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

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**WILLIAM WHITFORD, et al.,  
Plaintiffs,**

**vs. Case No.  
15-CV-421-bbc**

**GERALD NICHOL, et al.,  
Defendants.**

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**Deposition of JEFF YLVISAKER  
Friday, March 11, 2016  
1:34 p.m.  
at  
STATE OF WISCONSIN DEPARTMENT OF JUSTICE  
17 West Main Street  
Madison, Wisconsin**

**Reported by Kaila M. Macek, RMR**

**William Whitford v. Gerald Nichol  
Jeff Ylvisaker**

**March 11, 2016**

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1 Deposition of JEFF YLVISAKER, a witness in the  
2 above-entitled action, taken at the instance of the  
3 Plaintiffs, pursuant to Chapter 804 of the Wisconsin  
4 Statutes, before Kaila M. Macek, Registered Merit  
5 Reporter and Notary Public, State of Wisconsin, at  
6 STATE OF WISCONSIN DEPARTMENT OF JUSTICE, 17 West  
7 Main Street, Madison, Wisconsin, on the 11th day of  
8 March, 2016, commencing at 1:34 p.m. and concluding  
9 at 3:29 p.m.  
10  
11 **A P P E A R A N C E S:**  
12 **LAW OFFICE OF PETER EARLE, LLC**  
13 By: Mr. Peter G. Earle  
14 839 North Jefferson Street, Suite 300  
15 Milwaukee, Wisconsin 53202-3744  
16 Appeared on behalf of the Plaintiffs  
  
17 **RATHJE WOODWARD, LLC**  
18 By: Mr. Douglas M. Poland  
19 10 East Doty Street, Suite 800  
20 Madison, Wisconsin 53703  
21 Appeared on behalf of the Plaintiffs  
  
22 **STATE OF WISCONSIN DEPARTMENT OF JUSTICE**  
23 By: Mr. Brian P. Keenan  
24 and Mr. Gabe Johnson-Karp  
25 17 West Main Street  
Madison, Wisconsin 53707-7857  
Appeared on behalf of the Defendants  
  
26 **BELL GIFTOS ST. JOHN, LLC**  
27 By: Mr. Kevin M. St. John  
28 5325 Wall Street, Suite 2200  
29 Madison, Wisconsin 53718-7980  
30 Appeared on behalf of the Defendants

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1 **E X A M I N A T I O N**  
2 **PAGE**  
3 BY MR. EARLE 4  
4 BY MR. KEENAN 58  
5  
6 **E X H I B I T S**  
7 **NUMBER PAGE IDENTIFIED**  
8 Exh. 46 Subpoena 5  
9 Exh. 47 4/29/2013 Transcript 6  
10 Exh. 48 E-mail Dated 4/10/2012 8  
11 Exh. 49 Spreadsheet 11  
12 Exh. 50 Configuration Item Dated 2/18/2016 21  
13 Exh. 51 Privilege Log 35  
14 Exh. 52 Subpoena with Work Orders and 36  
15 Configuration Documents  
16 Exh. 53 WRK32586 Responsive Spreadsheets 40  
17 File Detail Report.xlsx  
18 Exh. 54 WRK32586 External HD Responsive 50  
19 Spreadsheets File Detail Report.xlsx  
20 Exh. 55 WRK32587 Responsive Spreadsheets 54  
21 File Detail Report.xlsx  
22 (Original exhibits attached to original transcript;  
23 copies of exhibits attached to copies of transcript.)  
24  
25

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1 **TRANSCRIPT OF PROCEEDINGS**  
2 **JEFF YLVISAKER, called as a witness herein,**  
3 **having been first duly sworn on oath, was examined**  
4 **and testified as follows:**  
5 **E X A M I N A T I O N**  
6 **BY MR. EARLE:**  
7 **Q Okay. Welcome.**  
8 **A Thank you.**  
9 **Q Why don't you state your first name and spell your**  
10 **last name for the record.**  
11 **A My name is Jeff Ylvisaker, Y-L-V-I-S-A-K-E-R.**  
12 **Q Do you mind if I call you Jeff, or would you --**  
13 **A Jeff is just fine.**  
14 **Q Jeff is just fine. Good.**  
15 **Okay. Jeff, you're here as the designated**  
16 **deponent on behalf of the legislative technology**  
17 **services bureau.**  
18 **A Correct.**  
19 **Q Do you understand that?**  
20 **A Yes, I do.**  
21 **Q And showing you what's been marked as Exhibit No. 1**  
22 **Oh, wait.**  
23 **MR. EARLE: Doug, what number are we on**  
24 **after yesterday? Brian, do you remember?**  
25 **Go off the record for a moment.**

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1 (A discussion is held off the record.)  
2 (Exhibit No. 46 was marked for identification.)  
3 BY MR. EARLE:  
4 Q Showing you what's been marked as Exhibit No. 46  
5 sequentially numbered in this case. Have you seen  
6 this document before?  
7 A Yes, I have.  
8 Q Okay. And this is a subpoena, 30(b)(6) subpoena,  
9 with four topics; correct?  
10 A Yes.  
11 Q Did you have an opportunity to review those four  
12 topics?  
13 A Yes.  
14 Q And you're here prepared to testify on each of those  
15 four topics?  
16 A Yes.  
17 Q Okay. And it's my understanding you brought some  
18 documents with you today?  
19 A I did.  
20 Q Okay. And those are being Bates numbered as we're  
21 talking and will be delivered to the room shortly; is  
22 that correct?  
23 A That's my understanding. Yes.  
24 Q Okay. And we're going to just get started, then --  
25 A Okay.

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1 Q -- while we're waiting for those documents.  
 2 You were previously deposed in connection  
 3 with redistricting; correct?  
 4 **A That's true.**  
 5 Q And that deposition occurred on April 29th of 2013;  
 6 correct?  
 7 **A Yes.**  
 8 Q Did you review that deposition in preparation for  
 9 today?  
 10 **A I did.**  
 11 Q Okay. And that deposition had seven exhibits  
 12 attached to it; correct?  
 13 **A I can't -- I can't say that I'm positive how many --**  
 14 Q Okay. Well --  
 15 **A -- exhibits are attached to it.**  
 16 Q Showing you -- let's mark as number 47 the transcript  
 17 of that deposition.  
 18 (Exhibit No. 47 was marked for identification.)  
 19 BY MR. EARLE:  
 20 Q Showing you what's been marked Exhibit 47. Is this a  
 21 copy of the 30 (b)(6) videotaped deposition that you  
 22 participated in on April 29th, 2013?  
 23 **A It certainly appears to be.**  
 24 Q Okay. And drawing your attention to the -- page  
 25 No. 3. There's a list of exhibits on there. Does

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1 that refresh your recollection as to the number of  
 2 exhibits that were involved in your prior deposition?  
 3 **A Yes.**  
 4 Q There were seven exhibits; correct?  
 5 **A Correct.**  
 6 Q Okay. And those included Exhibit No. 1, being the  
 7 subpoena issued to the senate in -- during that time  
 8 in that case; correct?  
 9 **A I see that. Yes.**  
 10 Q And the -- Exhibit No. 2 is a chart that you had  
 11 prepared, a single-page chart; correct?  
 12 **A Yes.**  
 13 Q And Exhibit No. 3 was the subpoena issued to the  
 14 state assembly; correct?  
 15 **A Correct.**  
 16 Q Exhibit No. 4 was the subpoena issued to the LTSB;  
 17 correct?  
 18 **A Correct.**  
 19 Q And Exhibit No. 5 was a compendium of documents that  
 20 you had brought to that deposition; correct?  
 21 **A Correct.**  
 22 Q And that is the exhibit that contained some  
 23 configuration records and some service records;  
 24 correct?  
 25 **A Correct.**

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1 Q And then Exhibit No. 6 was a copy of a declaration  
 2 you had previously issued in the Baldus case;  
 3 correct?  
 4 **A Yes.**  
 5 Q And Exhibit No. 7 was an e-mail with some  
 6 attachments; correct?  
 7 **A Correct.**  
 8 Q Okay. Drawing your attention to Exhibit No. 7 --  
 9 (Exhibit No. 48 was marked for identification.)  
 10 BY MR. EARLE:  
 11 Q Showing you what's been marked as Exhibit 48 in this  
 12 case, which was Exhibit No. 7 in your prior  
 13 deposition.  
 14 **A I understand.**  
 15 Q Okay. Can you identify that document, please?  
 16 **A It will take me a few moments.**  
 17 Q Sure.  
 18 **A Could you ask me the question again?**  
 19 Q Could you identify the exhibit, please.  
 20 **A I can identify it as the Exhibit No. 7 from the**  
 21 **previous deposition from 4/29/2013.**  
 22 Q You would agree that Exhibit No. 7 is a preservation  
 23 notice issued to the legislature for documents  
 24 relevant to the redistricting litigation dated -- the  
 25 letter on my letterhead is April 10th, 2012, directed

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1 to Eric McLeod and Dan Kelly; is that correct?  
 2 **A Yes.**  
 3 MR. ST. JOHN: Objection. Form.  
 4 BY MR. EARLE:  
 5 Q Okay. And --  
 6 MR. EARLE: We can go off the record.  
 7 (A discussion is held off the record.)  
 8 MR. EARLE: Back on the record.  
 9 Off the record we had a brief discussion  
 10 about a stipulation that has been worked up between  
 11 the parties with regards to a -- an agreement  
 12 whereby Mark Lanterman will provide a declaration  
 13 of -- reflecting his forensic review of the images  
 14 of the various computers that were -- that were used  
 15 in the redirecting process.  
 16 There were three computers and nine hard  
 17 drives, one of which was not accessible for purposes  
 18 of imaging. And we'll get into the details of that  
 19 in a -- of those specific computers in the course of  
 20 this deposition.  
 21 But the parties have agreed in principle  
 22 to that material -- to the authenticity of those  
 23 documents while preserving all evidentiary  
 24 objections beyond authenticity to the defendants in  
 25 the case, and that Mr. Lanterman will be made

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1 available for deposition by the defendants if they  
 2 so choose. And in the event that it's necessary,  
 3 Mr. Lanterman will be made available after the  
 4 cutoff of discovery, and those details will be  
 5 spelled out in the stipulation.  
 6 Does that accurately reflect our agreement  
 7 at this point?  
 8 MR. KEENAN: Yes, I believe it does.  
 9 MR. EARLE: Okay. Good.  
 10 BY MR. EARLE:  
 11 Q With that in mind, okay.  
 12 And going back to the exhibit before you,  
 13 Exhibit 48, you had previously seen the preservation  
 14 letter?  
 15 **A Yes.**  
 16 Q And you understood that the preservation letter meant  
 17 that documents needed to be preserved for purposes of  
 18 this litigation -- of the prior litigation? I'm  
 19 sorry.  
 20 **A Yes.**  
 21 Q Now, as part of your prior deposition, you prepared a  
 22 chart; correct?  
 23 **A I believe that I did. I would -- what I did in**  
 24 **preparation for this was I read this whole thing, but**  
 25 **I did not find every exhibit and review those.**

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1 Q Okay.  
 2 **A So --**  
 3 Q Did you find Exhibit No. 2?  
 4 **A No. I didn't specifically look for it.**  
 5 **(Exhibit No. 49 was marked for identification.)**  
 6 BY MR. EARLE:  
 7 Q Showing you what's been marked as Exhibit No. 2 to  
 8 your prior deposition, and it's Exhibit No. 49 in  
 9 this deposition. Does that refresh your  
 10 recollection?  
 11 **A Yes, it does.**  
 12 Q Okay. And this is an exhibit that you prepared;  
 13 correct?  
 14 **A Certainly looks that way.**  
 15 Q Okay. And I just want to establish some basics as we  
 16 go forward in this deposition using this exhibit as a  
 17 mechanism to accomplish that objective.  
 18 There were three computers that were  
 19 assigned to the republicans in the decennial  
 20 redistricting beginning in -- near the end of 2010,  
 21 2011; correct?  
 22 MR. KEENAN: Object to the form.  
 23 **A The -- they were deployed in, according to this, in**  
 24 **the summer of 2010.**  
 25 Q Okay.

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1 **A Two of them in the summer of 2010 and the third one**  
 2 **in March of 2011.**  
 3 Q Now, you're pointing on Exhibit 49 as you -- as you  
 4 speak; correct?  
 5 **A Yes.**  
 6 Q And those were the three computers that were deployed  
 7 to the republicans in the legislature; correct?  
 8 **A Yes.**  
 9 Q And there were three computers that were deployed to  
 10 the democrats at approximately the same time;  
 11 correct?  
 12 **A No. Not three.**  
 13 Q Okay. How many computers were deployed to the  
 14 democrats?  
 15 **A One per caucus, so one to the senate democrats and**  
 16 **one to the assembly democrats.**  
 17 Q Okay. So two --  
 18 **A Around the same time, you know, that we had deployed**  
 19 **the initial two to the senate republicans and the**  
 20 **assembly republicans.**  
 21 Q Were there any differences in the computers that were  
 22 deployed to the different caucuses?  
 23 **A The first four computers that were deployed should**  
 24 **have been virtually identical; that is, the same hard**  
 25 **drives, the same computer itself, the same external**

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1 **hard drive, the same software, the same data. So**  
 2 **those first four, one to each caucus, should have**  
 3 **been basically identical.**  
 4 **The one that was subsequently deployed to**  
 5 **the senate republicans was deployed later, in which**  
 6 **case it was a different model, but it should have**  
 7 **really been as similar as possible beyond that.**  
 8 Q And that third computer you're referring to is the  
 9 one that has the code WRK32864; correct?  
 10 **A That is correct.**  
 11 Q And that was deployed to Tad Ottman; correct?  
 12 **A Correct.**  
 13 Q But it was actually used by Joseph Handrick; correct?  
 14 **A I don't know the answer to that question.**  
 15 Q Okay. That's fine. All right.  
 16 Now, before we go much further, let's  
 17 just -- let's -- I'd like to establish one thing  
 18 that -- the deposition transcript that you reviewed,  
 19 which is Exhibit No. 47, is that accurate, everything  
 20 that's in there?  
 21 **A I would say that, yeah, as I read it yesterday and**  
 22 **today, that it seemed to be -- I mean, as far as I**  
 23 **know, it's accurate. And I just don't remember all**  
 24 **of the specifics, so I was kind of refreshing my**  
 25 **memory with some of these things as I read it. But**

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1 **as far as I know, it should be perfectly accurate to**  
 2 **the best of my knowledge.**  
 3 Q Okay. And the reason I ask that is I don't want to  
 4 have to go through and repeat all these questions and  
 5 get all those same answers. And since this is an  
 6 exhibit in this case and you reviewed it prior to  
 7 this deposition, you, in effect, have just now  
 8 ratified the content of Exhibit 47 as if it were  
 9 taken in this deposition; is that okay?  
 10 **A That is fine.**  
 11 Q Okay. Good. All right. And I'm going to go back  
 12 over specific points as we go through it.  
 13 **A Okay.**  
 14 Q But I -- that makes life a lot easier for everybody  
 15 here.  
 16 **A Sounds good.**  
 17 Q Okay. So I just want to identify the basics here,  
 18 then. So at first you deployed two computers to the  
 19 republicans: One to the assembly, one to the  
 20 democrats. The assembly computer went to Adam Foltz  
 21 **A Yes.**  
 22 Q The senate computer went to Tad Ottman?  
 23 **A Correct.**  
 24 Q And the code for the Ottman computer was WRK32587  
 25 correct?

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1 **A Correct.**  
 2 Q And the code for the Adam Foltz computer was  
 3 WRK32586; correct?  
 4 **A Correct.**  
 5 Q Okay. And each of those two computers had external  
 6 hard drives attached to them?  
 7 **A Correct.**  
 8 Q Okay. And the Ottman computer was deployed to  
 9 Michael Best & Friedrich on July 15, 2010; correct?  
 10 **A Yes.**  
 11 Q And that had one external hard drive attached to it?  
 12 **A Yes.**  
 13 Q Okay. How did that external hard drive work with  
 14 relationship to that computer?  
 15 **A So it should have been connected via a USB drive to**  
 16 **it. And then the purposes -- the reason why it was**  
 17 **there was to provide a place for the end user to back**  
 18 **data up to or perhaps to transfer data -- well, they**  
 19 **could do whatever they wanted, really, since it was**  
 20 **connected via a USB drive.**  
 21 **But we basically put it in place for**  
 22 **auxiliary storage and backup of the redistricting**  
 23 **plans.**  
 24 Q Okay. And in your deposition on April 29th of 2013,  
 25 you described how those external hard drives were

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1 configured to automatically back up the hard drive  
 2 that they were attached to on a schedule; correct?  
 3 **A Yes.**  
 4 Q Okay. And it's your understanding, based on the  
 5 configuration of the service records of those  
 6 computers, that that backup function was not impaired  
 7 at any point in time during the redistricting  
 8 process; correct?  
 9 **A I don't know if I did or can claim that it wasn't**  
 10 **impaired or, you know, shut off temporarily or -- so**  
 11 **I don't know if I can answer that question.**  
 12 **I think I can answer and say that we**  
 13 **deployed it with however I described it inside here,**  
 14 **but how it stayed, I couldn't say.**  
 15 Q So the end user could have interrupted the backup  
 16 function at any point in time?  
 17 **A As I understand it, yes.**  
 18 Q And that would be an intentional action as opposed to  
 19 an accident that would require service --  
 20 MR. ST. JOHN: Object to form.  
 21 BY MR. EARLE:  
 22 Q -- correct? Let me rephrase that.  
 23 Account -- not accounting for intentional  
 24 disconnection or intentional adding of other stuff  
 25 onto the external hard drive, if there was a

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1 malfunction between the external hard drive and the  
 2 computer in terms of scheduled backup functions, you  
 3 received no such calls; correct?  
 4 **A Oh, not that I'm aware of.**  
 5 Q Okay. Okay. Now, if -- if a backup was interrupted  
 6 because it was -- the external hard drive was  
 7 disconnected and therefore could not back up the  
 8 computer on the schedule and then was subsequently  
 9 reconnected, would the backup that occurred  
 10 subsequent to the reconnection cover material that  
 11 had not been previously backed up?  
 12 **A Kind of. So the way that something like that would**  
 13 **presumably work is that you have your computer, and**  
 14 **then you have your external hard drive. And the --**  
 15 **you would not back up the entire contents of your**  
 16 **computer to the external hard drive. Ideally, you**  
 17 **probably would have just a particular folder of**  
 18 **things that -- your work product that you were**  
 19 **interested in backing up.**  
 20 **So what it would probably be -- probably**  
 21 **be the case is that this folder, anything you put in**  
 22 **that folder, once a night, you know, if that's what**  
 23 **it was set to, would be then copied here.**  
 24 **So if the -- if that was working, you**  
 25 **know, for weeks and then there was a disconnection**

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1 **and then a re -- for, say, a week, and say you**  
 2 **changed -- you changed -- you made plans, put things**  
 3 **in there, took things out, when you went to, you**  
 4 **know, reconnect it and then the backup ran again, it**  
 5 **would just kind of take a snapshot of what was ever**  
 6 **available in the folder that you were backing up.**  
 7 Q At the point of the backup?  
 8 **A At the point of the backup, like a Polaroid.**  
 9 Q Got you. Okay.  
 10 Now, it's possible that the end user could  
 11 disconnect that external hard drive and download  
 12 other documents directly onto the external hard  
 13 drive; correct?  
 14 **A Can you -- would you ask that one more time?**  
 15 MR. EARLE: Read the question.  
 16 (Record was read back as requested.)  
 17 Now, it's possible that the end user could  
 18 disconnect that external hard drive and download  
 19 other documents directly onto the external hard  
 20 drive; correct?  
 21 **A While the hard drive is connected, you could just**  
 22 **move -- you could copy a file from your computer to**  
 23 **the hard drive. You wouldn't specifically disconnect**  
 24 **it. However, you could disconnect it and then**  
 25 **reconnect it and then write to it. But -- yeah.**

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1 Q Could you disconnect the external hard drive, take it  
 2 somewhere else, download material onto the external  
 3 hard drive, and then reconnect it?  
 4 **A Yes.**  
 5 Q Okay. And is it possible that the material on the  
 6 external hard drive that had been added to it, would  
 7 that stay in the external hard drive and not be  
 8 backed up onto the -- would that be reflected on the  
 9 hard drive itself of the computer that it was  
 10 connected to?  
 11 **A To the best of my knowledge, there should not have**  
 12 **been a mechanism intentionally put in place that**  
 13 **would copy data from the external hard drive and put**  
 14 **it onto the computer itself.**  
 15 Q Okay. So if there were something on an external hard  
 16 drive that was not on the computer itself, there  
 17 might be at least two possible explanations for that:  
 18 One being that material had been deleted from the  
 19 hard drive itself, and the other being that material  
 20 could have been added onto the external hard drive  
 21 and not the computer itself; is that correct?  
 22 MR. KEENAN: Object to form.  
 23 MR. ST. JOHN: Object to form. And  
 24 object, speculation.  
 25 Go ahead and answer, if you can.

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1 **A Well, the question seemed to be complicated. I think**  
 2 **what you asked is if the contents of the external**  
 3 **hard drive didn't reflect -- didn't match with the**  
 4 **content here --**  
 5 Q "Here" meaning the computer or hard drive itself?  
 6 **A The computer or hard drive itself -- how could**  
 7 **something like that happen?**  
 8 Q That's a better question. I'll withdraw the prior  
 9 question. We'll go with that one.  
 10 **A Something -- I mean, a person could just put a file**  
 11 **on here, on the external hard drive, because the --**  
 12 **it wasn't just for backups. They could put things on**  
 13 **there just to store them because these files are**  
 14 **really big.**  
 15 **Or they -- if they were, in fact, which I**  
 16 **feel like it had to be the case, that the external**  
 17 **hard drive was only backing up from a limited**  
 18 **location on the computer, that the -- that target**  
 19 **folder, that the content there was just changed over**  
 20 **time. You know what I mean?**  
 21 **Like if you have a downloads folder and**  
 22 **your downloads folder is backing up every single**  
 23 **night to the external hard drive on your computer,**  
 24 **you may decide at some point that you don't want**  
 25 **"Chrome install" anymore and delete that, in which**

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1 **case then they're different.**  
 2 Q Okay. We'll get into that in more detail. I just  
 3 want to understand.  
 4 I see that you brought some documents back  
 5 in.  
 6 MR. EARLE: We can go off the record.  
 7 (A discussion is held off the record.)  
 8 (Exhibit No. 50 was marked for identification.)  
 9 MR. ST. JOHN: If you want to refer to  
 10 this exhibit by page number, there are numbers on  
 11 the lower right-hand corner, Peter.  
 12 BY MR. EARLE:  
 13 Q I see that they're Bates stamped -- Exhibit 50 is  
 14 Bates stamped 1 through 38; is that correct?  
 15 **A Yes.**  
 16 Q Okay. All right.  
 17 Now, you have just tendered the documents  
 18 that you brought with you to this deposition;  
 19 correct?  
 20 **A I did.**  
 21 Q Would you describe what the documents are?  
 22 **A Yes. There's a number of them here. Some of them**  
 23 **are multiple pages as one document.**  
 24 Q Okay.  
 25 **A Should I go through them one-by-one?**

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1 Q Yes, please.  
 2 **A The first document, starting on page 1, is**  
 3 **configuration item -- basically a document from our**  
 4 **asset management system that has some information**  
 5 **about a physical piece of hardware for hard drive**  
 6 **HDD32575, and that consists of 5 pages, 1 through 5.**  
 7 Q And that is the hard drive that was assigned to  
 8 Tad Ottman; correct?  
 9 **A Yes.**  
 10 Q Okay. So the WRK number for that is WRK32587;  
 11 correct?  
 12 **A Yes.**  
 13 Q Okay.  
 14 **A All right. That's --**  
 15 Q Continue.  
 16 **A -- Document 1.**  
 17 Q What does it -- what does this document tell you?  
 18 **A Oh, I'm sorry. Okay. This document right here, it**  
 19 **talks about the -- I guess the life cycle of a**  
 20 **particular asset. And so this particular asset is an**  
 21 **external hard drive, and it tells us when we**  
 22 **purchased it. On page 3, it says "purchase date,**  
 23 **December 18 '09." And this -- we bought these --**  
 24 **there may be another exhibit --**  
 25 Q And we don't need to repeat the testimony that you

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1 provided -- your prior testimony about how this  
 2 particular hard drive -- external hard drive was  
 3 deployed because you covered that in your prior  
 4 testimony; correct?  
 5 **A Okay. So just focus on --**  
 6 Q Right.  
 7 **A Okay. Sorry. All right.**  
 8 **So basically, yeah, this hard drive had**  
 9 **been assigned to Tad Ottman. And then I -- the**  
 10 **records I see on here that are why I brought this**  
 11 **document today is because I see that on page 1 it**  
 12 **says "Version: Packed and ready to shred on**  
 13 **12/9/13." And then down towards the bottom on**  
 14 **remark, it says "For GIS redistricting project,**  
 15 **Ottman, Tad, shredded 5/21."**  
 16 Q That's 5/21 of what year?  
 17 **A 2015.**  
 18 Q 2015. Were there any specific events that led to  
 19 this being shredded on 5/21/15?  
 20 **A Yes.**  
 21 Q Could you describe what those events were?  
 22 **A So the -- the standard protocol for LTSE in the life**  
 23 **cycle of computer equipment is when we purchase it,**  
 24 **we prepare it, we deploy it; once it's done being**  
 25 **used and it will not be used in any other way, then**

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1 **we decommission it.**  
 2 **We are not allowed to sell -- the**  
 3 **legislature is not allowed to sell, like, to an asset**  
 4 **recovery service. What we have to do is we have to**  
 5 **take the computers and give them to UW SWAP, and then**  
 6 **they sell it; and then that money, you know, goes**  
 7 **back to the budget fund.**  
 8 **But instead of spending a lot of time,**  
 9 **because it would take a lot of time to shred -- to**  
 10 **wipe -- instead of sending the hard drives -- instead**  
 11 **of wiping hard drives and sending the hard drives, I**  
 12 **made the decision years ago to shred every hard**  
 13 **drive, like literally send it through a metal**  
 14 **grinding machine and shred it. That way, I know that**  
 15 **none of the data that was on those hard drives are**  
 16 **going to end up at a school or in Brazil or -- from**  
 17 **anyone who bought it from SWAP.**  
 18 **So as a standard protocol, we do that.**  
 19 **When a machine is done, we disassemble it, insofar as**  
 20 **we take the hard drives out and then we have the**  
 21 **shell. And then what we do is we have a bin that we**  
 22 **put the hard drives in, and we have a bigger bin that**  
 23 **we put the computer shells in.**  
 24 **And then periodically when they fill up,**  
 25 **one of them, the bin that goes -- we call up SWAP and**

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1 **say, "Hey. Come here and pick this up, please."**  
 2 **They come, they take all the stuff away.**  
 3 **The hard drives, we wait for that to fill**  
 4 **up enough, and really we --**  
 5 Q You're talking about the bin to fill up enough?  
 6 **A Yeah, the bin to fill up with hard drives that are to**  
 7 **be destroyed.**  
 8 **And so in this particular case, as I see**  
 9 **from this document and from my recollection, we**  
 10 **determined, you know, that these could be**  
 11 **decommissioned in December of 2013 and then started**  
 12 **taking the steps to decommission this -- this**  
 13 **particular hard drive and the other one -- or, this**  
 14 **hard drive and computer associated with Tad Ottman**  
 15 **and the other external hard drive and computer**  
 16 **assigned to Tad Ottman -- do you want me to read the**  
 17 **numbers or no?**  
 18 Q Sure.  
 19 **A Okay. The hard drive was HDD32579. That's the**  
 20 **external hard drive that was the second computer that**  
 21 **was assigned to Tad Ottman. And then the computer**  
 22 **itself was WRK32864.**  
 23 Q Thank you for that. I want to understand that a  
 24 little better, then.  
 25 So the HDD number refers to the external

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1 hard drive that's attached to the computer itself,  
 2 which is referred to by the WRK number; is that  
 3 correct?  
 4 **A Correct. The "HD" is "hard drive." "Hard disk**  
 5 **drive" is probably why there's two Ds. And the "WRK"**  
 6 **stands for "work station."**  
 7 Q Okay. So -- okay. So when we talk about the  
 8 Tad Ottman computer, WRK32587, we would refer to the  
 9 external hard drive attached to that computer as  
 10 HDD3257?  
 11 **A 75.**  
 12 Q 75. Right. Yeah. I'm sorry.  
 13 **A 575. Yeah. Sorry.**  
 14 Q I'll reread it.  
 15 **A There's a lot of numbers. I'm sorry.**  
 16 Q HD32575; correct?  
 17 **A HDD32575.**  
 18 Q Good. Okay. Yes.  
 19 And the policy for shredding that you just  
 20 described, that preexisted the redistricting  
 21 litigation; correct?  
 22 **A Yes.**  
 23 Q That's been in place for a long time?  
 24 **A Yes. I can't remember the exact date that was put**  
 25 **into place, but it's been a standard protocol for a**

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1 **number of -- many years. Before this started.**  
 2 Q Okay. Okay.  
 3 **A In fact, the -- if I may just add, the legislature**  
 4 **periodically replaces desktop computers and laptop**  
 5 **computers. And we -- at the end of 2014 and the very**  
 6 **beginning of 2015, we did a laptop replacement**  
 7 **project.**  
 8 **And so since we knew we were going to do**  
 9 **that, we knew that we were going to end up with, you**  
 10 **know, 180, 200, you know, however many hard drives**  
 11 **from that project because we take the laptop back --**  
 12 **take a laptop, put it here, take the hard drive out,**  
 13 **put it here. We tell SWAP to come pick up the**  
 14 **laptops at some point.**  
 15 **We waited for the entire project to**  
 16 **complete -- the entire laptop replacement project to**  
 17 **complete before making a visit to the Cascade -- you**  
 18 **know, the company -- there's a document in here that**  
 19 **describes this -- Cascade Asset Management to do the**  
 20 **shredding.**  
 21 **So in that case, it wasn't like a bin**  
 22 **filled up specifically, but we knew that there was**  
 23 **going to be a big project with a lot of hard drives,**  
 24 **and we waited until that project was complete to**  
 25 **complete.**

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1 **And then I'm sure we'll get to this, but**  
 2 **then we shredded -- according to this document, which**  
 3 **is Exhibit 50, page 22, there's a certificate of**  
 4 **destruction/notice of recycling activity that**  
 5 **describes what -- basically what we did on 5/21 of**  
 6 **2015.**  
 7 **My staff member Christopher took these**  
 8 **hard drives, 232 hard drives listed on page 23, 232**  
 9 **hard drives, and had them shredded through a process**  
 10 **called "witnessed shredding," which means my staff**  
 11 **member, as in per instruction, watches them -- from**  
 12 **the moment he leaves the LTSB, he doesn't stop**  
 13 **anywhere on the way to the place, goes to the place,**  
 14 **and while he's at the place, he watches them and**  
 15 **watches them go through the grinder.**  
 16 **And they go through this grinder, and then**  
 17 **he gets to look at this pile of metal fragments, and**  
 18 **then they give us a certificate telling us that such**  
 19 **a thing happened.**  
 20 Q So on page 22, which computer is this attached to?  
 21 **A On page 22, which computer is this attached to?**  
 22 Q Yeah. Which computer is referenced as having been  
 23 destroyed on page 22?  
 24 **A Well, this would have been a lot of computers. This**  
 25 **would have been a lot of computers. The**

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1 **redistricting hard drives for these computers that**  
 2 **we're talking about today were part of this.**  
 3 Q Okay. Where in Exhibit 50 is the document that -- if  
 4 there is one, that would indicate that Tad Ottman's  
 5 WRK32587 computer hard drive and external hard drive  
 6 HDD32575 were included in that batch?  
 7 **A It's in here. It will take me just a moment to find**  
 8 **it.**  
 9 **All right. On Exhibit 50, there's a**  
 10 **document on page 12, which is upside down, and on**  
 11 **page 11 that I added some notes to. So there's a**  
 12 **document -- it's an Excel file -- page 12. It's an**  
 13 **Excel file. I copied the Excel file and then I**  
 14 **opened it up and I added notes to it for my own**  
 15 **reference here. That -- those notes really replicate**  
 16 **Exhibit 49 in terms of which computer was assigned to**  
 17 **whom.**  
 18 **And so what this document here, 12,**  
 19 **represents is my hardware inventory manager Chris**  
 20 **noting which hard drives were -- from the**  
 21 **redistricting project were going to be part of the**  
 22 **trip to Cascade to have them shredded.**  
 23 **You'll -- if you count these things,**  
 24 **you'll know there's more on here because some of them**  
 25 **are on here more than once. So, for example, Tad's**



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1 machine was WRK32587. You know, it's on here twice  
 2 because there were two hard drives.  
 3 Q I'm sorry. Start -- do that one again.  
 4 A On -- so on this list here, there's -- halfway down,  
 5 it says 3258 -- or, WRK32587, and then below it, it  
 6 says WRK32587. That would be representative of the  
 7 two hard drives.  
 8 Q That were in there?  
 9 A That were in that original computer. Because there  
 10 were, if you remember --  
 11 Q Right.  
 12 A -- there were two hard drives per thing because they  
 13 were, you know, redundant. And so, for example,  
 14 below that, WRK32586 and WRK32586 are the ones that  
 15 were assigned to Adam.  
 16 I don't know exactly why, but if you go to  
 17 the bottom of the list, you can see that it says  
 18 WRK32587 again. I don't know why he put the name on  
 19 there again.  
 20 But we also have on here HDD32575, and  
 21 that is towards the top. It's the fourth one.  
 22 HDD32575. It says "senate republican," and then that  
 23 one does appear again down on the list, HDD32575.  
 24 So some of them were on the list more than  
 25 once. In the case, you know, of the WRK32587, it's

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1 because there's two hard drives in there.  
 2 And then you can see from looking at this  
 3 list that HDD32574, the external hard drive assigned  
 4 to Adam Foltz, was part of this batch. The computer  
 5 itself, WRK32586, is part of that batch. And then  
 6 also the hard drive HDD32579, the second external  
 7 hard drive assigned to Tad Ottman, was part of this  
 8 batch, as well as the hard drives for WRK32864, the  
 9 second redistricting computer assigned to Tad Ottman.  
 10 So this step was taken just because there  
 11 was a little more of a sensitive nature to these hard  
 12 drives. Perhaps anticipation of me meeting with you  
 13 today. I don't know.  
 14 But just because everyone knew that there  
 15 was a sensitive nature to these things, you know. So  
 16 we just, before taking them to get them shredded, he  
 17 recorded this here.  
 18 Q Okay. Who is Michael Keene?  
 19 A Oh, Michael Keene is a fellow at the -- who works at  
 20 the legislative reference bureau who also had a  
 21 redistricting computer deployed to him during the  
 22 redistricting process as part of the bill drafting  
 23 process. And so we, you know, shredded his hard  
 24 drive and I guess noted that, as well.  
 25 Q Okay. And was there a similar process to -- used for

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1 the hard drives that were deployed -- the two hard  
 2 drives -- the -- would have been six hard drives that  
 3 were deployed to the democrats?  
 4 A Oh, no. Because those machines have not been  
 5 decommissioned.  
 6 Q The democrat machines have not been decommissioned?  
 7 A Correct.  
 8 Q Okay. Where are they?  
 9 A Is that -- okay.  
 10 As far as I know, they're both deployed to  
 11 the -- each of the -- to -- one is deployed to a  
 12 senate democrat, one is deployed to an assembly  
 13 democrat.  
 14 Q Okay.  
 15 A I could -- I did not prepare a bunch of knowledge on  
 16 those items because they weren't in here. I just  
 17 know that they have not been decommissioned.  
 18 And I would say that, to the best of my  
 19 memory right now, the senate democrat one is in  
 20 Senator Miller's office, probably sitting on the  
 21 floor somewhere collecting dust, and the other one is  
 22 very likely either in Representative Kessler's office  
 23 or at LTSB. But they were not decommissioned.  
 24 Q Okay. What was the mechanism by which the decision  
 25 to decommission these hard drives, the republican

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1 hard drives, made?  
 2 A I will look through Exhibit 5 -- 50 and find the  
 3 document that describes that. I think you can go to  
 4 page 38, the last page.  
 5 So what I have here on Exhibit 50, page  
 6 38, is an e-mail. It's really two parts. There's an  
 7 e-mail that I sent to Tad Ottman on December 5th of  
 8 2013. And shall I read the --  
 9 Q Yes, please.  
 10 A It says -- the subject is "computer decommission."  
 11 And I say, "Good afternoon, Tad. Please confirm my  
 12 understanding of your recent request. On Friday,  
 13 11/15/2013, you informed me that the litigation hold  
 14 on the redistricting computers assigned to Senator  
 15 Fitzgerald's office has been released. You also  
 16 authorized LTSB to decommission the computers and  
 17 related external hard drives. Once I receive  
 18 confirmation from you, I will proceed. Thank you."  
 19 And then -- that was sent on December 5th.  
 20 The top part of page 38 is Tad's response, and that  
 21 was sent the same day, just about half hour later,  
 22 and he said, "That is my understanding of the issue  
 23 (as explained in the attached e-mail from Cindy  
 24 Buchko.) You can proceed with decommissioning of the  
 25 computer." And then there's an attachment of an

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1 **e-mail from Cindy Buchko, which is in here.**  
 2 Q Where is that?  
 3 MR. ST. JOHN: The attachment is not part  
 4 of the records. We have a privilege log that  
 5 explains what the document is.  
 6 The document is a -- the attachment  
 7 contains e-mails between Attorney Buchko; Attorney  
 8 Pyper; Jeff is on the first e-mail in the string,  
 9 but it's a string e-mail; Tad is on the e-mail, Tad  
 10 Ottman; Adam Foltz is on the e-mails.  
 11 The subject matter in the e-mails is --  
 12 the e-mails are titled "final order," and the  
 13 conversation in the e-mails relates to  
 14 responsibilities that people have to preserve  
 15 records.  
 16 MR. EARLE: Okay. So that's a  
 17 communication of counsel to the legislature --  
 18 outside counsel to the legislature to Ottman and  
 19 Foltz?  
 20 MR. ST. JOHN: Correct. To legislative  
 21 employees, all of whom were being represented by  
 22 Whyte Hirschboeck at the time, and as well as LTSB.  
 23 MR. EARLE: Okay.  
 24 MR. ST. JOHN: There are no other -- the  
 25 privilege log will list all individuals who are on

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1 those communications.  
 2 (Exhibit No. 51 was marked for identification.)  
 3 MR. EARLE: Exhibit 51 has been marked.  
 4 This is the privilege log? This is the document you  
 5 were just referring to, Kevin; is that correct?  
 6 MR. ST. JOHN: That is correct.  
 7 MR. EARLE: Okay. Thank you.  
 8 BY MR. EARLE:  
 9 Q Okay. Drawing your attention to page 16. You there?  
 10 Can you explain what that is?  
 11 **A Page 16 of Exhibit 50?**  
 12 Q Yes.  
 13 **A An e-mail. The first e-mail in this chain is an**  
 14 **e-mail from me to Chris, my inventory manager and --**  
 15 **dated July 20, 2015. And basically -- I'll read the**  
 16 **e-mail.**  
 17 **Computer -- the subject is "computers to**  
 18 **SWAP." "Chris, the next time you send equipment to**  
 19 **UW SWAP, please send WRK32586 and WRK32587. The hard**  
 20 **drives have already been taken care of, and these**  
 21 **shells are old and barely functional. Please be sure**  
 22 **to remove the asset tags and any other labels that we**  
 23 **applied. Thank you." And then Chris responded right**  
 24 **away and said, "Thanks, Jeff."**  
 25 **And basically this document demonstrates**

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1 **that the computer shells for 86 and 87 -- well, the**  
 2 **computers themselves, but not the hard drives -- we**  
 3 **already talked about the hard drives -- were**  
 4 **eventually -- were sent to SWAP.**  
 5 Q And that means you were given -- they were turned  
 6 over to UW, that process you described earlier?  
 7 **A Correct. The process we have to go through instead**  
 8 **of an asset recovery sort of process.**  
 9 Q Focusing on -- let me find myself here. Hold on a  
 10 second.  
 11 Your prior Exhibit No. 5, I forgot what  
 12 exhibit number that is here, which we marked  
 13 earlier --  
 14 **A Oh. This is 50.**  
 15 Q Yeah. Exhibit -- Exhibit 5 has not been marked.  
 16 (Exhibit No. 52 was marked for identification.)  
 17 MR. EARLE:  
 18 Q Showing you what's been marked as Exhibit No. 51, I  
 19 believe --  
 20 THE REPORTER: 52.  
 21 Q -- 52, which was Exhibit 5 in your prior deposition.  
 22 **A Okay.**  
 23 Q Which is a -- has some subpoenas on the top of it.  
 24 But further in, it contains documents similar to  
 25 those you've produced here today; correct?

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1 **A I would like to take a moment to just look at it.**  
 2 Q Sure.  
 3 **A I think you asked me if Exhibit 52 is some documents**  
 4 **that are similar to --**  
 5 Q Similar. Yes.  
 6 **A -- the ones I brought before. The answer is yes.**  
 7 Q Okay. And Exhibit -- Exhibit 52 includes work orders  
 8 and configuration documents as of the date of your  
 9 prior deposition; correct?  
 10 **A Yes.**  
 11 Q Okay. And drawing your attention to four pages from  
 12 the back of Exhibit 52. There's a work order ID  
 13 29, 180. Do you see it there?  
 14 **A 29, 180. Yes.**  
 15 Q Okay. Is there a copy of that in the material you  
 16 brought here today?  
 17 **A No. I don't believe -- no. I don't believe I**  
 18 **brought any work orders. I did not bring any work**  
 19 **orders today.**  
 20 Q Okay. Okay. I know it's been a long time. Do you  
 21 want to take a moment to review that real quickly?  
 22 **A Review this particular work order?**  
 23 Q Yeah. Sure.  
 24 **A Okay.**  
 25 **I have read that work order.**

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1 Q Okay. I guess the question I have is this work order  
 2 describes a request from Tad Ottman to replace two --  
 3 or swap out two computers that he was using as of  
 4 January 28th of 2013; correct?  
 5 **A Yes.**  
 6 Q And the two computers that are -- that he wants to  
 7 swap out, the old ones were WRK32587, which Tad was  
 8 using, and WRK 32864 from the conference room of that  
 9 senate office, along with two corresponding hard  
 10 drives, HDD32575, HDD32579; correct?  
 11 **A Correct.**  
 12 Q Okay. And those were the redistricting computers  
 13 that had been assigned to Tad Ottman; correct?  
 14 **A Correct.**  
 15 Q Okay. And the external hard drives that had been  
 16 assigned to Tad Ottman; correct?  
 17 **A Correct.**  
 18 Q Okay. And so those hard drives were then -- then  
 19 came into the custody of LTSB and they were replaced  
 20 with new computers; correct?  
 21 **A Yes.**  
 22 Q Okay. The question I have is were the contents of  
 23 the computers that were removed downloaded onto the  
 24 new computers that were swapped in?  
 25 **A Very unlikely. I would say the answer is no because**

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1 **we prepared the computers, and then it seems like we**  
 2 **went over there, dropped off the computers, and then**  
 3 **took back the other computers and then put them in a**  
 4 **cage.**  
 5 **The process of copying, if we were copying**  
 6 **data from something to something else, would take**  
 7 **time and coordination, and I think that would have**  
 8 **been recorded in here.**  
 9 **So as far as I can tell -- and it -- we**  
 10 **just gave them two new computers and then took back**  
 11 **these computers and then we put them in the cage.**  
 12 Q Okay. And it's your testimony that had data and  
 13 material -- documents on the old computers been  
 14 downloaded onto the new computers, that would have  
 15 been recorded in the work order?  
 16 **A If that had happened during this process, then it**  
 17 **should have been recorded in the work order.**  
 18 Q Okay. Okay.  
 19 MR. EARLE: Let's take a short break. I  
 20 have to assemble a set of documents here.  
 21 (A recess is taken from 2:37 p.m. to 2:46 p.m.)  
 22 MR. EARLE: Back on the record.  
 23 MR. ST. JOHN: Are these to be marked? Do  
 24 you want these marked?  
 25 MR. EARLE: So this is going to be marked.

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1 I'm sorry. That's your copy.  
 2 (Exhibit No. 53 was marked for identification.)  
 3 BY MR. EARLE:  
 4 Q Showing you what's been marked as Exhibit No. 53.  
 5 Mr. Ylvisaker, I will represent to you, as  
 6 you're aware, the hard drives were imaged by Mark  
 7 Lanterman. You knew that as of the last deposition;  
 8 correct?  
 9 **A Correct.**  
 10 Q Okay. And you made the hard drives available so that  
 11 Mark Lanterman could image them, and all of that is  
 12 covered in your prior deposition; correct?  
 13 **A Correct.**  
 14 Q Okay. And we won't go through that.  
 15 What you have before you is a spread -- two  
 16 spreadsheets that are identical, as far as I can  
 17 tell, created by Mark Lanterman reflecting the two  
 18 hard drives in WRK32586, and these are -- which is  
 19 the Adam Foltz computer; correct?  
 20 **A WRK32586, responsive spreadsheets, yes, that is the**  
 21 **computer that was assigned to Adam Foltz.**  
 22 Q That's correct. And there were two hard drives in  
 23 that computer; correct?  
 24 **A Correct.**  
 25 Q Therefore, you have -- at the bottom, you'll see it

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1 says 004WRK32586, and there's a subsequent  
 2 spreadsheet behind that one that's 005, the same WRK  
 3 number, reflecting both hard drives?  
 4 **A I see that.**  
 5 Q Okay. So what I understand -- what I understand and  
 6 I'll represent to you is that this represents Mark  
 7 Lanterman's extraction of spreadsheets from that  
 8 computer. And just listing the files that correspond  
 9 to the criteria of files that have extensions of XLSX  
 10 or XLSM or -- I think that's -- that's it. Do you  
 11 see that there?  
 12 **A I see that.**  
 13 Q Okay. And now the -- if you look at the -- on the  
 14 first page of the exhibit that's marked, okay, about  
 15 halfway down, you'll see that there is a spreadsheet  
 16 that's called "PlanComparisons.xlsxm."  
 17 **A I see that.**  
 18 Q And this is a spreadsheet that was created on May 9,  
 19 2011, at 5:59 p.m.; do you see that?  
 20 **A I see that it's -- that number is in the column**  
 21 **called "created." Yes.**  
 22 Q Okay. And if you go to the next page of that  
 23 exhibit --  
 24 MR. POLAND: Actually, I think it says  
 25 5:39, doesn't it?

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1 MR. EARLE: 5:39. I'm sorry. What did I  
 2 say?  
 3 MR. POLAND: You said 5:59.  
 4 MR. EARLE: I'm sorry. 5:39. Thank you.  
 5 BY MR. EARLE:  
 6 Q And the -- and then if you go to the second page,  
 7 page 3 of the same exhibit, if you go down to the  
 8 same location on that page where it says  
 9 "PlanComparisons.xlsxm," you can see that it was  
 10 accessed, according to Mark Lanterman, on 7 -- I  
 11 mean, 4/27/2012, at 4:50 p.m. You there?  
 12 **A I see that.**  
 13 Q And if we go to page 5, we can see that  
 14 PlanComparisons.xlsxm was modified on 4/27/2012 at  
 15 4:50 p.m.; do you see that?  
 16 **A I see that.**  
 17 Q If we go to page 7, we can see that  
 18 PlanComparisons.xlsxm had a file path that was  
 19 /users/afoltz/desktop/projects/PlanComparisons.xlsxm;  
 20 do you see that?  
 21 **A That's on page 7?**  
 22 Q Yes. Right in the middle.  
 23 **A I see that.**  
 24 Q Go to page 9. PlanComparisons.xlsxm consisted of  
 25 95.88 kilobytes?

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1 **A I see that.**  
 2 Q It was authored by A. Foltz; correct?  
 3 **A I see that.**  
 4 Q And it was last saved by A. Foltz; correct?  
 5 **A I see that.**  
 6 Q Okay. Keep going. If you go to the same location on  
 7 page 11, we can see that PlanComparisons.xlsxm was  
 8 office created -- has an office created date of  
 9 5/2/11 at 6:13 p.m. Do you see that?  
 10 **A I see that.**  
 11 Q And if you go to page 13, we can see that  
 12 PlanComparisons.xlsxm has an office last printed date  
 13 of 4/23/2012 at 12:12 p.m.; correct?  
 14 **A I see that.**  
 15 Q And if we go to page 15, we see that  
 16 PlanComparisons.xlsxm has an office last saved date of  
 17 April 27, 2012, at 4:50 p.m.; correct?  
 18 **A I see that.**  
 19 Q And then if we go to the reference document, I will  
 20 represent to you that PlanComparisons.xlsxm is  
 21 attached to that exhibit.  
 22 Give you a clip there so you can keep it  
 23 together after you're done.  
 24 Can you open that spreadsheet up. I have  
 25 some questions about that.

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1 **A There appears to be more than one --**  
 2 Q Yes.  
 3 **A -- thing here; right?**  
 4 Q Yes. And I will represent to you that the pages you  
 5 have before you represent the entirety of the file  
 6 that corresponds to that file path.  
 7 **A That's what you're telling me.**  
 8 Q Yes. And I know you can't verify that at this point,  
 9 but I want you to assume that fact, okay.  
 10 If you look at the first page of that, at  
 11 the top is a spreadsheet that says  
 12 "Milwaukee\_Gaddie\_4\_16\_11\_V1\_B." All right. Do  
 13 you see that there?  
 14 **A I see that.**  
 15 Q And I'll represent to you that this exhibit, this  
 16 document, was the subject of a deposition two days  
 17 ago with Keith Gaddie, okay, and -- who is -- who is  
 18 a consultant to the legislature.  
 19 At the second page of the -- is captioned,  
 20 at the top,  
 21 "Statewide2\_Milwaukee\_Gaddie\_4\_16\_11\_V1\_B," and the  
 22 third page is "final map," with the assembly  
 23 districts listed in chronological order 1 through 99;  
 24 do you see that?  
 25 **A I see that.**

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1 Q Fourth page is "final map" with the assembly  
 2 districts listed in rank order of republican  
 3 concentration; I'll represent that to you.  
 4 **A Okay.**  
 5 Q Okay. Now, I guess my question has to do with the  
 6 last page. The last page of this document is  
 7 captioned "Kessler map."  
 8 **A I see that.**  
 9 Q Okay. Now, I want to ask you are you aware of any  
 10 circumstance under which Adam Foltz, using the  
 11 computer assigned to him, WRK32586, could have  
 12 acquired a copy of a document captioned "Kessler  
 13 maps"?  
 14 **A Could you ask the question one more time? I'm sorry.**  
 15 **(Record was read back as requested.)**  
 16 **Now, I want to ask you are you aware of**  
 17 **any circumstance under which Adam Foltz, using the**  
 18 **computer assigned to him, WRK32586, could have**  
 19 **acquired a copy of a document captioned "Kessler**  
 20 **maps".**  
 21 **A I'm not.**  
 22 Q Okay. Could Adam Foltz, using the network system  
 23 that the legislature has that you describe in your  
 24 deposition of April 29, 2013, have accessed the  
 25 computer assigned to Fred Kessler?

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1 MR. ST. JOHN: Objection. Speculation.  
 2 Go ahead. Answer the question.  
 3 BY MR. EARLE:  
 4 Q I'll refine the question. I'll restate it.  
 5 **A Okay.**  
 6 Q Keeping in mind your knowledge of how the  
 7 legislature's computer networks work and the ability  
 8 of a person signing onto one computer to access  
 9 information on other computers within the legislature  
 10 that you described in some detail on April 29th,  
 11 2013, is it -- is it possible using those procedures  
 12 and those computer networks that you have created for  
 13 a user such as Adam Foltz to access the content of a  
 14 computer used by a -- by Fred Kessler?  
 15 **A It should not be possible unless a person knew the**  
 16 **other person's credentials. I mean, thus then signed**  
 17 **on as the person. But the permissions should not**  
 18 **allow person A to access person B's computer by the**  
 19 **design and continual efforts of LTSB to maintain a --**  
 20 **the work environment. So it should not be possible.**  
 21 Q And in your deposition on April 29th, 2013, you  
 22 describe in some detail how the security of these  
 23 computers is maintained; correct?  
 24 **A You're referring to the deposition I had on 4/29 --**  
 25 Q Yeah.

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1 **A I describe some of the detail of it. Yes.**  
 2 Q And, you know -- and I draw your attention to page  
 3 105 through 107 where you discuss the -- the security  
 4 related to computer access. Do you want to review  
 5 that very quickly?  
 6 I mean, I draw -- I would draw your  
 7 attention specifically to page 105, line 21, where  
 8 you're testifying that as a hypothetical, you -- you  
 9 use Jared Bender, one of your staff people, as a  
 10 hypothetical to illustrate your point.  
 11 You said, "Now, if someone else, Jared  
 12 Bender, were to come over and log onto my computer  
 13 with his credentials, then what will -- what it will  
 14 do, it will create a world for him. If he tries to  
 15 access my data, he will not be able to because it's  
 16 locked down. So even though we both can log onto the  
 17 computer, my data on the local computer is locked  
 18 away from Jared."  
 19 Did I read that correctly?  
 20 **A Yes. You're reading that correctly.**  
 21 Q Okay. And that's your understanding of how those  
 22 computers work; correct?  
 23 **A Yes.**  
 24 Q And that's the reason why using the network provided  
 25 through the LTSB, Adam Foltz could not have logged

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1 onto a computer assigned to Fred Kessler and accessed  
 2 the data on that computer; correct?  
 3 **A Should not be able to.**  
 4 Q Unless he had Fred Kessler's credentials?  
 5 MR. ST. JOHN: Objection. Foundation.  
 6 BY MR. EARLE:  
 7 Q Correct?  
 8 **A If a person had someone else's credentials, then they**  
 9 **can do what they can do. And, I mean, there's room**  
 10 **for things that we don't know, you know.**  
 11 Q Right.  
 12 **A As technology professionals, it's -- you know, things**  
 13 **are possible that we don't know.**  
 14 Q That's correct. And I'm not asking you to speculate.  
 15 I'm just trying --  
 16 MR. ST. JOHN: Peter, if I could, just for  
 17 one second. This whole line of questioning has been  
 18 about speculation. We are two hours into the --  
 19 from the beginning of this deposition time period.  
 20 These questions have nothing to do with the topics  
 21 of the deposition.  
 22 I would appreciate it if we could get  
 23 through the topics from the deposition and not ask  
 24 the witness to engage in hypothetical what-ifs that  
 25 LTSB is not on notice for, nor would appear to serve

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1 any purpose.  
 2 MR. EARLE: Okay. And we're going to get  
 3 through this very quickly.  
 4 BY MR. EARLE:  
 5 Q So the universe of possible avenues for a document  
 6 that may have come from Fred Kessler's computer or  
 7 data that may have come from Fred Kessler's computer  
 8 would be to -- using the credentials of the other  
 9 person, Fred Kessler, accessing the computer  
 10 directly; correct? That's one possibility --  
 11 **A Yes.**  
 12 Q -- that you just described?  
 13 **A If you have someone else's credentials, you could**  
 14 **access the computer directly.**  
 15 Q Or Fred Kessler could give Ottman permission and  
 16 provide the data to him; correct?  
 17 **A You said Ottman, but I think you meant --**  
 18 Q I mean -- right. Adam Foltz. So Fred Kessler could  
 19 have simply provided the data to Adam Foltz. That's  
 20 a possibility; correct?  
 21 **A Yes.**  
 22 Q Can you think of any other -- another possibility  
 23 could be that the LTSB somehow set up a pathway, and  
 24 we've established that that's not possible; correct?  
 25 **A It's theoretically possible, but no one should do**

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1 **that ever.**  
 2 Q Okay.  
 3 **A I mean, as a theoretical possibility, you know, sure,**  
 4 **it's a possibility.**  
 5 Q Okay.  
 6 **A But I would be very surprised if something like that**  
 7 **were to happen because everyone who works at LTSB**  
 8 **understands their role very well.**  
 9 Q And the likelihood of that is near -- nearly  
 10 impossible; correct?  
 11 **A Correct. Very near zero.**  
 12 Q Very near zero. Okay. All right. Okay. Pause for  
 13 a moment.  
 14 (A recess is taken from 3:02 to 3:08 p.m.)  
 15 (Exhibit No. 54 was marked for identification.)  
 16 BY MR. EARLE:  
 17 Q All right. Showing you what's been marked as Exhibit  
 18 No. 54. I understand you've never seen these  
 19 documents before, but I want to ask you some  
 20 questions similar to the last set I asked you about  
 21 Exhibit 53.  
 22 If you look at -- I will represent to you  
 23 this represents a printout of a spreadsheet created  
 24 by Mark Lanterman that consists of 12 -- consists of  
 25 13 -- 12 pages of spreadsheets with XLS or XLSX or

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1 XLSM file extensions that were on the external hard  
 2 drive for Adam Foltz associated with computer  
 3 WRK32586.  
 4 And that -- if you want to just kind of  
 5 mark with a red pencil here, if you will, on the  
 6 exhibit itself to make it easier for you, ID No. 4.  
 7 Okay.  
 8 **A (Witness complies.)**  
 9 Q Which has a file name of C/users/afoltz/desktop/work  
 10 space/Kessler/Kessler\_map\_data/asm.xls. And then 15  
 11 number 15, which is -- I'll just read the last part  
 12 of it. It's /Kessler/passone\_key.xls. And if you  
 13 look at number 30, the last denominations on the file  
 14 path are Kessler/ASM\_jobs.XLS. 34 is  
 15 kessler/asm.xls, and on the second -- on the second  
 16 page on number 41, it's -- the -- it's  
 17 /redistricting/Kessler\_plan, and then a series of  
 18 numbers, \_final.xls. Do you see those there?  
 19 **A I do.**  
 20 Q Yep. And I'll represent to you that the documents  
 21 that would correspond to each of those are attached  
 22 to the exhibit and are labeled at the bottom.  
 23 I want to ask you a series of questions as  
 24 to is it possible for this material to appear on the  
 25 external hard drive of Adam Foltz through the three

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1 mechanisms that we discussed earlier? Adam Foltz  
 2 accessing Fred Kessler's computer directly, your  
 3 answer would be the same as you answered before when  
 4 I asked you --  
 5 MR. ST. JOHN: Object. Form.  
 6 BY MR. EARLE:  
 7 Q -- in the context of the prior exhibit?  
 8 MR. ST. JOHN: Objection. Form.  
 9 BY MR. EARLE:  
 10 Q I'll withdraw that question.  
 11 Is it possible for Adam Foltz, without  
 12 having Fred Kessler's credentials, to access files on  
 13 his computer of this nature?  
 14 MR. ST. JOHN: Objection. Form.  
 15 THE WITNESS: I don't know what that  
 16 means. Does that mean I can still answer?  
 17 BY MR. EARLE:  
 18 Q You can answer. He just thinks my question is not  
 19 worded right.  
 20 **A I think it's theoretically possible. I mean -- could**  
 21 **you please reask the question again.**  
 22 **(Record was read back as requested.)**  
 23 **Is it possible for Adam Foltz, without**  
 24 **having Fred Kessler's credentials, to access files**  
 25 **on his computer of this nature?**

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1 **A I would say that our system is designed specifically**  
 2 **not to allow something like this, but I can't say**  
 3 **with absolute certainty that a person couldn't figure**  
 4 **something out.**  
 5 Q Is it possible for the LTSB to have provided a  
 6 pathway for Adam Foltz to obtain that information  
 7 from Fred Kessler's computer?  
 8 **A Again, theoretically possible, but very, very, very,**  
 9 **very, very unlikely.**  
 10 Q Just about zero percent possibly; correct?  
 11 **A Yes.**  
 12 Q Okay. It's possible that Fred Kessler could have  
 13 provided this information to Adam Foltz; correct?  
 14 **A Yes.**  
 15 Q Can you think of any other way that Adam Foltz could  
 16 have gotten this information with your knowledge of  
 17 how these computers are set up?  
 18 MR. ST. JOHN: Objection.  
 19 BY MR. EARLE:  
 20 Q Using his computer?  
 21 MR. ST. JOHN: Objection. Form.  
 22 Objection. Foundation.  
 23 MR. KEENAN: Join in the objections.  
 24 **A First, I'm not even sure what that information is,**  
 25 **you know what I mean. So at the moment, it's just a**

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1 **name, but, I mean, nothing is certain, so I couldn't**  
 2 **make any absolute statements.**  
 3 BY MR. EARLE:  
 4 Q But no procedure using the systems in place set up by  
 5 the LTSB that you are aware of would allow for this  
 6 to occur outside of the --  
 7 MR. ST. JOHN: Objection. Form.  
 8 BY MR. EARLE:  
 9 Q -- possibilities we discussed earlier?  
 10 MR. ST. JOHN: Objection. Form.  
 11 Objection. Foundation.  
 12 **A Making sure I don't have any double negatives in**  
 13 **there, but our -- the legislature's system should not**  
 14 **allow people to access each other's data.**  
 15 Q Okay.  
 16 MR. EARLE: Let's take a quick break here.  
 17 (A recess is taken from 3:14 p.m. to 3:19 p.m.)  
 18 (Exhibit No. 55 was marked for identification.)  
 19 BY MR. EARLE:  
 20 Q Showing you what's been marked as Exhibit No. 55.  
 21 This is a similar spreadsheet for the -- for the  
 22 spreadsheets with the file extensions of XLS and XLM,  
 23 XLSM for the Ottman computer, which is WRK32587.  
 24 And it's just a short question. If you  
 25 turn to page 19 --

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1 **A I'm on page 19.**  
 2 Q Okay. And hold on a second. If you look down the  
 3 page, three down, there's a file that's called  
 4 "assembly base." It's repeated multiple times. But  
 5 of the versions has a file path, which is the third  
 6 one down, /users/tottman.WISLEG/Dropbox. And there's  
 7 a whole series of Dropbox files on here.  
 8 And the question I have is are these  
 9 computers that are issued by the legislature set up  
 10 so that a user, an end user, can store material on  
 11 Dropbox and pull it down onto their computer?  
 12 **A Yes. I would say nowadays any computer could move**  
 13 **a -- move a file back and forth because you can do**  
 14 **that through the Web browser. And so a person could**  
 15 **log onto Dropbox on any Internet connected -- or, log**  
 16 **you know, onto the Internet on an Internet connected**  
 17 **device, go to a Web browser, and then you could pull**  
 18 **something from your Dropbox or put something on your**  
 19 **Dropbox.**  
 20 Q So in that kind of a circumstance, an end user could  
 21 store files in Dropbox, work on them on their  
 22 computer, and never have them actually on the  
 23 computer itself?  
 24 **A That gets a little bit more complicated because it**  
 25 **seems that you would have to -- they'd have to come**

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1 **down to the computer in order to work on them on the**  
 2 **computer. And then, you know -- could you ask the**  
 3 **question again?**  
 4 **(Record was read back as requested.)**  
 5 **So in that kind of a circumstance, an end**  
 6 **user could store files in Dropbox, work on them on**  
 7 **their computer, and never have them actually on the**  
 8 **computer itself?**  
 9 **A Well, I think when you say "work on them on the**  
 10 **computer," then the document is on the computer.**  
 11 Q Well, if you've accessed the document through the  
 12 Internet in Dropbox, you don't actually have to  
 13 download it onto the computer itself, do they?  
 14 **A I think it depends on the file -- the application**  
 15 **that you're using. So, for example, maybe -- and I'm**  
 16 **not 100 percent sure right now -- but maybe something**  
 17 **like Microsoft Word or Outlook, Excel, could reside**  
 18 **locally on your computer, and then you could open up**  
 19 **a file on Dropbox and it stays on Dropbox.**  
 20 **But when it comes to some other programs,**  
 21 **like a program like Auto Bound or some mapping**  
 22 **software, it seems like it might be different. I**  
 23 **would have to study that to find out the real answer.**  
 24 **But it seems like the data has to at least**  
 25 **leave Dropbox, the data has to come down to the**

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1 **computer, and the question is does the application**  
 2 **write it locally ever, just use it in memory, and**  
 3 **then write it back to Dropbox? I guess, now that**  
 4 **I've talked myself through this, it's hard to answer**  
 5 **that question.**  
 6 Q Okay.  
 7 **A You'd have to know the particular program.**  
 8 Q Okay. Last question I have is the -- I think it was  
 9 one of the topics, the fourth topic, perhaps.  
 10 Did you do any forensic imaging of any of  
 11 these issues -- these computers that we've been  
 12 discussing here today after your last deposition?  
 13 **A No.**  
 14 Q Okay.  
 15 MR. EARLE: Do you have anything else?  
 16 (A discussion is held off the record.)  
 17 BY MR. EARLE:  
 18 Q When you looked for documents responsive to the  
 19 subpoena, did you look for documents in the Dropbox  
 20 files that Ottman and Foltz had?  
 21 **A When I looked for documents responsive to this thing**  
 22 **today, did I look in the Dropbox locations for Tad**  
 23 **and --**  
 24 Q Yeah.  
 25 **A No.**

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1 Q When you did the same thing on -- for the April 29th,  
2 2013, deposition, did you look in the Dropbox  
3 associated with Tad Ottman?  
4 **A No.**  
5 MR. EARLE: We're done.  
6 MR. KEENAN: I just have a few questions.  
7 EXAMINATION  
8 BY MR. KEENAN:  
9 Q And we've met before, but I'm Brian Keenan. I  
10 represent the defendants in this case.  
11 Do you know whether Adam Foltz and Tad  
12 Ottman used Dropbox on the computers that we've been  
13 talking about today?  
14 **A I -- this -- today is the very first time I have**  
15 **heard the word "Dropbox" used in this context.**  
16 Q So you don't know whether they actually used Dropbox?  
17 **A I don't know if they did or not.**  
18 Q You don't know whether, if they used the Dropbox  
19 program, whether there would have been a -- whether  
20 they would have needed to download a program from  
21 Dropbox such that it would also stay on the  
22 computer's hard drive?  
23 **A You mean download Dropbox?**  
24 Q Mr. Earle was asking questions about whether, if  
25 going through Dropbox, a copy would stay at the

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1 Dropbox site or be downloaded on the computer.  
2 **A Of a particular work product, would the work product**  
3 **stay in the Dropbox or come onto the computer?**  
4 Q Yes. There was those set of questions. And you  
5 don't know whether that was the case, if Adam or Tad  
6 used Dropbox, so you don't know what would have  
7 happened, whether those files would have stayed on  
8 Dropbox or --  
9 **A Correct. I don't know what would have happened.**  
10 Q Who is Tony Van Der Wielen?  
11 **A Tony Van Der Wielen is the team manager for the**  
12 **geographic information system's team at LTSB.**  
13 Q Can you explain what that team is?  
14 **A Oh, yes. The GIS team is the geographic -- the team**  
15 **that handles the geographic data for the legislature.**  
16 **So we make maps for them and prepare, like, postal**  
17 **route information or standardized mailing addresses.**  
18 **We publish maps on our website.**  
19 **One of the other things that that team**  
20 **does is it works with the US Census Bureau, you know,**  
21 **throughout the decade. But the legislature, and Tony**  
22 **in particular, has been designated in years past,**  
23 **the -- I think the term is "redistricting data**  
24 **liaison" or the "US" -- it's probably better to say**  
25 **that -- I think the actual term would be the "US**

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1 **Census Bureau data liaison," which, once the census**  
2 **occurs, then the census bureau processes its data for**  
3 **a year and then they give it to the states and then**  
4 **the states use that for redistricting.**  
5 **Tony Van Der Wielen is the point of**  
6 **contact for the state of Wisconsin. And then we --**  
7 **him and his team would also be the team that's**  
8 **responsible for working with the -- each caucus and**  
9 **going through a process of determining what**  
10 **redistricting software the legislature should use and**  
11 **then building the redistricting computers; that is,**  
12 **actually installing, you know, picking them out,**  
13 **designing them. "I want two hard drives," "I want an**  
14 **external hard drive," "I want this kind of graphics**  
15 **card," and then, you know, get those machines,**  
16 **install the necessary software, and then on an**  
17 **ongoing basis provide technical support to those**  
18 **machines.**  
19 Q All right. So he is involved on behalf of LTSB in  
20 working with the legislature on the redistricting  
21 process?  
22 **A Yes.**  
23 Q Okay. And if -- I'm looking at Exhibit 54, and I'm  
24 on -- if you look at the bottom, it's page 7 of 12.  
25 **A Page 7 of 12.**

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1 Q And sometimes it says "Van Der Wielen, Tony;" do you  
2 see that in, like, lines 25 and 26?  
3 **A I see that.**  
4 Q Okay. So would it be your understanding that's  
5 referring to Mr. Van Der Wielen that we've been  
6 talking about?  
7 **A Yes.**  
8 Q And I also see some references to TB -- capital T,  
9 large V, capital V, and then small A-N-D-E-R-W.  
10 What's your understanding of who that would refer to?  
11 **A I believe that this -- Tony J. Van Der Wielen and**  
12 **T. Van Der W. are references in this document to Tony**  
13 **Van Der Wielen of my staff.**  
14 Q Okay.  
15 MR. KEENAN: That's all the questions I  
16 have.  
17 MR. POLAND: Kevin, do you have anything?  
18 MR. ST. JOHN: I don't have any questions.  
19 You're done.  
20 Well, unless you guys have any -- no.  
21 We're done. Thank you.  
22 (Proceedings concluded at 3:29 p.m.)  
23  
24  
25





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