either make
20 a change or, you know, strike it off as something
21 that did not need requiring. And after I'd gone
22 through the entire list, then I would, you know,
23 generate another report on that map to see if
24 everything had been caught.**
25 Q. Do you -- did you retain the contiguity reports when

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1 they were generated?

2 **A. Not all the time, no.**

3 Q. Do you know whether there were contiguity reports

4 that were -- that were produced as part of the

5 Baldus litigation?

6 **A. I don't recall.**

7 Q. As you sit here today, can you -- can you identify

8 or do you recall any specific contiguity reports

9 that you created as part of the redistricting for

10 Act 43?

11 **A. I recall creating the reports.**

12 Q. Did you do that for every district that you worked

13 on?

14 **A. I only did that for completed maps. And when I say**

15 **"completed," I mean entire state completed maps.**

16 Q. And how many entire completed state maps were there

17 that -- for which you generated contiguity reports?

18 **A. That I personally created? I don't recall the exact**

19 **number. It may have only been three or four, if**

20 **that.**

21 Q. And there were -- so there were no contiguity

22 reports that were generated until a completed state

23 map was created; is that correct?

24 **A. That's correct. If you -- if you were to generate a**

25 **contiguity report on a map that was not completely**

Page 47

1 **filled in, every area of the state that hadn't been**

2 **assigned a district would show up in the report, and**

3 **it was not useful information to me in the process**

4 **of drawing a map.**

5 Q. Would any of the work that you did to apply these

6 traditional redistricting criteria have been

7 reflected or saved on the computer that you used to

8 redistrict in 2011?

9 **A. Some of the reports that were generated may have**

10 **been saved on the redistricting computer. I'm not**

11 **certain what else was, what's saved on there.**

12 Q. All right. And to the extent that it was requested

13 in the Baldus litigation, that would have been data

14 that you would have turned over to counsel during

15 the Baldus litigation?

16 **A. That's my recollection, yes.**

17 Q. Mr. Ottman, you'd agree with me that in drafting the

18 districts that were included in Act 43, you

19 considered the partisan political makeup of the

20 districts, correct?

21 **A. In evaluating the districts that became part of Act**

22 **43, we looked at partisan data as part of our**

23 **evaluation of the maps.**

24 Q. And it's true as well that you looked at the

25 potential partisan makeup of -- of districts as part

Page 48

1 of generating the maps that ultimately made up Act

2 43 as well, correct?

3 **A. I'm not certain what you mean by "potential."**

4 Q. The potential partisan performance or potential for

5 certain partisan outcomes in districts.

6 MR. ST. JOHN: Object. There's no question

7 there.

8 MR. POLAND: No, just clarifying. Well, that's

9 all right. We can --

10 THE WITNESS: Would you mind restating or --

11 BY MR. POLAND:

12 Q. I can restate the question. In -- in creating the

13 districts or in drafting the districts that resulted

14 in Act 43, you considered the potential partisan

15 performance in the districts that you were drawing?

16 **A. In the exercise of creating those -- those maps and**

17 **reviewing them both with legislative leadership and**

18 **individual legislators on their own districts, we**

19 **did show them the partisan metric that we were using**

20 **to evaluate the districts and what that partisan**

21 **metric showed for the -- the old districts, the**

22 **districts that were in place at that time, as well**

23 **as what that same metric would -- would read as in**

24 **the newly proposed districts that became Act 43.**

25 Q. And partisan considerations did come into play as

Page 49

1 you were drafting or creating the districts that

2 ended up in Act 43, correct?

3 **A. The partisan considerations came into play in**

4 **evaluating what we had drawn.**

5 Q. And in the process of drawing the different

6 districts -- strike that question.

7 During the process of drawing districts, there

8 was consideration given to the potential partisan

9 performance of the districts, correct?

10 **A. As we were drawing the districts, the -- the**

11 **partisan metric that we were measuring was available**

12 **to look at. The factors that we used to draw were**

13 **the ones that I enumerated earlier in terms of equal**

14 **population and sensitivity to minority concerns and**

15 **compact and contiguous districts. But the partisan**

16 **metric was available.**

17 **That metric wasn't a particularly useful tool**

18 **until you had a completed map because so many things**

19 **changed district by district in the process of**

20 **completing a map.**

21 Q. Is it your testimony that in drawing districts for

22 inclusion in Act 43, you did not -- you did not draw

23 the districts in a way to advantage republicans over

24 democrats?

25 **A. In drawing the districts we applied the traditional**

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1 **redistricting criteria to -- to come up with the**
 2 **potential new districts. We used, among other**
 3 **things, the -- the partisan analysis to evaluate**
 4 **what had been drawn.**
 5 Q. And -- and the partisan -- the partisan analysis
 6 that -- that you did was taken into account or was
 7 considered as you were drawing different district
 8 lines, correct?
 9 **A. The -- the partisan analysis was available for**
 10 **evaluation. It wasn't a specific decision point on**
 11 **how to draw the district.**
 12 Q. Let's do this. Did -- did you read the opinion of
 13 the court in the Baldus case?
 14 **A. I -- I believe so. I may have.**
 15 MR. POLAND: Can you get out Exhibit 79,
 16 please?
 17 MR. ST. JOHN: Sure.
 18 Q. Mr. Ottman, you've been handed a copy of what we've
 19 marked as Exhibit No. 79, and if you look on the
 20 front page, you'll see over in the lower right-hand
 21 corner it says Alvin Baldus, and there are a number
 22 of names, and then if you flip the page to 841,
 23 you'll see the caption goes on there and identifies
 24 the defendants, members of the Wisconsin Government
 25 Accountability Board, and then the other defendants.

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1 Do you see that?
 2 **A. I do.**
 3 Q. All right. And so you -- you understand this is an
 4 opinion that was issued in the Baldus case?
 5 **A. Yes.**
 6 Q. There is -- there's a date as well below -- below
 7 that caption that says decided March 22nd, 2012. Do
 8 you see that?
 9 **A. Yes.**
 10 Q. All right. I'd like to direct your attention to
 11 page 845 of Exhibit 79.
 12 **A. Okay.**
 13 Q. And I'd like you to look -- there are two columns
 14 there. I'd like you to look in the left-hand
 15 column, and about a little more than halfway down
 16 the page there is a paragraph that begins, "As we
 17 noted..." Do you see that?
 18 **A. I do.**
 19 Q. All right. So the -- I'm just going to read from
 20 the opinion here so I can set up the question. The
 21 court states, "As we noted, the venue of the
 22 redistricting work was the offices of Michael Best.
 23 The actual drafters included: Adam Foltz, a staff
 24 member to Assembly Speaker Jeff Fitzgerald; Tad
 25 Ottman, a staff member to Senate Majority Leader

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1 Scott Fitzgerald; and Joseph Handrick, a consultant
 2 with the law firm of Reinhart Boerner Van Duren,
 3 S.C.," and then there are some others that are
 4 identified there as well, correct?
 5 **A. Yes.**
 6 Q. All right. The opinion goes on to state, "The
 7 drafters relied on a computer program called
 8 autoBound to work with various district lines. They
 9 testified that the partisan makeup of the potential
 10 new districts played no part at all in their
 11 decisions. Handrick, for instance, testified that
 12 he did not know if partisan makeup was considered,
 13 that he had no access to voting data from past
 14 elections, and that only, 'population equality,
 15 municipal splits, compactness, contiguity, and
 16 communities of interest' were considered. Foltz
 17 testified that he worked with legal counsel and
 18 experts and that Speaker Fitzgerald, Senator
 19 Fitzgerald, Robin Vos, and Senator Zipperer advised
 20 him where to draw the boundaries."
 21 Do you see that?
 22 **A. I do.**
 23 Q. And then they continue on. "In June and July 2011,
 24 Foltz had meetings about redistricting with every
 25 single republican member of the State Assembly. He

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1 did not meet with any democrats. Nevertheless, he
 2 testified that it was not a part of the goal to
 3 increase the republican membership of the
 4 legislature. Before his meetings with the
 5 republicans, each person was required to sign a
 6 confidentiality agreement promising not to discuss
 7 anything that was said. Ottman had similar meetings
 8 conducted under the cloak of secrecy."
 9 Now I'd like you to turn to page 851, please.
 10 And I'd like you to look over at the second column.
 11 And about the one, two, three, four, fifth line down
 12 this discussion or the court's opinion here is at a
 13 point where they're talking about population
 14 deviations. The court states, "Numbers like these
 15 place a very heavy burden on the plaintiffs to show
 16 a constitutional violation. In the final analysis,
 17 they have failed to surmount that burden. We come
 18 to that conclusion not because we credit the
 19 testimony of Foltz, Ottman, and the other drafters
 20 to the effect that they were not influenced by
 21 partisan factors; indeed, we find those statements
 22 to be almost laughable. But the partisan motivation
 23 that in our view clearly lay behind Act 43 is not
 24 enough to overcome the de minimis population
 25 deviations that the drafters achieved, at least

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1 under this theory."
2 Do you see that language in the court's
3 opinion?
4 **A. I do.**
5 Q. All right. Do you dispute the Baldus court's
6 statement about the partisan intent?
7 MR. ST. JOHN: Objection. That's vague. I
8 can't tell if that question is do you dispute
9 whether the court made that statement or whether the
10 witness disagrees with the content.
11 BY MR. POLAND:
12 Q. Do you -- do you disagree with the content of the
13 court's statement that partisan motivation clearly
14 lay behind Act 43?
15 **A. I -- I disagree with the court's conclusion that**
16 **they find those statements laughable. And -- and as**
17 **I had mentioned in my previous dep -- deposition, I**
18 **stated that partisan numbers were used in the**
19 **evaluation of the maps.**
20 Q. Do you disagree with the court's statement that
21 partisan motivation clearly lay behind Act 43?
22 **A. I -- I don't know that I have an opinion on their**
23 **characterization.**
24 Q. You mentioned before, you testified before that you
25 were aware of some of the filings in the Whitford

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1 litigation, correct?
2 **A. That's correct.**
3 Q. Did you see motions for summary judgment that were
4 filed in the Whitford litigation?
5 **A. I -- I may have.**
6 Q. Were you aware that there was a hearing last week in
7 the Whitford litigation?
8 **A. I was aware that that occurred.**
9 Q. Did you -- did you attend that hearing?
10 **A. I did not.**
11 Q. Did you talk to anybody about that hearing?
12 **A. I -- I believe I spoke to Adam Foltz about it.**
13 Q. Was that before or after the hearing occurred?
14 **A. After the hearing occurred.**
15 Q. Have you seen a transcript of that hearing?
16 **A. I have not.**
17 Q. If you could take a look at Exhibit No. 80. It
18 should be marked there.
19 MR. ST. JOHN: Doug, let me know when there's a
20 good time. I've got to take a break myself.
21 MR. POLAND: Give me three minutes.
22 MR. ST. JOHN: That's fine.
23 BY MR. POLAND:
24 Q. Mr. Ottman, you've been handed a copy of what's been
25 marked as Exhibit 80. Do you have that in front of

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1 you?
2 **A. I do.**
3 Q. All right. If you look on the first page you'll see
4 there's a caption from this case, the Whitford case.
5 Do you see that?
6 **A. Which caption are you referring to?**
7 Q. The caption is just the -- sort of the top half of
8 the document where it says William Whitford and it's
9 got some other names, plaintiffs, versus Gerald
10 Nichol, and some other names and defendants.
11 **A. Yes, I see that.**
12 Q. Do you see it states March 23rd, 2016, 9:30 a.m.?
13 **A. Yes.**
14 Q. And just below that it says, "Stenographic
15 transcript of motion hearing held before the
16 Honorable Judge Kenneth Ripple, Honorable Judge
17 Barbara B. Crabb, and Honorable Judge William
18 Griesbach"?
19 **A. I do.**
20 Q. Have you seen Exhibit 80 before?
21 **A. I don't believe so, no.**
22 Q. I'd like you to turn to page 9 then in Exhibit 80.
23 And I'd like you to look at beginning at line 13, do
24 you see a statement by Judge Crabb.
25 She says, "I have one question. For the

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1 purpose of summary judgment, are you denying that
2 the legislature had any partisan intent when it --
3 you're not."
4 Mr. Keenan says, "No, we're not."
5 Judge Crabb says, "That's good."
6 Mr. Keenan then says, "Our argument is that
7 even assuming there's partisan intent and that there
8 was some partisan intent, the standard still doesn't
9 work."
10 Do you see that?
11 **A. Yes.**
12 Q. All right. Then I'd like you to turn to page 24,
13 please. And I'd like you to look at page -- or at
14 line 13.
15 Judge Crabb says, "You're not really disputing
16 that the republicans drew this plan with a desire to
17 create the best possible election process for the
18 republicans, are you?"
19 Mr. Keenan said, "I would dispute whether it's
20 the best possible."
21 Judge Crabb continues on and says, "I'm not
22 saying it turned out to be the best, but that their
23 intent was to do the best job they could to
24 safeguard the common seats and to increase the
25 number of seats that would be available to

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1 republicans."
2 Mr. Keenan responds, "I think -- I'm not
3 disputing that they districted with partisan
4 advantage."
5 Do you see that?
6 **A. I do.**
7 Q. Do you disagree with Mr. Keenan's statements to the
8 court last week?
9 MR. KEENAN: I'm going to object. It calls for
10 a legal conclusion, and there is a procedural
11 posture in this case that I'm not sure how that
12 plays into this question, and I think it's vague for
13 that reason.
14 BY MR. POLAND:
15 Q. Do you dispute Mr. Keenan's statement that -- that
16 you districted with partisan advantage?
17 **A. I -- I read his comments as speaking to the**
18 **legislature's actions. I -- I can only speak to the**
19 **map drawing process.**
20 Q. And you're distinguishing between the map drawing
21 process and the legislature's intentions?
22 **A. Yes. I -- I can't speak to the legislators who**
23 **voted on this what their -- what their intentions**
24 **were.**
25 Q. The -- you were a legislative aide at the time that

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1 you drew the map, correct?
2 **A. That's correct.**
3 Q. And you were an employee of the legislature,
4 correct?
5 **A. That's correct.**
6 Q. And Mr. Foltz also is an employee of the
7 legislature, correct?
8 **A. That's correct.**
9 Q. And Mr. Handrick was -- was a consultant to the
10 legislature, correct?
11 **A. I believe he was a consultant to the law firm.**
12 Q. That would be Michael Best & Friedrich?
13 **A. I believe so.**
14 Q. That was retained by the legislature, correct?
15 **A. I'm sorry, who was retained by the legislature?**
16 Q. Michael Best & Friedrich was retained by the
17 legislature, correct?
18 **A. That's correct.**
19 Q. And you met with legislative leadership during the
20 process of drawing the districts for Act 43,
21 correct?
22 **A. That's correct.**
23 Q. And you worked with the legislative leadership when
24 you created those districts, correct?
25 **A. We worked with them to the extent that I testified**

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1 **previously in terms of showing them map alternatives**
2 **that they selected and that ultimately became part**
3 **of SB -- whatever -- Act 43, I believe.**
4 Q. And you don't intend to testify at trial in the
5 Whitford case that you didn't intend to advantage
6 republicans in creating the districts that make up
7 Act 43, correct?
8 MR. ST. JOHN: Object to form. It's -- that's
9 just got a couple negatives in it. Can I have the
10 question read back just to see if you understand the
11 question, Mr. Ottman?
12 MR. POLAND: Uh-huh.
13 MR. ST. JOHN: Because I had a hard time
14 understanding.
15 (Question read.)
16 THE WITNESS: I don't know if I will be
17 testifying at the trial or what I may be asked to
18 testify to.
19 MR. POLAND: All right. Take a break.
20 MR. ST. JOHN: Thank you.
21 THE VIDEOGRAPHER: This ends disk number one of
22 the video deposition of Tad M. Ottman on March 31,
23 2016; the time 3:40 p.m.
24 (Break taken.)
25 THE VIDEOGRAPHER: This is the beginning of

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1 disk number two of the video deposition of Tad M.
2 Ottman on March 31, 2016; the time 3:50 p.m.
3 By MR. POLAND:
4 Q. Mr. Ottman, in drafting Act 43, is it fair to say
5 that you took into account the potential partisan
6 performance of the districts that you were drawing
7 by taking previous election data and calculating how
8 the districts that you were drawing in Act 43 would
9 perform based on those previous data?
10 **A. My understanding of the partisan metric was that it**
11 **compared how the old districts had performed versus**
12 **how the new districts, had those same elections**
13 **occurred in that territory, would have performed. I**
14 **can't speak to whether or not that's predictive of**
15 **future elections.**
16 Q. It would -- it was possible to take the -- the --
17 the data from previous elections and to use that
18 data to generate a partisan performance from a
19 district that you drew, correct?
20 **A. The data -- because the -- the data was -- the**
21 **election data was available down to I believe the**
22 **ward level, we were able to show these are the --**
23 **the summary totals of the elections in the old**
24 **districts, and if those same elections had been in**
25 **the new districts, these are what those totals would**

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1 **have added to up, with the proviso that because the**
 2 **election data was at the ward level, if there were**
 3 **areas of the map where those wards were divided in**
 4 **the map with different census blocks, the election**
 5 **data was only an approximation at that point.**
 6 Q. Would you agree with me as well that you sought to
 7 draft districts with an overall partisan advantage
 8 for republicans?
 9 **A. The -- the goal of the districts we were drawing are**
 10 **the enumerated redistricting criteria I've spoken to**
 11 **previously in terms of equal population, compact and**
 12 **contiguous, and sensitivity to minority concerns.**
 13 **The partisan scores were something that we used to**
 14 **evaluate the maps along with other criteria such as,**
 15 **you know, core retention of the old districts,**
 16 **municipal splits, things like that.**
 17 Q. And did there -- as part of the process of creating
 18 the districts, you looked at the -- the partisan
 19 scores from the regression that Dr. Gaddie had done,
 20 correct?
 21 **A. I -- I did not use any regression analysis that**
 22 **Dr. Gaddie had done as part of any of my map**
 23 **drawing. I did see his regression analysis.**
 24 Q. You did work with -- with Dr. Gaddie during the
 25 redistricting in 2011, correct?

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1 **A. That's correct.**
 2 Q. And Dr. Gaddie was at the Michael Best & Friedrich
 3 offices three times during -- between April and June
 4 of 2011, correct?
 5 **A. That -- I don't know the exact number of times.**
 6 **That sounds right.**
 7 Q. Do you recall Dr. Gaddie traveling to Madison and
 8 being present in the -- the redistricting offices of
 9 Michael Best & Friedrich in April of 2011?
 10 **A. I couldn't speak to the date. I do recall him being**
 11 **in the offices.**
 12 Q. All right. How about at the late May of 2011, do
 13 you recall Dr. Gaddie being present at the Michael
 14 Best offices in late May of 2011?
 15 **A. I don't recall the exact date. I do recall him**
 16 **being present.**
 17 Q. All right. How about mid-June right around the time
 18 that -- that the -- the maps were being finalized in
 19 June of 2011, do you recall Dr. Gaddie being present
 20 then?
 21 **A. I believe he was present around that time. Yes.**
 22 Q. All right. When you met with Dr. -- strike that.
 23 Did you meet with Dr. Gaddie when he was
 24 present in the Michael Best offices in Madison?
 25 **A. I did.**

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1 Q. All right. And when you met with him, did you
 2 discuss with him the draft districts that you'd
 3 created up to that point in time?
 4 **A. He -- he had asked for certain information related**
 5 **to those districts so there were discussions about**
 6 **that information. Correct.**
 7 Q. All right. And what were the aspects of the
 8 districts that he had asked you about?
 9 **A. He had several questions related to the minority**
 10 **districts and minority populations, minority voting**
 11 **age populations. And I don't know -- there were**
 12 **several questions that he asked. I don't know if**
 13 **they were all at these meetings or if some were**
 14 **through the attorneys or by email.**
 15 **He asked for information that I recall on**
 16 **whether different senate and assembly seats had been**
 17 **held throughout the decade by either democrats or**
 18 **republicans. He -- he'd asked for information on**
 19 **some of the draft maps in terms of the report -- the**
 20 **autoBound reports that I talked to you in terms of**
 21 **compactness and contiguousness. I'm not recalling**
 22 **any other specific information at this time.**
 23 Q. All right. Now, Dr. Gaddie did have as one of his
 24 tasks as a consultant the development of a
 25 regression model that would take data from the

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1 previous elections and calculate how those draft
 2 districts would perform on a partisan basis,
 3 correct?
 4 **A. I'm not certain if that was a task he had. I know**
 5 **he performed some sort of analysis like that.**
 6 Q. All right.
 7 MR. POLAND: Would you get out Exhibit No. 81?
 8 MR. ST. JOHN: This?
 9 MR. POLAND: Yeah.
 10 Q. Mr. Ottman, you've been handed a copy of a document
 11 that's been marked as Exhibit 81. Do you have that
 12 in front of you?
 13 **A. Yes.**
 14 Q. Have you ever seen a copy of Exhibit 81 before?
 15 **A. I -- I believe so.**
 16 Q. Do you recall when you saw it?
 17 **A. I believe I saw it within the last few weeks or**
 18 **within the last couple of months.**
 19 Q. All right. Did you -- before then had you ever seen
 20 it?
 21 **A. I don't recall seeing it before then.**
 22 Q. All right. I'd like you to look at the first
 23 paragraph. And -- well, actually before I do that,
 24 I will represent that -- now this is a document that
 25 was marked as Exhibit 36 at Professor Gaddie's

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1 deposition earlier this month, and he testified this
2 is a document that he had created.
3 **A. Okay.**
4 Q. First paragraph starts out saying, "The measure of
5 partisanship should exist to establish the change in
6 the partisan balance of the district. We are not in
7 court at this time," but -- strike that. "We are
8 not in court at this time; we do not need to show
9 that we have created a fair, balanced, or even
10 reactive map, but we do need to show to lawmakers
11 the political potential of the district."
12 Do you see that?
13 **A. I do.**
14 Q. All right. Do you -- do you understand that it was
15 part of the task that Dr. Gaddie had to show
16 lawmakers the political potential of the districts
17 that were being drawn?
18 **A. I -- I don't understand that that was one of his**
19 **tasks. I was not aware that it was.**
20 Q. Okay. Was that something that you believed you need
21 to do as well, show lawmakers the political
22 potential of the districts?
23 **A. I guess I'm not certain what he means exactly by**
24 **"political potential" so I -- I don't know that that**
25 **was one of the tasks to show legislators.**

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1 Q. All right. Next paragraph states, "I have gone
2 through the electoral data for state office and
3 built a partisan score for the assembly districts."
4 Do you see that statement?
5 **A. I do.**
6 Q. All right. Do you know what that's referring to?
7 **A. I do not.**
8 Q. Have you seen the term "partisan score" before?
9 **A. I -- it's a term that rings a bell. I don't know**
10 **where I saw it before.**
11 Q. All right. Do you recall seeing it as part of the
12 work that you did in 2011 for the purpose of
13 redistricting?
14 **A. Not that I recall.**
15 Q. The paragraph goes on to state, "It is based on a
16 regression analysis of the assembly vote from 2006,
17 2008, and 2010, and it is based on prior election
18 indicators of future election performance."
19 Do you see that?
20 **A. I do.**
21 Q. All right. Now, you are aware of Professor Gaddie's
22 regression analysis that he created in 2011 for the
23 redistricting, correct?
24 **A. I am aware that he created it, yes.**
25 Q. All right. Do you know who asked him to create it?

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1 **A. I do not know for sure who did.**
2 Q. Did you ever talk with Dr. Gaddie about the
3 regression analysis that he created?
4 **A. I don't recall if I had conversation with him about**
5 **that or not.**
6 Q. Did you ever see any of the output of Dr. Gaddie's
7 regression analysis?
8 **A. I -- I saw a document he produced that I believe was**
9 **called a response -- responsiveness curve or**
10 **something along those lines. I don't know if that**
11 **is the same thing as what's referred to here.**
12 Q. Okay. When did you see a responsiveness curve?
13 **A. It would have been at one of those meetings where he**
14 **was in the Michael Best & Friedrich offices.**
15 Q. Did -- do you recall looking at a responsiveness
16 curve with Dr. Gaddie that had been printed out?
17 **A. Yes.**
18 Q. All right. Where was that in the Michael Best &
19 Friedrich offices?
20 **A. It was in the redistricting offices that -- where**
21 **the redistricting computers were located.**
22 Q. Was there a room that was called the map room or
23 referred to as the map room?
24 **A. Yes.**
25 Q. All right. Did you see the responsiveness curves

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1 with Dr. Gaddie in the map room?
2 **A. That's my recollection.**
3 Q. When you were looking at the responsiveness curves
4 with Dr. Gaddie, were you looking at anything else
5 at the same time? For example, were you looking at
6 any -- any proposed districts?
7 **A. Not to my recollection, no.**
8 Q. Was there a discussion about the responsiveness
9 curves that you had with Dr. Gaddie?
10 **A. There -- there was a discussion in terms of him**
11 **explaining in a general way what the document**
12 **represented.**
13 Q. And what did he explain in a general way that the
14 document represented?
15 **A. My -- my recollection was that he explained that**
16 **this showed how vote totals may change one way or**
17 **another in wave years depending on either a large**
18 **democrat turnout, large republican turnout.**
19 Q. Have you ever heard the term "swing analysis"?
20 **A. I don't -- I don't believe so.**
21 Q. Okay. Have you ever heard the term "swing" used in
22 conjunction with -- with elections?
23 **A. I've heard that term, yes.**
24 Q. All right. Did you hear that term used at all as
25 part of the redistricting process in 2011?

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1 **A. I did.**
 2 Q. All right. And what was the context in which you
 3 heard that term used?
 4 **A. The context it was used was to describe seats that**
 5 **may swing from one party to the other.**
 6 Q. And we'll look at some spreadsheets and explore that
 7 a little bit in a little more detail.
 8 That paragraph, that second paragraph of
 9 Exhibit 81 in the last clause that we read where it
 10 says that the partisan score is "based on prior
 11 election indicators of future election performance,"
 12 do you see that?
 13 **A. I do.**
 14 Q. Do you know what Dr. Gaddie is referring to there?
 15 **A. I do not.**
 16 Q. The third paragraph states, "I am also building a
 17 series of visual aids to demonstrate the partisan
 18 structure of Wisconsin politics. The graphs will
 19 communicate the top-to-bottom party bases of the
 20 state politics. It is evident from the recent
 21 Supreme Court race and also the Milwaukee County
 22 executive contest that the partisanship of Wisconsin
 23 is invading the ostensibly non-partisan races on the
 24 ballot this year."
 25 Do you see that?

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1 **A. I do.**
 2 Q. All right. The statement that Dr. Gaddie makes
 3 where he says he's building a series of visual aids
 4 to demonstrate the partisan structure of Wisconsin
 5 politics, did you see any of the visual aids that he
 6 created?
 7 **A. The -- the only thing that springs to mind is that**
 8 **curve analysis that I referenced earlier.**
 9 Q. That responsiveness curve I think you had called it?
 10 **A. I think that's what it was called, right.**
 11 Q. Did you see any other kinds of visual aids that
 12 Dr. Gaddie built or created to reflect partisan
 13 structure of Wisconsin politics?
 14 **A. Not -- not that I recall.**
 15 Q. I'm going to have you take a look at Exhibit No. 82,
 16 please. Mr. Ottman, have you seen Exhibit 82
 17 before?
 18 **A. I believe so. Yes.**
 19 Q. All right. If you look up at the top, you'll see
 20 that there's a Gmail header. Below that there's a
 21 line that says from Professor Gaddie. And then
 22 below that there's an email header that says Joseph
 23 Handrick, and it has an email address; and then it
 24 says to Adam Foltz, and also has your name there as
 25 well as an addressee, correct?

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1 **A. Correct.**
 2 Q. And that is dated Wednesday, April 20th, 2011,
 3 correct?
 4 **A. That's correct.**
 5 Q. All right. Just below that in the body of the
 6 message Mr. Handrick writes, "See Keith's comments
 7 below." And just below that there is another email
 8 that says it's from rkgaddie@ou.edu. Do you see
 9 that?
 10 **A. I do.**
 11 Q. Do you understand that to be Professor Keith
 12 Gaddie's email address?
 13 **A. I do.**
 14 Q. And then below that it says to joeminocqua@msn.com.
 15 Do you see that?
 16 **A. I do.**
 17 Q. And then that's Mr. Handrick's email address,
 18 correct?
 19 **A. I believe it was his address at the time.**
 20 Q. All right. And may not be now, but it was at the
 21 time?
 22 **A. I believe so.**
 23 Q. And that also is dated Wednesday, April 20th, 2011,
 24 correct?
 25 **A. Correct.**

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1 Q. All right. Now, the body of Mr. -- of Dr. Gaddie's
 2 email to Mr. Handrick says, "Hey, Joe. I went ahead
 3 and ran the regression models for 2006, 2008, and
 4 2010 to generate open seat estimates on all the
 5 precincts."
 6 Do you see that?
 7 **A. I do.**
 8 Q. What did you understand that to mean when you
 9 received the email from Mr. Handrick?
 10 **A. I don't recall when -- when I received this email.**
 11 **I do recall the second sentence there where it**
 12 **discussed the -- the correlation between the '04-'10**
 13 **composite, which is what we've been using, and that**
 14 **Joe and I had a discussion that that seemed to be**
 15 **a -- a close enough proxy to use for an accurate**
 16 **analysis of the current assembly districts as well**
 17 **as evaluating the districts that had gone forward.**
 18 Q. So are you referring then -- if we flip over to the
 19 second page of Exhibit 82, there is a -- there is a
 20 paragraph that reads -- and this is in an email
 21 from -- that Mr. Handrick created, I believe. It
 22 says, "So I had Tad do a composite with the 2006 and
 23 2010 state races and all the federal races from '04
 24 to 2010," open paren, "in other words, all statewide
 25 races from '04 to 2010" close paren. "This seems to

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1 work well both in absolute terms and as well as
2 seats in relation to each other."
3 Do you see that language?
4 **A. I do.**
5 Q. All right. Now, what does that refer to?
6 **A. That refers to we had looked at a number of**
7 **different composites of election races be -- in the**
8 **previous decade from 2002 through 2010, and this**
9 **refers to the -- all state races and all federal**
10 **races from '04 to '010 that we ultimately ended up**
11 **using as a comparison between the existing districts**
12 **and the newly proposed districts.**
13 Q. So if we flip back to the first page, and if we look
14 at that email from Dr. Gaddie to Mr. Handrick on
15 April 20th, the second paragraph states, "But at
16 this point, if you ask me, the power of the
17 relationships indicates that the partisanship proxy
18 you are using," then in parens "all races, is an
19 almost perfect proxy for the open seat vote and the
20 best proxy you'll come up with."
21 Do you see that language?
22 **A. I do.**
23 Q. And so is that the proxy you're referring to?
24 **A. That is the -- yeah, I believe the proxy that is**
25 **referred to there is the all -- what was I think**

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1 **labeled all '04 and '010 which is all state and**
2 **federal races from those elections.**
3 Q. And that was a proxy that you were seeking to
4 develop that would be a good -- a good proxy for the
5 outcome of Dr. Gaddie's regression analysis,
6 correct?
7 **A. My understanding was that it was a proxy to**
8 **measure -- to reflect the current districts and then**
9 **use that as a point of comparison with any new**
10 **districts that we may draw.**
11 Q. And that was -- that was a partisanship proxy,
12 correct?
13 **A. Correct. That measured partisanship.**
14 Q. All right. Okay. So you worked with Mr. Handrick
15 to develop that proxy; is that correct?
16 **A. That's correct.**
17 Q. Was there a -- was the comparison between the output
18 of Dr. Gaddie's model or regression analysis, I
19 should say, and the -- the output of the
20 partisanship proxy that you and Mr. Handrick was
21 trying -- were trying to develop, was that something
22 that was assessed by Dr. Gaddie and Mr. Ottman --
23 Mr. Handrick, do you know?
24 **A. My -- my recollection is that we had done a couple**
25 **of different composite elections, and I don't know**

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1 **who -- I think perhaps Joe had forwarded them to**
2 **Professor Gaddie, and then he responded with yeah,**
3 **this is a -- this is a good measurement, an adequate**
4 **measurement.**
5 **I don't recall any specific discussions with**
6 **either Joe or Professor Gaddie about regression**
7 **specifically.**
8 Q. So you weren't -- to the extent there was -- there
9 was an effort made to compare the outputs of
10 Dr. Gaddie's regression model with the -- the
11 partisan proxy -- partisanship proxy that you and
12 Mr. Handrick were trying to develop, you were not
13 involved in that; is that correct?
14 **A. That's correct.**
15 Q. When Dr. Gaddie was present in Madison during the
16 spring of 2011, did you discuss with him at all the
17 partisanship proxy?
18 **A. I'm sorry, what -- what time frame?**
19 Q. This is in the spring of 2011 when Dr. Gaddie was
20 present in Madison.
21 **A. I don't recall specific conversations. We -- there**
22 **may have been a conversation that we were using the**
23 **'04 through '10 elections.**
24 Q. Did you -- did you look at the out -- at the output
25 from the application of the partisan proxy at all on

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1 any draft districts with Dr. Gaddie there?
2 **A. There -- there may have been a printout at one of**
3 **the meetings of the districts that we were**
4 **reviewing. I don't recall specifically.**
5 Q. And when you say a printout, was that a printout of
6 the maps of the districts as they stood at the time?
7 **A. The current districts as well as there may have been**
8 **a printout of some of the proposed statewide maps**
9 **that we were preparing to discuss with legislative**
10 **leaderships.**
11 Q. And did you talk about the proposed statewide maps
12 with Dr. Gaddie in the context of or in relation to
13 the partisanship proxy?
14 **A. I believe that data was available as well as, you**
15 **know, a printout of the, you know, actual map file.**
16 **I believe the -- the corresponding score with the**
17 **old districts and the new district may have been**
18 **printed out for him to look at, too. I don't recall**
19 **specifically.**
20 Q. Do you recall being in the map room at Michael Best
21 & Friedrich and looking at those printouts with
22 Dr. Gaddie?
23 **A. I don't recall specifically going through them with**
24 **him.**
25 Q. Did you go through those with the legislative

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1 leadership?

2 **A. Yes, the legislative leadership saw both the same**

3 **partisan metric on the current districts as well as**

4 **the proposed alternatives that they were examining.**

5 Q. Did you ever modify a district that -- a draft or a

6 proposed district that you had drawn after reviewing

7 either the results of applying the partisanship

8 proxy or looking at the outcome or output of

9 Dr. Gaddie's regression model?

10 MR. ST. JOHN: I'm just going to object to

11 form. You can answer the question.

12 THE WITNESS: Could you restate the question or

13 repeat the question? I'm sorry.

14 (Question read.)

15 THE WITNESS: I -- I don't recall making

16 modifications on those bases.

17 BY MR. POLAND:

18 Q. In modifying a proposed district, did you ever

19 redraw the boundaries of a district in such a way

20 that it increased the republican partisan

21 performance of that district as a result of looking

22 at the partisanship proxy?

23 **A. I -- I don't recall making those decisions based on**

24 **the partisanship performance.**

25 Q. Take a look at --

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1 MR. POLAND: Why don't we go off the record

2 here. We're going to get set up with the DVD like

3 we did last time.

4 THE VIDEOGRAPHER: We are going off the record

5 at 4:16 p.m.

6 (Discussion held off the record.)

7 THE VIDEOGRAPHER: We are back on the record at

8 4:18 p.m.

9 By MR. POLAND:

10 Q. Mr. Ottman, I'm going to hand you a copy of a

11 document that's been marked as Exhibit No. 83, ask

12 you to take a look at that. Have you seen Exhibit

13 83 before?

14 **A. I don't believe so, no.**

15 Q. All right. I think you've testified a number of

16 times that when you performed your redistricting

17 work in 2011, you used a computer that had been

18 issued to you by the LTSB, correct?

19 **A. That's correct.**

20 Q. And do you recall that in the Baldus case the

21 plaintiffs obtained the internal and external hard

22 drives from the computer that you used?

23 **A. Yes.**

24 Q. And that was as part of the discovery process?

25 **A. That's my understanding.**

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1 Q. Do you recall that the plaintiffs in the Baldus case

2 retained a computer forensic expert named Mark

3 Lanterman to conduct a forensic analysis of the

4 internal and external hard drives on the computer

5 that you used?

6 **A. Yes.**

7 Q. Turning your attention to Exhibit 83, and I'd like

8 you to turn to the second page of that exhibit that

9 states it's the Amended Declaration of Mark

10 Lanterman.

11 **A. Okay.**

12 Q. Have you seen this particular declaration before?

13 **A. I'm not certain.**

14 Q. All right. It's -- if it helps, the last page of

15 the declaration identifies that it was made as of

16 March 18th, 2016, so just a couple of weeks ago.

17 **A. Okay. Then I would not have seen this.**

18 Q. All right. Are you aware that the plaintiffs in the

19 Whitford case, so that's -- that's this case, have

20 retained Mark Lanterman to conduct additional

21 analyses on the internal and external hard disk

22 drives of the redistricting computer that you had

23 used?

24 **A. Yes.**

25 Q. You were aware of that?

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1 **A. Yes.**

2 Q. Okay. When were you made aware of that?

3 **A. I'm -- I'm not certain. Sometime this year, after**

4 **the first of the year, I believe.**

5 Q. All right. I'd like you to turn to page 5 of

6 Exhibit -- well, it's the page 5 of Mr. Lanterman's

7 declaration, at least.

8 **A. Okay.**

9 Q. And toward the bottom of the page, you'll see just

10 above paragraph 17, you'll see it states "Systems

11 associated with WRK32587." Do you see that?

12 **A. Yes.**

13 Q. Does that -- that designation of WRK32587 have any

14 meaning to you?

15 **A. I'm not certain which works -- I know it's a**

16 **workstation designation.**

17 Q. All right. In paragraph 17 Mr. Lanterman's

18 declaration states, "Third," CS -- "CFS recovered,

19 identified, and produced any active or deleted Excel

20 spreadsheets created, accessed, or modified during

21 the months of April, May, or June of 2011 from the

22 system named" open quote, Sen Republican WRK32587

23 close quote, "which I understand was assigned to Tad

24 Ottman."

25 Do you see that?

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<p>1 A. I do.</p> <p>2 Q. Do you have any reason to doubt that the system that</p> <p>3 was designated WRK32587 was a system that had been</p> <p>4 assigned to you?</p> <p>5 A. I don't.</p> <p>6 Q. Mr. Lanterman goes on to state, "Across the two hard</p> <p>7 drives in this system, a total of 364 spreadsheets</p> <p>8 were responsive being created between April and June</p> <p>9 2011. However, the vast majority of these were</p> <p>10 exact duplicates. After identifying and removing</p> <p>11 duplicates, a total of 35 unique files remained."</p> <p>12 All right.</p> <p>13 A. Okay.</p> <p>14 Q. Mr. Lanterman goes on to state in paragraph 18, "I</p> <p>15 created an Excel spreadsheet detailing the</p> <p>16 locations, dates, and other information of all</p> <p>17 responsive spreadsheets that were identified on the</p> <p>18 WRK32587 system," and then in parens it says, quote,</p> <p>19 WRK32587 Responsive Spreadsheets File Detail</p> <p>20 Report.xlsx, close close, close paren. "I provided</p> <p>21 a copy of that spreadsheet as well as the 35 unique</p> <p>22 spreadsheets to counsel for the plaintiffs. Copies</p> <p>23 of the file detail spreadsheet that I created, as</p> <p>24 well as the 35 unique spreadsheets, are contained on</p> <p>25 the DVD-ROM provided contemporaneously with this</p>	<p>1 spreadsheets are contained on the DVD-ROM provided</p> <p>2 contemporaneously with this declaration."</p> <p>3 Do you see that testimony from Mr. Lanterman?</p> <p>4 A. Yes.</p> <p>5 Q. All right. That was to set up what we're going to</p> <p>6 take a look at now, which is the DVD that</p> <p>7 Mr. Lanterman refers to in his declaration.</p> <p>8 A. Okay.</p> <p>9 MR. POLAND: So why don't we -- why don't we go</p> <p>10 off the -- the record now and we can set that up in</p> <p>11 this computer.</p> <p>12 THE WITNESS: Okay.</p> <p>13 THE VIDEOGRAPHER: We are going off the record</p> <p>14 at 4:25 p.m.</p> <p>15 (Discussion held off the record.)</p> <p>16 THE VIDEOGRAPHER: We are back on the record at</p> <p>17 4:28 p.m.</p> <p>18 BY MR. POLAND:</p> <p>19 Q. Mr. Ottman, during the break, we put into the DVD</p> <p>20 drive in the computer in front of you the DVD-ROM</p> <p>21 that was attached to Mr. Lanterman's declaration</p> <p>22 that we had marked as Exhibit 83. And so that's in</p> <p>23 the computer now, and we're going to look at some of</p> <p>24 the spreadsheets that are on that computer. Okay?</p> <p>25 A. Okay.</p>
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<p>1 declaration."</p> <p>2 Do you see that testimony?</p> <p>3 A. Yes.</p> <p>4 Q. And then finally, in paragraph 19, Mr. Lanterman</p> <p>5 states, "I also identified relevant spreadsheets</p> <p>6 from the external hard drive associated with the</p> <p>7 WRK32587 system. This external hard drive was used</p> <p>8 in conjunction with a backup program that packaged</p> <p>9 files within compressed zip" format -- "zip volumes</p> <p>10 that first needed to be decompressed. After that,</p> <p>11 CFS identified a total of 431 spreadsheets that had</p> <p>12 been created or modified between April and June</p> <p>13 2011. Of those, the vast majority were found to be</p> <p>14 duplicates, leaving a total of 77 unique files. I</p> <p>15 created an Excel spreadsheet detailing the</p> <p>16 locations, dates, and other information of all</p> <p>17 responsive spreadsheets that were identified on the</p> <p>18 external hard drive associated with the WRK32587</p> <p>19 system," open paren, quote, WRK32587 External HD</p> <p>20 Responsive Spreadsheets File Detail report.xlsx,</p> <p>21 close quote, close paren. "I provided a copy of the</p> <p>22 spreadsheet I created as well as the 77 unique</p> <p>23 identified spreadsheets to counsel for the</p> <p>24 plaintiffs. Copies of the spreadsheet that I</p> <p>25 created as well as the 77 unique identified</p>	<p>1 Q. All right. I'd like you to open up the spreadsheet</p> <p>2 that's the file detail report for WRK32587.</p> <p>3 A. 32587?</p> <p>4 Q. Correct.</p> <p>5 MR. ST. JOHN: Is this for the external HD or</p> <p>6 the responsive --</p> <p>7 MR. POLAND: No, this is not for the external.</p> <p>8 MR. ST. JOHN: All right. You're on the right</p> <p>9 one.</p> <p>10 THE WITNESS: Okay.</p> <p>11 BY MR. POLAND:</p> <p>12 Q. Are you there? Do you have that open?</p> <p>13 A. I do.</p> <p>14 Q. All right. I wanted to ask you first about some of</p> <p>15 the -- the file names that are identified on this</p> <p>16 spreadsheet. If you take a look at -- if you scroll</p> <p>17 all the way down to rows 91 -- or beginning at row</p> <p>18 91, and if you look in column A, which is the File</p> <p>19 Name column.</p> <p>20 A. Okay.</p> <p>21 Q. Are you there?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. You see there is a -- there is a name there,</p> <p>24 there's a file path C back slash users back slash T</p> <p>25 Ottman dot --</p>

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1 **A. What column are you in?**
 2 Q. 91.
 3 MR. ST. JOHN: What column?
 4 **A. What column?**
 5 Q. Oh, I'm sorry, column A. Column A. That's the File
 6 Name column.
 7 **A. On mine it says Milwaukee Compact Exercise Wards**
 8 **Only.**
 9 Q. Do you know what, I'm sorry, I'm on the external. I
 10 made that mistake. Let me pull up the other one.
 11 Bear with me just a second here. I'm not sure if
 12 mine has a different -- oh, okay. Here we go.
 13 Yeah, then I did actually want you to take a
 14 look at the -- you can leave that one open.
 15 **A. Okay.**
 16 Q. I did want you to look at the external one. I'm
 17 sorry. That was the one I intended you to look at.
 18 **A. So that is WRK32864?**
 19 Q. 587.
 20 **A. Oh, the external?**
 21 Q. The external. Right.
 22 **A. Okay.**
 23 Q. I'm going to just get that back open now. Okay.
 24 Now if we scroll down to row 91.
 25 **A. Yes.**

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1 Q. Are you there? And we're in column A. Do you see
 2 there there's a file path that says C back slash
 3 users back slash tottman dot WRK32587 back slash
 4 documents back slash documents back slash Tad
 5 underscore space senate underscore space assertive
 6 underscore space curve. Do you see that?
 7 **A. I do.**
 8 Q. All right. Do you know what the file name
 9 Tad_Senate_Assertive_Curve refers to?
 10 **A. I'm -- I'm not sure entirely. I think that was**
 11 **something that Dr. Gaddie prepared.**
 12 Q. All right. And if you -- if you scroll the page
 13 over so you get to column H and column I, you'll see
 14 that Dr. Gaddie is identified as -- as the author
 15 and then also as the person who last saved that
 16 file.
 17 **A. Okay.**
 18 Q. All right? Did you discuss any file that was named
 19 Tad_Senate_Assertive_Curve with Dr. Gaddie?
 20 **A. I believe that was one of the documents that he**
 21 **printed out that I referred to before that we looked**
 22 **at.**
 23 Q. Do you know specifically what the use of the term
 24 "assertive" was supposed to indicate?
 25 **A. I do not.**

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1 Q. Did you have -- ever have any discussions with
 2 Dr. Gaddie about -- about any files that were named
 3 assertive?
 4 **A. The previously mentioned discussion where we looked**
 5 **at the printout.**
 6 Q. All right. Did you ever see the name assertive used
 7 in conjunction with either Mr. Handrick's or
 8 Mr. Foltz's names?
 9 **A. I believe I saw something with Joe's name. I don't**
 10 **recall if I saw something with Mr. Foltz's name.**
 11 Q. All right. Now, if we -- if we actually take a look
 12 at the Tad_Senate_Assertive_Curve, so now we're
 13 going to go into the folder, it's the external hard
 14 drive folder, and take a look at that one.
 15 MR. ST. JOHN: This one is the drive 87.
 16 THE WITNESS: External Responsiveness
 17 Spreadsheets D Duplicated?
 18 Q. Correct. And it would be the
 19 Tad_Senate_Assertive_Curve.xlsx.
 20 **A. Okay.**
 21 Q. All right. And do you have that up?
 22 **A. Yes.**
 23 Q. All right. And I'm just going to -- to make sure
 24 we're sort of on the same page. Does yours look
 25 kind of like mine, showing you my screen?

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1 **A. It does.**
 2 Q. Terrific. Is this a document that you've seen
 3 before?
 4 **A. I believe so. Yes.**
 5 Q. Does this look like the responsiveness curve that
 6 you had testified to earlier?
 7 **A. This looks like the -- the curve document that I**
 8 **testified that I viewed.**
 9 Q. Do you know what the purpose of this responsiveness
 10 curve is?
 11 **A. I'm not entirely fluent with what it means beyond --**
 12 **beyond the fact that I believe it reflects some sort**
 13 **of change in how the districts display depending on**
 14 **different percentages of either wave elections or**
 15 **percentages of republican or democrat vote.**
 16 Q. All right. And does this reflect partisan makeup of
 17 districts?
 18 **A. I believe the numbers on this chart are partisan**
 19 **vote totals or percentages.**
 20 Q. How many times did you review these kinds of curves
 21 with Dr. Gaddie?
 22 **A. I -- I don't recall viewing them more than once.**
 23 Q. Was anyone else present when you reviewed them with
 24 Dr. Gaddie?
 25 **A. Adam Foltz was I think present. Joe Handrick may**

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1 **have been. There may have been legal counsel**
 2 **present.**
 3 Q. Do you recall reviewing these curves at all with any
 4 of the legislative leadership?
 5 **A. I'm not certain if they saw them or not. I think**
 6 **they would have been in the room where the map**
 7 **alternatives were discussed. I don't recall if**
 8 **there were any specific conversations with the**
 9 **legislators about these.**
 10 Q. After you reviewed this particular curve with
 11 Dr. Gaddie, was there anything done with respect to
 12 the makeup of the proposed districts that would have
 13 changed the districts?
 14 **A. The -- the final map that became enacted had not**
 15 **been drawn at this point so there were changes --**
 16 **there were changes after I had seen this document.**
 17 Q. Do you recall approximately where in the process of
 18 drawing districts you were at the time that you
 19 viewed this particular curve?
 20 **A. I -- I believe we were in the process of preparing**
 21 **map alternatives to show to the legislators, the**
 22 **legislative leadership.**
 23 Q. And do you recall approximately when that was?
 24 **A. Approximately -- my best recollection is late May,**
 25 **early June.**

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1 Q. So if Dr. Gaddie was, in fact, in Madison in late
 2 May of 2011, that might have been the time that you
 3 would have viewed this curve with Dr. Gaddie?
 4 **A. That's possible, yes.**
 5 Q. And if we -- if we look at the -- if we look at the
 6 Responsive Spreadsheets File Detail Report for --
 7 there it is -- back to row 91 -- actually it looks
 8 like there are several of them. If we look at 91
 9 through 94, it looks like there are perhaps a few
 10 versions. Looks like in row 93, 94 there are
 11 versions that were created on May 28th of 2011.
 12 Actually if you scroll all the way over to column J.
 13 **A. On which row?**
 14 Q. 91 through 94, on all of them.
 15 **A. Okay.**
 16 Q. If you're all the way over to column J, you see that
 17 Office Created Date identifies May 28, 2011?
 18 **A. Uh-huh.**
 19 Q. Do you see that?
 20 **A. Yes.**
 21 Q. Do you recall Dr. Gaddie being in Madison on or
 22 about May 28th of 2011?
 23 **A. That -- I don't recall specific dates. That seems**
 24 **to be a time frame that I recall him being there.**
 25 Q. Did you see any of the partisan analysis documents

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1 that Mr. Foltz created?
 2 **A. Yes.**
 3 Q. If you'd take a look at Exhibit No. thirty -- this
 4 is going to be Gaddie Exhibit No. 39. Give you a
 5 minute to take a look at it.
 6 **A. (Witness reading.) Okay.**
 7 Q. Have you seen Exhibit No. 39 before?
 8 **A. I -- I believe I've seen parts of it. I'm not**
 9 **certain if I've seen all of it or not. It's**
 10 **possible I've seen all of it.**
 11 Q. Do you know if you've seen it in this -- in this
 12 particular format before?
 13 **A. Yes.**
 14 Q. Okay. Is this -- is this a format that -- strike
 15 that question.
 16 Did you create any documents in this format?
 17 **A. Not identical, no.**
 18 Q. All right. Was it a similar format?
 19 **A. I did have documents in a similar format. Yes.**
 20 Q. If you look at -- well, if you note actually in red
 21 at the top of Exhibit 39, you'll see that there is a
 22 file name that's handwritten in there that says Plan
 23 Comparisons.xlsm. Do you see that?
 24 **A. Yes.**
 25 Q. All right. If you look on -- I'm going to bring you

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1 back to the computer now. And I'm going to ask you
 2 to look at the WRK32587 Responsive Spreadsheets File
 3 Detail Report. Not the external one.
 4 **A. Not the external one.**
 5 Q. Yeah, not the external one. It's the internal one.
 6 **A. I'm sorry, what is the file name again?**
 7 Q. It's WRK32587 Responsive Spreadsheets File Detail
 8 Report.
 9 MR. ST. JOHN: Tad, you want to go back -- this
 10 isn't what was on the hard drive. This is the
 11 document that Mr. Lanterman created that is a
 12 spreadsheet of what was there. Let me give you some
 13 help. This is for the 86 machine; is that right?
 14 MR. POLAND: No, this is the 587.
 15 MR. ST. JOHN: 87.
 16 MR. POLAND: 587.
 17 MR. ST. JOHN: Responsive Spreadsheets File.
 18 THE WITNESS: Okay.
 19 MR. ST. JOHN: I think we're on the same --
 20 MR. POLAND: File detail report?
 21 MR. ST. JOHN: Yes.
 22 THE WITNESS: Okay.
 23 BY MR. POLAND:
 24 Q. And so if you -- if you go down to row 113, you
 25 should see a file name Plan Comparisons.xlsm?

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<p style="text-align: right;">Page 94</p> <p>1 A. 113?</p> <p>2 Q. Yeah.</p> <p>3 A. Yes.</p> <p>4 Q. Okay. If you scroll across, you'll see that the</p> <p>5 author in H, column H, that is, is afoltz?</p> <p>6 A. Uh-huh.</p> <p>7 Q. It says last saved by Tad. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. All right. Now I'd like to -- well, let me first</p> <p>10 ask, do you know why a document that Mr. Foltz would</p> <p>11 have created is something that you would have saved</p> <p>12 on your computer?</p> <p>13 A. Sometimes if we wanted to share documents we would</p> <p>14 put them on a flash drive and hand them between each</p> <p>15 other and save them on our individual workstations.</p> <p>16 Q. Okay. Now, I'm going to ask to actually go in and</p> <p>17 open that particular spreadsheet, the Plan</p> <p>18 Comparisons.xlsm spreadsheet.</p> <p>19 A. And which file is that in? I'm sorry.</p> <p>20 Q. It's called Plan Comparisons.</p> <p>21 MR. ST. JOHN: Go to -- go to the folder</p> <p>22 entitled Responsive Spreadsheets for workstation 87,</p> <p>23 587. Yep.</p> <p>24 THE WITNESS: Okay. And what file am I looking</p> <p>25 for?</p>	<p style="text-align: right;">Page 96</p> <p>1 looked just a minute ago at Gaddie Exhibit No. 39</p> <p>2 and talked about the format of that report?</p> <p>3 A. Yes.</p> <p>4 Q. And so the format of that report I want to just</p> <p>5 compare it in terms of the way that it looks with</p> <p>6 the Plan Comparisons that we have up on the screen</p> <p>7 right now.</p> <p>8 A. Uh-huh.</p> <p>9 Q. Okay. And to me at least they look at least pretty</p> <p>10 similar in format in that they have -- they have</p> <p>11 a -- the 99 districts listed from 1 to 99 with</p> <p>12 Assembly and Senate columns, and then there are a</p> <p>13 couple of boxes at the end of the page that say</p> <p>14 Current Map and New Map. Is that what you have on</p> <p>15 your screen as well?</p> <p>16 A. Yes.</p> <p>17 Q. All right. So at the very top now of the Plan</p> <p>18 Comparison spreadsheet that you have on the screen,</p> <p>19 do you see that it says Joe Assertive?</p> <p>20 A. I do.</p> <p>21 Q. Do you know what Joe assertive means?</p> <p>22 A. I do not.</p> <p>23 Q. All right. Is that -- do you know is that a name of</p> <p>24 a proposed -- a proposed plan?</p> <p>25 A. I -- I don't -- I don't know. I did not -- that's</p>
<p style="text-align: right;">Page 95</p> <p>1 MR. POLAND: It's called Plan Comparisons.</p> <p>2 THE WITNESS: Okay.</p> <p>3 MR. ST. JOHN: Just for the record, an error</p> <p>4 message just came up, said, "We found a problem with</p> <p>5 some content in Plan Comparisons. Do you want us to</p> <p>6 try to recover as much as we can? If you trust the</p> <p>7 source of this workbook, click yes."</p> <p>8 MR. POLAND: I got the same error message and I</p> <p>9 clicked yes. And I'm still up and running. It's</p> <p>10 not your computer so don't worry, right?</p> <p>11 THE WITNESS: Okay.</p> <p>12 MR. POLAND: Is it open now?</p> <p>13 MR. ST. JOHN: There was a -- Sorry. There</p> <p>14 was -- there was another message that came up</p> <p>15 that -- which Tad closed quickly.</p> <p>16 THE WITNESS: I'm sorry.</p> <p>17 MR. ST. JOHN: But it seemed to suggest that</p> <p>18 not all the documents could be recovered.</p> <p>19 BY MR. POLAND:</p> <p>20 Q. Okay. Does the document that you have that's open</p> <p>21 in front of you, does it say at the top Joe</p> <p>22 Assertive?</p> <p>23 A. Yes.</p> <p>24 Q. All right. That's fine. That's really what I</p> <p>25 wanted to ask you about. Do you see -- we had</p>	<p style="text-align: right;">Page 97</p> <p>1 not a naming convention I used.</p> <p>2 Q. As we look at -- well, actually, if I look at the</p> <p>3 tabs on the bottom, I see a tab that's called Joe</p> <p>4 Aggressive. Do you see that tab on the bottom of</p> <p>5 your page?</p> <p>6 A. Oh, yes.</p> <p>7 Q. Do you know does the name Joe aggressive have any</p> <p>8 meaning to you in the context of these types of</p> <p>9 graphs or these types of charts that were created?</p> <p>10 A. No, it's not a naming convention that I used.</p> <p>11 Q. Do you recall ever looking at any maps that are</p> <p>12 called Joe Assertive or Joe Aggressive?</p> <p>13 A. I'm not certain if the map titles were that way. I</p> <p>14 recall seeing spreadsheets like this with those</p> <p>15 titles.</p> <p>16 Q. All right. Do you -- do you recall seeing any --</p> <p>17 any other aspects of -- of district plans other than</p> <p>18 maps themselves that were identified as Joe</p> <p>19 Assertive or Joe Aggressive?</p> <p>20 A. Yeah, as we've discussed, I saw Tad Assertive Curve.</p> <p>21 There may have been documents like this with that</p> <p>22 heading as well.</p> <p>23 Q. All right. And so as we look at -- and we can do</p> <p>24 this on Exhibit 39 if it's easier, I wanted to ask</p> <p>25 you just about the -- what the numbers mean.</p>

25 (Pages 94 to 97)

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1 **A. Okay.**
 2 Q. At the top -- and let's just use Exhibit 39. It's a
 3 little bit easier to read, I think. At the top
 4 there is a -- a title Milwaukee Gaddie 4_16_11_V1_B.
 5 Do you see that?
 6 **A. I do.**
 7 Q. I understand that's a naming convention that
 8 Mr. Foltz used, correct?
 9 **A. I believe so. Yes.**
 10 Q. All right. Then we have the districts -- over in
 11 the left-hand column we have the districts that run
 12 from 1 to 99, correct?
 13 **A. Yes.**
 14 Q. And those are the assembly districts, right?
 15 **A. That's correct.**
 16 Q. And then there is a -- there's another column over
 17 that has a Senate heading, and then it's got a
 18 number of columns below that, correct?
 19 **A. That's correct.**
 20 Q. And you've got three assembly districts to every
 21 senate district, correct?
 22 **A. Correct.**
 23 Q. And so that's why we have under the Senate column
 24 we've got 33 districts, correct?
 25 **A. That's correct.**

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1 Q. All right. Is it your understanding that when we
 2 look -- let's go back over to the Assembly column.
 3 Where it says Current, there are numbers and then
 4 there are some red shading in each of those -- next
 5 to those numbers, correct?
 6 **A. That's correct.**
 7 Q. Is it your understanding that that is the current
 8 partisan makeup -- or strike that -- that that is
 9 the partisan makeup of each of those assembly
 10 districts under the then current plan?
 11 **A. It's my understanding that that reflects the vote
 12 total which I've described earlier, which is all
 13 top-of-the-ticket races between '04 and '10.**
 14 Q. And that is -- that is a partisan metric that's
 15 55.15 percent republican share, correct?
 16 **A. That's my understanding, yes.**
 17 Q. All right. And then if we go over from the current,
 18 we go over to the column that says New, do you see
 19 that?
 20 **A. Yes.**
 21 Q. And what does the New column indicate there?
 22 **A. I believe the new refers to the map titled at the
 23 top.**
 24 Q. So that would be -- that would be that particular
 25 proposed map, those would be the partisan scores in

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1 each district that come out of that particular map,
 2 correct?
 3 **A. That would be the identical metric as reflected in
 4 the current one applied to the new district.**
 5 Q. All right. That's using the partisanship proxy that
 6 we discussed before?
 7 **A. It's using those top-of-the-ticket races that I
 8 mentioned from '04 to '10.**
 9 Q. All right. And then what is the column just next to
 10 that that says Delta, what does that indicate?
 11 **A. I'm not certain what Delta means. It looks like it
 12 reflects a percentage difference between the current
 13 and the new number.**
 14 Q. So in other words, if we look on that for district
 15 1, if we simply subtract 51.15 from 51.22, we
 16 get .07, correct?
 17 **A. That's correct.**
 18 Q. All right. Shifting over to the column that's
 19 titled Senate, we have essentially the same process
 20 going on; is that correct?
 21 **A. The same process for that senate seat, which
 22 reflects the three assembly districts to the left.**
 23 Q. And then if we go down to the bottom of the page,
 24 there are two boxes, one that's titled Current Map
 25 and one that's titled New Map. Do you see those?

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1 **A. I do.**
 2 Q. And if we look under Current Map, do you see that
 3 there are a few different designations. One says
 4 Safe GOP, one says Lean GOP, and then one says Total
 5 GOP Seats (safe plus lean). Do you see that?
 6 **A. I do.**
 7 Q. Is it your understanding that that is measuring
 8 the -- well, there are percentages next to each of
 9 those designations; is that correct?
 10 **A. That's correct.**
 11 Q. Then it's identifying the number of seats that fall
 12 within each of those categories in the assembly and
 13 senate?
 14 **A. It's my understanding that it's a -- a sum total of
 15 the seats that meet those percentages indicated to
 16 the -- on the table.**
 17 Q. All right. And then just below that the word Swing
 18 appears, and it says 48-52 percent. Do you see
 19 that?
 20 **A. I do.**
 21 Q. And you recall earlier we were discussing the -- the
 22 term "swing"?
 23 **A. Yes.**
 24 Q. And is this the -- is this an area where you had
 25 seen the term swing used before in the redistricting

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1 process?

2 **A. It is.**

3 Q. What does that -- what does the word swing indicate

4 there?

5 **A. I believe the word swing here is indicating any seat**

6 **that fell in between those two percentages, 48 and**

7 **52 percent.**

8 Q. Do you know why it's called swing?

9 **A. I assume because it indicates a number that in some**

10 **cases would result in a democrat winning and some in**

11 **a republican winning based on the percentage number**

12 **there.**

13 Q. And then just below Swing it says Lean DEM, Safe

14 DEM, and Total DEM. Do you see that?

15 **A. I do.**

16 Q. And then again there are percentages next to those

17 designations?

18 **A. Yes.**

19 Q. And then there are numbers of seats in the assembly

20 and senate that are associated with those

21 categories, correct?

22 **A. That's correct.**

23 Q. And if we go over to the box that's next to it that

24 says New Map, do you see that?

25 **A. I do.**

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1 Q. We have equivalent information that would be

2 generated by an application of the partisanship

3 proxy for new map, correct?

4 **A. That would use the same metric that's described in**

5 **this table and total up those percentages in terms**

6 **of where they fell in those percentage categories.**

7 Q. And that -- that would -- New Map, that would refer

8 to the Milwaukee Gaddie 4_16_11_V1_B?

9 **A. That's my understanding. It would reflect the map**

10 **on this page, the columns that are labeled New at**

11 **the top of the page.**

12 Q. Did you view printouts or documents like Gaddie

13 Exhibit 39 with Mr. Foltz during the redistricting

14 process?

15 **A. Yes.**

16 Q. All right. And back to the computer screen now, the

17 Plan Comparisons that -- that we looked at that was

18 on your computer, is that one of the documents that

19 you would have reviewed with Mr. Foltz?

20 **A. Which -- which plan are you talking, the Joe**

21 **Assertive?**

22 Q. Yes, just the spreadsheet itself is labeled Plan

23 Comparisons, and it has Joe Assertive at the top.

24 So the file name is Plan Comparisons, and then Joe

25 Assertive is the caption before the -- above the

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1 columns.

2 **A. Yes. I believe so.**

3 Q. You can -- you can close out of that spreadsheet

4 then.

5 I'd like you to take a look then, you'll see

6 there is a -- a spreadsheet that says WRK32864

7 Responsive Spreadsheets File Data Report?

8 **A. That one?**

9 MR. ST. JOHN: I think he -- the Responsive

10 Spreadsheets File Data Report is the last file right

11 there.

12 THE WITNESS: Oh, okay. Okay. The file detail

13 report?

14 Q. File detail report. Yes. Exactly.

15 **A. All right.**

16 Q. There -- if you look in rows 5 through 8 in column A

17 for file name, you'll see that for 5, for example,

18 it says Joe Base Map Numbers?

19 **A. Uh-huh.**

20 Q. And then 7, it says Joe Base Map. Do you see those?

21 **A. Yes.**

22 Q. And if you scroll over to columns H and I, you'll

23 see that author is identified as Tad, they were last

24 saved by Tad.

25 **A. Yes.**

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1 Q. Do you see those? What does the file named Joe Base

2 Map Numbers refer to?

3 **A. I'm not certain.**

4 Q. All right. Did you create those spreadsheets?

5 **A. I don't believe so, no.**

6 Q. Do you know why they would have been identified in

7 this spreadsheet as you as the author?

8 **A. Joe's workstation was logged in under my name so any**

9 **documents he created I suspect would have my name on**

10 **them.**

11 Q. I see. I'd like you to scroll down to rows 17

12 through 19, and if you'll look in row 17, for

13 example, it's a document that's titled -- has a file

14 name Summaries.xlsx. Do you see that?

15 **A. Yes.**

16 Q. And if you scroll all the way across to the right,

17 you'll see again that the author is Tad, identified

18 as Tad, last saved by Tad. And if you go down to

19 row 19, and if you scroll all the way across, you'll

20 see that the author is identified as jhandric?

21 **A. Yes.**

22 Q. And then last saved by Tad. Do you see that?

23 **A. Yes.**

24 Q. All right. Do you know why sometimes jhandrick

25 would be listed as author and sometimes Tad would be

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1 listed as author?
 2 **A. I -- I don't know.**
 3 Q. I'd like you to -- to actually open up the
 4 Summary.xlsx spreadsheet.
 5 MR. KEENAN: This is summary singular.
 6 MR. POLAND: This is the summary singular one,
 7 yeah.
 8 THE WITNESS: This would be in the responsive
 9 spreadsheets folder?
 10 BY MR. POLAND:
 11 Q. Yes, it would.
 12 **A. For 32864?**
 13 Q. For 32 -- yes. Correct.
 14 **A. And summary singular?**
 15 Q. Summary singular. Uh-huh.
 16 **A. Okay.**
 17 Q. Are you there?
 18 **A. I'm there.**
 19 Q. All right. And take a minute to look at the -- to
 20 look at the spreadsheet because I'm going to have a
 21 couple of questions for you about it.
 22 **A. Okay.**
 23 Q. Does the copy that you have -- the document that you
 24 have open, does it stay "Statistical pickup" at the
 25 top in the upper left?

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1 **A. Yes.**
 2 Q. Okay. I wanted to make sure we're on the same one.
 3 **A. Yes, I --**
 4 Q. Okay. Have you seen this document before?
 5 **A. I believe so, yes.**
 6 Q. Was this a document that you created?
 7 **A. I don't believe so, no.**
 8 Q. Do you know who did create it?
 9 **A. I think this was created by Joe Handrick.**
 10 Q. So it says "Statistical pickup. Currently held DEM
 11 seats that move to 55 percent or better."
 12 Do you see that?
 13 **A. Yes.**
 14 Q. Do you know what that is referring to?
 15 **A. I believe that is referring to seats that under**
 16 **the -- under the at that time current map were held**
 17 **by a democratic legislator, that under the new map,**
 18 **and I'm not sure which map is being referred to by**
 19 **new map, would -- the republican metric -- the**
 20 **metric measuring percentage of republican vote would**
 21 **be 55 percent or better.**
 22 Q. That's what I was going -- you anticipated one of my
 23 questions. I was going to ask you if there was a
 24 way of determining from this spreadsheet which map
 25 this relates to.

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1 **A. I do -- I do not know which one.**
 2 Q. All right. And so if we look just below that then,
 3 it says "GOP seats strengthened a lot," and then
 4 just below that it says, "Currently held GOP seats
 5 that start at 55 percent or below that improve by at
 6 least one percent."
 7 Do you see that? This is row 13 and row 14.
 8 **A. Yeah. My eyes aren't quite that good so I'm looking**
 9 **close, but I see that.**
 10 Q. Mine aren't either. You do see that?
 11 **A. I do.**
 12 MR. ST. JOHN: Let's enlarge this a little so
 13 you can see better.
 14 THE WITNESS: That helps. Yeah. Okay.
 15 BY MR. POLAND:
 16 Q. You see in rows 13 and 14 where it says, "GOP seats
 17 strengthened a lot. Currently held GOP seats that
 18 start at 55 percent or below that improve by at
 19 least one percent"?
 20 **A. Yes.**
 21 Q. What does that indicate to you?
 22 **A. My recollection is that that indicates the metric**
 23 **that we were using on election results that compared**
 24 **the at that time current assembly seats and the**
 25 **percentage that increased into the whatever new map**

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1 **this is referring to.**
 2 Q. And then if we go down from there, if we look at
 3 rows 35 and 36, we see, "GOP seats strengthened a
 4 little." States, "Currently held GOP seats that
 5 start at 55 percent or below that improve less than
 6 one percent." Do you see that?
 7 **A. I do. Yes.**
 8 Q. And what does that indicate?
 9 **A. I believe that indicates the same thing as I**
 10 **responded to above with the corresponding percentage**
 11 **here of less than one percent.**
 12 Q. All right. Below that it says, "GOP seats weakened
 13 a little. Currently held GOP seats that start at 55
 14 percent or below that decline."
 15 Do you see that?
 16 **A. I do.**
 17 Q. And what does that indicate?
 18 **A. That is a similar measurement using that metric of**
 19 **elections that we were looking at and whatever**
 20 **proposed map this is referring to, what the**
 21 **percentage would be on that.**
 22 Q. And then we have below that row 64 and 65, it says,
 23 "GOP seats likely lost. Currently held GOP seats
 24 that drop below 45 percent."
 25 Do you see that?

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1 **A. I do.**
 2 Q. And then -- and what does that indicate?
 3 **A. I believe that also indicates a measurement of the**
 4 **at time current assembly seats that under the map**
 5 **that this spreadsheet is referring to that same**
 6 **metric would fall below 45 percent.**
 7 Q. All right. And then below that rows 74 and 75 it
 8 says, "GOP donors to the team. Incumbents with
 9 numbers above 55 percent that donate to the team."
 10 Do you see that?
 11 **A. I do.**
 12 Q. Do you know what that indicates?
 13 **A. I'm -- I'm not entirely certain. This was Joe's**
 14 **terminology. I believe what it reflects is seats**
 15 **that under the at the time current map were above 55**
 16 **percent that under whichever map this is referring**
 17 **to are less than the number that they were at on**
 18 **the at the time current map. I'm not sure if I said**
 19 **that clearly.**
 20 Q. Yeah, I'm not sure I understand that.
 21 **A. I believe what it is is seats that were currently,**
 22 **under the metric we were using to measure, above 55**
 23 **percent by that measurement, that under this**
 24 **proposed map were at a number lower than what the**
 25 **current seat started at.**

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1 Q. Do you know what the -- the wording "donate to the
 2 team" means?
 3 **A. I'm -- I'm not sure exactly what that means, no.**
 4 Q. All right. I'm going to ask you to take a look
 5 Gaddie Exhibit 43 which is in front of you. Do you
 6 have that in front of you?
 7 **A. I do.**
 8 Q. Have you seen Exhibit 43 before?
 9 **A. I believe so. Yes.**
 10 Q. At the top of Exhibit 43 do you see it says Team
 11 Map?
 12 **A. Yes.**
 13 Q. Do you know what team map indicates?
 14 **A. I believe -- I believe that what this refers to is**
 15 **the map that was created after the meetings with**
 16 **assembly leadership -- or I'm sorry, legislative**
 17 **leadership where they made their decision, and then**
 18 **that resulted in having to create a new map that**
 19 **reflected to the best of our ability the decisions**
 20 **that they made and created a new map.**
 21 Q. So the team map would not be the final map; is that
 22 correct?
 23 **A. I think it may be, but I'm not 100 percent sure.**
 24 Q. All right. Back to the -- back to the spreadsheet
 25 on the screen then, the summary spreadsheet, rows 89

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1 and 90 state, "DEMS weakened. Currently held DEM
 2 seats" then in parens "45 percent or better," close
 3 paren, "that become more GOP."
 4 Do you see that?
 5 **A. I do.**
 6 Q. And what is -- what does that indicate?
 7 **A. It's my understanding that that measures seats under**
 8 **the at the time current map that were held by**
 9 **democratic legislators that would have been equal to**
 10 **or greater than 45 percent by the metric that the**
 11 **number increased above what -- what the old seat**
 12 **was.**
 13 Q. And by the numbers, you mean the -- the
 14 republican -- the partisan score in that district
 15 increases?
 16 **A. The -- the metric that we've been talking about**
 17 **which measures top-of-the-ticket races from '04**
 18 **to '10.**
 19 Q. All right. I'd like you to take a look now at
 20 the -- there's another spreadsheet on there that was
 21 labeled Summaries.
 22 **A. Okay. Okay.**
 23 Q. And actually I see that there are -- there are
 24 actually two. There's one in 17 and 18. Which one
 25 did you open? Do you know?

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1 **A. It starts with Racine/Kenosha at the top left. Does**
 2 **that help?**
 3 Q. Yeah. Hang on a second.
 4 MR. KEENAN: There's two on the Lanterman log,
 5 but there's only one in the folder, at least the
 6 folder I see.
 7 MR. POLAND: Well, right. Okay. Sorry. Let
 8 me get that one open then. Yes. You're right,
 9 Brian.
 10 BY MR. POLAND:
 11 Q. Have you seen -- and you have the Summaries
 12 worksheet open then?
 13 **A. I do.**
 14 Q. Is this a document that you've seen before?
 15 **A. I believe so, yes.**
 16 Q. All right. Do you know when you first saw this
 17 document?
 18 **A. I -- I don't know. It probably would have been**
 19 **sometime in that May/June/July time frame.**
 20 Q. Of 2011?
 21 **A. Of 2011.**
 22 Q. Okay. I'd like you to take a look at in that
 23 Racine/Kenosha portion of the -- of the spreadsheet
 24 from approximately rows 1 to 19 and then from
 25 columns A over to L, do you see that in column A

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1 there's some numbers 61, 62, 63, 64, 65, 66?
 2 **A. Yes.**
 3 Q. And those are assembly districts, correct?
 4 **A. That's my understanding.**
 5 Q. And then below that there's an SD 21 and SD 22. Do
 6 you see those?
 7 **A. Yes.**
 8 Q. And those indicate senate districts, correct?
 9 **A. That's my understanding.**
 10 Q. There is then in column B it says Current Law. Do
 11 you see that?
 12 **A. Yes.**
 13 Q. And there are some numbers that correspond to each
 14 of the assembly districts and the senate districts.
 15 Do you see those numbers?
 16 **A. I do.**
 17 Q. Do you know what those numbers are?
 18 **A. I'm not -- I'm not certain. I -- I think they**
 19 **reflect the electoral -- the metric that we've been**
 20 **talking about which is all '04-'10**
 21 **top-of-the-ticket -- or statewide elections I should**
 22 **say.**
 23 Q. And that reflects the republican share in each of
 24 those districts, correct?
 25 **A. That's my -- that's my belief.**

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1 Q. If we look at column D, do you see it says Base Map?
 2 **A. Yes.**
 3 Q. And then there are some numbers below that as well,
 4 correct?
 5 **A. Yes.**
 6 Q. And same thing, that's the metric we've been
 7 discussing as well?
 8 **A. I believe that's the same metric, yes.**
 9 Q. All right. Then if we look over at column F you see
 10 it says Assertive Map?
 11 **A. Yes.**
 12 Q. And again we've got some numbers below that, and
 13 those reflect the same metric we've been discussing?
 14 **A. I believe so.**
 15 Q. And then finally if we look over at column I, we see
 16 it says Aggressive Map, correct?
 17 **A. Correct.**
 18 Q. And then we've got numbers in column I that
 19 correspond to each of the assembly districts and
 20 senate districts listed, correct?
 21 **A. Correct.**
 22 Q. Again same metric we've been discussing?
 23 **A. I believe so, yes.**
 24 Q. Is -- is there a way to tell which -- when we look
 25 at Base Map, Assertive Map, and Aggressive Map, is

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1 there a way to tell from the spreadsheet which
 2 specific plans those -- or maps those refer to?
 3 **A. I'm -- I'm not aware which maps they refer to.**
 4 Q. We've seen some named Joe Assertive and some Tad
 5 Assertive, so is there a way to distinguish between
 6 those two as you look at this particular
 7 spreadsheet?
 8 **A. No, I don't believe I created this document so I'm**
 9 **not entirely certain what the -- what those maps are**
 10 **referring to.**
 11 Q. Do you recall discussing this particular spreadsheet
 12 with Mr. Handrick in two thousand -- spring of 2011?
 13 **A. I -- I had seen this -- this spreadsheet or some**
 14 **portions of it. If I recall it was a rather**
 15 **sprawling spreadsheet both vertically and**
 16 **horizontally so I may have seen portions of it, but**
 17 **not necessarily all of it.**
 18 Q. And I think if you were to scroll all the way over
 19 to the right, I think your description of sprawling
 20 is accurate. We're not going to go all the way over
 21 that far to the right. But I would like you to take
 22 a look at columns AG through AR.
 23 **A. Okay.**
 24 Q. Do you see in row 1 column AG it says Tale of the
 25 Tape?

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1 **A. Yes.**
 2 Q. Do you know what that refers to?
 3 **A. I don't exactly.**
 4 Q. Did you ever hear Mr. Handrick use that phrase, tale
 5 of the tape?
 6 **A. I don't recall hearing him say that.**
 7 Q. Do you see that there are -- there is in row 3 it
 8 says Assembly, and then there's a column that says
 9 Current Map, a column that says Team Map, and again
 10 we see the same terms Strong GOP, Lean GOP, Total
 11 GOP, Swing, Lean DEM, Strong DEM, Total DEM that we
 12 saw in the spreadsheet on Gaddie Exhibit 39,
 13 correct?
 14 **A. Yes.**
 15 Q. There's a reference to both Current Map and Team
 16 Map. Do you see that?
 17 **A. Yes.**
 18 Q. And do you know whether that particular team map is
 19 the same as the team map that was in Gaddie Exhibit
 20 43 that we looked at?
 21 **A. I -- I suspect it is. I can't say with certainty.**
 22 Q. Okay. Then if we -- let's skip over for a minute
 23 the -- the language that's in AK. If we skip over
 24 to column AL, do you see it says Joe Assertive, and
 25 then under column AN it says Tad Aggressive, under

<p style="text-align: right;">Page 118</p> <p>1 column AP Adam Aggressive, and then underneath each</p> <p>2 of those are numbers. Do you see those?</p> <p>3 A. Yes.</p> <p>4 Q. And are those -- are those seats that would result</p> <p>5 under the -- the metric that's been used for each of</p> <p>6 those different proposed maps?</p> <p>7 A. I -- I believe they reflect the number of seats that</p> <p>8 would fall into those statistical categories</p> <p>9 described in column AG.</p> <p>10 Q. Then there's some language in the center that says,</p> <p>11 "Current map: 49 seats are 50 percent or better.</p> <p>12 Team map: 59 assembly seats are 50 percent or</p> <p>13 better." Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Do you recall that -- that comparison being made?</p> <p>16 A. I don't recall this per -- particular comparison.</p> <p>17 Q. And one thing I actually did forget to do. As we</p> <p>18 looked at -- we looked at the documents that you had</p> <p>19 produced today that you brought along on the -- on</p> <p>20 the flash drive that you had, I did want to mark one</p> <p>21 of those that I had printed.</p> <p>22 (Exhibit No. 89 marked for identification.)</p> <p>23 Q. Mr. Ottman, I'm handing you a copy of a document</p> <p>24 that's been marked as Exhibit No. 89. And I will</p> <p>25 represent to you that this is a printout of a</p>	<p style="text-align: right;">Page 120</p> <p>1 A. I believe so. Yes.</p> <p>2 Q. All right. And we saw some language like this, the</p> <p>3 GOP seats strengthened a lot, GOP seats strengthened</p> <p>4 a little when we looked at the Summary.xls worksheet</p> <p>5 a few minutes ago, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Again, there is a -- there is language about halfway</p> <p>8 down the page that says, "GOP donors to the team."</p> <p>9 It says, "Incumbents with numbers above 55</p> <p>10 percent" -- it says "then," but I think it's</p> <p>11 supposed to be that "donate to the team." Do you</p> <p>12 see that?</p> <p>13 A. Yes.</p> <p>14 Q. All right. And what did you mean there when you</p> <p>15 used the term "donate to the team"?</p> <p>16 A. I believe the phrase referred to current incumbents</p> <p>17 who held seats that under the metric we were using,</p> <p>18 which was those top-of-the-ticket races, under the</p> <p>19 old map had numbers above 55 percent republican</p> <p>20 share of the vote, and that under the new map had</p> <p>21 republican numbers that were less than that -- those</p> <p>22 existing district numbers.</p> <p>23 Q. And there are some names that are identified under</p> <p>24 there, Cowles, Kedzie, Grothman, Lazich, and</p> <p>25 Zipperer, correct?</p>
<p style="text-align: right;">Page 119</p> <p>1 document on the flash drive that you brought, and</p> <p>2 this is a file, a Word document that has the file</p> <p>3 name GOP Seats Senate.docx. And it indicates that</p> <p>4 it was -- at least the directory indicates it was</p> <p>5 modified on June 9, 2011.</p> <p>6 Do you have a copy of that document in front of</p> <p>7 you?</p> <p>8 A. I do.</p> <p>9 Q. And is this a document that you've seen before?</p> <p>10 A. Yes.</p> <p>11 Q. Is this a document that you authored?</p> <p>12 A. I believe so. Yes.</p> <p>13 Q. All right. Do you recall when you authored this</p> <p>14 document?</p> <p>15 A. I don't recall specifically.</p> <p>16 Q. All right. Was it as part of the redistricting</p> <p>17 process in 2011?</p> <p>18 A. To my recollection, yes.</p> <p>19 Q. Do you know which particular plan Exhibit 89</p> <p>20 referred to?</p> <p>21 A. I -- I believe this was the -- the plan that was</p> <p>22 introduced, or at least a version of it that was</p> <p>23 close in -- in time to what was introduced.</p> <p>24 Q. All right. So close to the final plan that was</p> <p>25 actually introduced as Act 43?</p>	<p style="text-align: right;">Page 121</p> <p>1 A. That's correct.</p> <p>2 Q. And there are some numbers in parentheses next to</p> <p>3 them?</p> <p>4 A. Correct.</p> <p>5 Q. Do you know what those numbers in parentheses</p> <p>6 signify?</p> <p>7 A. As I recall those numbers reflect the republican --</p> <p>8 the reduction in republican percentage of the</p> <p>9 proposed map compared to the current seats held by</p> <p>10 those legislators.</p> <p>11 Q. Okay. Did -- did anybody ask you to prepare Exhibit</p> <p>12 89?</p> <p>13 A. I don't know. Joe Handrick or the legal team may</p> <p>14 have asked me to prepare it.</p> <p>15 Q. Do you recall discussing Exhibit 89 with anybody at</p> <p>16 the time that it was created?</p> <p>17 A. We may have discussed it with legislative</p> <p>18 leadership. I believe we did discuss it with</p> <p>19 legislative leadership.</p> <p>20 Q. Do you recall whether based on discussions with</p> <p>21 legislative leadership any changes were made to</p> <p>22 the -- the plan that was current at that time?</p> <p>23 A. I'm not certain what you mean by "current."</p> <p>24 Q. Reflected in this particular plan.</p> <p>25 A. I don't recall any changes being made as a result of</p>

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1 **this.**
 2 Q. All right. I want to go back to the spreadsheet
 3 that we were just looking at then. This is the
 4 Summaries, so the plural. I just have one more
 5 aspect of it that I wanted to ask you about. Are
 6 you there?
 7 **A. Yes.**
 8 Q. Okay. If you scroll over to column AU, and looking
 9 at AU through BB, do you see in row 2 it says Good
 10 Outcomes, and underneath that it says "Statistical
 11 pickup," and there's another column that says "55
 12 percent and below GOP inc strengthened," next to
 13 that, "45 percent and over DEM incumbent weakened,"
 14 and then below that "GOP donors."
 15 Do you see that?
 16 **A. Yes.**
 17 Q. Do you know who created those particular names for
 18 those columns?
 19 **A. I believe Joe Handrick created them.**
 20 Q. Do you know why Mr. Handrick would have considered
 21 those to be good outcomes?
 22 **A. I do not.**
 23 Q. And then if we look to the right of that, beginning
 24 in column BF and running through BL, you see it says
 25 Bad Outcomes, and then "45 percent and above DEM

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1 incumbent strengthened. 55 percent and below GOP
 2 inc weakened. Statistical loss. GOP non-donors."
 3 Do you see that?
 4 **A. I do.**
 5 Q. And do you know why Mr. Handrick -- or do you know
 6 who created those?
 7 **A. I believe they were created by Joe Handrick.**
 8 Q. Do you know why Mr. Handrick considered those to be
 9 bad outcomes?
 10 **A. I do not.**
 11 Q. And again, we see the term GOP donors used under
 12 good outcomes and then GOP non-donors used under bad
 13 outcomes. Does that help to refresh your memory at
 14 all by what was meant by donors?
 15 **A. The -- the only recollection I have is using the**
 16 **statistical metric we've been talking about, which**
 17 **is '04 through '10 statewide elections, incumbents**
 18 **whose percentage under the new map would be less**
 19 **than it was under the old map.**
 20 Q. And then looking down now at row 18, and this is in
 21 between columns AU and BF, it looks like there are
 22 some definitions there. The first says,
 23 "Statistical pickup equals seat that is currently
 24 held by DEM that goes to 55 percent or more." And
 25 it says in parens, "Example: If number 13 Cullen

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1 goes from 44 percent to 58 percent," close paren.
 2 Do you see that?
 3 **A. I do.**
 4 Q. Do you know -- do you know why that's called a
 5 statistical pickup?
 6 **A. I'm -- I'm not certain why that naming convention**
 7 **was chosed -- was chose.**
 8 Q. Okay. Below that it says "GOP incumbent
 9 strengthened equals positive movement on composite."
 10 Do you see that?
 11 **A. I do.**
 12 Q. Do you know what -- what that indicates or means?
 13 **A. I believe it means any -- any district held by a GOP**
 14 **incumbent that using -- used the same metric under**
 15 **the old map or the current at the time map that**
 16 **under the new map that same number would be**
 17 **increased.**
 18 Q. Okay. And then below that it says, "DEM incumbent
 19 weakened equals positive GOP movement on composite."
 20 And what does that indicate?
 21 **A. I believe it's a similar measurement of any DEM**
 22 **incumbent-held seat that under the at the time**
 23 **current map would have a greater GOP percentage**
 24 **using the same measurement under the new map.**
 25 Q. And then below that it says, "GOP donors equals

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1 those who are helping the team." Again we have this
 2 reference to donors and the team. Do you know what
 3 that means there?
 4 **A. I believe the -- the reference to GOP donors means**
 5 **what we discussed earlier in terms of seats held by**
 6 **current GOP incumbents whose percentage measurement**
 7 **that they were using under the new map was less than**
 8 **it was under the at the time current map.**
 9 Q. Do you know why Mr. Handrick or whoever created this
 10 particular spreadsheet identified them as being
 11 people who are, quote unquote, helping the team?
 12 **A. I'm not certain why he chose that phrasing.**
 13 Q. And then below that we see a row that says, "DEM
 14 incumbent strengthened equals DEM over 45 percent
 15 who has negative movement on composite."
 16 Do you see that language?
 17 **A. I do.**
 18 Q. And what does that indicate?
 19 **A. I'm not entirely certain. I believe it reflects a**
 20 **seat currently held by a DEM incumbent with a**
 21 **greater than 45 percent republican number based on**
 22 **the metric we've been talking about, all '04 through**
 23 **'10 elections, whose number using the same metric**
 24 **under the new map drops from where it was under the**
 25 **current map.**

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1 Q. Below that we have, "GOP incumbent weakened equals
2 those 55 percent and below who have negative
3 movement on composite."
4 Do you see that?
5 **A. I do.**
6 Q. And what does that indicate?
7 **A. I believe it indicates any GOP incumbent who held a
8 seat using that metric of all '04-'10 statewide
9 elections that measured 55 percent or more on the
10 current map that under the new map would have a
11 number below what their current seat was.**
12 Q. All right. And then, "Statistical loss equals seat
13 that is currently held by GOP that goes to 45
14 percent or below." Then in parens, "Example: If
15 number 47 goes all Dane County, we lose the number,
16 but not the incumbent," close paren.
17 Do you see that?
18 **A. I do.**
19 Q. Do you know what that means?
20 **A. I'm not certain entirely. I believe it has to do
21 with districts whose numbers switched so that the --
22 the current -- current seat, while it may remain the
23 name or similar, has a new number assigned to it.**
24 Q. I understand, but the incumbent stays the same; is
25 that correct?

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1 **A. Cor -- I believe so, yes.**
2 Q. And then finally it says, "GOP non-donors equals
3 those over 55 percent who do not donate points."
4 Do you see that?
5 **A. I do.**
6 Q. Do you know what that means?
7 **A. I believe that refers to any GOP seat that under the
8 at the time current map, the metric of all '04-'10
9 statewide elections was at forty -- I'm sorry, 55
10 percent or above and under the new map remained at
11 fif -- I'm not sure if it means remained at 55
12 percent or above or just remains at or above the
13 number that was on the current map.**
14 Q. Do you know why the language "donate points" is used
15 there?
16 **A. I do not.**
17 Q. All right. Do you know what points is supposed to
18 indicate?
19 **A. I don't.**
20 Q. Do you have any reason to -- to doubt that these --
21 the spreadsheets that are on this DVD-ROM that
22 Mr. Lanterman identified as having come from your
23 comput -- or your hard disk drives are actually from
24 your hard disk drives?
25 MR. ST. JOHN: Object. Vague as to what "your

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1 hard disk drive" means.
2 MR. POLAND: Fair enough. Fair enough. No,
3 that's fair enough.
4 BY MR. POLAND:
5 Q. Do you have any reason to doubt that the
6 spreadsheets that Mr. Lanterman has identified as
7 having come from the workstation that was issued to
8 you by the LTSB, that's WRK32587, were actually
9 spreadsheets that were on that system?
10 **A. In terms of that particular workstation, nothing
11 that I've seen that we've gone through here today
12 strikes me as unfamiliar in that I don't -- in that
13 I believe it was on that computer that was assigned
14 to me that I used.**
15 Q. Okay.
16 MR. POLAND: I don't have any further
17 questions.
18 EXAMINATION
19 BY MR. KEENAN:
20 Q. I was just going to stick on this Summaries document
21 that you were talking about.
22 **A. Okay.**
23 Q. Is it your testimony that this document was created
24 by Mr. Handrick?
25 **A. That's my belief. Yes.**

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1 Q. And Mr. Poland has been asking you some questions
2 about particular terms that are used in this summary
3 spreadsheet. You weren't the one who picked those
4 terms and defined what they meant, were you?
5 **A. That's correct. I did not.**
6 Q. Okay. Did you at the time that this document was
7 created, did you discuss what these terms meant with
8 Mr. Handrick?
9 **A. There was some discussion in general about the
10 numbers and the categories that were -- that were
11 broken down. I don't recall if there was a
12 discussion about how -- particularly how they were
13 termed.**
14 Q. Okay. For example, like a statistical pickup or
15 statistical loss, do you actually have an
16 understanding of what Mr. Handrick meant by that --
17 those terms?
18 **A. Only in general terms.**
19 Q. Okay.
20 MR. KEENAN: That's all I have.
21 MR. POLAND: Did you have anything, Kevin?
22 MR. ST. JOHN: No.
23 EXAMINATION
24 BY MR. POLAND:
25 Q. Just a quick follow-up on that. What was your

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1 general understanding or your understanding in
 2 general terms of the use of the phrase -- phrases
 3 statistical pickup and statistical loss?
 4 **A. My general understanding is it reflected a -- either**
 5 **an increase in the measurement of the partisan**
 6 **metric, the all '04-'10 statewide elections that we**
 7 **were using, or a decrease in those between --**
 8 **between some of those categories.**
 9 Q. And so a statistical pickup would be an increase for
 10 GOP, statistical loss would be a decrease for the
 11 GOP?
 12 MR. ST. JOHN: Object to form.
 13 THE WITNESS: I believe it -- I don't know that
 14 I would characterize it as a pickup, but perhaps a
 15 seat that was in one category as described on this
 16 sheet that moved either up or down a category.
 17 MR. POLAND: I understand. Okay. I don't have
 18 any further questions.
 19 MR. KEENAN: None for me.
 20 MR. ST. JOHN: None.
 21 THE VIDEOGRAPHER: This ends the video
 22 deposition of Tad M. Ottman on March 31, 2016; the
 23 time 5:33 p.m.
 24 (Deposition ended at 5:33 p.m.)
 25

1 STATE OF WISCONSIN }
 2 } SS:
 3 COUNTY OF WALWORTH }
 4
 5 I, LAURA L. KOLNIK, Registered Professional
 6 Reporter and Notary Public in and for the State of
 7 Wisconsin, do hereby certify that the foregoing
 8 proceedings were taken before me on the 31st day of
 9 March, 2016.
 10
 11 That the appearances were as noted initially.
 12
 13 That before said witness testified, he was first
 14 duly sworn by me to testify the truth, the whole truth
 15 and nothing but the truth relative to said cause.
 16
 17 I further certify that I am neither counsel for,
 18 related to, nor employed by any of the parties to the
 19 action in which this proceeding was taken; and, further,
 20 that I am not a relative or employee of any attorney or
 21 counsel employed by the parties hereto, nor financially
 22 interested, or otherwise, in the outcome of this action.
 23
 24 That the foregoing proceedings are true and correct
 25 as reflected by my original machine shorthand notes taken
 at said time and place.
 Dated this ____ day of _____, ____

 LAURA L. KOLNIK, RPR/RMR/CRR
 Notary Public
 State of Wisconsin
 My commission expires
 February 23, 2018

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