UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA,
CARLENE BECHEN, RONALD BIENDSEIL,
RON BOONE, VERA BOONE, ELVIRA BUMPUS,
EVANJELINA CLEEREMAN, SHEILA COCHRAN,
LESLIE W. DAVIS III, BRETT ECKSTEIN,
MAXINE HOUGH, CLARENCE JOHNSON,
RICHARD KRESBACH, RICHARD LANGE,
GLADYS MANZANET, ROCHELLE MOORE,
AMY RISSEEUW, JUDY ROBSON, GLORIA ROGERS,
JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP,
and TRAVIS THYSSEN,

       Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE,
and RONALD KIND,

       Intervenor-Plaintiffs,

                      Civil Action
  v.   File No. 11-CV-562

Members of the Wisconsin Government
Accountability Board, each only in
his official capacity:
MICHAEL BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, and TIMOTHY VOCKE,

[Caption Continued]

30(b)(6) VIDEOTAPE DEPOSITION

ADAM R. FOLTZ

Madison, Wisconsin
April 30, 2013

Susan C. Milleville, Court Reporter

and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin
Government Accountability Board,

            Defendants,

F. JAMES SENSENBRENNER, JR.,
THOMAS E. PETRI, PAUL D. RYAN, JR.,
REID J. RIBBLE, and SEAN P. DUFFY,

            Intervenor-Defendants.

_____

VOCES DE LA FRONTERA, INC.,
RAMIRO VARA, OLGA WARA,
JOSE PEREZ, and ERICA RAMIREZ,

            Plaintiffs,

   v.   Case No. 11-CV-1011
                                           JPS-DPW-RMD
Members of the Wisconsin Government
Accountability Board, each only in
his official capacity:
MICHAEL BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, and TIMOTHY VOCKE,
and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin
Government Accountability Board,

            Defendants.

_____

1   I N D E X

2   Witness   Pages

3   ADAM R. FOLTZ

4   Examination by Mr. Poland   6/171

5   Examination by Mr. Earle   134/174

6   Examination by Mr. Jacob   169

7   Examination by Ms. Buchko   171

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11

                          E X H I B I T S

12
    No.   Description   Identified

13
    29   Third Declaration of Mark Lanterman   97

14

15
      (The original exhibit was attached to the original

16   transcript and copies were provided to counsel)

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

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1   VIDEOTAPE DEPOSITION of ADAM R. FOLTZ, called

2   as a 30(b)(6) witness of lawful age, taken on behalf

3   of the Plaintiffs, wherein Alvin Baldus, et al., are

4   Plaintiffs, and Members of the Wisconsin Government

5   Accountability Board, et al., are Defendants, pending

6   in the United States District Court for the

7   Eastern District of Wisconsin, pursuant to subpoena,

8   before Susan C. Milleville, a Court Reporter and

9   Notary Public in and for the State of Wisconsin, at

10   the offices of Godfrey & Kahn, S.C., Attorneys at

11   Law, One East Main Street, in the City of Madison,

12   County of Dane, and State of Wisconsin, on the 30th

13   day of April 2013, commencing at 2:14 in the

14   afternoon.

15

16

17   A P P E A R A N C E S

18

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

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

                                4

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

2

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

6

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

10   CYNTHIA L. BUCHKO, Attorney,
      for WHYTE HIRSCHBOECK DUDEK S.C., Attorneys at Law,
11   33 East Main Street, Suite 300, Madison,
             Wisconsin 53701-1379, appearing on behalf of
12   the Wisconsin Senate, Wisconsin Assembly,
             Wisconsin Senate Chief Clerk Jeff Renk,
13   Wisconsin Assembly Chief Clerk Patrick E.
             Fuller and the Wisconsin Legislative Technology
14   Services Bureau.

15

      JAMES T. MURRAY, JR., Attorney,
16   for PETERSON, JOHNSON & MURRAY, S.C.,
             Attorneys at Law, 788 North Jefferson Street,
17   Suite 500, Milwaukee, Wisconsin 53202,
             appearing on behalf of the witness.
18

19   MICHAEL J. FITZGERALD, Attorney,
      for FITZGERALD LAW FIRM, S.C., Attorneys at Law,
20   526 East Wisconsin Avenue, Milwaukee,
             Wisconsin 53202, also appearing on behalf of
21   the witness.

22

      Also present: Todd S. Campbell, CLVS
23   Campbell Legal Video Company
                       417 Heather Lane, Suite B
24   Fredonia, WI 53021
                       (262) 447-2199
25

                                5

		ADAM R. FOLTZ,
	1	
	2	called as a witness, being first duly sworn,
	3	testified on oath as follows:
	4	EXAMINATION
02:14PM	5	By Mr. Poland:
	6	Q Mr. Foltz, you have in front of you a document
	7	that has already been marked as Exhibit No. 3. If
	8	you would look at the exhibit stickers on the
	9	bottom right of the document, you will see one
02:14PM	10	that's marked No. 3.
	11	A Okay.
	12	Q I'm going to ask you if you would pull that out of
	13	the stack and put it in front of you. You can
	14	push the others to the side for now or push them
02:14PM	15	up.
	16	A Okay.
	17	Q Have you seen Exhibit No. 3 before?
	18	A Yes.
	19	Q What is Exhibit No. 3?
02:14PM	20	A A subpoena for the Wisconsin State Assembly.
	21	Q And this is a specific kind of a subpoena. It's a
	22	subpoena to testify at a deposition taken pursuant
	23	to Rule 30(b)(6) of the Federal Rules of Civil
	24	Procedures, and that means that you're here in a
02:15PM	25	representative capacity testifying on behalf of

6

1		the Wisconsin State Assembly. Do you understand?
2	A	Yes.
3	Q	When did you first see Exhibit No. 3?
4	A	Early last week.
02:15PM 5	Q	Who gave Exhibit No. 3 to you?
6	A	Either Tom Pyper or Cindy Buchko.
7	Q	Now, Exhibit No. 3 calls for a representative of
8		the Wisconsin State Assembly.
9	A	Uh-huh.
02:15PM 10	Q	Do you see that?
11	A	Yes.
12	Q	Do you know how you came to be the person who is
13		designated to testify on behalf of the State
14		Assembly?
02:15PM 15	A	Related to my prior duties involved in
16		redistricting for the State Assembly when I worked
17		for Speaker Fitzgerald last legislative session.
18	Q	Do you know who made the decision that you would
19		be the designee?
02:15PM 20	A	I believe it was a group decision not attributable
21		to a single person.
22	Q	Who was involved in making that decision?
23	A	Speaker Vos's office, legal counsel.
24	Q	When you say legal counsel, do you mean Mr. Pyper
02:16PM 25		and Ms. Buchko?

7

	1	A	That's correct.
	2	Q	Anyone else involved in making that decision that
	3		you know of?
	4	A	Not that I know of.
02:16PM	5	Q	What did you do to prepare for your deposition
	6		here today?
	7	A	Met with legal counsel.
	8	Q	Again, that's Ms. Buchko?
	9	A	Yes. And Mr. Pyper.
02:16PM	10	Q	And Mr. Pyper? Did you meet with any other legal
	11		counsel?
	12	A	Yes. Mr. Fitzgerald and Mr. Murray.
	13	Q	When did you first meet with Mr. Fitzgerald and
	14		Mr. Murray in connection with the 30(b)(6)
02:16PM	15		deposition notice?
	16	A	I don't know if it's accurate to say that I met
	17		with -- let me back up. I don't know if it's
	18		accurate to say that I met with Mr. Murray and
	19		Mr. Fitzgerald regarding the 30(b)(6) but under my
02:16PM	20		deposition as an individual. I should be clear
	21		about that. The lines obviously get a little
	22		blurred given kind of the dual nature, but I would
	23		say it's accurate to say that I met with
	24		Ms. Buchko and Mr. Pyper regarding the 30(b)(6)
02:17PM	25		specifically.

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	1	Q	And when you met with Mr. Pyper and Ms. Buchko,
	2		what did you do to prepare for your deposition?
	3	A	Just a general conversation. Reviewed some
	4		documents.
02:17PM	5	Q	What documents did you review?
	6	A	A series of E-mails that -- or a series of
	7		documents, I should say not limited to E-mails
	8		necessarily, involving this ongoing action.
	9	Q	Do you recall what documents specifically you
02:17PM	10		reviewed?
	11	A	I believe they were documents that were included
	12		as exhibits in some of the motions that have been
	13		filed with the Court.
	14	Q	Did you review the motions themselves that have
02:17PM	15		been filed with the Court?
	16	A	I did not.
	17	Q	These were exhibits that were attached to the
	18		documents?
	19	A	I believe so.
02:17PM	20	Q	Do you recall any specific documents that you
	21		reviewed?
	22	A	The documents as listed -- the ones that I believe
	23		were attached as exhibits to the filings with the
	24		Court.
02:18PM	25	Q	Did you review any data or files on any CDs or DVD

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	1		as part of your preparation for today's
	2		deposition?
	3	A	I reviewed my prior depositions which came off of
	4		a DVD or CD.
02:18PM	5	Q	The transcripts themselves you reviewed?
	6	A	That's correct.
	7	Q	Did you review any of the exhibits to your
	8		depositions as well?
	9	A	No.
02:18PM	10	Q	Did you review any CDs or DVDs of documents that
	11		were produced in the litigation before the trial?
	12	A	No.
	13	Q	Did you have conversations, discussions, or
	14		communications with anyone else associated with
02:18PM	15		the Wisconsin State Assembly about the deposition
	16		today?
	17	A	Speaker Vos's office. I also did speak to --
	18		well, are you talking currently employed by the
	19		State Assembly?
02:18PM	20	Q	Correct.
	21	A	Speaker Vos's office.
	22	Q	Who at Speaker Vos's office did you speak with?
	23	A	Nick Probst.
	24	Q	Who is Mr. Probst?
02:19PM	25	A	He works for Speaker Vos as a legal counsel and

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	1		policy advisor.
	2	Q	What did you and Mr. Probst discuss about your
	3		deposition today?
	4	A	He just wanted to make sure that I was going to be
02:19PM	5		appearing on behalf of the State Assembly for the
	6		30(b)(6).
	7	Q	Did you work with Mr. Probst at all to prepare for
	8		your deposition today?
	9	A	No.
02:19PM	10	Q	Did Mr. Probst give you any documents to review?
	11	A	No.
	12	Q	Did anyone else in Speaker Vos's office give you
	13		any documents to review?
	14	A	No.
02:19PM	15	Q	Were you asked to do any independent research or
	16		investigation regarding the topics for testimony
	17		today?
	18	A	I read the deposition. I don't know if that was
	19		exactly under anyone's instruction, but I read my
02:19PM	20		prior depositions.
	21	Q	How many times did you meet with Ms. Buchko and
	22		Mr. Pyper to prepare for your deposition today?
	23	A	One that I can recall.
	24	Q	Was that last week?
02:20PM	25	A	Yes.

<center>11</center>

1	Q	You're correct. I think there may be some -- we
2		will have to be careful how we distinguish here
3		between the 30(b)(6) and the individual
4		deposition.
02:20PM 5	A	Right.
6	Q	But I want to specifically focus right now on the
7		30(b)(6) portion of the deposition. Did you ever
8		meet with Mr. Murray or Mr. Fitzgerald
9		specifically to prepare for your 30(b)(6)
02:20PM 10		testimony today?
11	A	No. But, again, blurring of the lines and
12		overlapping of topics.
13	Q	Understood. Have you had an opportunity to review
14		the topics that are identified in Exhibit No. 3
02:20PM 15		for your deposition today?
16	A	Yes.
17	Q	Are you prepared to testify to all nine topics
18		today?
19	A	I don't know if I can say all nine, but the ones
02:20PM 20		that I'm capable of answering.
21	Q	Let me shortcut the process. My understanding is
22		that Topic Number Six is a topic that you are not
23		designated to testify on.
24		MR. POLAND: Is that correct,
02:21PM 25		Ms. Buchko?

12

	1	MS. BUCHKO: That's correct.
	2	Q Is that your understanding as well, Mr. Foltz?
	3	A I believe so. Yes.
	4	Q Is it your understanding that as to the remaining
02:21PM	5	topics you are one of the witnesses who's been
	6	designated to testify on behalf of the Wisconsin
	7	State Assembly?
	8	A To the best of my knowledge. Yes.
	9	Q Let's talk about the very first topic that's
02:21PM	10	identified in Exhibit No. 3.
	11	A Uh-huh.
	12	Q The topic is the deletion or attempted deletion of
	13	any records or data --
	14	A Uh-huh.
02:21PM	15	Q -- from any of the three redistricting computers
	16	between January 1, 2011 and January 31, 2013. Do
	17	you see that topic?
	18	A I do.
	19	Q We're going to try to get a little bit better
02:21PM	20	oriented here. I'm going to ask you to take a
	21	copy of what's been marked as Exhibit No. 2 and
	22	have that in front of you.
	23	A All right.
	24	Q I'll represent this is a document that was
02:21PM	25	prepared by Jeff Ylvisaker. Do you know who

13

30(b)(6) VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 4/30/2013

1		Mr. Ylvisaker is?
2	A	Yes. I do.
3	Q	You will see if you look at Exhibit No. 3 there
4		are three different columns.
5	A	Uh-huh.
6	Q	The first column is identified -- at the top it
7		says HDD32575. Do you see that?
8	A	3257 -- I'm sorry. Which one?
9	Q	The first column.
10	A	The first column. Yes.
11	Q	Do you see that?
12	A	Yes.
13	Q	You see underneath it says WRK32587?
14	A	Yes.
15	Q	And then in parens it says Tad Ottman, HP 4600?
16	A	Yes.
17	Q	I will refer to that generally as Mr. Ottman's
18		redistricting computer. Okay?
19	A	Uh-huh.
20	Q	The middle column is identified at the top with a
21		designation HDD32574. Do you see that?
22	A	Yes. Uh-huh.
23	Q	Underneath it says WRK32586 and then in parens it
24		says Adam Foltz HP 4600. Do you see that?
25	A	Uh-huh.

02:22PM (lines 5, 10, 15, 20, 25)

14

1	Q	I will generally refer to that as your
2		redistricting computer. If we ever need
3		clarification, we will make sure we are clear.
4	A	Uh-huh.
5	Q	And then the third column is headed HDD32579.
6		Below that it says WRK32864 and then says
7		Tad Ottman HP -- it looks like Z200 or a 2200. Do
8		you see that?
9	A	I do.
10	Q	My understanding from Mr. Ylvisaker is that was a
11		redistricting computer that was used by
12		Mr. Handrick.
13	A	Uh-huh.
14	Q	So I'll refer to that as Mr. Handrick's
15		redistricting computer --
16	A	Understood.
17	Q	-- to orient ourselves. Are you familiar -- I
18		want to start with the middle column which is the
19		redistricting computer it's my understanding was
20		issued to you.
21	A	Uh-huh.
22	Q	I'm going to start by asking you -- I'm going to
23		jump down here to Topic Number Three.
24	A	Okay.
25	Q	Which is the location, possession, custody, and

02:23PM (lines 5, 10, 15, 20, 25)

15

1		control --
2	A	Okay.
3	Q	-- of any of the three redistricting computers.
4	A	Uh-huh.
02:24PM 5	Q	Between January 1, 2011 and January 31, 2013. We
6		will get ourselves oriented first with the custody
7		and control and work our way back.
8	A	Okay.
9	Q	Looking at Topic Number Three, there's an
02:24PM 10		indication on Mr. Ylvisaker's exhibit here, No. 2,
11		that the computer that was assigned to you for
12		redistricting purposes was deployed to Michael
13		Best & Friedrich on July 15, 2010. Do you see
14		that?
02:24PM 15	A	I do.
16	Q	When was the first time that you saw or used the
17		redistricting computer that was assigned to you?
18	A	Saw or used? I don't recall.
19	Q	Do you recall whether it was on or about July 15,
02:24PM 20		2010?
21	A	It may have been to get the office set up, but
22		that's -- probably. Probably around then.
23		Probably when we set up the office over there.
24	Q	Do you recall going over to Michael
02:24PM 25		Best & Friedrich's offices in the summer of 2010?

16

30(b)(6) VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 4/30/2013

1	A	I don't specifically recall going over there, but
2		I'm sure when the office was getting set up I was
3		over there at some point.
4	Q	Who made the decision to put that particular
5		redistricting computer, the Assembly redistricting
6		computer, in Michael Best & Friedrich's offices?
7	A	I don't recall who the decision would have been
8		made by.
9	Q	Were you involved in the discussions about where
10		to locate the Assembly's redistricting computer?
11	A	Not that I can recall.
12	Q	When I say the Assembly's redistricting computer,
13		I'm referring to the one that's referred to here
14		in Mr. Ylvisaker's chart.
15	A	Understood.
16	Q	What did you do to set up the computer, the
17		Assembly redistricting computer, at Michael
18		Best & Friedrich's offices?
19	A	I don't recall having any role in actually setting
20		up the computer. I may have been there when LTSB
21		deployed it. Maybe there was some person with
22		Michael Best to frankly open the door for us and
23		let us in the room. As far as the actual set up
24		in the computer, I don't recall having any role in
25		actually setting it up.

02:25PM (line 5)
02:25PM (line 10)
02:25PM (line 15)
02:25PM (line 20)
02:26PM (line 25)

17

30(b)(6) VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 4/30/2013

	1	Q	So it was LTSB who set up the computer?
	2	A	To the best of my knowledge. Yes.
	3	Q	Do you remember who from LTSB was responsible for
	4		setting up that computer?
02:26PM	5	A	No. Probably a combination of the GIS team, folks
	6		we have discussed in the past. Tony Van Der
	7		Wielen, Ryan Squires, the other Ylvisaker at LTSB.
	8		Joel I think is his first name. I'm sure it was
	9		some combination of those folks.
02:26PM	10	Q	Where is the office at Michael Best & Friedrich's
	11		offices where the Assembly redistricting computer
	12		was set ?
	13	A	How do you mean?
	14	Q	What office was it physically located in?
02:26PM	15	A	I don't know if there was a room number or
	16		anything like that.
	17	Q	My understanding is to get to the office that you
	18		accessed at Michael Best & Friedrich where the
	19		redistricting computer was located you would take
02:26PM	20		the elevator of the U.S. Bank building up to the
	21		seventh floor, correct?
	22	A	I believe that's their floor.
	23	Q	You get out of the elevator and go to the left.
	24		In other words, not toward the reception desk but
02:27PM	25		the opposite direction?

18

1	A	Yes.
2	Q	Was it a conference room that the redistricting
3		computer was kept in?
4	A	I don't know if it's intended to be a conference
02:27PM 5		room. It was a larger room but didn't have really
6		any frills. There was no projector. There was
7		nothing. It was just an empty room. I don't know
8		if its intended purpose was a conference room or
9		what the intended purpose of the room was when we
02:27PM 10		weren't there.
11	Q	Did you need any kind of key card or key to access
12		the conference room?
13	A	Yes. There was a key.
14	Q	A physical key that you would turn in a door?
02:27PM 15	A	To get into the room. Yes.
16	Q	As opposed to a key card?
17	A	Yes. Well, let me back up. There was an outer
18		door when you took a left out of the elevator that
19		required a fob to get past. Then once you got to
02:27PM 20		the actual room there was a key.
21	Q	So you were issued a key fob at some point to be
22		able to access that room?
23	A	As well as the key.
24	Q	Do you recall when you were issued the key fob?
02:28PM 25	A	No.

19

30(b)(6) VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 4/30/2013

	1	Q	How many other people had a key fob to be able to
	2		access that room?
	3	A	The room specifically was a key, just to make sure
	4		we're not mixing. The key itself, myself and
02:28PM	5		Tad Ottman at minimum. I would assume Michael
	6		Best attorneys or attorney. I don't know how many
	7		keys they had floating around with their staff.
	8		Beyond that I can't think of anyone that would
	9		have had the key.
02:28PM	10	Q	How was the Assembly computer set up in terms of
	11		its ability to communicate with any kinds of
	12		networks?
	13	A	I really don't know what the internal functions of
	14		the Michael Best IT team were to enable that.
02:28PM	15		Frankly, I just know that it was plugged into a
	16		wall and it had Internet access.
	17	Q	Are you familiar with the term ethernet? Do you
	18		know what an ethernet cable is?
	19	A	Uh-huh.
02:28PM	20	Q	Did it have an ethernet cable that was plugged
	21		into one end of the computer and the other end
	22		into a jack in the wall?
	23	A	I believe so. Yes.
	24	Q	Was there any kind of wireless access that you're
02:29PM	25		aware of?

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1	A	Not that I'm aware of.
2	Q	You said that was Michael Best's IT team that set
3		that up?
4	A	Well, I don't know is the short answer. The
5		interplay between LTSB with their responsibilities
6		to the workstation and how Michael Best may have
7		interplayed with that to provide access to the
8		outside world I don't know.
9	Q	So it's your testimony that the Assembly
10		redistricting computer was present in the Michael
11		Best offices sometime beginning in around July 15,
12		2010; is that correct?
13	A	I believe so. I believe this document.
14	Q	I'm going to jump down to sort of the end of the
15		process now.
16	A	Right.
17	Q	I would like you to look at -- there's a column or
18		there's a row that corresponds with May of 2012
19		where it says, "Approximately 5/1/2012 service
20		call related to network connection 121W." Do you
21		see that?
22	A	I do.
23	Q	What is your understanding about the time when the
24		Assembly redistricting computer left Michael
25		Best's offices?

02:29PM (lines 5, 10, 15, 20)
02:30PM (line 25)

21

1	A	All I know is that at this 5/1/2012 point -- the
2		computer would have been back in the capitol. I
3		don't know if it actually physically arrived on
4		that date or if it were before that. But this
02:30PM 5		service call relating to a network connection in
6		the capitol shows that it was there at that point.
7		Whether it was there a day before or a week before
8		I don't know.
9	Q	Who decided to move the Assembly redistricting
02:30PM 10		computer from Michael Best's office back over to
11		the capitol building?
12	A	That would have been one of my bosses whether it
13		be Speaker Fitzgerald or chief of staff. I'm not
14		sure exactly who made the decision.
02:30PM 15	Q	Were you involved at all in the decision to move
16		the computer back over to the capitol building?
17	A	Not that I can recall. I was just told to come
18		back.
19	Q	I'm sorry?
02:31PM 20	A	I was just told to come back. I don't recall
21		actually being part of the conversation as to
22		giving me those marching orders.
23	Q	Did you personally contact LTSB and ask them to
24		move the computer back over?
02:31PM 25	A	I don't recall.

22

	1	Q Did you communicate with anyone at Michael
	2	Best & Friedrich about the move of the Assembly
	3	redistricting computer from Michael Best's offices
	4	back over to the State capitol building?
02:31PM	5	A I don't recall a specific conversation about that,
	6	but I'm sure I informed someone at Michael Best,
	7	Ray Taffora or Eric McLeod, that I was packing up.
	8	Q Do you know whether there was any kind of a
	9	written communication to Michael Best at the time
02:31PM	10	that the computer was moved back over from Michael
	11	Best to the State capitol?
	12	A No written communication that I'm aware of.
	13	Q So nothing that was sent to them saying LTSB is
	14	going to come in, they're going to pack up the
02:32PM	15	computer equipment, and they're going to take it
	16	away?
	17	A Not to my knowledge.
	18	Q Do you know how somebody would have gained access
	19	to that computer and basically walked out the
02:32PM	20	front door of a law firm with computers in arms
	21	without having some kind of preauthorization to do
	22	it?
	23	MS. BUCHKO: Object to form.
	24	A I guess I'm not following the question. There was
02:32PM	25	no written document that I'm aware of. As far as

23

1		gaining access, it would just simply be that we
2		let them into the room.
3	Q	Were you there when they came to take the computer
4		from Michael Best's offices over to the capitol?
5	A	Yeah. I don't recall. I don't recall exactly how
6		that process worked with getting them back over.
7	Q	Between the time -- strike that question. It's
8		your testimony that you don't know exactly when
9		the computer went back over from Michael Best's
10		offices to the State capitol?
11	A	That's correct. I think the May 1st timeline is a
12		ballpark give or take. Whether it be a day or a
13		week, I don't know.
14	Q	Do you know the last time that you were at Michael
15		Best's offices working on the Assembly
16		redistricting computer?
17	A	At the Michael Best offices it would have been
18		before that 5/1/2012. Beyond that I don't know.
19	Q	Between the day that the Assembly redistricting
20		computer was deployed to Michael Best's offices in
21		July of 2010 --
22	A	Uh-huh.
23	Q	And the day that it was transferred back over from
24		Michael Best's offices to the State capitol
25		building --

02:32PM (line 5)
02:32PM (line 10)
02:33PM (line 15)
02:33PM (line 20)
02:33PM (line 25)

24

	1	A	Uh-huh.
	2	Q	Was that computer ever away from Michael
	3		Best & Friedrich's offices?
	4	A	Yes.
02:33PM	5	Q	Where was it?
	6	A	A conference room at Reinhart's offices in
	7		Milwaukee.
	8	Q	When was it in a conference room at Reinhart's
	9		offices in Milwaukee?
02:33PM	10	A	The week of trial.
	11	Q	Who made the decision to bring the Assembly
	12		redistricting computer to Reinhart's conference
	13		room in Milwaukee?
	14	A	I don't recall exactly who made the decision.
02:34PM	15	Q	Were you working on that computer in Reinhart's
	16		conference room in Milwaukee during the trial?
	17	A	Yes.
	18	Q	Were any of the other redistricting computers
	19		taken over to Reinhart's conference room in
02:34PM	20		Milwaukee during the trial?
	21	A	No.
	22		MR. EARLE: Can we take a break or
	23		do you want to wait a little bit?
	24	Q	How long was the Assembly redistricting computer
02:34PM	25		in the conference room in Reinhart's offices in

25

1		Milwaukee?
2	A	It would have been during the week of trial.
3		Whether it went over on Monday or Tuesday I'm not
4		sure. Five days give or take depending on what
5		day it actually went over there.
6	Q	Why was the computer taken over there?
7	A	To provide assistance.
8	Q	During the trial?
9	A	Yes.
10	Q	Who had access to the Assembly redistricting
11		computer while it was at Reinhart's office in
12		Milwaukee during the trial?
13	A	Myself. Beyond that I don't know.
14	Q	Was there anyone else who worked on the computer
15		during that week?
16	A	Not to my knowledge.
17	Q	Did Mr. Ottman work on the computer during that
18		week?
19	A	He may have, but I don't recall him specifically
20		working on it.
21	Q	Did Mr. Handrick work on it during that week?
22	A	Not to my knowledge.
23	Q	Did any of the expert witnesses who testified on
24		behalf of the defendants work on that computer
25		during that week?

02:35PM (lines 5, 10, 15, 20, 25)

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30(b)(6) VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 4/30/2013

	1	A	I don't believe so.
	2	Q	What about reviewing files up on a screen that was
	3		generated from that computer? Was there anyone
	4		other than you or Mr. Ottman who viewed files on
02:36PM	5		the screen of that computer during that week?
	6	A	There may have been.
	7	Q	What about any of the counsel for the defendants?
	8		Were any of the counsel for defendants -- did any
	9		of them use the computer during the week?
02:36PM	10	A	Not that I can recall.
	11	Q	Did any of them access the computer during the
	12		week?
	13	A	I don't believe so.
	14	Q	Did any of them view any of the files on the
02:36PM	15		screen of that computer during that week?
	16	A	They may have, but I don't recall a specific
	17		instance.
	18	Q	How was the Assembly redistricting computer
	19		connected to -- strike that question. Was the
02:36PM	20		Assembly redistricting computer connected to a
	21		network while it was in Reinhart's offices in
	22		Milwaukee?
	23	A	I don't believe so.
	24	Q	Did you have Internet access on that computer?
02:36PM	25	A	I don't believe so for that week. No.

27

	1	Q	Was there also a hard disc drive that was
	2		connected to the Assembly redistricting computer?
	3	A	I don't recall if the -- are you referring to --
	4		just to be clear, there was a disc drive, yes, the
02:37PM	5		internals. Are you referring to the external
	6		specifically in this context?
	7	Q	That's a good distinction for make. Yes. Let's
	8		talk about the external hard drive.
	9	A	I don't recall if the external made the trip to
02:37PM	10		the Reinhart conference room.
	11	Q	Did you personally transport the Assembly
	12		redistricting computer from Michael Best's offices
	13		in Madison over to Reinhart's offices in
	14		Milwaukee?
02:37PM	15	A	That's correct.
	16	Q	And did you physically bring the computer back
	17		over from Reinhart's offices in Milwaukee back to
	18		Michael Best's offices in Madison?
	19	A	Yes. That's correct.
02:37PM	20	Q	Did you hook it back up when you brought it back
	21		to the office here?
	22	A	I believe I hooked it up. Yes.
	23	Q	Other than being in Reinhart's office in Milwaukee
	24		for the week during trial, was the Assembly
02:38PM	25		redistricting computer in any other location than

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30(b)(6) VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 4/30/2013

1		Michael Best's offices before it was moved back
2		over to the capitol building?
3	A	There may have been a period of time before it was
4		deployed to Michael Best where it was at LTSB. I
5		don't know that. Or if they just pulled it
6		straight out of the box. I don't know. From the
7		time it went to Michael Best, it was Michael Best,
8		the week at Reinhart, back into the capitol.
9	Q	Let's talk about the Assembly redistricting
10		computer during the time that it was located at
11		Michael Best before the trial.
12	A	Before the trial.
13	Q	So before it was moved over to Reinhart's offices
14		for the week.
15	A	Uh-huh.
16	Q	Who had access to that computer while it was in
17		Michael Best's offices?
18	A	I did of course. LTSB. Beyond that -- I don't
19		recall specific instances where Tad or Joe may
20		have been working on it. They may have. They may
21		not have. But I can't recall specific instance
22		where they may have jumped on.
23	Q	Did any of the Michael Best & Friedrich attorneys
24		have access to the computer?
25	A	Well, how do you define access in that case?

02:38PM (lines 5, 10, 15, 20)
02:39PM (line 25)

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	1	Q	Was the computer password protected?
	2	A	Yes.
	3	Q	Who had the password to be able to log on to the
	4		computer?
02:39PM	5	A	I don't know the sum of the user names that were
	6		associated with that computer. I know I had one.
	7		I believe there may have been a separate account
	8		for LTSB for technical support reasons. I don't
	9		know that for a fact. They may have just done
02:39PM	10		service under my user name. I believe that's the
	11		case. Beyond that I don't know of any other log
	12		in name on that computer.
	13	Q	Okay. So we have got a log in name. How about
	14		password? Was there a password associated with
02:39PM	15		your log in name?
	16	A	Yes.
	17	Q	Who had that password?
	18	A	I did.
	19	Q	Did anyone else have that password?
02:39PM	20	A	Not to my knowledge.
	21	Q	If Mr. Ottman or Mr. Handrick needed to work on
	22		that computer, how would they access it if they
	23		didn't have your password?
	24	A	I would have just stepped aside and let them work
02:40PM	25		on it.

30

	1	Q	Did you ever step aside and let anyone other than
	2		Mr. Handrick or Mr. Ottman work on your computer?
	3	A	Again, I don't recall any instance where
	4		Mr. Handrick or Mr. Ottman were working on the
02:40PM	5		computer. Just to go back to that. Beyond that,
	6		it would be LTSB that I can think of that would
	7		have sat down on the computer and done various
	8		technical support functions.
	9	Q	Aside from accessing the computer, let's talk
02:40PM	10		about viewing files that could be displayed on the
	11		computer screen itself.
	12	A	Uh-huh.
	13	Q	Clearly you viewed files that were displayed on
	14		the computer screen that was attached to the
02:40PM	15		monitor that was attached to your computer,
	16		correct?
	17	A	Uh-huh.
	18	Q	Did Mr. Ottman ever view any files that you
	19		brought up on the screen, the monitor attached to
02:40PM	20		your computer?
	21	A	I am sure he did. Again, not specifically
	22		recalling a specific instance where that may have
	23		happened, but it seems very likely given the
	24		collaborative nature of the process.
02:40PM	25	Q	How about Mr. Handrick? Did Mr. Handrick ever

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1		view any files that were displayed on the monitor
2		attached to your computer?
3	A	I would probably say the same answer as with Tad.
4		I don't recall a specific instance. I'm sure it
5		happened. Yes.
6	Q	How about the lawyers for Michael
7		Best & Friedrich? Did any of them view the files
8		that you brought up on your computer monitor?
9	A	I'm sure they did.
10	Q	Do you know which attorneys for Michael
11		Best & Friedrich would have done that?
12	A	Not with absolute certainty. It would have been a
13		combination of various attorneys at Michael Best
14		that may have been working on this at one point or
15		another.
16	Q	Which attorneys at Michael Best & Friedrich worked
17		on the redistricting with you?
18	A	Eric McLeod, Ray Taffora, Joe Olson. There may
19		have been some others, but those are the three
20		that jump to mind.
21	Q	Was there a lawyer named Screnock who also
22		assisted as part of the redistricting process?
23	A	I don't know what his involvement was with
24		redistricting specifically. I know him and met
25		with him. Well, I shouldn't say met with him. I

02:41PM (lines 5, 10, 15, 20, 25)

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	1		know him from being around there. I don't
	2		remember any specific involvement that Screnock
	3		had with the redistricting process. He may have,
	4		though.
02:42PM	5	Q	What about -- Aaron Kastens is another attorney
	6		who did appear on behalf of the legislature in
	7		this lawsuit. Was Mr. Kastens involved with the
	8		redistricting process at all?
	9	A	I know that he appeared on some filing at some
02:42PM	10		point. From my perspective, I've never met
	11		Aaron Kastens I don't believe.
	12	Q	I want to you ask you about the external hard disc
	13		drive that was attached to the Assembly's
	14		redistricting computer. Are you familiar with the
02:42PM	15		hard drive?
	16	A	Yes.
	17	Q	The external hard drive. I'll try to be careful
	18		to remember to say that.
	19	A	Understood.
02:42PM	20	Q	What was the purpose of the external hard drive?
	21	A	My understanding of the external hard drive is
	22		that it provided a second redundancy of work file
	23		product that would run in a backup I believe it
	24		was nightly. I don't know exactly when those
02:43PM	25		backups occurred. They were automated, and they

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	1	were set up by LTSB.
	2	Q Did you do anything to start or stop the backup
	3	process on the external hard drive that was
	4	connected to your computer at any point?
02:43PM	5	A No. My understanding of how LTSB set it up is
	6	they set it up for some hour where normally you're
	7	not working, the middle of the night and that type
	8	of thing, and the process, the protocol which
	9	dumped files onto the external hard drive, I
02:43PM	10	believe was a fully automated process.
	11	Q Did you ever have any reason to access the
	12	external hard drive that was attached to your
	13	computer?
	14	A No.
02:43PM	15	Q Did you ever save anything on that external hard
	16	drive intentionally as opposed to the --
	17	A As opposed to the internal drives? No. I did
	18	not.
	19	Q And as opposed to the automated process.
02:43PM	20	A Right. Right.
	21	Q Is there anybody that we haven't talked about who
	22	had possession, custody, or control of the
	23	Assembly redistricting computer during the time
	24	that it was at Michael Best's office?
02:44PM	25	A Possession, custody, or control of the computer

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1		when it was at Michael Best's office?
2	Q	Correct.
3	A	I don't believe so.
4	Q	What about for the one week that it was at
5		Reinhart's office?
6	A	Not that I can think of.
7	Q	Now I want to move to the time that the computer
8		moved from Michael Best & Friedrich's offices back
9		over to the capitol building.
10	A	Okay.
11	Q	Exhibit No. 2, which Mr. Ylvisaker prepared,
12		identifies the service call related to a network
13		connection. Do you see that?
14	A	I do.
15	Q	And there's a room number or there's a number I
16		should say that he gives, 121 W. Do you see that?
17	A	I do.
18	Q	Is that a room at the capitol building?
19	A	Yes. It is.
20	Q	What room is that?
21	A	121 West would be the room.
22	Q	Who occupied that room at the time?
23	A	It's a room known as the speaker's annex or at
24		least under the way the offices were set up last
25		session in the legislature the speaker's annex

02:44PM (line 5)
02:44PM (line 10)
02:44PM (line 15)
02:44PM (line 20)
02:45PM (line 25)

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1		which is basically an overflow room for storage.
2	Q	Is that where the Assembly redistricting computer
3		was located at that time?
4	A	That's correct. Post Michael Best time.
02:45PM 5	Q	Post Michael Best. So when it was moved from
6		Michael Best & Friedrich to the capitol building,
7		that's the location where it was put?
8	A	That's correct.
9	Q	Do you know who decided that it would be put in
02:45PM 10		that location?
11	A	I don't know who made that actual decision.
12	Q	Do you know who made the service call that's
13		related to that network that is identified on
14		Exhibit No. 2?
02:45PM 15	A	I don't remember the call with absolute certainty,
16		but I'm assuming it's me.
17	Q	All right. I'm going to ask if you can take a
18		look at Exhibit No. 5. It's a stack of documents
19		that's clipped together.
02:45PM 20	A	Okay.
21	Q	What you're going to see as you page through
22		Exhibit 5 -- you will see a few subpoenas that are
23		on the top, and then you're going to see some
24		documents that are identified as Configuration
02:46PM 25		Items. Then you will see some documents that say

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	1		Service Call at the top.
	2		MS. BUCHKO: It might be easier if
	3		you unclip it. Try to keep it in order.
	4		Sorry, counsel. I hope you don't mind.
02:46PM	5		MR. POLAND: That's okay.
	6	A	So Configuration Item.
	7	Q	Just so that we're clear, we are going to dip into
	8		another topic here for a brief time. There's a
	9		Topic Number Five, all maintenance performed on
02:46PM	10		the three redistricting computers. We're going to
	11		get into that a little bit. I'll come back to it
	12		specifically as a topic. We're going to touch on
	13		a couple of the issues.
	14	A	Uh-huh.
02:46PM	15	Q	I would like to turn your attention in the service
	16		call documents, the very first one is
	17		identified -- there's an ID number at the top and
	18		it says 46,484. Do you see that?
	19	A	I'm sorry. Where am I looking?
02:47PM	20	Q	Right underneath where it says Service Call. It
	21		says Main.
	22	A	I see Configure. Am I not in the right spot?
	23		MS. BUCHKO: Do you mind?
	24		MR. POLAND: That's fine.
02:47PM	25	Q	There are service calls.

<div align="center">37</div>

1	A	Sorry about that. Okay. 46,484.
2	Q	Do you see that ID?
3	A	I do.
4	Q	I'm going to stop you there. If you look a little
5		further down, you will see it says Caller:
6		Adam Foltz. Do you see that?
7	A	I do.
8	Q	All right. And then a little further down from
9		that it says Classification: Outlook Exchange.
10		Do you see that?
11	A	Okay.
12	Q	Now, jump all of the way down to the bottom of the
13		page, and you're going to see it's got a
14		Description and a Ticket History. Do you see
15		that?
16	A	Ticket History. Yes.
17	Q	So there's a description there. Okay?
18	A	Okay.
19	Q	I'm just looking at this to orient you with the
20		kind of information that's in these documents.
21	A	Okay.
22	Q	I'm going to take you to a different one, a
23		service call. I should ask you the foundational
24		question. Have you seen these kinds of documents
25		before, Mr. Foltz?

02:47PM (lines 5, 10, 15, 20)
02:48PM (line 25)

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30(b)(6) VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 4/30/2013

	1	A	I have not.
	2	Q	You haven't. Okay. I'm going to ask you to look
	3		two documents behind that. There's a service call
	4		with an ID 55,738.
02:48PM	5	A	Okay.
	6	Q	If you look on that, it says Caller: Adam Foltz.
	7	A	Uh-huh.
	8	Q	And look all of the way down at the bottom of that
	9		page.
02:48PM	10	A	Uh-huh.
	11	Q	You will see it says 35,112. There's an entry by
	12		a Michael Winger?
	13	A	Okay.
	14	Q	It says -- the description says, "GIS machine now
02:48PM	15		in 121W. Needs help." Do you see that?
	16	A	Where is that again? Okay.
	17	Q	Under Description.
	18	A	Yes.
	19	Q	It then goes and says, "Helped him find a network
02:48PM	20		drop that worked. Turned off static IP
	21		addressing." And it continues on the next page.
	22		Do you see that?
	23	A	Yes.
	24	Q	Does that help refresh your recollection that you
02:49PM	25		were the person who placed the service call?

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	1	A	Yes. That appears to be the case.
	2	Q	Did this computer continue to be assigned to you
	3		after it was moved back over to the capitol
	4		building?
02:49PM	5	A	I don't know what you mean by assigned to me. The
	6		computers in the capitol you can log in on your
	7		user name or you can log out. It's not
	8		necessarily fixed to one person in the capitol
	9		context. So I guess I don't know exactly what you
02:49PM	10		mean by assigned to me.
	11	Q	Maybe I'm just using the LTSB speak --
	12	A	Uh-huh.
	13	Q	-- about assignments. Was this a computer that
	14		you continued to use once it was moved back over
02:49PM	15		to the capitol building?
	16	A	That's correct.
	17	Q	Did you ask for the computer to be put in 121
	18		West?
	19	A	Did I ask for it?
02:49PM	20	Q	Correct.
	21	A	Not to my knowledge. No.
	22	Q	Did you have a separate office that you maintained
	23		over in the capitol building at that time?
	24	A	I was in -- well, the speaker's office.
02:50PM	25	Q	What's the number of the speaker's office or the

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1		room number or what was it at the time?
2	A	It's the same office that it is now. It's off the
3		chambers. I don't remember the exact number of
4		it, but it's the speaker's office fixed to the
5		position.
6	Q	So it's not the person who occupies it?
7	A	It's the speaker's office regardless of who the
8		speaker is. Now, granted, the configuration has
9		changed a little bit this session to just be clear
10		on that. The speaker's office is the speaker's
11		office.
12	Q	Got it. And you were in the speaker's office. At
13		that time in May of 2012 it was Speaker Fitzgerald
14		at the time and now it's Speaker Vos, correct?
15	A	Yes.
16	Q	What was the number of the office or you said you
17		don't recall?
18	A	Of the speaker's office?
19	Q	Correct.
20	A	I don't remember. It's second floor west.
21	Q	So it's one floor up from 121 West; is that
22		correct?
23	A	Yes.
24	Q	Did you have a primary computer that you worked on
25		beginning in May of 2012 separate and apart from

(Timestamps in left margin: 02:50PM at lines 5, 10, 15, 20, 25)

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1		this redistricting computer?
2	A	I would bounce back and forth. I would primarily
3		be on the computer in 121 West, the GIS station.
4		I may have logged in to computers located actually
5		in the speaker's office from time to time as well.
6		I just kind of bounced back and forth.
7	Q	Why were you using a computer, the redistricting
8		computer that was in 121 West, as opposed to using
9		exclusively a computer that was up in the
10		speaker's office?
11	A	I don't really know why.
12	Q	Had you used the redistricting computer for
13		purposes other than redistricting?
14	A	Yes.
15	Q	Did you continue to use that computer for purposes
16		other than redistricting?
17	A	Yes.
18	Q	Now, going back to the service call that we were
19		just looking at. This is the one on May 1st.
20	A	Yes.
21	Q	That ticket history says, "Helped him find a
22		network drop that worked." Do you know what that
23		is referring to there?
24	A	I don't.
25	Q	Were you able to access any kind of a network with

02:51PM (lines 5, 10, 15, 20); 02:52PM (line 25)

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1		the computer when it was first put over in 121
2		West?
3	A	I don't recall, but it seems as though -- first
4		able to? No. And that was what prompted the
5		service call is the way it reads.
6	Q	And someone from LTSB came over and helped you
7		with that?
8	A	I don't know if this was an in-person or on the
9		phone. The way it reads is it sounds -- it sounds
10		like it was just on the phone. I should say it
11		reads that way.
12	Q	There is a reference in here that says, "Remap
13		network drives with his new password since it
14		changed yesterday." Do you see that?
15	A	Uh-huh.
16	Q	Do you know what was involved with the remapping
17		of the network drive?
18	A	No. A technical support issue.
19	Q	Do you know what was involved with the change of
20		your password?
21	A	The only thing I know about that is that you're
22		required to change your password. There's
23		security protocols that LTSB sets up that requires
24		rotation of the password after a certain number of
25		days.

02:52PM (lines 5)
02:52PM (line 10)
02:52PM (line 15)
02:52PM (line 20)
02:53PM (line 25)

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	1	Q	There's a reference, "Also linked up Outlook 2007
	2		with his .pst files on his Y drive." Do you see
	3		that?
	4	A	I do.
02:53PM	5	Q	What's the Y drive?
	6	A	Y drive I believe is assigned to the -- the Y
	7		drive I believe is assigned to the office and
	8		that's where office, legislative office files, are
	9		stored. But I'm not 100 percent sure on that.
02:53PM	10	Q	Do you know why they were linking up the Outlook
	11		2007 with your .pst files on your Y drive?
	12	A	I believe it was just to facilitate -- not knowing
	13		exactly, I believe it was just to facilitate
	14		Outlook being able to function.
02:53PM	15	Q	Do you know what kind of data are stored in .pst
	16		files?
	17	A	No.
	18	Q	The next paragraph says, "Adam is using a local
	19		user account to log in, still." Do you see that?
02:54PM	20	A	Uh-huh.
	21	Q	What's the local user account?
	22	A	Without knowing the exact answer, what I would say
	23		that is is probably the difference between being
	24		over at Michael Best where to my understanding we
02:54PM	25		weren't actually part of the Michael Best network

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1		logging in as a user at Michael Best versus being
2		in the capitol where you're part of that work
3		group, part of that IT infrastructure. I really
4		don't know the technical terms behind that, but I
02:54PM 5		believe that's what it's referring to.
6	Q	The next sentence says, "He knows the difference
7		between his local user account and his network
8		account." Do you see that?
9	A	Uh-huh.
02:54PM 10	Q	Have you ever heard the term domain account used?
11	A	No.
12	Q	The network account, that's the account that you
13		would have used when you accessed the State's
14		network; is that correct?
02:54PM 15	A	I believe so. Yes.
16	Q	And local user account is just to get on the
17		computer?
18	A	I believe so, but, again, technical terms that I'm
19		not completely familiar with what they mean in the
02:55PM 20		IT context.
21	Q	Did you ever use a network account while the
22		computer was located at Michael Best & Friedrich?
23	A	I want to be clear on that because there were
24		times where you would VPN in to establish a
02:55PM 25		connection with the Outlook server for lack of a

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1		better term. I don't know how that falls in what
2		you're asking, but to the extent that VPN access
3		may have been used to get Outlook E-mail, yes.
4	Q	And VPN is an acronym for virtual private network;
5		is that correct?
6	A	I believe so.
7	Q	VPN is something that LTSB set up your computer to
8		be able to do; is that correct?
9	A	I believe that's the case. Yes.
10	Q	I would like you to turn to the very first of the
11		service calls. It's Number 46,484.
12	A	46,484 service call.
13	Q	Correct.
14	A	Okay.
15	Q	All right. If you look down under Caller, you
16		will see it identifies Adam Foltz.
17	A	Uh-huh.
18	Q	And then Classification says Outlook Exchange. Do
19		you see that?
20	A	Under Classification?
21	Q	Correct.
22	A	Yes.
23	Q	If we jump down to the bottom, we will see
24		January 26, '11.
25	A	Uh-huh.

02:55PM (line 5)
02:55PM (line 10)
02:56PM (line 15)
02:56PM (line 20)
02:56PM (line 25)

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1 Q   There's an entry by Jared Bender.

2 A   Okay.

3 Q   And it says, "I couldn't log on to his machine

4   despite it being provided by LTSB and on VPN so I

02:56PM 5   walked him through the steps."

6 A   Uh-huh.

7 Q   Do you see that?

8 A   Yes.

9 Q   Did Mr. Bender come over physically to Michael

02:56PM 10   Best & Friedrich and assist you with that?

11 A   No. I don't believe so. To the best of my

12   knowledge, all of the in-person technical support

13   was performed by that roster that I had rattled

14   off to you earlier, the GIS team. I don't believe

02:57PM 15   Jared Bender is part of the GIS team.

16 Q   There are two dashes, and it says, "He is now

17   connected to Outlook and can access the rep's

18   mailboxes as requested." Do you see that?

19 A   I do.

02:57PM 20 Q   Who is the rep that is referred to there? Do you

21   know?

22 A   It would be my appointing authority which would

23   have been Representative Fitzgerald.

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

02:57PM 25   Outlook?

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30(b)(6) VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 4/30/2013

	1	A That would be the rep.fitzgerald@legis.wi.gov mail
	2	box which is kind of the publicized if you want to
	3	E-mail your State representative send your E-mail
	4	here.
02:57PM	5	Q Did you also have access to your own State E-Mail
	6	account then through the VPN?
	7	A Yes.
	8	Q Did you continue to use the Assembly redistricting
	9	computer beginning in May of 2012 until some
02:58PM	10	definite time or definite date?
	11	A Definite -- well, yes. Yes.
	12	Q When was the last time that you used the Assembly
	13	redistricting computer in the capitol building?
	14	A I don't recall the specific date, but it is some
02:58PM	15	time before Pat Fuller put it in the inventory
	16	cage.
	17	Q So if we take a look at the column on Exhibit
	18	No. 2, in that middle column, you will see an
	19	entry that says, "Approximately 9/13/2012."
02:58PM	20	A Right.
	21	Q "Computer returned to LTSB per Patrick Fuller
	22	assembly chief clerk. Locked in inventory cage."
	23	Do you see that?
	24	A I do.
02:58PM	25	Q When was the last time that you worked on the

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	1		Assembly redistricting computer?
	2	A	I don't recall the specific day, but it would have
	3		been before 9/13 of '12.
	4	Q	How was a decision made to return that computer to
02:59PM	5		LTSB?
	6	A	I don't know who was involved in the
	7		decision-making process of that.
	8	Q	Were you told that that was going to happen?
	9	A	I was told that it had happened.
02:59PM	10	Q	So it was already -- had it been accomplished by
	11		the time that you were told about it?
	12	A	That's correct.
	13	Q	Were you still working for the Assembly at that
	14		time?
02:59PM	15	A	No. Not at that point I would not have been.
	16	Q	At some point in time you went to work for Senator
	17		Fitzgerald's office, correct?
	18	A	Correct.
	19	Q	When did you begin working for Senator
02:59PM	20		Fitzgerald's office?
	21	A	January of '13 would have been Senator Fitzgerald.
	22	Q	When did you stop working for the Assembly?
	23	A	Sometime late August or early September I left
	24		State service.
02:59PM	25	Q	Were you employed at all by the State after that

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	1		time until you came to be employed by Senator
	2		Fitzgerald's office?
	3	A	I'm sorry. Say that again.
	4	Q	It was a bad question. When you left the
03:00PM	5		employment of the State Assembly, what did you do
	6		after that?
	7	A	I went to work for the Republican Party of
	8		Wisconsin.
	9	Q	And did you leave the employment of the Republican
03:00PM	10		Party of Wisconsin when you began working for
	11		Senator Fitzgerald?
	12	A	No.
	13	Q	So you're still employed by the Republican Party
	14		of Wisconsin currently?
03:00PM	15	A	No.
	16	Q	You're not? Okay. When did you stop being
	17		employed by the Republican Party of Wisconsin?
	18	A	Would have been after the election.
	19	Q	So turning back in time then to September 13th or
03:00PM	20		September of 2012.
	21	A	Uh-huh.
	22	Q	You don't know why the decision was made to give
	23		the Assembly redistricting computer to the chief
	24		clerk?
03:01PM	25	A	No. I believe the prior testimony was that I did

<div align="center">50</div>

	1	not know who made that decision.
	2	Q Do you know why it was done?
	3	A I believe it was a response to the filings that
	4	plaintiffs' attorneys had filed with the Court.
03:01PM	5	Q What leads you to that conclusion?
	6	A The timing. I believe it was matched up with when
	7	your first motion and kind of the ongoing
	8	discovery issues perked up to the Court's
	9	attention. Again, I believe that's what was going
03:01PM	10	on there.
	11	Q Did you ever discuss that with anyone?
	12	A I was informed of it after.
	13	Q I should let you finish. Go ahead.
	14	A I was informed of it.
03:01PM	15	Q Who informed you of it?
	16	A Not knowing for sure, it would have probably been
	17	either Speaker Fitzgerald himself or the chief of
	18	staff to the speaker's office.
	19	Q So after you came to be employed by -- I'm sorry.
03:01PM	20	You said Speaker Fitzgerald?
	21	A It would have been him or his chief of staff most
	22	likely but again not recalling that specifically.
	23	Q Between the time that you last worked on the
	24	computer -- strike that question. Assume the time
03:02PM	25	that you last worked on that computer was before

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1		the time you left the employment of the Assembly.
2		Is that fair to say?
3	A	Yes. That would be accurate. I would say that's
4		fair. Yes.
03:02PM 5	Q	So it would have been sometime in August or early
6		September?
7	A	Yes.
8	Q	Between the time that the computer came back over
9		to the capitol building on or about May 1, 2012
03:02PM 10		and then September 13th when it was returned to
11		LTSB --
12	A	Uh-huh.
13	Q	-- who in addition to you actually used that
14		computer?
03:02PM 15	A	I don't know. I can't think of anyone, but I
16		don't know that with an absolute certainty.
17	Q	Do you know who had access to the computer, who
18		could have used it?
19	A	It was in the speaker's annex and the key --
03:03PM 20		there's only a couple of keys to the speaker's
21		annex, and I believe they're kept by the chief of
22		staff. Others may have had copies of that key.
23		I'm not aware of that, though.
24	Q	Is the door generally kept open during business
03:03PM 25		hours or does it usually remain closed?

<div align="center">52</div>

1	A	In that room it tends to be locked more than
2		opened given that it's typically a storage room.
3	Q	Do you know of any users, and, again, I'm kind of
4		moving into another topic now.
5	A	Okay.
6	Q	Topic Number Four asks the identity of all users
7		of the computers.
8		MS. BUCHKO: Counsel, should we
9		see --
10		MR. POLAND: Let me finish this one
11		question, and then we will go off.
12	Q	Other than you, who else used the Assembly
13		redistricting computer between May of 2012 and
14		September of 2012?
15	A	No one that I can recall.
16		MR. POLAND: Let's take a break
17		there. We're going to see if our other
18		witness is here.
19		THE VIDEOGRAPHER: The time is
20		3:03. We are going off the record.
21		(Recess)
22		THE VIDEOGRAPHER: The time is 4:45
23		p.m. We are back on the record.
24	Q	Mr. Foltz, before we broke, we were talking about
25		some of the topics in the Assembly's 30(b)(6)

Timestamps in left margin:
- 03:03PM (line 10)
- 03:03PM (line 15)
- 03:04PM (line 20)
- 04:46PM (line 25)

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1		deposition subpoena. Do you recall that?
2	A	Yes.
3	Q	I was primarily trying to stick with one topic
4		although I was delving into some others.
5	A	Uh-huh.
6	Q	I'm going to try to go back and just complete this
7		on a topic-by-topic basis so we can stay organized
8		here.
9	A	Okay.
10	Q	We were talking about the redistricting computer
11		at the time that it was over back in the State
12		capitol --
13	A	Uh-huh.
14	Q	-- and it was in Room 121 West. Do you recall
15		that discussion that we were having?
16	A	Yes. I do.
17	Q	You testified that there came a point in time when
18		you left the employment of the Wisconsin State
19		Assembly, correct?
20	A	That's correct.
21	Q	You testified that it was sometime in late August
22		or early September; is that correct?
23	A	That's correct.
24	Q	Do you recall with any more specificity when it
25		might have been? Was it before Labor Day, after

04:46PM (line 5)
04:46PM (line 10)
04:47PM (line 15)
04:47PM (line 20)
04:47PM (line 25)

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1		Labor Day?
2	A	No.
3	Q	And you don't recall the last time that you used
4		that computer; is that correct?
04:47PM 5	A	That's correct.
6	Q	Do you know whether between the time that you left
7		the State Assembly and the September 13, 2012 date
8		that's identified in Exhibit No. 2, when the
9		computer was turned over to LTSB --
04:47PM 10	A	Uh-huh.
11	Q	Do you know whether there was any one else to whom
12		use of that computer was assigned?
13	A	Not that I know of.
14	Q	And once it was turned over to LTSB on or about
04:48PM 15		September 13, 2012, do you know anything else
16		about what that computer was used for or its
17		storage or handling at all?
18	A	No. My understanding is that it was locked in
19		their inventory cage and was to the best of my
04:48PM 20		knowledge not accessed again until the forensic
21		imaging process began.
22	Q	And that includes both the computer itself as well
23		as the attached external hard drive?
24	A	Yes. That's correct.
04:48PM 25	Q	We had a little bit of a time lag here, so I will

1		apologize in advance if I asked this before. When
2		the computer was over in the 121 West room, did
3		you observe anyone else using the computer --
4	A	No.
5	Q	-- that redistricting computer?
6	A	No.
7	Q	As far as you know, were you the only user of that
8		computer at that time?
9	A	I never observed anyone and I don't know of anyone
10		else that had accessed it.
11	Q	Did you ever access and see files that were
12		changed or switched around in a way that would
13		indicate to you someone else had been on that
14		computer?
15	A	Not that I can recall.
16	Q	Do you know whether that computer was used for any
17		purposes other than redistricting between the July
18		2010 time frame when it was installed at Michael
19		Best & Friedrich and the time that you started the
20		redistricting process in 2011?
21	A	No. I'm sorry. What was the question again? In
22		that time period?
23	Q	Correct. If it was used for any purposes other
24		than redistricting.
25	A	Not to my knowledge.

04:49PM (lines 5, 10, 15, 20, 25)

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1	Q	In other words, it was just sort of sitting over
2		at Michael Best's office during that time frame?
3	A	That's correct. As far as I know.
4	Q	Did you do your other types of Assembly work on
5		the redistricting computer during the time that it
6		was at Michael Best & Friedrich?
7	A	Yes. If an issue were to come up. Yes.
8	Q	Did you have any other computer available to you
9		over in Speaker Fitzgerald's office at that same
10		time?
11	A	Potentially, yes. I could have gone over there
12		and logged in on one of the workstation there is.
13	Q	Did you have any specific computer that was
14		assigned to you personally or specifically in
15		Speaker Fitzgerald's office?
16	A	No.
17	Q	As you said before, you could log on to just about
18		any computer and access your account and do work
19		on it.
20	A	The State account when on the State network.
21	Q	Right. Were there other types of legislation that
22		you were working on during the same time that you
23		were doing work on your redistricting computer?
24	A	Not that I can recall.
25	Q	Were there any other Assembly bills you were

04:50PM (lines 5, 10, 15, 20)
04:51PM (line 25)

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1		working on at the same time?
2	A	Not that I can think of. I'm sorry. What time
3		frame are we referring to here?
4	Q	Let me back it down then and ask you. During the
5		time that the computer -- from January of 2011
6		when you began the redistricting work until May
7		when the computer was moved back over to the State
8		capitol building, were there any other Assembly
9		bills you were working on during that time?
10	A	Not that I can recall. No.
11	Q	What about from the time the computer moved from
12		Michael Best & Friedrich over to the State capitol
13		building, so from roughly May of 2012 through
14		September 13, 2012? Was there any other
15		legislation that you were working on on that
16		computer?
17	A	Not that I can recall. And at that point the
18		legislature is out of session. So very likely
19		not, but, again, I don't recall specifically.
20	Q	When did the legislature go out of session?
21	A	I don't know what the date is on that for the 2010
22		calendar.
23	Q	2012?
24	A	I'm sorry. You're right. I'm not sure exactly
25		when the session officially ended in that calendar

04:51PM (line 5)
04:51PM (line 10)
04:51PM (line 15)
04:52PM (line 20)
04:52PM (line 25)

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	1	year.
	2	Q Another one of the topics is Topic Number Five --
	3	A Okay.
	4	Q -- which talks about all maintenance performed on
04:52PM	5	the three redistricting computers between
	6	January 1, 2011 and January 31, 2013. Do you see
	7	that?
	8	A Number Five. Correct.
	9	Q Correct. Topic Number Five.
04:52PM	10	A Yes.
	11	Q And we saw some of those examples in the service
	12	items that Mr. Ylvisaker had provided, correct?
	13	A Uh-huh. Yes.
	14	Q Was there any maintenance that was performed on
04:52PM	15	the Assembly redistricting computer while it was
	16	at Michael Best & Friedrich that wasn't reflected
	17	in the service call items we saw in Exhibit No. 5?
	18	A I didn't review all of the service call items I
	19	believe. But in the ones I saw, those were not
04:53PM	20	reflected. Those visits were not reflected in
	21	those specific tickets.
	22	Q What kinds of service calls were made or service
	23	that was requested that wasn't reflected in those
	24	tickets?
04:53PM	25	A The-in person visits from the GIS team to update

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	1		the software, upgrade -- update geographic data
	2		sets for a better term. To upgrade the Autobound
	3		software and provide service and maintenance on
	4		the GIS specific software.
04:53PM	5	Q	Did you make those requests or did they do that on
	6		their own initiative?
	7	A	Both. You can have issues that arise by the
	8		software not functioning, but LTSB may have
	9		received a patch or a software update where they
04:53PM	10		proactively would have come over and brought those
	11		files and updated the software.
	12	Q	Do you recall having any specific performance
	13		problems with the Assembly redistricting computer
	14		during the time that it was at the Michael
04:54PM	15		Best & Friedrich offices?
	16	A	Yes.
	17	Q	What kinds of performance problems did you
	18		encounter?
	19	A	Basically the Autobound software was awful for
04:54PM	20		lack of a better term. It was very buggy, very
	21		unstable software. It required a lot of work just
	22		to get it up and running and keep it up and
	23		running. It was quite horrible.
	24	Q	Was LTSB or the GIS team able to solve the
04:54PM	25		problems that you experienced with the Autobound

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1		software?
2	A	I would say so.
3	Q	Mr. Ottman had testified earlier that his computer
4		worked very slowly and he installed a product
5		called CCLeaner on his computer in an attempt to
6		make it work more quickly. Did you encounter any
7		kinds of similar problems with your computer
8		working slowly?
9	A	Yes. The computers -- well, I should say the
10		Autobound software worked very slowly. I can
11		remember that happening where that was just
12		inefficient. It was very unstable. Very slow.
13	Q	Did you install any kinds of programs or
14		applications like CCLeaner to try to make the
15		computer work more quickly?
16	A	Not to my knowledge.
17	Q	Did you connect to the Internet through your
18		redistricting computer?
19	A	Yes.
20	Q	What browser did you use to connect to the
21		Internet.
22	A	Internet Explorer. I may have -- I really don't
23		recall. Probably something other than Internet
24		Explorer as well. Firefox I believe. But, again,
25		not recalling exactly. But probably using an

04:54PM (line 5)
04:54PM (line 10)
04:55PM (line 15)
04:55PM (line 20)
04:55PM (line 25)

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	1		alternative to Internet Explorer.
	2	Q	Did you install whatever alternative browser it
	3		was yourself or did LTSB install that for you?
	4	A	I don't recall who installed that.
04:55PM	5	Q	Do you remember downloading any software from the
	6		Internet and installing it yourself on the
	7		computer?
	8	A	I don't recall any instance where I had done that,
	9		but I may have.
04:56PM	10	Q	Were you given any kind of administrative
	11		privileges with respect to the computer to your
	12		knowledge?
	13	A	I don't know.
	14	Q	Were there any restrictions that were placed on
04:56PM	15		your use of the computer by LTSB?
	16	A	I don't know.
	17	Q	Was there ever anything that you tried to do with
	18		your computer that you weren't able to do?
	19	A	Not -- I guess in what context do you mean?
04:56PM	20	Q	That's a broad question. Was there ever a time
	21		that you tried to install some software and the
	22		computer said you don't have adequate privileges
	23		or you can't do that?
	24	A	I don't recall.
04:56PM	25	Q	Did you ever perform any kind of maintenance on

<div align="center">62</div>

	1		the files themselves on the computer?
	2	A	What do you mean by that?
	3	Q	Did you ever move any folders around or rename
	4		folders?
04:56PM	5	A	I'm sure that happened as part of the process.
	6	Q	Did you add folders to the computer?
	7	A	Yes.
	8	Q	Did you delete any folders from the computer?
	9	A	Not to my knowledge. Obviously the line from my
04:57PM	10		declaration alludes to a duplicative folder that
	11		was on there, but I don't recall specifically.
	12	Q	What about other than the folders? What about
	13		files themselves? Did you delete any files from
	14		the redistricting computer while it was over at
04:57PM	15		Michael Best & Friedrich?
	16	A	I may have. I don't recall any specific instances
	17		of that.
	18	Q	Was there ever a time where LTSB performed any
	19		maintenance of the redistricting computer for you
04:57PM	20		that after they were done you looked on it and
	21		said *I can't find something that was there before,*
	22		*there was something I wanted to use and now it's*
	23		*gone*?
	24	A	Not that I can think of.
04:57PM	25	Q	Now let's talk about the time after the computer

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1		went back from Michael Best & Friedrich's offices
2		to the State capitol building. Again, we saw a
3		couple of examples of maintenance calls that LTSB
4		made from the service calls that Mr. Ylvisaker had
5		printed out. Were there other instances in which
6		LTSB came and provided assistance for maintenance
7		purposes on the redistricting computer?
8	A	Not that I can recall on that. Again, not saying
9		it didn't happen. I just don't recall any
10		instance. You're saying instances where they
11		physically came over like they did at Michael
12		Best; is that correct?
13	Q	Yes.
14	A	Not that I can recall, but I don't remember that
15		for sure.
16	Q	Did you consult with them by telephone?
17	A	The service tickets would indicate yes. The
18		GIS -- I can't say for certain because sometimes
19		the GIS was such an in depth and technically
20		specific process that it required LTSB to come
21		over and move a massive number of files that an
22		Autobound software update would include. I'm sure
23		there were other times where the issues were
24		smaller in scope and didn't require massive
25		movement of data where I could just get walked

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1		through the process. So I would say it's both.
2	Q	Did they also have the ability to take over your
3		computer remotely so that they could move the
4		cursor around on your computer and manipulate
5		things on your computer?
6	A	In the capitol that's a common way that LTSB
7		services the computer. I don't recall an instance
8		in the capitol where they did that takeover that
9		you refer to. I don't know if it's an option when
10		I was over in the Michael Best offices, and I
11		can't recall an instance where they would have
12		done that again with the networks not being on the
13		State network. I don't believe that's the case.
14		I don't believe they have that capability.
15	Q	I would like to ask you about Topic Number Two
16		which is on the first page of Exhibit A. That's
17		the topic of recovery or restoration of any
18		records or data from or to any of the three
19		redistricting computers.
20	A	Uh-huh.
21	Q	Was there ever a time that data was -- let's talk
22		about the time that the Assembly redistricting
23		computer was at the Michael Best & Friedrich
24		offices.
25	A	Okay.

04:59PM (line 5)
04:59PM (line 10)
04:59PM (line 15)
05:00PM (line 20)
05:00PM (line 25)

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	1	Q	Was there ever a time that data had to be
	2		recovered from that computer?
	3	A	Not that I'm aware of. I would say the best
	4		answer I could give you on that one is that I
05:00PM	5		can't recall any specific instance where I would
	6		run say a Windows recovery, and, frankly, on these
	7		machines I would never do something like that
	8		because we had more technically advanced people
	9		available to us. Now, in LTSB's servicing of the
05:00PM	10		computer I don't know if at any point that was
	11		required to restore or roll back a system to a
	12		prior setting. I don't know if at any point in
	13		the updating or fixing of the very buggy Autobound
	14		software if that was ever part of their process.
05:01PM	15	Q	Did you personally ever do anything to recover or
	16		retore any files on the redistricting computer
	17		while it was at Michael Best & Friedrich's office?
	18	A	Not that I can recall.
	19	Q	Did there ever come a time where you inadvertently
05:01PM	20		deleted something and restored it in some way?
	21	A	Possible but again not recalling a specific
	22		instance.
	23	Q	Is there any specific instance that you're aware
	24		of that LTSB did that?
05:01PM	25	A	Did what exactly, the restoration?

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	1	Q	Restored or recovered any data on that computer.
	2	A	I can't speak to that not knowing what they were
	3		doing when they were trying to get Autobound back
	4		up and running whether they had to roll back the
05:01PM	5		system to a prior configuration to get it working
	6		again I really don't know.
	7	Q	How about anybody other than LTSB? Are you aware
	8		of any situation in which anyone other than you or
	9		LTSB did anything to restore or recover data to
05:02PM	10		the Assembly redistricting computer while it was
	11		at Michael Best's offices?
	12	A	Not that I can think of.
	13	Q	Did anyone from Michael Best & Friedrich, any of
	14		their IT people, ever assist you in the use of
05:02PM	15		your redistricting computer?
	16	A	The only instance where that may have happened
	17		would have been probably setting up the network
	18		connection. Now, I don't specifically recall them
	19		sitting down at the computer and working some type
05:02PM	20		of configuration on my end or if it was something
	21		they were able to do on the back end IT server end
	22		for lack of a better description. I can't think
	23		of a specific instance where they sat down. They
	24		may have. I'm not saying that they didn't. I
05:02PM	25		just don't recall them. But the only situation

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	1		where that probably would have been possible is
	2		when they came in to -- I shouldn't say came in.
	3		When they established the connection for the
	4		redistricting computer to the outside world, to
05:02PM	5		the Internet.
	6	Q	Now let's talk about the time when the Assembly
	7		redistricting computer was moved back over to the
	8		capitol building. Was there ever any time where
	9		you personally recovered or restored any records
05:03PM	10		or data to that computer?
	11	A	Not that I can recall.
	12	Q	We talked a little bit before about the time when
	13		somebody from LTSB was working with you when the
	14		computer was first moved back over.
05:03PM	15	A	The call that I saw the ticket for.
	16	Q	Correct. Yes. Do you know whether as a result of
	17		that process any data was restored or recovered
	18		onto the computer?
	19	A	I don't know that, but from reading the ticket it
05:03PM	20		doesn't seem as if that is the case for that given
	21		service ticket.
	22	Q	Is it your understanding that whoever provided
	23		that service at LTSB would know more about that
	24		than you would?
05:03PM	25	A	Yes. They would absolutely know more about the --

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1		I guess if you're asking would they know more
2		about the mechanics of what they did on that
3		service ticket? Absolutely.
4	Q	Correct. And the affect of it on the computer?
5	A	Yes. I would say that's accurate.
6	Q	After they made that service call, were you able
7		to access what you couldn't previously access on
8		that computer?
9	A	That's the way the ticket reads is that there was
10		an access I did not have that once the issue was
11		resolved I had after the service call.
12	Q	And then aside from the document itself do you
13		have an independent recollection of that?
14	A	Of?
15	Q	When you asked them to come over and help you with
16		the computer.
17	A	Again, I don't recall an instance where they came
18		over to work on the computer or if this was all
19		done by phone or if it was one of those where they
20		take over the computer. I don't remember specific
21		instances in those different categories.
22		Obviously there's the ticket there for that one
23		call about getting the computer access to whatever
24		they deemed as the mapped drive.
25	Q	And fair enough. I do keep talking in terms of a

05:03PM (line 5)
05:04PM (line 10)
05:04PM (line 15)
05:04PM (line 20)
05:04PM (line 25)

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         1        physical -- somebody coming over physically.  But

         2        whether it was coming over physically or doing

         3        something remotely, do you have any independent

         4        recollection of when they helped to restore your

05:05PM  5        access on that computer to whatever you couldn't

         6        access before?

         7   A    No.  Not specifically.

         8   Q    Is there any kind of recovery or restoration of

         9        files on the Assembly redistricting computer that

05:05PM 10        you do recall at any time?

        11   A    No.  Again with the caveat that I don't know

        12        exactly how LTSB provided its services with a very

        13        buggy computer and a very buggy redistricting

        14        software.

05:05PM 15   Q    I would like to move to Topic Number Eight that's

        16        listed in the deposition subpoena.  That's all

        17        efforts taken to preserve data and records on the

        18        redistricting computers between January 1, 2011

        19        and January 31, 2013.  Do you see that?

05:05PM 20   A    I do.

        21   Q    Let's start with January 1, 2011.  As of that

        22        date, had you received any instructions from

        23        anyone to preserve data and records on the

        24        Assembly redistricting computer?

05:06PM 25   A    No.
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1	Q	When was the first time?
2	A	Doug, I just want to back up to that real quick.
3	Q	Yes.
4	A	I don't remember if I was specifically over at
5		Michael Best on January 1 specifically. It was
6		probably after January 1. Now, I don't know if
7		this was end of January or middle of February.
8		But it was probably sometime in that time from
9		where I actually went over there. I just want to
10		be clear on that.
11	Q	That's fair. We do have your testimony in the
12		depositions last year and it was closer to the
13		time I think we would have asked you more
14		questions about that.
15	A	Okay.
16	Q	If we need to, we can always go back and refer to
17		that.
18	A	Fair enough.
19	Q	Did there come to be a point in time where
20		someone, and I'm just going to -- for now we will
21		just leave it broad and say someone, instructed
22		you that you should take efforts to preserve data
23		and records on the Assembly redistricting
24		computer?
25	A	To the best of my knowledge no. Again, we're

05:06PM (lines 5, 10, 15, 20, 25)

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	1	talking about the January 1 to January 13
	2	timeline?
	3	Q January 1, 2011 to January 31, 2013.
	4	A Let me back up. Can you restate the question?
05:07PM	5	Q I'm just go to ask the court reporter to read it
	6	back.
	7	(The following was read by the reporter:
	8	Q "Did there come to be a point in time where
	9	someone, and I'm just going to -- for now we
05:06PM	10	will just leave it broad and say someone,
	11	instructed you that you should take efforts to
	12	preserve data and records on the Assembly
	13	redistricting computer?")
	14	A Okay. This is going to get a little bit wonky
05:07PM	15	because I don't know exactly how some of these
	16	internal systems work. To the best of my
	17	recollection, when the open meetings complaint was
	18	filed, we were given an instruction to maintain
	19	records that involved open meetings, the meetings
05:07PM	20	in the open meetings violation. If that makes
	21	sense. Other than that preservation, I think it
	22	would go back to the 9/13/12 where the computer
	23	was taken out of State service and put in the
	24	cage.
05:08PM	25	Q All right. So you have given me two time frames

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1		now. You referred to the filing of an open
2		meetings complaint, correct?
3	A	That's correct.
4	Q	Do you recall when that date was?
5	A	It was after trial. I don't know at what point
6		after trial, though.
7	Q	I'll share with you --
8	A	I don't recall at what point after trial.
9	Q	Fair enough. I'll show you a document in a minute
10		that will I think refresh your recollection on
11		that.
12	A	Okay.
13	Q	That was one time frame you gave me.
14	A	Uh-huh.
15	Q	And then you also mentioned as of September 13,
16		2012 when LTSB physically took custody of the
17		computers, correct?
18	A	That's correct. Yes.
19	Q	Any other time other than those two that you have
20		mentioned where you were given an instruction to
21		preserve data and records on the redistricting
22		computers?
23	A	Not that I can recall.
24	Q	Let's talk about the open meetings complaint, and
25		I believe it's Exhibit No. 7 in the stack in front

05:08PM (lines 5, 10, 15, 20, 25)

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         1        of you.

         2    A   Okay.

         3               MR. POLAND:  I'm sorry.  Which

         4          number?

05:09PM  5               MS. BUCHKO:  Exhibit 7.

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

         7    A   Portions I think would be the accurate answer to

         8        that.

         9    Q   What portions have you seen?

05:09PM 10    A   For sure the complaint itself.  I would say

        11        probably not this cover E-mail.

        12    Q   So the very first page of Exhibit 7?

        13    A   Right.  Not saying I have not, but I don't recall

        14        seeing it.  I believe I've seen the letter on

05:09PM 15        page 2, the second page, the letter to McLeod and

        16        Kelly from Mr. Earle.

        17    Q   All right.  And then you believe that you saw a

        18        copy of the complaint itself?

        19    A   I probably did at some point.

05:10PM 20    Q   If you noticed the date of the letter from

        21        Mr. Earle to Mr. McLeod and Mr. Kelly, it's dated

        22        April 10, 2012.  Do you see that?

        23    A   I do.

        24    Q   If you look at the very first page of Exhibit 7,

05:10PM 25        you will see an E-mail that's already dated
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1		April 10, 2012, correct?
2	A	I do see that. Yes.
3	Q	Does that refresh your recollection as to when you
4		were given instruction to preserve documents
5		pertaining to this complaint?
6	A	Not to a specific time frame, but I think it helps
7		narrow it down. I would guess it would be after
8		April 10th.
9	Q	Who gave you an instruction on or about April 10,
10		2012 to preserve documents pertaining to the open
11		meetings complaint?
12	A	I believe it was Eric. I'm pretty sure it was
13		Eric McLeod.
14	Q	Were you still working over at the Michael
15		Best & Friedrich offices at that time?
16	A	At that point probably. Again not knowing exactly
17		when the computers went back over. But between
18		that kind of April and May -- was it May 1?
19	Q	Correct.
20	A	The May 1 timeline with the network connection? I
21		may have been. I may not have been at that point.
22		I really don't know.
23	Q	What instruction did Mr. McLeod give you?
24	A	To the best of my recollection, the instruction
25		was to preserve anything pertaining to meetings,

05:10PM (line 5)
05:10PM (line 10)
05:10PM (line 15)
05:11PM (line 20)
05:11PM (line 25)

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1		open meetings.
2	Q	Did Mr. McLeod say anything more than that or was
3		it just limited to open meetings?
4	A	That's my recollection of it. But, again, I don't
5		recall word for word what was said.
6	Q	Did you talk with any of the other attorneys at
7		Michael Best & Friedrich about preserving files on
8		the redistricting computer pertaining to the open
9		meetings complaint?
10	A	Not that I can recall. Again, I'm not saying that
11		those conversations did not happen, but I don't
12		remember a specific instance.
13	Q	Then on September 13, 2012 the computer, we have
14		gone over a number of times, was put into the
15		custody of LTSB, correct?
16	A	That's correct.
17	Q	And that's who has custody of the hard drives from
18		the computer currently, correct?
19	A	To the best of my knowledge.
20	Q	Before approximately April 10, 2012 had you been
21		given any instruction to preserve data and records
22		on the Assembly redistricting computer?
23	A	Not that I can specifically recall. No.
24	Q	Did anyone -- I should go back and ask you this
25		question. When Mr. McLeod gave you the

05:11PM (lines 5)
05:11PM (line 10)
05:12PM (line 15)
05:12PM (line 20)
05:12PM (line 25)

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	1		instruction to preserve records and data
	2		pertaining to the open meetings complaint, did he
	3		give that to you verbally or did he give that to
	4		you in writing?
05:12PM	5	A	I believe it was an E-mail.
	6	Q	Do you know if you still have that E-mail?
	7	A	I don't know. I may.
	8	Q	Was that an E-mail that was sent to your G Mail
	9		account?
05:13PM	10	A	I don't remember.
	11	Q	Was anyone else copied on that E-mail that
	12		Mr. McLeod sent?
	13	A	Again, I'm not 100 percent that it was even an
	14		E-mail. But following kind of the structure of
05:13PM	15		it, very likely Tad Ottman as well. Not knowing
	16		that, but it's a safe assumption.
	17	Q	Did you speak with Mr. Ottman at all on or about
	18		April 10, 2012 about the preservation of records
	19		or data pertaining to the open meetings complaint?
05:13PM	20	A	Not that I can recall.
	21	Q	When you began working at the Michael
	22		Best & Friedrich offices in approximately January
	23		2011, were you told that there was any kind of
	24		privilege that covered the work that you were
05:14PM	25		doing?

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	1	A	I don't recall a specific time where I was told
	2		that there was privilege, but -- obviously with
	3		motions that were filed after the first round of
	4		subpoenas, it was pretty clear that Michael Best
05:14PM	5		was operating under the -- I don't want to say
	6		assumption -- but was operating under there is the
	7		existence of an attorney-client privilege and
	8		possibly a legislative privilege.
	9	Q	And you just referred to subpoenas. What did you
05:14PM	10		mean when you made that reference?
	11	A	When the first round of subpoenas went out and
	12		then there was the following motion practice,
	13		there was a series of a few motions back and forth
	14		and obviously a Court ruling and the sanctions.
05:14PM	15	Q	And that was in the roughly December 2011 time
	16		frame, correct?
	17	A	I believe that. Yes.
	18	Q	So I want to talk about an earlier time frame.
	19	A	Okay.
05:14PM	20	Q	I want to talk about the time frame when you first
	21		went over and were working in the Michael
	22		Best & Friedrich offices --
	23	A	Okay.
	24	Q	-- in approximately January of 2011. Is it your
05:15PM	25		understanding that a complaint had not been filed

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1		in this case as of that time?
2	A	That's my understanding.
3	Q	Do you remember when the first complaint was filed
4		in this litigation?
5	A	I don't remember specifically when that complaint
6		was filed.
7	Q	So again turning your attention to beginning in
8		January 2011 --
9	A	Uh-huh.
10	Q	At that time do you recall being instructed by
11		Mr. McLeod, Mr. Olson or any other counsel at
12		Michael Best & Friedrich that there was a
13		privilege that applied to the work that you were
14		doing for the legislative redistricting?
15	A	Not that I can specifically recall.
16	Q	Were you ever told that there's an attorney-client
17		privilege over your communications with Mr. McLeod
18		and Mr. Olson?
19	A	I don't specifically remember being told that at
20		that time frame.
21	Q	Did you ever have a discussion, and I'm going to
22		be specific about the time frame here, between
23		January of 2011 and then June of 2011 where you
24		ever -- did you ever discuss the possibility of
25		any litigation over the legislative redistricting?

05:15PM (lines 5, 10, 15, 20)
05:16PM (line 25)

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1	A	I'm sure it was discussed at some point.
2	Q	Was there ever any kind of a discussion about the
3		need to preserve documents and data because they
4		might be at issue in the litigation?
5	A	No.
6		MS. BUCHKO: Objection, asked and
7		answered.
8	Q	At the time that the complaint was filed, were you
9		instructed that now that a complaint had been
10		filed you had an obligation to preserve documents
11		and data on the redistricting computer?
12	A	Not that I can recall.
13	Q	I'll draw your attention to a document that's been
14		marked as Exhibit No. 9 in your stack. Do you
15		have that in front of you?
16	A	Yes. Okay.
17	Q	If you look at the top, you will see it's an
18		E-mail from Jim Troupis to you and Mr. McLeod with
19		copies to Mr. Ottman and Mr. Handrick. The date
20		is June 7, 2011. Do you see that?
21	A	I do see that.
22	Q	Is this a document that you have seen before?
23		I'll give you a minute to look at it.
24	A	I'm sure I have. I was an author of part of this
25		E-mail chain, so I'm sure I've seen it at some

Timestamps:
05:16PM (line 5)
05:16PM (line 10)
05:17PM (line 15)
05:17PM (line 20)
05:17PM (line 25)

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	1	point.
	2	Q	I want to draw your attention to right underneath
	3		the address block there you see in capital letters
	4		it says Attorney Client Privilege Litigation
05:17PM	5		Preparation?
	6	A	Uh-huh.
	7	Q	Did anybody ever explain to you what that meant?
	8	A	I think it's fairly self-explanatory, but, again I
	9		didn't author this part of the E-mail.
05:17PM	10	Q	What did you understand it to mean?
	11	A	Well, again, not recalling the specific E-mail, I
	12		think it's pretty self-explanatory; that this
	13		particular E-mail is protected by attorney-client
	14		privilege according to Mr. Troupis.
05:18PM	15	Q	Did the words litigation preparation on this
	16		E-mail have any significance for you?
	17	A	Not particularly.
	18	Q	Did anybody ever tell you that as of June 7, 2011
	19		there was an obligation to preserve any documents
05:18PM	20		because of litigation?
	21		MR. POLAND: Objection.
	22	A	Not. Not that I can recall.
	23		THE WITNESS: Sorry.
	24	Q	I would like you to take a look at Exhibit No. 10
05:18PM	25		that's in the stack there.

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	1	A	10.
	2	Q	Now, you can take a minute to look at it.
	3	A	And this is the yellow label that's states 10,
	4		correct?
05:18PM	5	Q	They yellow label. I know there are a lot of
	6		labels on there. It's the yellow label that says
	7		10. I'll give you a minute to look at it. Is
	8		this a document that you have seen before?
	9	A	I believe so.
05:18PM	10	Q	And this is a document that refers to the
	11		Wisconsin State Senate and it refers to
	12		Scott Fitzgerald. Do you see that?
	13	A	I do see the reference to the Senate and the
	14		majority leader.
05:19PM	15	Q	Is it your understanding that there were similar
	16		agreements with respect to the Wisconsin State
	17		Assembly?
	18	A	That's correct.
	19	Q	And you had seen those documents?
05:19PM	20	A	Yes.
	21	Q	Do you know whether the State Assembly documents
	22		that you had seen also said at the top Privileged
	23		Attorney Client Communication?
	24	A	I don't specifically recall that being in the
05:19PM	25		Assembly's version of this, but it is a safe

<div align="center">82</div>

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	1	assumption given that -- I'm assuming the language
	2	matches minus the Fitzgerald that is referenced
	3	and the house of the legislature that's
	4	referenced.
05:19PM	5	Q Do you recall the time frame when these documents
	6	were signed?
	7	A I would go based off of the date on here, but --
	8	Q Right. And the date on the first page -- it
	9	appears to be -- that appears to be a senator with
05:20PM	10	poor handwriting. And it's either April 12, 2011
	11	or July 12, 2011? Is that your understanding?
	12	A Yes. Again, not being able to make the difference
	13	out between the 7 and the 4 here.
	14	Q If you turn the page over, you will see that
05:20PM	15	there's a date on there of May 3, 2011. Do you
	16	see that?
	17	A I do.
	18	Q Do you recall these types of agreements being
	19	signed on or about April or May of 2011?
05:20PM	20	A That seems to fit. Yes.
	21	Q At that particular time did anyone tell you that
	22	there was an obligation to preserve any kinds of
	23	records pertaining to redistricting?
	24	MS. BUCHKO: Objection, asked and
05:20PM	25	answered.

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1	A	Not that I can think of.
2		THE WITNESS: I better slow down on
3		my answers.
4		MS. BUCHKO: Give me a minute.
05:20PM 5	Q	At the time the subpoenas were served in December
6		2011, were you given any instructions about
7		preserving records and data on the redistricting
8		computer?
9	A	Not that I can recall.
05:21PM 10	Q	At the time that the computers left Michael Best
11		and -- the Assembly's redistricting computer left
12		Michael Best & Friedrich's office and went over to
13		the capitol building, were you given any
14		instruction other than what you have already
05:21PM 15		testified to on the open meetings complaint?
16	A	Uh-uh.
17	Q	Were you given any instructions to preserve
18		records and data pertaining to redistricting?
19	A	Not that I can recall.
05:21PM 20	Q	Did you personally take any efforts, affirmative
21		efforts, to preserve any data and records on the
22		redistricting computers? I'll just give you an
23		example. For example, by password protecting or
24		somehow restricting access to the computers.
05:21PM 25	A	No. I don't believe I could do that even if I

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	1	wanted to because of LTSB's role in servicing the
	2	computers.
	3	Q Did you ever consult with anyone on steps that
	4	might be taken to preserve data and records on the
05:22PM	5	redistricting computers?
	6	A Not that I can recall.
	7	Q I would like to ask you about the production of --
	8	this is Topic Number Nine now, the production of
	9	any records, data, or documents for the
05:22PM	10	redistricting computers in the redistricting
	11	lawsuit or in response to any inquiry from the
	12	majority leader of the State Senate. I don't know
	13	why it says the State Senate. It should say the
	14	speaker of the State Assembly. But we will talk
05:22PM	15	about that.
	16	MR. POLAND: Before I get into that
	17	topic in more detail, it's my understanding,
	18	Ms. Buchko, that Mr. Foltz is the only
	19	witness who is testifying on behalf the State
05:22PM	20	Assembly as to Topic Number Nine, correct?
	21	MS. BUCHKO: That's correct.
	22	Q There came a time, Mr. Foltz, where the State
	23	Assembly's redistricting computer was searched for
	24	materials that were requested in discovery,
05:23PM	25	correct?

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	1	A	That's correct.
	2	Q	When was the first time that that occurred?
	3	A	I don't recall specifically when that would have
	4		happened, but it would have followed some point
05:23PM	5		after the subpoenas went out in December of --
	6	Q	2011?
	7	A	Yes.
	8	Q	Your deposition was taken in December of 2011,
	9		correct?
05:23PM	10	A	I believe so.
	11	Q	Do you remember whether the subpoena was marked as
	12		an exhibit at that deposition and you were asked
	13		about it?
	14	A	Probably.
05:23PM	15	Q	At that time who undertook the search of records
	16		and data on the State Assembly's redistricting
	17		computer?
	18	A	Most likely me.
	19	Q	Did anyone else participate in that process?
05:23PM	20	A	Yes.
	21	Q	Who else participated in that process?
	22	A	Primarily Joe Olson.
	23	Q	How did you go about searching the State
	24		Assembly's redistricting computer for documents
05:24PM	25		that were responsive to the subpoenas?

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	1	A	I don't specifically recall the process. I know
	2		that there was clicking through the various
	3		documents and printing out various documents and
	4		then attorneys making determinations as to their
05:24PM	5		responsiveness to the subpoena.
	6	Q	So when you say clicking through various
	7		documents, what do you mean by that?
	8	A	If memory serves, I would pull up files that
	9		were -- because primarily my files were mostly
05:24PM	10		clumped into one folder. Going through them and
	11		getting the determination from attorneys if that
	12		file was responsive or not.
	13	Q	Did the one folder that the files were mostly
	14		clumped in have a name?
05:25PM	15	A	Projects I believe.
	16	Q	Did the Projects folder have any sub folders in
	17		it?
	18	A	It may have. I don't know, though. I don't
	19		recall.
05:25PM	20	Q	So you pulled up documents on your screen and
	21		looked at them; is that correct?
	22	A	Yes.
	23	Q	Was anyone else present when you opened up
	24		documents or pulled them up on your screen to
05:25PM	25		review them?

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1	A	Yes.
2	Q	Who else was present?
3	A	It would have been legal counsel.
4	Q	Which legal counsel?
05:25PM 5	A	I believe it's primarily Joe Olson, but
6		Eric McLeod obviously was part of the process as
7		well.
8	Q	Did Mr. Olson or Mr. McLeod actually look at the
9		documents as you pulled them up on your monitor?
05:25PM 10	A	Some. But there were also some that I believe
11		were printed. So there were paper forms available
12		to them.
13	Q	Let's stick with the ones for now that you pulled
14		up on your monitor.
05:25PM 15	A	Okay.
16	Q	Did they sit down at the station? Did they look
17		over your shoulder? How were they arrayed when
18		they were looking at these documents?
19	A	I believe over the shoulder, next to. Something
05:26PM 20		along those lines.
21	Q	And you would pull up a document and you would
22		view it and they would view it; is that correct?
23	A	That's -- yes.
24	Q	Why were they looking at the documents along with
05:26PM 25		you?

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	1	A	To determine the responsiveness.
	2	Q	So did they make a determination as you pulled
	3		documents up as to whether a document was or
	4		wasn't responsive?
05:26PM	5	A	I believe that's the case.
	6	Q	If they determined a document was responsive, what
	7		did you do with that document on your computer?
	8	A	If memory serves, what happened then was that they
	9		moved -- the document in question if it was deemed
05:26PM	10		responsive would get moved into -- I shouldn't say
	11		moved. I believe copied, just to draw the
	12		distinction between a physical movement and a
	13		copying in dual location. I believe that that
	14		file was copied into a separate folder which was
05:26PM	15		then burned to a disc. Again, I believe that's
	16		how it worked, but it was a long time ago.
	17	Q	Do you recall the name of the folder into which
	18		the documents were copied?
	19	A	I do not.
05:27PM	20	Q	If a document was determined to be nonresponsive,
	21		what was done with that document?
	22	A	I believe it just sat there.
	23	Q	Was there any kind of a log created or a list
	24		created of documents that were deemed to be not
05:27PM	25		responsive?

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	1	A	Not that I can recall. Not responsive versus
	2		privileged?
	3	Q	Nonresponsive versus privileged. Correct.
	4	A	I don't believe so.
05:27PM	5	Q	And those weren't copied to a separate folder or
	6		somehow segregated?
	7	A	I don't believe so. I think they just stayed in
	8		the source, most likely the Projects folder,
	9		but --
05:27PM	10	Q	Now, you just raised a distinction I was going to
	11		ask about. What if a document was determined to
	12		be privileged by Mr. McLeod or Mr. Olson? What
	13		happened to that document?
	14	A	I believe they made a note of it for the drafting
05:28PM	15		of the privilege log. Again, not 100 percent
	16		sure, but I believe that was the process.
	17	Q	Was there a separate folder that you created on
	18		your computer to copy privileged documents into
	19		and segregate them out that way?
05:28PM	20	A	I don't believe so but don't specifically recall.
	21		But I don't think there was a folder.
	22	Q	Did you have any discussion with Mr. McLeod and
	23		Mr. Olson as you were going through and clicking
	24		through documents about whether documents were
05:28PM	25		responsive that you were viewing on the screen?

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1	A	I'm sure there were conversations.
2	Q	Any specific conversations that you can recall?
3	A	No. Not really.
4	Q	Did the topic of Senate Bill 150 ever come up as
5		you were looking at documents?
6	A	Not that I can recall, but obviously we -- I
7		shouldn't say we. The way that the attorneys at
8		Michael Best read that attachment to the subpoena
9		was that SB 150, which later became Act 39, was
10		not within the scope of the subpoena.
11	Q	Did they tell you that at some point in time?
12	A	I'm sure they did, but I don't recall the specific
13		instance where that was mentioned.
14	Q	Were there any other restrictions or limitations
15		that you're aware of that the Michael Best lawyers
16		put on the review of the documents?
17	A	Uh-huh. There was a time certainty.
18	Q	And what was the time certainty?
19	A	I believe it was -- again regarding Acts 43 and
20		44. Again, since we didn't produce or were told
21		not to produce SB 150, Act 39, I believe it was
22		either publication or enactment of Acts 43 and 44
23		and before I believe was the time frame that we
24		were given.
25	Q	Do you remember the date of enactment of Acts 43

05:28PM (line 5)
05:29PM (line 10)
05:29PM (line 15)
05:29PM (line 20)
05:29PM (line 25)

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1		and 44?
2	A	No. I don't recall specifically. I want to say
3		it was August, maybe late July.
4	Q	Of 2011?
05:30PM 5	A	Yes.
6	Q	Now, you also mentioned that as part of the
7		process of producing documents in addition to
8		clicking through them and viewing them on the
9		monitor you printed some as well; is that correct?
05:30PM 10	A	I can't remember if they were printed or if they
11		had already been printed and just happened to be
12		there. So I don't specifically recall.
13	Q	If they would have already been printed and
14		happened to be there, who would have done that
05:30PM 15		printing?
16	A	Probably me.
17	Q	So there came a time where rather than having
18		Mr. Olson and Mr. McLeod standing over your
19		shoulders watching you click through documents you
05:30PM 20		printed documents out for them?
21	A	I can't remember -- I can't remember if they were
22		printed out for them or if they had already been
23		printed out and then were subsequently reviewed by
24		attorneys.
05:30PM 25	Q	I'm not understanding, so let me try to

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	1		understand. As part of this process did you
	2		review documents on your computer and say *That*
	3		*looks like something that the attorneys should*
	4		*look at*, print that document out, and then collect
05:31PM	5		a stack of them to give them to look at?
	6	A	I don't recall if that was the -- again, all
	7		determinations on responsiveness were made by the
	8		attorneys. I don't remember if these were files
	9		that happened to be printed out for just the
05:31PM	10		day-in day-out functions of my job or if there was
	11		an effort to batch print them and then have them
	12		reviewed. Does that make --
	13	Q	Understood. Let me see if I can understand this.
	14		So you had some documents that were already
05:31PM	15		existing in hard copy.
	16	A	That's possible. I don't remember which direction
	17		it went, if there was printing for the purposes of
	18		reviewing by the attorneys or if it just happened
	19		to be a stack of paperwork that I had from just
05:31PM	20		day-in day-out activities over there that they
	21		reviewed at that time. I don't remember exactly
	22		how that process worked.
	23	Q	I understand. But in any event, regardless of
	24		whether they were preexisting in hard copy format
05:32PM	25		or whether you printed them out, you provided

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1		Mr. Olson and Mr. McLeod with some kind of a stack
2		of documents?
3	A	Yes. I would say that's accurate.
4	Q	Did you make any decisions before you gave them
5		that stack of documents on your own about what
6		should be given to them and what shouldn't be
7		given to them?
8	A	No.
9	Q	You let Mr. Olson and Mr. McLeod make the decision
10		about whether documents should be produced?
11	A	Correct.
12	Q	Did you also produce any information in data form
13		in its native format?
14	A	I'm not following.
15	Q	For example, you can have a document that you
16		print out that's an Excel spreadsheet and you
17		could print it and hand it to somebody or you
18		could provide it to them in its native format,
19		it's Excel spreadsheet file. Do you understand
20		the distinction?
21	A	I do.
22	Q	Do you know whether any of the materials that were
23		produced from the Assembly redistricting computer
24		in response to that first subpoena were provided
25		in a native format?

05:32PM (lines 5)
05:32PM (line 10)
05:32PM (line 15)
05:33PM (line 20)
05:33PM (line 25)

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1	A	I don't recall specifically. No.
2	Q	Do you recall burning any kinds of data or data
3		files to a CD or a DVD?
4	A	That would have -- I believe that was the process
5		when responsiveness was determined and those files
6		were copied over to -- again, I believe that's how
7		the process worked; that there was a folder to
8		copy the documents over as deemed responsive by
9		the attorneys, throw that on a disc. I believe
10		that was the process.
11	Q	Now, earlier you testified that there were a
12		series of motions and then there was ruling by the
13		Court --
14	A	Uh-huh.
15	Q	-- on motions in the December 2011 time frame,
16		correct?
17	A	Yes.
18	Q	Do you recall that there was -- strike that
19		question. You testified before there was an order
20		where the Court actually sanctioned Michael
21		Best & Friedrich, correct?
22	A	Yes. I remember that.
23	Q	Do you remember the date of the order?
24	A	I do not.
25	Q	If I told you it was January 3, 2012, would that

05:33PM (lines 5, 10)
05:34PM (lines 15, 20, 25)

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	1	refresh your recollection?
	2	A I'll take your word on it.
	3	Q As a result of that order, did there come to be a
	4	time when you were asked again to produce
05:34PM	5	additional records?
	6	A Yes.
	7	Q How did that come about?
	8	A I'm not following.
	9	Q Who asked you to produce additional records?
05:34PM	10	A It would have been legal counsel at Michael Best.
	11	Q So it would have been Mr. McLeod or Mr. Olson?
	12	A Most likely at that point. Yes.
	13	Q Do you remember when that was?
	14	A No. Not specifically. But following the order.
05:34PM	15	Q What did they tell you?
	16	A I don't recall specifically what they told me.
	17	Q Did they give you any instructions?
	18	A I don't remember specific instructions, but I do
	19	remember going -- we went through the process
05:35PM	20	again, for lack of a better, of going through
	21	documents, and, as I testified to before, that
	22	since the documents weren't already pre-segregated
	23	for lack of a better term into a privileged
	24	folder, it probably just went through the same
05:35PM	25	process again of clicking through the files,

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	1		moving them to that disc and then producing that
	2		disc.
	3	Q	Okay. Now, you had talked before -- we're going
	4		to dip a little bit here into the deletion of
05:35PM	5		files.
	6	A	Okay.
	7	Q	You had talked earlier about the declaration that
	8		Mr. Lanterman filed, correct?
	9	A	That's correct.
05:35PM	10	Q	Did you read Mr. Lanterman's declaration?
	11	A	I did.
	12		(Exhibit No. 29 marked for
	13		identification)
	14	Q	Mr. Foltz, the court reporter has handed you a
05:36PM	15		document we have marked as Exhibit No. 29. Do you
	16		have that in front of you?
	17	A	I do.
	18	Q	Have you seen this document before?
	19	A	I have.
05:36PM	20	Q	When did you receive this document?
	21	A	Following it being filed by plaintiffs' attorneys.
	22	Q	On or about April 18, 2013, correct?
	23	A	I believe so.
	24	Q	I don't know why attorneys always say on or about.
05:36PM	25		I can tell you it was April 18th. It says so on

<div align="center">97</div>

	1		the page. It's a bad habit we have.
	2	A	There we go.
	3	Q	I would like to turn your attention to Paragraph
	4		Number Eight of Mr. Lanterman's third declaration.
05:37PM	5		In that paragraph Mr. Lanterman states, "Evidence
	6		of deletions in 2012 also appears on ASM
	7		Republican WRK32586." I just want to stop there
	8		for a minute. Do you see that?
	9	A	I do.
05:37PM	10	Q	Do you understand that to be the Assembly
	11		redistricting computer?
	12	A	That's my understanding.
	13	Q	That's the computer that you had been working on,
	14		correct?
05:37PM	15	A	That's correct.
	16	Q	Now, I'm going to jump down to the next sentence.
	17		It says, "Among the items deleted was a folder
	18		titled Draft Plans for Printing as well as its sub
	19		folder titled Hispanic Amendment and all of the
05:37PM	20		folders' contents." Do you see that?
	21	A	I do.
	22	Q	Do you recall deleting a folder titled Draft Plans
	23		for Printing?
	24	A	I don't recall.
05:38PM	25	Q	Do you recall deleting a sub folder titled

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1		Hispanic Amendment?
2	A	I do not.
3	Q	The next sentence says, "This folder was created
4		on January 6, 2012 and then deleted less than one
5		minute later by user logged onto the system as
6		A. Foltz." Do you see that?
7	A	I do.
8	Q	Do you recall creating that folder?
9	A	I don't.
10	Q	The next paragraph states, "I recovered a sample
11		of ten of these deleted documents. The documents
12		appear to be the same or similar to non-deleted
13		documents that I located in the folder called
14		Projects located on the desktop of the A. Foltz
15		user account." Do you see that?
16	A	I do.
17	Q	All right. I want to ask you about the folder
18		called Projects that was on the desktop of the
19		A. Foltz user account.
20	A	Okay.
21	Q	Is that the same Projects folder that you
22		described for me a minute ago?
23		MS. BUCHKO: Objection; foundation,
24		competency.
25		Go ahead.

05:38PM (line 5)
05:38PM (line 10)
05:38PM (line 15)
05:39PM (line 20)
05:39PM (line 25)

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30(b)(6) VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 4/30/2013

1	A	I believe that to be the case.
2	Q	What was that folder designed to do, the Projects
3		folder?
4	A	Same as any folder. Repository of data.
5	Q	And that was on the desktop, maintained on the
6		desktop of your computer?
7	A	Yes.
8	Q	Mr. Lanterman goes on to say that, "Without
9		further analysis I am unable to determine if all
10		of the deleted documents from this folder
11		associated with the A. Foltz account can be
12		accounted for among the non-deleted data." Do you
13		see that?
14	A	I do.
15	Q	Do you know whether all of the deleted documents
16		from the folder associated with the A. Foltz
17		account can be accounted for among the non-deleted
18		data?
19	A	Yes. I believe so.
20	Q	And what makes you believe so?
21	A	If these were plans for printing, they exist
22		in multiple locations because, as Mr. Lanterman
23		alludes to, the files remain in the Projects
24		folder. Secondly, these would have been present
25		also in the Autobound maps.

05:39PM (lines 5)
05:39PM (lines 10)
05:39PM (lines 15)
05:40PM (lines 20)
05:40PM (lines 25)

100

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

05:40PM (line 5)
05:41PM (line 10)
05:41PM (line 15)
05:41PM (line 20)
05:41PM (line 25)

101

1		Amendment -- were those provided to the plaintiffs
2		as part of the document production?
3	A	Yes.
4	Q	How were they provided to the plaintiffs?
5	A	They would have been embodied in the Autobound map
6		outputs that plaintiffs received I believe for the
7		second round of depositions.
8	Q	And that would have been in late January -- I'm
9		sorry. That would have been in January 2011?
10	A	2012 at that point.
11	Q	January 2012?
12	A	Yes.
13		MS. LAZAR: Doug, can we take a
14		break in a few minutes? I think you're
15		killing the court reporter.
16		MS. BUCHKO: Am I killing you?
17		That's fine. Let's take a break. We
18		will take a break.
19		THE WITNESS: The time is 5:41 p.m.
20		This concludes Disc No. 1 of the deposition
21		of Mr. Adam Foltz in the 30(b)(6) testimony
22		for the Wisconsin State Assembly.
23		(Recess)
24		THE VIDEOGRAPHER: The time is
25		5:52. We are back on the record. This marks

05:42PM (line 5)
05:42PM (line 10)
05:42PM (line 20)
05:53PM (line 25)

102

1		the beginning of Disc No. 2 of the deposition
2		of Mr. Adam Foltz in the capacity of the
3		30(b)(6) testimony.
4	Q	Mr. Foltz, just before we broke we were looking at
5		Exhibit No. 29. That's the third declaration of
6		Mark Lanterman. We were looking at Paragraph
7		Number Nine of that. Do you recall that?
8	A	I do.
9	Q	Do you have that document in front of you?
10	A	I do.
11	Q	I would like to go back to these documents that we
12		were talking about --
13	A	Uh-huh.
14	Q	-- or files that Mr. Lanterman said were deleted
15		from the Assembly redistricting computer.
16	A	Okay.
17	Q	All right? Now, you testified a minute ago I
18		believe that those files were produced to the
19		plaintiffs; is that correct?
20	A	That a -- again, going back to be careful with how
21		this is worded. The information contained within
22		those files was produced in a different format to
23		plaintiffs' attorneys. That's when we got into
24		the talk of the difference between formats that
25		are printable with GIS software versus the

05:53PM (line 5)
05:53PM (line 10)
05:54PM (line 15)
05:54PM (line 20)
05:54PM (line 25)

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1		Autobound which frankly just looked weird when you
2		tried to print it.
3	Q	So those data were imported into -- was it RGIS
4		you said?
5	A	ArcMap.
6	Q	A different software application?
7	A	Yes. And, again, not trying to get too far into
8		the weeds on this, Autobound is a plug -- it's an
9		independent software program, but it works with
10		ArcMap and Arc GIS. It's kind of a plug-in, but
11		it's also independent software. And then Arc GIS
12		is a separate standalone program.
13	Q	And then there were maps that were printed or
14		generated from running Arc GIS?
15	A	That seems accurate. Yes.
16	Q	It was those maps then that were provided to
17		plaintiffs?
18	A	Well, again, drawing the distinction between the
19		maps that were printed versus the Autobound maps.
20		The Autobound maps were produced. I don't recall
21		if these specific shape files were produced. But,
22		again, it would be duplicative because they were
23		produced in the output from the Autobound
24		software.
25	Q	So the underlying files that Mr. Lanterman

05:54PM — line 5
05:55PM — line 10
05:55PM — line 15
05:55PM — line 20
05:55PM — line 25

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	1		identified were deleted, do you know whether those
	2		specific files with the specific file extensions
	3		that they had whether those were produced in that
	4		format?
05:55PM	5	A	I don't recall if they were produced in that
	6		format, that format being the shape file not the
	7		Autobound.
	8	Q	Correct.
	9	A	Okay. Yes. I don't recall if the shape files
05:56PM	10		were produced or not, but the underlying maps
	11		were.
	12	Q	Let's take a look at -- let me find the exhibit
	13		numbers here. Exhibits No. 13 and 14 that should
	14		be in front of you there.
05:56PM	15	A	13 and 14?
	16	Q	Correct.
	17	A	Okay.
	18	Q	Do you recall that on January 10th and
	19		January 11th of 2012 there were discs that were
05:57PM	20		DVDs that were produced to the plaintiffs? That's
	21		a standalone question.
	22	A	I don't specifically recall that, but --
	23	Q	Let's take a look at Exhibit No. 13. Do you see
	24		that there's a cover letter --
05:57PM	25	A	Okay.

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	1	Q	-- from Mr. McLeod to me?
	2	A	Okay.
	3	Q	That's dated January 10, 2012, correct?
	4	A	Okay.
05:57PM	5	Q	Have you seen a copy of this letter before?
	6	A	I may have. I don't recall.
	7	Q	If you turn to the next page, you will see a
	8		document that says Supplemental Document
	9		Production in Response to Subpoenas Issued by
05:57PM	10		Plaintiffs to Joe Handrick, Adam Foltz, and
	11		Tad Ottman. Do you see that?
	12	A	Okay. Yes.
	13	Q	Then it states, "Joe Handrick, Adam Foltz and
	14		Tad Ottman through their attorneys hereby produce
05:57PM	15		the enclosed documents in response to the
	16		subpoenas issued by plaintiffs."
	17	A	Yes. I do see that.
	18	Q	And it goes on from there, correct?
	19	A	Yes.
05:57PM	20	Q	Is it your understanding that this cover letter
	21		and then that particular document we were just
	22		reading were produced to the plaintiffs by Michael
	23		Best & Friedrich on your behalf on January 10,
	24		2012?
05:58PM	25		MS. BUCHKO: Object to foundation.

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

          2   Q   There is a photocopy then on the next page of a

          3       DVD and label, correct?

          4   A   Uh-huh.

05:58PM   5   Q   Do you know whether the documents that are

          6       identified in Paragraphs Eight and Nine of

          7       Mr. Lanterman's declaration that you said were

          8       subsequently produced to plaintiffs -- whether

          9       they were produced on that DVD that was produced

05:58PM  10       to the plaintiffs under cover of the letter in

         11       Exhibit 13?

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

         13                   (Question read)

         14               MS. BUCHKO:  Object to form,

05:59PM  15           foundation, and competency.

         16   A   Again, I would say that I don't know if the

         17       specific shape files were produced, but I'm fairly

         18       confident that the maps were produced again from

         19       the Autobound output.

05:59PM  20   Q   The folder that Mr. Lanterman refers to in

         21       Paragraph Eight says Draft Plans for Printing and

         22       then the sub folder is titled Hispanic Amendment.

         23       Do you see that?

         24   A   I do.

05:59PM  25   Q   Do you know which legislative districts that would
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1		have applied to?
2	A	8 and 9. Possibly 7, 8, and 9. It could also --
3		it could potentially also be a statewide plan that
4		incorporated those districts. Does that make
5		sense? It may not be limited to just those two or
6		possibly three. It may be the entire State plan.
7	Q	Is there any way to tell what particular districts
8		that pertained to?
9	A	Not from what I have in front of me.
10	Q	What would you need to look at to make that
11		determination?
12	A	Frankly, the computer. Arc GIS and/or Autobound.
13	Q	Do you know whether these were final plans or
14		whether these were draft plans for those
15		legislative districts?
16	A	Given the title of the folder I would say draft
17		but not precluding the fact that the final plan
18		may have been in there. I don't know.
19	Q	There were draft plans that evolved over time with
20		respect to different districts; is that correct?
21	A	I would say that's accurate.
22	Q	Do you know whether those draft plans as they
23		evolved over time were produced to the plaintiffs
24		during the litigation?
25	A	To the best of my knowledge you have every

06:00PM (line 5)
06:00PM (line 10)
06:00PM (line 15)
06:00PM (line 20)
06:01PM (line 25)

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	1	Autobound file.
	2	Q And that's of every iteration of every draft map
	3	that was created?
	4	A I'm not following the question.
	5	(Question read)
	6	Q Let me try to restate it. The configurations, the
	7	draft configurations of the districts, changed
	8	over time?
	9	A Uh-huh.
06:02PM	10	Q Were the plaintiffs provided with the data that
	11	related to those different iterations of the
	12	districts as they evolved?
	13	A Yeah. Again, I'm not following. I believe you
	14	have all of the Autobound maps, and that's the
06:02PM	15	only program that can draw a redistricting plan.
	16	To the best of my knowledge, you have all of the
	17	maps. That's the best answer I can give you on
	18	that one.
	19	Q Were the plaintiffs provided with the underlying
06:02PM	20	data that created the maps?
	21	A What do you mean by underlying -- the census data
	22	or --
	23	Q No. I mean the things like the shape files and
	24	the other files that were used to create the maps.
06:03PM	25	A The shape files? Again, I'm not following. Yes.

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1   I'm not following the question. You have the

2   Autobound outputs in a specific format. They are

3   not shape file outputs. They are a text

4   assignment file output.

06:03PM   5   Q   Were the plaintiffs provided with whatever

6   underlying data was used to create the Autobound

7   output?

8   A   Well, the way I understand that question is that

9   would be the census data. I believe you were

06:03PM   10   provided with the census data, the census data set

11   as provided to us by LTSB.

12   Q   Were there any other kinds of files, types of

13   files, other than census files that were used to

14   create various iterations of the different

06:04PM   15   district configurations as they evolved?

16   A   Again, I'm not following the question or where

17   you're going with this one.

18   Q   All right. Just trying to figure out -- we talked

19   about these ten specific files that were deleted

06:04PM   20   that Mr. Lanterman found had been deleted.

21   A   Uh-huh.

22   Q   And I asked the question of whether these had been

23   produced. My understanding from your answer is

24   that they would have been present in the Autobound

06:04PM   25   maps.

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	1	A	Yes.
	2	Q	But these ten specific files might not have been
	3		produced; is that correct?
	4	A	That seems fair. Yes.
06:04PM	5	Q	So these ten specific files are specific types of
	6		files I guess that are typically used to create
	7		the Autobound output; is that correct?
	8		MS. BUCHKO: Object to form.
	9	A	I would say they are the Autobound output when you
06:05PM	10		are attempting to print a map.
	11	Q	Okay. So as the configuration of the districts
	12		changed or evolved over time from March of 2011
	13		until the final product --
	14	A	Uh-huh.
06:05PM	15	Q	-- were the plaintiffs provided with the Autobound
	16		output for all of the different iterations of
	17		those district configurations as they changed and
	18		evolved?
	19	A	Again, I'm going to take issue with iteration.
06:05PM	20		You have all of the files. The files are the
	21		files. If there was a point where I clicked on an
	22		undo button or -- you were constantly changing
	23		things. You would move through the process. You
	24		would back it up five steps. You would redo those
06:05PM	25		five steps in a different way. When I hear every

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	1	iteration, I hear it as every mouse click. Going
	2	back, my -- to the best of my knowledge you have
	3	all of the Autobound maps that I drew in my time,
	4	drawing maps.
06:06PM	5	Q Exhibit No. 14 that's in front of you --
	6	A Okay.
	7	Q Have you seen Exhibit 14 before?
	8	A Not that I recall.
	9	Q Were you aware that on January 11th there was
06:06PM	10	another DVD that was produced to the plaintiffs
	11	containing additional electronic files?
	12	A I may have been aware at the time. I don't recall
	13	it.
	14	Q I'll note that the label on that DVD refers to
06:06PM	15	Tad Ottman's supplemental production. It doesn't
	16	say Adam Foltz on it. You might have been aware?
	17	A Might have at the time.
	18	Q Do you know whether the production of these files
	19	that are referred to in Paragraphs Eight and
06:07PM	20	Nine -- whether that was produced in one of the
	21	DVDs that was provided to the plaintiffs on
	22	January 10th or January 11, 2012?
	23	MS. BUCHKO: Objection, asked and
	24	answered.
06:07PM	25	A I'll go back to the previous answer on that. I

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         1      don't recall specifically the shape files.  But,

         2      again, pointing back to the shape files are

         3      duplicative output of what is contained in the

         4      Autobound files.

06:07PM  5   Q  When is it your understanding that those Autobound

         6      files were provided to the plaintiffs?

         7   A  I believe it was the Autobound outputs.  Again, I

         8      want to be careful with this because the Autobound

         9      file is different from what was produced to embody

06:07PM  10     the maps.  The redistricting software -- there's

         11     only two or three players, and it's highly

         12     proprietary software.  You received an output of

         13     the Autobound maps.  You did not receive the

         14     specific Autobound file format.  I just want to be

06:08PM  15     clear on that.

         16  Q  When were those produced to the plaintiffs?

         17  A  I believe the second round.  The supplemental

         18     document production.

         19  Q  And would that have been on January 10th and 11th

06:08PM  20     of 2012?

         21  A  Based on the headers on these various exhibits

         22     that seems accurate.

         23  Q  Did you go back and take a look at those DVDs that

         24     were produced to the plaintiffs on January 10th

06:08PM  25     and 11th to confirm that?
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1	A	No. I did not.
2	Q	Did anybody go back and do that to your knowledge?
3	A	Not to my knowledge.
4	Q	Your belief that they were produced to the
5		plaintiffs, is that based on your memory?
6	A	Yes.
7	Q	Were there any other times that you did something
8		similar to what Mr. Lanterman identifies here
9		which is create a folder and then delete documents
10		from it on the Assembly redistricting computer?
11	A	Not that I can recall.
12	Q	Other than what's identified in Paragraphs Eight
13		and Nine of Mr. Lanterman's declaration, did you
14		ever delete any data or records from the Assembly
15		redistricting computer?
16		MS. BUCHKO: Object to form.
17	A	Not that I can specifically recall.
18	Q	What about generally?
19	A	How do you mean?
20	Q	Well, you had answered *Not that I specifically*
21		*recall.* I'm asking do you have a general
22		recollection of deleting any files from the
23		Assembly redistricting computer.
24	A	Well, in the general sense say while I am sitting
25		there with the VPN connection to Outlook -- if an

06:08PM (line 5)
06:09PM (line 10)
06:09PM (line 15)
06:09PM (line 20)
06:09PM (line 25)

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	1	E-mail came in for a notice for a committee
	2	hearing, I probably just deleted it.
	3	Q What about -- when you say notice to a committee
	4	hearing, do you mean pertaining to redistricting?
06:10PM	5	A No. In the general sense that if the committee on
	6	aging and long-term care noticed a hearing which
	7	gets blasted out in E-mail.
	8	Q Understood. I'm going to restrict my questions
	9	just to redistricting data records. Did you
06:10PM	10	personally delete any records or data from the
	11	State Assembly redistricting computer? And that's
	12	records or data that pertained to redistricting.
	13	A Again, not that I can specifically recall.
	14	Q Are you aware of anyone else deleting any
06:10PM	15	redistricting related records or data from the
	16	Assembly redistricting computer?
	17	A Aware in that I've seen it in the declarations and
	18	whatnot.
	19	Q Do you have personal knowledge of that being done
06:10PM	20	at any time?
	21	A How do you define personal knowledge?
	22	Q Well, not having read it from somebody else's
	23	declaration. Did you observe it?
	24	A No.
06:11PM	25	Q Did you hear anybody say that they had done it?

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30(b)(6) VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 4/30/2013

	1	A	No.
	2	Q	Did you ever receive any information that anyone
	3		had deleted -- other than in Mr. Lanterman's
	4		declaration, have you ever received any
06:11PM	5		information that anyone had deleted any
	6		redistricting records or data from the Assembly
	7		redistricting computer?
	8	A	Again, the information I had received has been in
	9		the form of various declarations. I'm not sure
06:11PM	10		exactly what you're asking. Various declarations,
	11		filings, media stories. Things like that.
	12	Q	Once the computer, the Assembly redistricting
	13		computer, was moved from Michael Best's offices
	14		over to the State capitol building, did you delete
06:11PM	15		any of the redistricting related records or data
	16		from that computer?
	17	A	Not that I can recall.
	18	Q	Did you ever decide you just don't need to keep it
	19		around anymore or free up space or do anything to
06:12PM	20		delete?
	21	A	Not that I can think of. No.
	22	Q	Let's talk about E-mail. You used G Mail to
	23		communicate with respect to redistricting,
	24		correct?
06:12PM	25	A	Yes.

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	1	Q	Did you delete any of your G Mails relating to
	2		redistricting?
	3	A	Not that I can think of.
	4	Q	So if we were to get your current G Mail account
06:12PM	5		and if we were to look through the E-mails that
	6		are in your current G Mail account, we would see
	7		redistricting E-mails in there?
	8	A	I believe so. Yes.
	9	Q	Did you have any kind of a separate folder set up
06:12PM	10		within G Mail that you used specifically for
	11		redistricting E-mail communications?
	12	A	Not that I can recall.
	13	Q	Did you include your G Mails or -- strike that.
	14		Did you search your G Mail account when you were
06:13PM	15		asked by Mr. McLeod and Mr. Olson to search for
	16		documents that were responsive to plaintiffs'
	17		subpoenas?
	18	A	Yes.
	19	Q	Where did you do that?
06:13PM	20	A	It would have been at Michael Best.
	21	Q	That's a web based E-mail account, correct?
	22	A	Yes.
	23	Q	So you pulled up your G Mail account and looked
	24		through those G Mails?
06:13PM	25	A	Uh-huh.

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	1	Q	Did you make any decision as you looked through
	2		those G Mails about what might be responsive and
	3		what might not be responsive?
	4	A	No. Responsiveness was left to the attorney.
06:13PM	5	Q	How did the attorneys see those G Mails?
	6	A	I can't remember if they stood over the shoulder
	7		or if it was search, print, and then go about it
	8		that way. I can't remember which path that took.
	9	Q	I would like you to take a look at Exhibit No. 11,
06:14PM	10		please.
	11	A	Okay.
	12	Q	Do you have Exhibit No. 11 in front of you?
	13	A	I do.
	14	Q	I'll represent to you that this is a collection of
06:14PM	15		34 E-mails that were provided to the plaintiffs by
	16		Mr. Evans who at the time was an expert retained
	17		by Michael Best & Friedrich.
	18	A	Okay.
	19	Q	I'm going to give you an instruction here, and
06:14PM	20		then we will go off the record for a couple of
	21		minutes. I'm going to ask you to take a look
	22		through this exhibit, Exhibit No. 11, and identify
	23		for me any E-mails that you found when you
	24		conducted your search that you believe you gave to
06:15PM	25		the attorneys at Michael Best & Friedrich.

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	1	A	I'm going to have no way of recalling what E-mails
	2		specifically were produced out of this.
	3	Q	All right. Let's stay or the record here for a
	4		minute and try a different way. Let's look at the
06:15PM	5		very first E-mail on page 1 of Exhibit No. 11. Do
	6		you see that?
	7	A	Okay.
	8	Q	You see that's an E-mail from Jim Troupis and
	9		you're one of the recipients, correct?
06:15PM	10	A	That's correct.
	11	Q	And it was sent to your G Mail account, right?
	12	A	Yes.
	13	Q	And it's on or about July 15, 2011, correct?
	14	A	It appears that way. Yes.
06:15PM	15	Q	I will tell you this is an E-mail that was not
	16		produced to the plaintiffs during the litigation.
	17	A	Okay.
	18	Q	Do you know why this E-mail was not produced to
	19		the plaintiffs during the litigation?
06:15PM	20	A	No. I do not know why it was not.
	21	Q	Understanding that this was from your G Mail
	22		account, do you believe that you provided this
	23		G Mail to the attorneys at Michael
	24		Best & Friedrich when you looked through your
06:15PM	25		computer?

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1		MR. JACOB: Objection as to form
2		and foundation.
3		THE WITNESS: I'm sorry. Could you
4		read back the question. There was a little
5		cross-talk there.
6		(Question read)
7	A	Again I can't recall specifically this E-mail and
8		its production or why it wasn't produced.
9	Q	That's one of the reasons we're taking depositions
10		is to try to understand why these things weren't
11		produced.
12	A	Uh-huh.
13	Q	I'm asking anybody who is connected with this
14		E-mail if they know why it wasn't produced.
15		That's why I'm asking you.
16	A	Okay.
17	Q	Is it your testimony you don't know why this
18		E-mail wasn't produced?
19	A	No.
20	Q	I would like you to turn to -- there are Bates
21		stamps on here. Turn to the next page. It's
22		Evans 0002.
23	A	Uh-huh.
24	Q	This is an E-mail from Mr. Troupis, and it was --
25		I'm sorry. It was from you and it was to

06:16PM (lines 10, 15, 20, 25)

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	1		Mr. Troupis and others. Do you see that?
	2	A	I do.
	3	Q	Do you know why this E-mail wasn't produced?
	4	A	No. I do not.
06:17PM	5	Q	Let's go to the next page, Evans 0003.
	6	A	Uh-huh.
	7	Q	Do you see that's an E-mail from Mr. McLeod to you
	8		dated July 16, 2011? Do you see that?
	9	A	I do.
06:17PM	10	Q	Do you know why this E-mail wasn't produced?
	11	A	I do not. Is this the same E-mail as the -- it's
	12		part of a chain.
	13	Q	It's a chain.
	14	A	Okay. No. I don't.
06:17PM	15	Q	Let's go to Evans 0005.
	16	A	Okay.
	17	Q	This is an E-mail from Mr. Troupis to you and
	18		others are copied on it dated Saturday, July 16,
	19		2011. Do you see that?
06:17PM	20	A	I do.
	21	Q	Do you know why that E-mail wasn't produced?
	22	A	I don't.
	23	Q	We could do this one of two ways. I could either
	24		go off the record and give you a minute or two to
06:17PM	25		flip through these and let me know if you know of

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	1	any reason why any of these E-mails weren't
	2	produced or if you think you have got a blanket
	3	answer for me now, you can give it to me now.
	4	A Well, I just -- the specific recollection of
06:18PM	5	individual E-mails is -- this was a process that
	6	started a long time ago, so I really -- specific
	7	E-mails at this point are all just a blur. Take
	8	that for what it is. I don't know if that gets
	9	you where you need to be on this.
06:18PM	10	Q Let's go off the record. Take just a couple of
	11	minutes here or however long you need to take to
	12	flip through these and familiarize yourself with
	13	them. Then we will go back on and I will ask you
	14	the question.
06:18PM	15	THE VIDEOGRAPHER: The time is
	16	6:17. We are going off the record.
	17	(Recess)
	18	THE VIDEOGRAPHER: The time is
	19	6:34. We are back on the record.
06:35PM	20	Q Mr. Foltz, just before we broke I asked you to
	21	take a look at Exhibit No. 1. You have now had an
	22	opportunity to do that.
	23	A I have.
	24	Q You have seen a number of E-mails within Exhibit
06:36PM	25	No. 11 that have your name on them, correct?

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	1	A	Yes.
	2	Q	You either wrote them or you received them or you
	3		were copied on them, correct?
	4	A	That is correct.
06:36PM	5	Q	I want you to -- I will tell you that these are
	6		E-mails that were not produced to the plaintiffs
	7		in the litigation. I want to ask you with respect
	8		to the documents contained in Exhibit 11 as a
	9		whole, do you know of any reason that any of the
06:36PM	10		E-mails that have your name on them were not
	11		produced to the plaintiffs?
	12	A	I do not with the caveat going back to my prior
	13		testimony. I believe there's an SB 150 reference
	14		in here once or twice at some point that I know
06:36PM	15		that at the time we were not producing anything
	16		involving SB 150/Act 39.
	17	Q	Set that document to the side. I'm going to ask
	18		you to take a look at Exhibit No. 12.
	19	A	Okay.
06:36PM	20	Q	I won't ask you to go through the whole document.
	21		I'm going to direct you to a specific page in it
	22		once you get it out.
	23	A	Okay.
	24	Q	Exhibit No. 12.
06:37PM	25	A	Okay.

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06:37PM	1	Q	I will represent to you that this is a collection
	2		of E-mails that were provided to us by Mr. Jacob
	3		who is counsel for Michael Best & Friedrich, and
	4		these are documents relating to SB 150 that were
	5		not produced to the plaintiffs in the litigation.
	6	A	Okay.
	7	Q	So I want to direct your attention to the second
	8		page which is Evans 000108.
	9	A	108. Okay.
06:37PM	10	Q	And you see the E-mail header at the top says To
	11		and you are listed as one of the people this
	12		E-mail was sent to. Do you see that?
	13	A	Is it the top address block or is this the --
	14	Q	This is the top.
06:37PM	15	A	The top address block. Okay.
	16	Q	Of Evans 000108.
	17	A	Okay.
	18	Q	Do you see that?
	19	A	I do.
06:37PM	20	Q	And this is a document that pertained to SB 150.
	21	A	Okay.
	22	Q	Is it your understanding that to the extent that
	23		your name is on any of the documents contained
	24		within Exhibit No. 12 that the reason it wouldn't
06:38PM	25		have been produced is that the document pertained

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30(b)(6) VIDEOTAPE DEPOSITION OF ADAM R. FOLTZ 4/30/2013

1		to SB 150?
2	A	That's fair.
3	Q	And, again, you were instructed not to produce any
4		documents pertaining to SB 150?
06:38PM 5	A	Yes.
6	Q	That instruction came from counsel at Michael
7		Best & Friedrich?
8	A	Yes.
9	Q	I would like you to look at Exhibit No. 15,
06:38PM 10		please, that's in your stack.
11	A	Okay.
12	Q	We're going to march through a few in order here.
13	A	So 15?
14	Q	You can just get 15 to 20 actually. Just have
06:38PM 15		those in front of you.
16	A	There's a 28. There's an 18. 20. I'm sorry,
17		Doug. You said 15 through 20 --
18	Q	Correct?
19	A	-- is what we were going to rifle through?
06:38PM 20	Q	Yes. Do you have those in front of you?
21	A	I do.
22	Q	Let's look at Exhibit No. 15 first.
23	A	Okay.
24	Q	The back and the bottom three-quarters of Exhibit
06:39PM 25		No. 15 you will see it's got a stamp across it

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1		that says Previously Produced?
2	A	I do.
3	Q	So I want to direct your attention only to the top
4		of Exhibit No. 15, and that's that very first
5		E-mail header that's dated Thursday, June 30,
6		2011. Do you see that?
7	A	Yes.
8	Q	And the subject is MKE Hispanics?
9	A	Okay.
10	Q	Do you see that?
11	A	Yes.
12	Q	And you are copied on this E-mail, correct?
13	A	Yes.
14	Q	The subject line says MKE Hispanics. Do you see
15		that?
16	A	I do.
17	Q	Do you know what that refers to?
18	A	I believe Milwaukee.
19	Q	Milwaukee Hispanics. Does it refer to the
20		Hispanic districts in Milwaukee do you know?
21		MS. BUCHKO: Objection on
22		competency.
23	A	I'm sorry. What was the question again?
24	Q	Whether the heading, the Milwaukee Hispanics
25		heading, refers to the Hispanic districts,

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1		legislative districts, in Milwaukee.
2	A	I believe so.
3	Q	Do you know why that top portion of Exhibit No. 15
4		wasn't produced to the plaintiffs?
5	A	Between the header and then the Thursday, June
6		30th?
7	Q	Basically anything above the On Thursday, June 30,
8		2011.
9	A	Okay. And the question again?
10	Q	Do you know why that wasn't produced to the
11		plaintiffs?
12	A	I do not.
13	Q	I would like you to look at Exhibit No. 16,
14		please.
15	A	Okay.
16	Q	If you look on the second page of Exhibit 16
17		through the end, you will see a stamp across those
18		pages that says Previously Produced.
19	A	Okay.
20	Q	I want to draw your attention to the first page
21		and limit my question only to the first page of
22		Exhibit 16.
23	A	Okay.
24	Q	You see that you are a recipient of Exhibit No. 16
25		or at least -- you are a recipient, correct?

06:40PM (line 5)
06:40PM (line 10)
06:40PM (line 15)
06:40PM (line 20)
06:41PM (line 25)

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	1	A	That is correct.
	2	Q	And the subject of it is Amendment to Legislative
	3		Redistricting Plan and there's a number, correct?
	4	A	Okay. Yes.
06:41PM	5	Q	Do you know why this document wasn't produced to
	6		the plaintiffs?
	7	A	Again referring only to the first page?
	8	Q	Correct.
	9	A	I do not know.
06:41PM	10	Q	I would ask you to look at Exhibit No. 17.
	11		There's no indication on Exhibit No. 17 anywhere
	12		that it was previously produced to the plaintiffs,
	13		so my question will pertain to the entire
	14		document.
06:41PM	15	A	Okay.
	16	Q	If you look at this document -- actually, you
	17		might not be on this one. No. I don't think you
	18		are on this one. You can set this one to the
	19		side.
06:41PM	20	A	Okay. And this was 17?
	21	Q	That was 17.
	22	A	Okay.
	23	Q	And you can set 18 to the side.
	24	A	Okay.
06:42PM	25	Q	And 19 to the side.

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	1	A	Okay.
	2	Q	Let's look at Exhibit No. 20. Do you see that
	3		or -- do you have Exhibit 20 in front of you?
	4	A	I do.
06:42PM	5	Q	I would like to draw your attention to the very
	6		first page of Exhibit 20, page 105. Do you see
	7		that this is an E-mail that was sent to you on or
	8		about Monday, October 10, 2011?
	9	A	I do see that.
06:42PM	10	Q	And you see the subject line is Amendment on
	11		Effective Date of Redistricting?
	12	A	Uh-huh.
	13	Q	Do you know why this particular document wasn't
	14		produced to the plaintiffs?
06:42PM	15	A	On this one I would refer to the previous
	16		testimony about the time certainty that we were
	17		operating under in the production process with the
	18		E-mail date of October 10, 2011 being after the
	19		enactment or publication date that we were working
06:42PM	20		with.
	21	Q	And this document, Exhibit 20, fell out of the
	22		date range that Mr. McLeod had instructed you to
	23		look for documents and produce them?
	24	A	Without specifically saying that it was Eric that
06:43PM	25		put me under those instructions because I do not

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1		recall who specifically gave me those
2		instructions, that is correct.
3	Q	Was it somebody at Michael Best & Friedrich who
4		gave you those instructions?
06:43PM 5	A	Yes.
6	Q	I want to go back to -- you have got Exhibit
7		No. 29 in front of you. That's Mr. Lanterman
8		declaration.
9	A	Just a second. 29 you said?
06:43PM 10	Q	Correct.
11	A	That's the Lanterman third declaration?
12	Q	Correct.
13	A	Okay.
14	Q	I'm going to draw your attention to Paragraph
06:43PM 15		Number Ten.
16	A	Okay.
17	Q	Do you see Mr. Lanterman states in Paragraph Ten,
18		"On that same computer, ASM Republican WRK32586, I
19		have recovered four million deleted master file
06:44PM 20		table entries." Do you see that?
21	A	I do.
22	Q	Again, that's a reference to the Assembly
23		redistricting computer, correct?
24	A	You caught me mid sip. That appears correct.
06:44PM 25		Yes.

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1	Q	Now, do you know what Mr. Lanterman is referring
2		to when he talks about four million deleted master
3		file table entries?
4		MS. BUCHKO: Objection, foundation
5		and competency.
6	A	I don't know.
7	Q	That's why I asked do you know.
8	A	I don't.
9	Q	Did you do anything to intentionally delete any
10		master file table entries?
11	A	I don't even know what they are.
12	Q	Are you aware of anything that you might have done
13		that would have deleted the master file table
14		entries?
15	A	No.
16	Q	Mr. Lanterman toward the end of that paragraph has
17		a statement where he says the only other time he
18		has seen such a pattern is when data were deleted
19		and then restored from a backup and the
20		restoration brings back the file itself leaving
21		the deleted MFT entry. Do you see that?
22	A	I do.
23	Q	Did you engage in any kind of a restoration from a
24		backup on your Assembly redistricting computer?
25	A	Going back to my prior testimony, I don't think --

06:44PM (lines 4-5)
06:44PM (line 10)
06:44PM (line 15)
06:45PM (line 20)
06:45PM (line 25)

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	1		I can't think of any instance where I ran anything
	2		in the recovery aspect of computer maintenance
	3		again not knowing exactly what LTSB did when they
	4		were performing their various technical support
06:45PM	5		functions.
	6	Q	I would like to turn your attention to Topic
	7		Number Seven of the subpoena, and that's any
	8		forensic or other analysis conducted on the
	9		redistricting computer between January 1, 2011 and
06:46PM	10		January 31, 2013. Do you see that?
	11	A	Number Seven?
	12	Q	Correct.
	13	A	Okay.
	14	Q	Are you aware of any forensic or other analysis
06:46PM	15		that was conducted on the Assembly redistricting
	16		computer?
	17	A	Just after it went to the LTSB inventory cage
	18		there were forensic images taken by Mr. Lanterman
	19		and Mr. Evans.
06:46PM	20	Q	Did you participate at all in the imaging of the
	21		Assembly redistricting computer by Mr. Evans?
	22	A	I did not.
	23	Q	Did you participate in the decision to retain
	24		Mr. Evans to perform that work?
06:46PM	25	A	I know that it had happened.

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	1	Q	Were you made aware of it, that it happened, after
	2		it actually occurred?
	3	A	I don't recall specifically what the series of
	4		events was on that.
06:46PM	5	Q	Did you have discussions with anyone before
	6		Mr. Evans was retained?
	7	A	I'm sure.
	8		MS. BUCHKO: Object.
	9		THE WITNESS: Sorry.
06:47PM	10		MS. BUCHKO: That's okay. Object
	11		only to the extent it calls for discussion
	12		with counsel, attorney-client privilege.
	13	A	I'm sure there were some conversations.
	14	Q	Did you make any kind of a recommendation about
06:47PM	15		whether to retain Mr. Evans to conduct that
	16		forensic analysis?
	17		MS. BUCHKO: Same objection to the
	18		extent if may disclose attorney-client
	19		privileged communication.
06:47PM	20		THE WITNESS: I'm sorry. The
	21		question again?
	22		(Question read)
	23	A	I can't recall a recommendation I would have made.
	24		No.
06:47PM	25		MR. POLAND: At this time then I'm

<div align="center">133</div>

	1	going to pass the witness to Mr. Earle.
	2	EXAMINATION
	3	By Mr. Earle:
	4	Q I'm going to jump around a little bit, Mr. Foltz,
06:48PM	5	within the confines of these various topics that
	6	you have been designated.
	7	A Okay.
	8	Q I want to begin by asking you if at any point
	9	during the time that you had access to and used
06:48PM	10	the computer that was assigned to you that was
	11	placed at Michael Best and including the time
	12	where you apparently moved it to Reinhart --
	13	A Uh-huh.
	14	Q Whether during any of that time you engaged in any
06:48PM	15	non work-related misconduct on that computer?
	16	MS. BUCHKO: Object; foundation,
	17	competency, form.
	18	Q Go ahead.
	19	A I can't think of any. No.
06:49PM	20	Q Did you engage in any criminal conduct on that
	21	computer?
	22	MS. BUCHKO: Same objection.
	23	A No.
	24	Q Did you engage in any partisan political activity
06:49PM	25	on that computer?

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1		MS. BUCHKO: Same objection. I'm
2		also going to object on the grounds that it's
3		outside the scope of the designated topics on
4		the 30(b)(6) rules.
06:49PM 5	A	Well, partisan numbers are part of the
6		redistricting data set and various analyses were
7		conducted that had partisan numbers as part of it.
8	Q	Were maps drawn to reflect those partisan numbers?
9	A	I don't understand the question.
06:49PM 10	Q	Did you create maps to reflect the partisan
11		numbers that you analyzed to consider those maps?
12		MS. BUCHKO: Same objection,
13		outside the scope of the designated topics
14		and unrelated to pretrial discovery.
06:49PM 15	A	And the question again was?
16	Q	Do you want it read to you?
17	A	Yes.
18		(The following was read by the reporter:
19		Q "Did you create maps to reflect the partisan
06:49PM 20		numbers that you analyzed to consider those
21		maps?")
22	A	As I understand the question, the partisan
23		analysis is a back end analysis. You draw a map,
24		and then you get a partisan number.
06:50PM 25	Q	And then you evaluate the map?

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	1	A	There were evaluations done. Yes.
	2	Q	And maps were changed, right?
	3	A	In what context?
	4	Q	Well, if you decide that what you see doesn't
06:50PM	5		respond to some objective that you have in
	6		redistricting, some strategy that you have in the
	7		redistricting, you change the map, right?
	8		MS. BUCHKO: I'm going to object to
	9		form. Outside the scope of the topics.
06:50PM	10		Counsel, if you don't close this out pretty
	11		quickly, I'm going to instruct him to no
	12		longer answer.
	13		MR. EARLE: That's fine. You have
	14		a standing objection to that. It's very
06:50PM	15		clearly related to the topics.
	16		MS. BUCHKO: Tell me how.
	17		MR. EARLE: I'm not going to do
	18		that for very precise reasons.
	19	Q	Go ahead.
06:50PM	20	A	I'm sorry. The question again?
	21		(The following was read by the reporter:
	22		Q "Well, if you decide that what you see
	23		doesn't respond to some objective that you have
	24		in redistricting, some strategy that you have
06:50PM	25		in the redistricting, you change the map,

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1		right?")
2	A	I guess the best answer to that question is the
3		maps were continually changed during the process
4		for months and months and you again have all of
06:51PM 5		the Autobound files that reflect all of the
6		different versions of Autobound maps that I had
7		drawn.
8	Q	Did you use the computers for any non work-related
9		purpose during the time that you had access to
06:51PM 10		them?
11	A	I'm sure I probably did at some point.
12	Q	What kind of non work-related purpose did you use
13		the computers for?
14	A	I may have jumped on Facebook.
06:51PM 15	Q	Did you communicate with anybody via Facebook
16		about redistricting while you jumped on Facebook?
17	A	No.
18	Q	Did you do any non related work on the computers
19		beyond jumping on Facebook?
06:52PM 20	A	Maybe. I don't know.
21	Q	Well, tell me about it.
22	A	I really don't recall.
23	Q	Did you engage in electoral campaign activity on
24		those computers?
06:52PM 25	A	No.

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	1	Q	Did you produce shape files to us to reflect the
	2		maps that were created and considered?
	3	A	No. Going back to my prior testimony, the shape
	4		files were not produced. The outputs of Autobound
06:52PM	5		software the -- I shouldn't say -- let me back up.
	6		I don't recall if the shape files were produced
	7		and again going back to the Lanterman declaration
	8		about the draft plans for printing. The Autobound
	9		files were produced as a text assignment file.
06:52PM	10	Q	You produced to us the shape files from the 2002
	11		legislative maps, didn't you?
	12		MS. BUCHKO: Object to form.
	13	A	I don't recall specifically that production.
	14	Q	You produced to us files that had file extensions
06:53PM	15		of .PRJ. Strike that. I'm going to withdraw that
	16		question. Let me ask it this way. Do you know
	17		what a file extension .SHP is?
	18	A	I believe that's the extension associated with a
	19		shape file.
06:53PM	20	Q	Okay. And do you know what a file extension .SHX
	21		is?
	22	A	I do not.
	23	Q	How about a file extension .DBF?
	24	A	I believe that is a database extension.
06:54PM	25	Q	How about a .PRJ?

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        1    A   I'm not aware of what that is.

        2    Q   Would you dispute that from your files on

        3        January 11, 2012 a vast number of shape files with

        4        those file extensions were produced to the

06:54PM  5        plaintiffs related to the 2002 legislative remap?

        6    A   It seems entirely possible.

        7    Q   That's because you had that data on your computer;

        8        isn't that true?

        9    A   I believe so.  If that's the case.

06:54PM 10    Q   Why wasn't that data produced to us for this

       11        redistricting round?

       12                   MS. BUCHKO:  Object; form,

       13            foundation.

       14    A   These are the 2002 maps.

06:55PM 15    Q   I can show you -- you can come over here and you

       16        can look at my computer and you can see from the

       17        electronic image that I have right here on this

       18        computer --

       19    A   Okay.

06:55PM 20    Q   -- that was produced from you -- I got two sets of

       21        documents.  I got production of hard copies and I

       22        got electronic files.

       23    A   Okay.

       24    Q   I have the electronic files up here.  I'll move

06:55PM 25        this stuff over so you can come over and see this.
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1		MR. EARLE: I know he's going to
2		get out of the camera view for just a moment.
3		It may orient him a little bit more.
4	A	I just want to be clear what we're discussing
5		here. You said shape files in the various --
6	Q	Come over here and take a look at it.
7	A	I'm good where I am.
8	Q	I'll come over to you if Mr. Murray and Ms. Buchko
9		don't object.
10		MR. MURRAY: To you approaching the
11		witness?
12		MR. EARLE: To me approaching the
13		witness.
14		MR. MURRAY: I might object.
15		MR. JACOB: I just want an exhibit
16		sticker put on that.
17		MR. EARLE: I'm doing it with leave
18		of counsel here.
19		MR. MURRAY: Attach the computer to
20		the original transcript.
21	Q	You can see we have electronic files of a folder
22		that's entitled 2002 Legislative and Court Maps
23		parens Shape Files and then we have all of these
24		different files and then we have assembly.DPB,
25		assembly.PRG, assembly.SHP, assembly.SHX?

06:55PM (line 5)
06:56PM (line 10)
06:56PM (line 15)
06:56PM (line 25)

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	1	A	Okay.
	2	Q	And then we have the same equivalent for Senate.
	3	A	Okay.
	4	Q	Each of these have shape files --
06:56PM	5	A	Okay.
	6	Q	-- of that nature as I go through these.
	7	A	Uh-huh.
	8	Q	All right?
	9	A	Okay.
06:56PM	10	Q	I can represent to you that in all of the material
	11		provided by you to us there are no shape files for
	12		this current redistricting plan.
	13	A	For the current redistricting plan there are no
	14		shape files?
06:57PM	15	Q	None were produced to the plaintiffs?
	16	A	Okay.
	17	Q	Do you have an explanation for that?
	18	A	As I testified to earlier, the shape files are
	19		duplicative of the Autobound map outputs.
06:57PM	20	Q	Who made a decision not to produce the shape files
	21		from the current redistricting plan?
	22	A	I don't recall.
	23	Q	You had shape files on your computer, correct?
	24	A	Yes.
06:57PM	25	Q	For the current map.

<div align="center">141</div>

1	A	I don't know that. Current as in Act 43?
2	Q	Act 43. What was ultimately codified and then
3		overruled by the Court.
4	A	Uh-huh.
5	Q	That act.
6	A	Okay.
7	Q	Those shape files. We didn't get those, right?
8	A	I don't know if I had those shape files for the
9		final version.
10	Q	Did you delete those files from your computer?
11	A	Of the final plan?
12	Q	Of any plan.
13	A	I don't even know if I had the final shape file
14		output of Act 43 pre or post the Court's changes
15		to Districts 8 and 9.
16	Q	Now, you got a map that was produced by MALDEF,
17		correct?
18	A	I believe that's the case.
19	Q	And you evaluated that map, correct?
20	A	Sure.
21	Q	I'll rephrase that. You participated in the
22		evaluation of that map as part of the team,
23		correct?
24	A	That's accurate.
25	Q	And was that map translated into a set of shape

06:58PM (lines 5, 10, 15, 20, 25)

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1		files or did you put it in Autobound and generate
2		a map to look at?
3	A	May have.
4	Q	Did you preserve that?
5	A	The Autobound file should be preserved. Yes.
6	Q	Did you produce that?
7	A	I believe so.
8	Q	Where would that have been?
9	A	What do you mean by where?
10	Q	In what production did that map get produced?
11	A	It would have been the supplemental production for
12		round two of the depositions.
13	Q	And in what format would that have been produced?
14	A	That would have -- again, going back to the
15		previous testimony, the output function of a text
16		assignment or a block assignment file.
17	Q	If I told you that we did not get any electronic
18		version of any map other than the map that was
19		adopted by the Court, would you disagree with that
20		statement?
21	A	I would.
22	Q	And what would be the basis for your disagreement?
23	A	Because you have the text assignment files of the
24		Autobound plans.
25	Q	I want to talk to you about your G Mail account.

06:59PM (lines 5, 10, 15, 20)
07:00PM (line 25)

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1	A	Okay.
2	Q	Have you taken steps to preserve everything in
3		your G Mail account?
4	A	When we met with Whyte Hirschboeck, they made sure
5		to just inform us, you know, don't delete
6		anything.
7	Q	Have you been instructed to gather all E-mail
8		messages from your G Mail account that are
9		responsive to the subpoenas that were issued?
10	A	Yes. We have been told to start pulling together
11		the post enactment and the SB 150 E-mails.
12	Q	And when will you finish that task?
13	A	I will defer to legal counsel on that.
14	Q	No. I want to know when you're going to finish
15		that task. I'm not asking you about legal
16		counsel's view of it. When did you start?
17	A	I haven't yet to be honest with you.
18	Q	You haven't started?
19	A	No.
20	Q	What have you done to secure that information?
21	A	Not delete it.
22	Q	Is there a reason you haven't started?
23	A	Just busy with work.
24	Q	Does it concern you that you haven't started?
25		MS. BUCHKO: Object to form.

07:00PM (line 5)
07:00PM (line 10)
07:00PM (line 15)
07:01PM (line 20)
07:01PM (line 25)

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	1	A	I really -- no.
	2	Q	Have you been asked to produce those by any
	3		deadline?
	4	A	No.
07:01PM	5	Q	Have any of the E-mails that existed on your
	6		G Mail account related to redistricting between
	7		the time that you started working on the
	8		redistricting project and the trial -- were any of
	9		those deleted?
07:02PM	10	A	Not that I can recall.
	11	Q	So when we get those E-mails that are responsive
	12		to the subpoenas from your G Mail account --
	13	A	Uh-huh.
	14	Q	-- we will get every single E-mail that was
07:02PM	15		generated on the subject of redistricting?
	16		MS. BUCHKO: No. Object to form.
	17		MR. EARLE: Let me finish the
	18		question before you object to it.
	19		MS. BUCHKO: Okay.
07:02PM	20		MR. EARLE: May I have it read to
	21		where I was.
	22		(Question red)
	23	A	I can't say with absolute certainty. There may be
	24		things on scheduling or something along those
07:02PM	25		lines maybe.

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1	Q	Did you intentionally delete any responsive
2		information from anywhere?
3	A	No.
4	Q	How many draft plans were generated for the area
5		around Kenosha-Racine?
6	A	I don't recall.
7	Q	More than one, right?
8	A	Yes. Again, specific -- well, are you referring
9		specifically just to me or the entire
10		redistricting process?
11	Q	Through the whole redistricting process.
12	A	I'm sure there was more than one alternative.
13		Yes.
14	Q	What was the process by which alternatives were
15		considered?
16		MS. BUCHKO: I'm going to object on
17		the grounds that it is again outside the
18		scope of the designated topics for the
19		30(b)(6) deposition.
20		MR. EARLE: I'm trying to discover
21		deleted materials.
22	Q	Go ahead.
23	A	The process used when evaluating alternatives? Is
24		that --
25	Q	Right.

07:03PM (lines 5, 10, 15, 20, 25)

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1	A	And this goes back to the first round of
2		depositions. There was a chunk of time there
3		where legislative leaders came in and various
4		alternatives were discussed.
07:04PM 5	Q	And those alternatives were printed out, correct?
6	A	I can't remember if they were printed out or just
7		displayed on the screen. I don't recall exactly
8		what format they were in.
9	Q	You overlaid data on those map configurations,
07:04PM 10		correct?
11	A	How do you mean?
12	Q	Well, you associated data with the different
13		district lines such as turnout and --
14	A	Turnout is not a census statistic.
07:04PM 15	Q	You overlaid census statistics, correct?
16	A	I want to be careful about overlaid because
17		overlaid implies it was actually on the map. Keep
18		in mind the Autobound software also has a matrix,
19		more or less a spreadsheet, that's sitting to the
07:04PM 20		side that pertinent data such as that may also be
21		pulled from.
22	Q	So you can look at the map and you can look at the
23		data and you can interpret what is within the
24		potential district that's being considered,
07:05PM 25		correct?

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  1    A    That seems accurate.  Yes.
  2    Q    And it's your testimony that all of the different
  3         districts that were created and considered were
  4         produced to the plaintiffs in response to
07:05PM  5    discovery.  Is that what your testimony under oath
  6         is here?
  7                    MS. BUCHKO:  Object to form and
  8              mischaracterizes his previous testimony.
  9    A    Going back to -- there were alternatives from
07:05PM 10    other people involved in the process, so I can
 11         only speak to myself.  You have all of the
 12         Autobound maps.
 13                    MR. EARLE:  Read my question to the
 14              deponent.
07:05PM 15                    (Question read)
 16    Q    Can you answer that question?
 17    A    I did.
 18    Q    That's a yes or no answer.  Were they produced or
 19         weren't they produced?
07:06PM 20                    MS. BUCHKO:  Asked and answered.
 21              He said he did.
 22                    MR. EARLE:  You said that.  He
 23              didn't say that.
 24                    MR. POLAND:  Can you read his
 25              answer back, please.
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            1              (The following was read by the reporter:

            2              A  "Going back to -- there were alternatives

            3              from other people involved in the process, so I

            4              can only speak to myself.  You have all of the

07:05PM     5              Autobound maps.")

            6      Q   I didn't ask if I have all of the Autobound maps.

            7          I'm asking you whether all of the maps that were

            8          created and considered were produced.  It's a

            9          simple yes or no question.

07:06PM    10      A   You've got to be careful because there were

           11          alternatives by other people and I can only

           12          testify to myself in this and you have all of the

           13          Autobound maps that I have drawn.

           14      Q   Do I have the maps that you created and

07:06PM    15          considered?  That's the question I'm asking.

           16      A   I believe that would be the case because any map

           17          that was considered was a map that I had drawn and

           18          you have, again, all of the Autobound maps.

           19      Q   All right.  I want to talk about this trip to

07:07PM    20          Milwaukee --

           21      A   Okay.

           22      Q   -- during the trial.  Who decided to send a

           23          computer and you to Milwaukee to assist in the

           24          trial?

07:07PM    25      A   I don't remember who made that decision.
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	1	Q Who told you to do it?
	2	A I don't remember.
	3	Q You just got up one day, grabbed your computer,
	4	and ran to Chicago?
07:07PM	5	MS. BUCHKO: Object to form,
	6	leading and argumentative.
	7	Q Or Milwaukee?
	8	A No. I'm sure somebody requested that of me. I
	9	just don't recall who specifically requested that.
07:07PM	10	Q Who was paying you while you went to Chicago or to
	11	Milwaukee?
	12	MS. BUCHKO: Which state?
	13	MR. MURRAY: Now you're trying to
	14	confuse the witness.
07:08PM	15	MR. EARLE: I'm trying to get the
	16	witness to share my confusion here.
	17	Q Who was paying you?
	18	A I would have been on the State Assembly's payroll
	19	at that point.
07:08PM	20	Q Did your boss authorize it?
	21	A I'm not sure if he specifically authorized, but he
	22	was aware.
	23	Q What do you know about the decisional process?
	24	You can't tell me who told you to go. I want to
07:08PM	25	understand the decisional process by which you

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1		ended up going.
2	A	I don't recall the decisional process and what the
3		conversations were that led up to it. Somebody in
4		the process asked me to go. My boss was aware of
5		it. I went.
6	Q	Did you discuss that with Eric McLeod?
7	A	I'm sure I did.
8	Q	Did you discuss that with Patrick Hodan?
9	A	Probably not.
10	Q	Did you discuss that with Dan Kelly?
11	A	Probably not. I may have.
12	Q	Did you discuss that with Maria Lazar?
13	A	Not that I can recall.
14	Q	Did you discuss it with anybody in the attorney
15		general's office?
16	A	Not that I can recall.
17	Q	Did you discuss it with Tad Ottman?
18	A	I'm sure I did.
19	Q	What did you understand to be the purpose of you
20		going to Milwaukee for that week during the trial?
21	A	I'm not following.
22	Q	What did you understand the purpose to be for you
23		to go to Milwaukee with that computer for that
24		trial?
25	A	To observe the trial and provide anything that

07:08PM (line 5)
07:08PM (line 10)
07:09PM (line 15)
07:09PM (line 20)
07:09PM (line 25)

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1		would be asked of me.
2	Q	Did you make the arrangements with the Reinhart
3		law firm?
4	A	I don't really know if there were arrangements per
5		se. They had a conference room where folks were
6		congregated.
7	Q	I'm sure if you just showed up one day at
8		Mr. Murray's office, although he's a very
9		hospitable guy, without announcing yourself with a
10		computer in tow and walked into his conference
11		room and set it up he would ask you a few
12		questions.
13	A	Okay.
14	Q	So you just walked into Reinhart one day with your
15		computer and plunked it down in the conference
16		room? Is that what happened?
17		MS. BUCHKO: Object to form.
18	A	I don't remember who informed Reinhart that I
19		would be bringing a computer and showing up.
20	Q	What did you do while you were there with that
21		computer?
22	A	I don't recall specifically. If there was a
23		question that somebody had that was accessible
24		through the data sets or the Autobound software, I
25		could look it up for them. Or if somebody just

The timestamps 07:10PM appear beside lines 5, 10, 15, 20, and 25.

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1		wanted to review a map on the screen, I could pull
2		that up for them.
3	Q	So you pulled up maps onto a screen for the
4		litigation team in the trial; is that correct?
07:11PM 5	A	I don't know if it was the -- well, do you
6		consider the experts to be part of the litigation
7		team at that point or is that limited to
8		attorneys?
9	Q	Let's start with the attorneys.
07:11PM 10	A	Okay.
11	Q	Did you do that for any of the attorneys?
12	A	Not that I can specifically recall.
13	Q	Is it your testimony that you only did that for
14		Bernie Grofman?
07:11PM 15	A	No.
16	Q	Did you do that for Bernie Grofman?
17	A	I may have.
18	Q	Do you know who Bernie Grofman is?
19	A	Yes.
07:11PM 20	Q	Did you or didn't you do that for Bernie Grofman?
21	A	I don't recall.
22	Q	Who do you recall doing that for?
23	A	Nobody in particular.
24	Q	You're going to sit here and tell me that you
07:11PM 25		cannot recall showing a map to any individual over

	1	the course of that week while you were in Chicago?
	2	MS. BUCHKO: Object to form.
	3	MR. POLAND: Milwaukee.
	4	Q I mean in Milwaukee.
07:11PM	5	MS. BUCHKO: Object to form and
	6	mischaracterizes his previous testimony.
	7	A I'm sure I showed the map to someone. I don't
	8	recall specific instances of who saw a map or
	9	requested a statistic or anything like that.
07:12PM	10	Q What maps did you show?
	11	A It would have been the final product.
	12	Q Which maps? Which areas?
	13	A I don't recall specifically, but the map itself
	14	would have been Act 43. Or I should say -- yes.
07:12PM	15	Act 43.
	16	Q So it's your testimony that the litigation
	17	people -- is it your testimony that you only
	18	showed the maps to experts?
	19	A No. That's not my testimony.
07:12PM	20	Q Well, you said you didn't show it to any of the
	21	lawyers. Is that what you said?
	22	A No. I don't recall specifically showing it to the
	23	attorneys.
	24	Q Okay.
07:12PM	25	A I don't recall specifically showing it to the

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1		experts. I'm sure somebody looked at it at some
2		point, but I don't specifically remember who was
3		over my shoulder at that given moment.
4	Q	How much time did you spend at the computer
5		showing people who you can't remember stuff?
6	A	I don't remember.
7	Q	You were there for a week or how long?
8	A	I was in the courtroom at some point. I was at
9		the Reinhart conference room at some point.
10	Q	Did you print anything out from that computer
11		while you were at Reinhart?
12	A	No. I don't believe I had -- if memory serves, I
13		did not have printer access.
14	Q	So it's your testimony that a forensic examination
15		of the activity on that computer during those
16		dates will demonstrate what you were doing with
17		regards to redistricting?
18		MS. BUCHKO: Objection; form,
19		foundation, competency.
20	A	I don't know how to answer that. Not recalling
21		specifically what I did, I really can't say with
22		certainty.
23	Q	Do you recall showing anybody any maps about
24		Milwaukee's African American districts as they
25		were affected by the redistricting?

07:12PM (line 5)
07:13PM (line 10)
07:13PM (line 15)
07:13PM (line 20)
07:14PM (line 25)

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	1	A	Well, if they were looking at Act 43, those
	2		districts would be part of that.
	3	Q	Is it your testimony that your purpose there in
	4		moving the computer to Milwaukee during the trial
07:14PM	5		was in order to demonstrate on a screen Act 43 for
	6		the litigation team? Is that what the sole
	7		purpose of your presence there was?
	8		MS. BUCHKO: Object to form.
	9	A	That's not my testimony.
07:14PM	10	Q	Well, I'm inferring that from what you're saying
	11		here. It seems like you're saying that the only
	12		thing you did with that computer was to show
	13		people the final map.
	14		MS. BUCHKO: Object to form and
07:14PM	15		argumentative.
	16	Q	Is that what you did?
	17		MS. BUCHKO: Object to form and
	18		argumentative.
	19	Q	Is that what your activity was limited to?
07:14PM	20	A	I can't say that with certainty. I may have
	21		pulled a statistic as I said. I may have -- if
	22		there was some number that needed to be pulled up,
	23		I could have pulled that up.
	24	Q	Did you save all of the images that were generated
07:15PM	25		in the course of your stay in Milwaukee during the

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	1		week of the trial?
	2	A	I'm not following the question.
	3	Q	Did you delete any images that you created to show
	4		people associated with the litigation team?
07:15PM	5	A	I may have. I don't remember. Again, I don't
	6		remember creating images. I may have for that
	7		week of trial.
	8	Q	Were you asked to use that computer in a way that
	9		you declined?
07:15PM	10	A	Not that I can recall.
	11	Q	So you responded to every request given to you by
	12		the litigation team?
	13	A	I can't think of an instance where I wouldn't
	14		have.
07:16PM	15	Q	Did you share with members of the litigation team
	16		documents or files that were not produced to the
	17		plaintiffs in the course of that week while you
	18		were in Milwaukee during that trial?
	19	A	I don't know.
07:16PM	20	Q	You may have?
	21	A	I don't know.
	22	Q	When did you pack up and leave Reinhart?
	23	A	Reinhart? After trial.
	24	Q	Did Eric McLeod join you over there at the
07:16PM	25		Reinhart conference room?

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1	A	No. He wasn't around.
2	Q	Was anybody from Michael Best there?
3	A	Not that I can think of.
4	Q	Did you generate any paper in the course of your
5		work at Reinhart during that week?
6	A	Again, I don't believe so because I didn't have
7		printer access.
8	Q	Did you save all of the E-mails from your G Mail
9		account generated during that week?
10	A	I doubt there were any E-mails at that point.
11	Q	You did not receive any E-mails during the week
12		that you were at the Reinhart law firm in
13		Milwaukee during that trial?
14	A	I can't say that with absolute certainty. The map
15		was locked in at that point.
16	Q	It turns out not so.
17	A	Well, fair enough.
18	Q	So you didn't send any E-mails to anybody?
19	A	I may have. I don't specifically --
20	Q	I'm talking about E-mails about redistricting and
21		the remapping process.
22	A	I may have. I don't recall having sent any
23		E-mails during the week of trial.
24	Q	Now, you testified that with regards to
25		Exhibit No. 7 --

Timestamps in left margin:
07:17PM (line 5), 07:17PM (line 10), 07:17PM (line 15), 07:17PM (line 20), 07:18PM (line 25)

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	1	A	Which one was 7 again?
	2		MR. MURRAY: What is Exhibit 7?
	3		MR. EARLE: This is the --
	4		MR. POLAND: The preservation
07:18PM	5		notice.
	6	Q	As I understand your testimony, you interpret
	7		Exhibit No. 7 as a demand for preservation of open
	8		meetings information; is that correct?
	9	A	I would say that that was not my interpretation.
07:18PM	10		No.
	11	Q	What is your interpretation -- strike that. I'll
	12		ask it this way: What is your understanding of
	13		what was requested of you when you were given
	14		Exhibit 7?
07:19PM	15		MS. BUCHKO: Objection, foundation.
	16	A	Again, my understanding --
	17	Q	Hold on. You got Exhibit 7 about the time it was
	18		issued, right?
	19	A	I believe I got at least the complaint itself.
07:19PM	20		I'm not 100 percent sure on the other pages.
	21	Q	Eric McLeod has testified that he gave this to
	22		you.
	23	A	Okay.
	24	Q	Tad Ottman has testified he received it.
07:19PM	25	A	Okay.

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	1	Q	Are you testifying you don't know whether you
	2		received it?
	3	A	No. I remember the complaint. I just don't
	4		remember if I saw the cover E-mail or the cover
07:19PM	5		letter specifically.
	6	Q	Did Eric McLeod say anything to you about what you
	7		should preserve?
	8	A	And going back to my prior testimony on that, I
	9		believe what I was instructed was to preserve
07:19PM	10		things that related to the open meetings
	11		allegations for lack of a better term.
	12	Q	Why don't you open it up to the second page.
	13	A	Is this the letter with your office's letterhead?
	14	Q	Right.
07:20PM	15	A	Okay.
	16	Q	Look at the first paragraph and the fourth line
	17		down. Do you see your name in there?
	18	A	Okay.
	19	Q	Do you see your name in there?
07:20PM	20	A	I do.
	21	Q	Were you told that this letter was intended to
	22		have you specifically preserve documents
	23		responsive to the subject matter of the letter?
	24		MS. BUCHKO: Object to form.
07:20PM	25	A	Well, again, going back to -- what was the

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 1         question again?

 2                        (Question read)

 3     A   Well, going back to the prior testimony, if memory

 4         serves we received an E-mail from Eric saying

 5         preserve things that relate to open meetings.

 6     Q   Would you look at the second paragraph.

 7     A   Okay.

 8     Q   The second very long sentence that starts with the

 9         words "As it is likely."  It's right in the middle

10         of the paragraph.  "As it is likely that the

11         subject matter."  Do you see that there?

12     A   Okay.

13     Q   Got it?

14     A   I do.

15     Q   Okay.  Read that sentence into the record, please.

16     A   Where did that begin again?  "As it is likely"?

17         Is that the beginning point?

18     Q   Yes.

19     A   "As it is likely that the subject matter alleged

20         in the attached verified complaint will result in

21         litigation, this letter serves to put you and your

22         clients on notice that you and they are under a

23         duty to preserve all potentially relevant data,

24         documents, electronically stored information and

25         other evidence under your respective possession,
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	1	custody, and control including but not limited to
	2	all computer hard drives, E-mail systems, both
	3	public and private, data storage devices, files
	4	and specifically the hard drives and backup
07:22PM	5	storage devices for the computers used by
	6	Tad Ottman, Adam Foltz, and Joseph Handrick while
	7	working on the redistricting process leading to
	8	the adoption of Act 43 and Michael
	9	Best & Friedrich."
07:22PM	10	Q Where does it mention in that sentence open
	11	meetings?
	12	A Well, I can't speak to the attorney's
	13	interpretation of this. Not to speak for them,
	14	but I believe that it must have been their
07:22PM	15	assumption that since this was an open meeting
	16	allegation that the relevant data in question
	17	pertained to open meetings. Again, leaving the
	18	lawyering to the lawyers, I just take the
	19	instructions as I'm given them by attorneys in a
07:22PM	20	matter such as this.
	21	Q So if it turns out that you did not preserve
	22	something that you should have been preserving,
	23	it's Eric McLeod's fault?
	24	MR. JACOB: Object as to form.
07:23PM	25	A Yeah. I'm not going to -- I don't know how to

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	1		possibly answer that.
	2	Q	Well, if you didn't -- if you failed to preserve
	3		something that should have been preserved in
	4		response to Exhibit No. 7, who's at fault?
07:23PM	5		MR. JACOB: Same objection.
	6	A	Yeah. Going back to -- I know what I was asked to
	7		preserve by Mr. McLeod. I believe to the best of
	8		my recollection it was specifically relating to
	9		the open meetings violation allegation.
07:23PM	10	Q	Now, you just read a sentence into the record.
	11	A	Uh-huh.
	12	Q	Did you comply with that sentence?
	13	A	Well, again, leaving the lawyers to interpret
	14		legalese, I know what the instructions -- again, I
07:23PM	15		believe I know to the best of my recollection the
	16		instructions given to me by Mr. McLeod as a result
	17		of this letter.
	18	Q	I'm not asking you whether you complied with the
	19		instructions given to you by Mr. McLeod. I'm
07:24PM	20		asking you whether you complied with the wording
	21		of the sentence you just read into the record.
	22		Answer that question, please.
	23		MS. BUCHKO: Objection, competency.
	24	A	Again, leaving the lawyering to the lawyers, I
07:24PM	25		defer to lawyers to tell me exactly how to respond

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	1		to legal filings.
	2	Q	Did you preserve all potentially relevant data,
	3		documents, electronically stored information and
	4		other evidence under your possession, custody, and
07:24PM	5		control on storage devices, files, the hard drives
	6		that you had in your computer over at Michael Best
	7		while you were working on the redistricting
	8		process that led to the adoption of Act 43?
	9		MS. BUCHKO: Objection to form.
07:24PM	10	Q	Did you do that?
	11		MS. BUCHKO: Objection to form,
	12		competency, compound.
	13	A	Yeah. Again, going back to the instructions I was
	14		put under was to preserve what was relevant to
07:25PM	15		open meetings.
	16	Q	Mr. Foltz, you're just prolonging this deposition.
	17		I'm not asking about what you did in response to
	18		what you were told by Eric McLeod.
	19	A	What I was --
07:25PM	20	Q	I'm asking whether you preserved all of the
	21		material in your possession on all of the hard
	22		drives, all of the electronically stored material
	23		that led to the adoption of Act 43.
	24	A	Well, again, going back to -- I was put under a
07:25PM	25		certain understanding of what relevant was in the

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	1	context of this letter from Eric McLeod to the
	2	best of my recollection, and that's what was
	3	preserved.
	4	Q That's fine. We have that testimony. You have
07:25PM	5	now repeated that twice --
	6	A Uh-huh.
	7	Q -- in an effort to avoid answering the question
	8	that I'm asking you. I'm asking you a different
	9	question. I'm asking you whether you in fact
07:25PM	10	preserved all data, all files, all ESI that was in
	11	your position, custody, or control that led to the
	12	adoption of Act 43. That's what I'm asking you.
	13	MR. MURRAY: I'm going to interpose
	14	an objection here. He's answered your
07:26PM	15	question. The question reads all potentially
	16	relevant data. He's told you he preserved
	17	what he thought was relevant. You're
	18	belaboring this by arguing over and over and
	19	over again. He's answered your question.
07:26PM	20	MR. EARLE: He has not.
	21	MR. MURRAY: Your sentences uses
	22	the world relevant, not his.
	23	MR. EARLE: I'm going to have the
	24	question read to him one more time and ask
07:26PM	25	him to answer the question and we can move

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	1	on.
	2	A I've answered it. The definition of relevant in
	3	here was what I was instructed by the attorneys
	4	that it was.
07:26PM	5	Q And you're saying that if it wasn't about open
	6	meetings you didn't preserve it? Is that what
	7	your testimony is?
	8	A I'm saying those are the instructions I was given
	9	by legal counsel.
07:26PM	10	Q So you're interpreting the word relevant as being
	11	limited to material related to the open meetings
	12	allegations and nothing else?
	13	A I'm saying that that was not my interpretation.
	14	It was the interpretation I was given again
07:27PM	15	leaving the lawyering to the lawyers.
	16	Q I'm just trying to figure out what you did,
	17	Mr. Foltz. The inference from what you're saying
	18	is that you did comply in saving everything that
	19	was related to open meetings, right? But is the
07:27PM	20	inference that you did not save the stuff that's
	21	not related to the open meetings law?
	22	MS. BUCHKO: Objection; form,
	23	compound.
	24	A Like I said, there may have been some deletion
07:27PM	25	that I'm not thinking of. But you

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	1		have forensically examined these hard drives.
	2		Mr. Lanterman has pointed to the deletions of the
	3		copies of the files involving the Draft Plans for
	4		Printing folder and the Hispanic Amendment folder.
07:27PM	5	Q	How many Hispanic Amendment folders were there?
	6	A	Based on the Lanterman declaration, just the one.
	7	Q	I'm asking how many there were.
	8	A	I don't know.
	9		MS. BUCHKO: I asked him if he
07:28PM	10		needed a break.
	11		THE WITNESS: I'm good. I may need
	12		a refill on water. It's warm in here.
	13	Q	Do you want to grab some water? Did you talk to
	14		anybody at the LTSB before coming here to this
07:28PM	15		deposition here today?
	16	A	I'm sure I've talked to LTSB in the past.
	17	Q	I'm talking about in preparation for this
	18		deposition here today.
	19	A	No. I did not.
07:28PM	20	Q	Did you help prepare Bernie Grofman for his
	21		testimony?
	22	A	No.
	23	Q	Do you know if the backup device, the external
	24		hard drive, to the computer that was assigned to
07:29PM	25		you worked consistently during the time that you

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          1       had it?

          2   A   I don't know that for a fact.

          3   Q   Did you view pornography on the computer that was

          4       assigned to you?

07:29PM   5                   MS. BUCHKO:  I'm going to object.

          6   A   No.

          7                   MR. POLAND:  That's outside of the

          8           scope of the designated topics for this

          9           deposition.

07:29PM  10               Go ahead.

         11   Q   Which leads me to the second question.

         12   A   Uh-huh.

         13   Q   Did you delete pornographic images that may have

         14       been downloaded onto the computer at any point in

07:29PM  15       time?

         16   A   No.

         17                   MR. EARLE:  I think I am done.

         18                   THE WITNESS:  Okay.

         19                   MR. POLAND:  Ms. Lazar?

07:30PM  20                   MS. LAZAR:  No.  The only thing I

         21           wanted to do was state for the record that

         22           all depositions taken today, April 30, and

         23           April 29th were on the warmest days of spring

         24           and that the air conditioning in this

07:30PM  25           conference room has not been on.  I want that
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1		for the record since they're all video
2		depositions. So I just want that noted when
3		someone views the videos.
4		I have no other questions.
5		EXAMINATION
6		By Mr. Jacob:
7	Q	Mr. Foltz, real quick.
8	A	Uh-huh.
9	Q	I wanted to clarify something. Mr. Foltz, earlier
10		you testified that Michael Best IT staff may have
11		assisted in getting network connections to the
12		redistricting computer while they were deployed or
13		housed at Michael Best. Do you recall that?
14	A	I do.
15	Q	I wanted to clarify if what you meant by network
16		connection was just an Internet connection.
17	A	That is correct.
18	Q	So at no time were the redistricting computers
19		connected to Michael Best's network?
20	A	Right. Insomuch as it was needed to facilitate
21		Internet connectivity.
22	Q	Understood. Thank you. You testified that you
23		had a conversation with McLeod regarding
24		preservation of documents in conjunction with this
25		April 10, 2012 notice of preservation demand that

07:31PM (line 10)
07:31PM (line 15)
07:31PM (line 20)
07:32PM (line 25)

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	1		you were testifying about earlier. Do you recall
	2		that?
	3	A	A conversation may not be the right word. I
	4		believe it was an E-mail.
07:32PM	5	Q	Some sort of communication?
	6	A	Fair enough.
	7	Q	Setting that aside, you testified that you
	8		otherwise do not recall having any conversations
	9		or communications with Mr. McLeod regarding
07:32PM	10		instructions to preserve documents. Do you recall
	11		that testimony?
	12	A	Yes. Yes.
	13	Q	Would it be accurate or -- let me rephrase it
	14		another way. Is it possible that Eric McLeod
07:33PM	15		could have had a conversation with you about
	16		document preservation at various times and you
	17		just don't remember it?
	18		MR. EARLE: I'm going to object to
	19		the form of the question. You're asking him
07:33PM	20		to speculate by the structure of the
	21		question.
	22		MR. POLAND: Join the objection.
	23	A	It's possible.
	24		MR. JACOB: That's all I have.
07:33PM	25		MS. BUCHKO: I do have one, a

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1	couple quick ones.
2	EXAMINATION
3	By Ms. Buchko:
4	Q Are you familiar with for example a photograph
5	having more than one electronic format jpg versus
6	another electronic format for the photograph?
7	A Yes.
8	Q When you were testifying earlier concerning shape
9	file versus Autobound file, is that a similar
10	analogy, different format for the same electronic
11	information?
12	A Yes.
13	MS. BUCHKO: Thank you. That's all
14	I've got.
15	MR. POLAND: I do have a follow-up
16	based on that.
17	RE-EXAMINATION
18	By Mr. Poland:
19	Q Ms. Buchko just asked you a question about
20	different formats, jpg and other formats. Do you
21	understand that?
22	A Yes. I do.
23	Q Is it your belief that the information conveyed in
24	those various electronic files is exactly the
25	same?

07:33PM (line 5)
07:33PM (line 10)
07:34PM (line 15)
07:34PM (line 20)
07:34PM (line 25)

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	1	A	I do believe that. The reason being is that when
	2		you dump a redistricting plan out of Autobound in
	3		a shape file format to facilitate printing you
	4		can't move the redistricting lines at that point.
07:34PM	5		You're locked in for back of a better term. Once
	6		something is dumped out of Autobound, that shape
	7		file and the legislative district lines that are
	8		dumped out into that shape file can't be moved
	9		because in Arc GIS there is no way to reassign a
07:34PM	10		unit of geography that would facilitate moving
	11		that line.
	12	Q	Is it your testimony that there's no information
	13		whatsoever or usefulness that the plaintiffs could
	14		have obtained from getting the shape file itself?
07:35PM	15	A	Usefulness? I don't know exactly what you mean by
	16		that. The thing about dumping files from a
	17		proprietary redistricting software is there's no
	18		clean way of doing it because you have three
	19		highly competitive, highly proprietary pieces of
07:35PM	20		software. In producing those to you, I don't know
	21		what software you have on the receiving end,
	22		whether it be the same that I have which is
	23		Autobound or Maptitude. I think there's another
	24		player out there or two. I don't know what format
07:35PM	25		you have. So if I give you an AB9 file, I don't

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	1	know if you can do that. I don't know what you
	2	have on the receiving end. On my end I need to
	3	give you a format that can speak across platforms
	4	if that makes sense. There's no clean way of
07:35PM	5	doing that because either you do a text assignment
	6	file which quite literally goes through and
	7	assigns I believe by census block all units of
	8	geography to an associated legislative district --
	9	you can produce them as shape files as well, but
07:36PM	10	then the problem becomes when you put that shape
	11	file into the redistricting software on your end,
	12	on the receiving end, you would have to go through
	13	and manually assign all 99 legislative districts.
	14	I know it's a long answer, but there's no clean
07:36PM	15	and quick way without knowing what you have as
	16	plaintiffs' counsel on the receiving end of this
	17	because of the proprietary nature of the software.
	18 Q	Do you know whether there was ever an offer made
	19	to the plaintiffs to produce the data that you
07:36PM	20	have on the redistricting computer in one format
	21	versus a different format?
	22 A	I'm not aware of any conversations between counsel
	23	on that.
	24	MR. POLAND: I don't have anything
07:36PM	25	further.

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	1	MR. EARLE: I just have one
	2	question.
	3	RE-EXAMINATION
	4	By Mr. Earle:
07:37PM	5	Q This might have been touched on, but I'm going to
	6	ask it directly. Did you at any time on the
	7	computer you were assigned wipe everything off of
	8	it and then restore it later?
	9	A No.
07:37PM	10	Q To your knowledge did anybody else do that?
	11	A Again, going back to my prior testimony, I don't
	12	know what LTSB had to do to facilitate some of the
	13	technical support functions. They may have. They
	14	may not have. I'm not aware.
07:37PM	15	Q The question is whether you know whether anybody
	16	else did that or not.
	17	A I don't know.
	18	MR. EARLE: Okay. I'm done.
	19	MR. POLAND: Nothing further.
07:37PM	20	We're done.
	21	(Adjourning at 7:37 p.m.)
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1   STATE OF WISCONSIN )
                       ) ss.
2   COUNTY OF DANE     )

3           I, SUSAN C. MILLEVILLE, a Court Reporter

4   and Notary Public duly commissioned and qualified in

5   and for the State of Wisconsin, do hereby certify

6   that pursuant to subpoena, there came before me on

7   the 30th day of April 2013, at 2:14 in the afternoon,

8   at the offices of Godfrey & Kahn, S.C., Attorneys at

9   Law, One East Main Street, the City of Madison,

10  County of Dane, and State of Wisconsin, the following

11  named person, to wit:  ADAM R. FOLTZ, who was by me

12  duly sworn to testify to the truth and nothing but

13  the truth of his knowledge touching and concerning

14  the matters in controversy in this cause; that he was

15  thereupon carefully examined upon his oath and his

16  examination reduced to typewriting with

17  computer-aided transcription; that the deposition is

18  a true record of the testimony given by the witness.

19          I further certify that I am neither

20  attorney or counsel for, nor related to or employed

21  by any of the parties to the action in which this

22  deposition is taken and further that I am not a

23  relative or employee of any attorney or counsel

24  employed by the parties hereto or financially

25  interested in the action.
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1   In witness whereof I have hereunto set my

2   hand and affixed my notarial seal this 4th day of May

3   2013.

4

5   _____
                          Notary Public, State of Wisconsin
6
    My commission expires
7   June 23, 2013

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CINDY BARBERA, CARLENE
BECHEN, RONALD BIENDSEIL, RON BOONE, VERA
BOONE, EL BUMPUS, EVANJELINA CLEEREMAN,
SHEILA COCHRAN, LESLIE W. DAVIS III, BRETT
ECKSTEIN, MAXINE HOUGH, CLARENCE
JOHNSON, RICHARD KRESBACH, RICHARD
LANGE, GLADYS MANZANET, ROCHELLE MOORE,
AMY RISSEEUW, JUDY ROBSON, GLORIA ROGERS,
JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP,
TRAVIS THYSSEN,

                   Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE
and RONALD KIND,

                   Intervenor-Plaintiffs,

       v.

Members of the Wisconsin Government Accountability
Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER, GERALD
NICHOL, THOMAS CANE, THOMAS BARLAND, and
TIMOTHY VOCKE, and KEVIN KENNEDY, Director
and General Counsel for the Wisconsin Government
Accountability Board,

                   Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI,
PAUL D. RYAN, JR., REID J. RIBBLE,
and SEAN P. DUFFY,

                   Intervenor-Defendants.

Civil Action
File No. 11-CV-562

Three-judge panel
28 U.S.C. § 2284

(caption continued on next page)

THIRD DECLARATION OF MARK LANTERMAN

VOCES DE LA FRONTERA, INC., RAMIRO VARA,
OLGA WARA, JOSE PEREZ, and ERICA RAMIREZ,

          Plaintiffs,

        v.

Members of the Wisconsin Government Accountability
Board, each only in his official capacity:
MICHAEL BRENNAN, DAVID DEININGER, GERALD
NICHOL, THOMAS CANE, THOMAS BARLAND, and
TIMOTHY VOCKE, and KEVIN KENNEDY, Director
and General Counsel for the Wisconsin Government
Accountability Board,

          Defendants.

Case No. 11-CV-1011
JPS-DPW-RMD

       I, Mark Lanterman, declare, under penalty of perjury and pursuant to 28 U.S.C. § 1746,

that the following is true and correct:

       1.   I am the Chief Technology Officer for Computer Forensic Services, Inc. ("CFS")

in Minnetonka, Minnesota. My credentials as a computer forensic expert for this case, including

my curriculum vitae, previously were submitted to the Court. *See* Dkt. 254 ¶ 25; Dkt. 254-9;

Dkt. 260 ¶¶ 9-12.

       2.   In a declaration dated March 11, 2013 (Dkt. 297), I reported on my preliminary

review of the nine hard drives—two internal drives and one external drive, from each of three

state redistricting computers—that I received via overnight shipment on February 27, 2013. My

analysis to that point revealed evidence that files had been deleted from the hard drives in June

2012, July 2012, and November 2012, and that software designed to "wipe"—that is, to

permanently destroy—data had been downloaded onto some of the hard drives within the last

year. (As I noted in that declaration, my analysis was limited to eight of the hard drives that I

had received; one of the drives, which exhibited visible physical damage, could not be read.)

However, as explained in my previous declaration, determining the volume and contents of deleted files and establishing whether wiping software was actually executed is a process that must be customized for each one of the surviving systems. I estimated that, due to this complexity, the process would take approximately eight more weeks and that the cost of such a forensic analysis would, at a minimum, exceed $100,000.

3.   To date, CFS has incurred nearly $100,000 in fees and costs associated with device imaging, data recovery, analysis, storage, and hosting. At the request of plaintiffs' counsel, I have temporarily suspended CFS's work, pending this report and the response of the relevant parties.

4.   In this declaration, I briefly summarize some of my more recent findings thus far—with the caveat that this represents only some examples of what my analysis has uncovered.

5.   Of the nine hard drives I received on February 27, 2013, eight are readable, and the "drive image"—i.e. duplicate copy—of each drive has been subject to forensic analysis. The ninth, an external drive, bore marks indicating that the housing previously had been removed from the drive in a manner that physically damaged the outer housing, and it could not be read. The original drives have all been returned to the Legislative Technology Services Bureau.

6.   Of the eight readable drives, two were labeled as having been removed from a computer system with the name "ASM Republican WRK 32586"; two were labeled as having been removed from a computer system with the name "Sen Republican WRK 32864"; two were labeled as having been removed from a computer system with the name "Sen Republican WRK 32587"; and two are external drives, labeled "ASM Republican" and "Senate Republican," respectively.

7.   The largest volume of deletions occurred on "Sen Republican WRK 32864". Hundreds of thousands of files (but likely less than one million) were deleted from "Sen

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Republican WRK 32864"on July 25, 2012. The deletions were performed by a user logged into the system as "tottman." The files deleted include indexes, data tables, database files, and other files that appear to be associated with mapping software. The database files appear to have been created in June 2011. Among the deletions were files in folders titled "AB9Backup," "AB9Plan," "LegendBMPs," "Plan Backups," "Matrix Backups," "Reports," and "Saved Matrix." These deletions do not appear to be related to any routine maintenance of the computer, because folders containing similar data but with different names were not targeted for deletion.

8.   Evidence of deletions in 2012 also appears on "ASM Republican WRK 32586," although the number of files deleted is less than that of "Sen Republican WRK 32864." Among the items deleted was a folder titled "Draft Plans for Printing," as well as its subfolder titled "Hispanic amendment" and all of the folders' contents. This folder was created on January 6, 2012, and then deleted less than one minute later, by a user logged into the system as "afoltz."

9.   I have recovered a sample of ten of these deleted documents. The documents appear to be the same or similar to non-deleted documents that I located in a folder called "Projects," located on the desktop of the afoltz user account. Without further analysis, I am unable to determine if all of the deleted documents from this folder associated with the afoltz account can be accounted for among the non-deleted data.

10.   On that same computer, "ASM Republican WRK 32586," I have recovered four million deleted master file table ("MFT") entries. The MFT is like a table of contents for the hard drive, tracking files by name, date, and location. When a file is deleted, the MFT entry associated with that file is also deleted. Thus, my recovery of four million deleted MFT entries would ordinarily signal the deletion of four million files. However, some of the deleted MFT entries reference files that still exist on the hard drive. In my experience, this is unusual. The only other time I have seen such a pattern is when data were deleted and then restored from a

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backup; the restoration brings back the file itself, leaving the deleted MFT entry. I cannot, at this stage of the analysis and without further work, explain why the files associated with some of the four million deleted MFT entries are not at this time deleted.

11.   It is my opinion, based on my experience, that at least 60 to 70 percent of the cost of this entire project is a consequence of the deletion of data from these computers. Identifying the population of deleted data files—and then recovering as much of the deleted data as can be recovered—is a time-consuming, resource-intensive, and (therefore) expensive process. Only after the deleted data are recovered will CFS have a complete population of data on which to run searches, as well as to allow a comparison of the documents and data that were produced during the litigation with the documents and data that were not produced.

12.   If I am instructed to proceed with the remainder of the work that I have suspended, the work that will follow CFS's recovery of deleted data includes creating indexes for each device, processing the e-mail files on each device, running the search terms provided by plaintiffs' counsel, and generating a report for the legislature's and LTSB's counsel and for plaintiffs' counsel to review.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 10, 2013.

Mark Lanterman

_____

Mark Lanterman

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