

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

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

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE,
and RONALD KIND,

Intervenor-Plaintiffs,

v.

Civil Action
File No. 11-CV-562

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

[Caption Continued]

VIDEOTAPE DEPOSITION

TAD M. OTTMAN

Madison, Wisconsin
April 30, 2013

Susan C. Milleville, Court Reporter

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

Defendants,

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

Intervenor-Defendants.

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

Plaintiffs,

v.

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

Members of the Wisconsin Government
Accountability Board, each only in
his official capacity:

MICHAEL BRENNAN, DAVID DEININGER,
GERALD NICHOL, THOMAS CANE,
THOMAS BARLAND, and TIMOTHY VOCKE,
and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin
Government Accountability Board,

Defendants.

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I N D E X

<u>Witness</u>	<u>Pages</u>
TAD M. OTTMAN	
Examination by Mr. Poland	6
Examination by Mr. Earle	40/49
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Identified</u>
1	Subpoena	6
2	Declaration	7

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

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

1 VIDEOTAPE DEPOSITION of TAD M. OTTMAN, called
2 as a witness of lawful age, taken on behalf of the
3 Plaintiffs, wherein Alvin Baldus, et al., are
4 Plaintiffs, and Members of the Wisconsin Government
5 Accountability Board, et al., are Defendants, pending
6 in the United States District Court for the
7 Eastern District of Wisconsin, pursuant to subpoena,
8 before Susan C. Milleville, a Court Reporter and
9 Notary Public in and for the State of Wisconsin, at
10 the offices of Godfrey & Kahn, S.C., Attorneys at
11 Law, One East Main Street, in the City of Madison,
12 County of Dane, and State of Wisconsin, on the 30th
13 day of April 2013, commencing at 12:34 in the
14 afternoon.

15
16
17 A P P E A R A N C E S

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

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

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

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

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

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

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

1 (Exhibit Nos. 1 and 2 marked for
2 identification)

3 TAD M. OTTMAN,
4 called as a witness, being first duly sworn,
5 testified on oath as follows:

6 EXAMINATION

7 By Mr. Poland:

8 Q Mr. Ottman, the court reporter has handed you a
9 document that we have had marked as Exhibit No. 1.
10 Do you have that in front of you?

12:34PM

11 A I do.

12 Q And do you see that's a subpoena for your
13 appearance at a deposition, correct?

14 A That's correct.

12:34PM

15 Q Now, we just went through and spent part of
16 yesterday and then the earlier part of today
17 taking a deposition where you were tendered as a
18 witness under Federal Rules of Civil Procedure
19 30(b)(6) testifying about matters on behalf of the
20 Wisconsin State Senate, correct?

12:34PM

21 A That's correct.

22 Q Just to make sure that we understand the
23 distinction, this is a deposition that we're
24 taking of you in your individual capacity as
25 opposed to a representative capacity. Do you

12:35PM

1 understand that?

2 A I do.

3 Q I will do my very best to limit the questions that
4 I have here to questions that we either did not

12:35PM

5 cover or only touched on in a representative
6 capacity in the other deposition. All right? If
7 we get to a point and I ask you a question, if you
8 want to refer me back to testimony that you gave
9 in the 30(b)(6) deposition, you can feel free to

12:35PM

10 do that. All right?

11 A Okay.

12 Q Have you had an opportunity to review Exhibit
13 No. 1?

14 A I have.

12:35PM

15 Q Counsel or someone has provided you with a copy of
16 that subpoena?

17 A That's correct.

18 Q I would like you to look at Exhibit No. 2.

19 Exhibit No. 2. Have you seen Exhibit No. 2

12:35PM

20 before?

21 A I have.

22 Q Can you identify it, please.

23 A It's the declaration prepared by counsel.

24 Q This is a declaration that -- if you turn to the

12:36PM

25 very last page of Exhibit 2, which is the seventh

1 page, you will see it has an electronic signature
2 on it, correct?

3 A That's correct.

4 Q And that's your electronic signature?

12:36PM

5 A Yes.

6 Q Did you give authorization or authority to someone
7 to sign your name electronically to this document?

8 A I gave it to counsel at Godfrey & Kahn. Counsel
9 at Whyte Hirschboeck. Sorry.

12:36PM

10 Q And it's dated April 25, 2013, correct?

11 A Yes.

12 Q Who asked you to prepare this document?

13 A Counsel at Whyte Hirschboeck.

14 Q Did you physically sit down at a computer and type
15 this document out yourself?

12:36PM

16 A I typed -- I edited it. I did not type the
17 original document.

18 Q Were you presented originally with a document that
19 was typed out and you were given a chance to
20 review it?

12:36PM

21 A That's correct.

22 Q Were you told you could make any changes to it you
23 want?

24 A Yes.

12:37PM

25 Q And did you in fact make changes to the document

1 from the original that was given to you?

2 A I did.

3 Q Is it your understanding and belief that
4 everything that's stated in this declaration is
12:37PM 5 true and correct?

6 A That's my understanding.

7 Q Let's take a look at Paragraph Number Two of your
8 declaration. The first sentence refers to the
9 subpoena, and that's the subpoena that we just
12:37PM 10 marked as Exhibit 1, correct?

11 A No.

12 Q Let me withdraw that question. You refer to a
13 subpoena in the beginning of Paragraph Two. What
14 subpoena was that?

12:37PM 15 A That was the subpoena prior to the redistricting
16 trial. The subpoena I believe was issued in 2011.

17 Q That was issued in December of 2011, correct?

18 A I believe that's when it was issued.

19 Q It was marked as an exhibit to one of your
12:38PM 20 previous depositions, correct?

21 A That's correct.

22 Q The next sentence of your declaration states, "I
23 was advised by the Senate's attorney that I needed
24 to search for and produce documents related to the
12:38PM 25 redistricting process that predated the enactment

1 of Acts 43 and 44." Do you see that?

2 A I do.

3 Q The Senate's attorney that's referred to in
4 Paragraph Two, who is it that you're referring to
5 there?

12:38PM

6 A Eric McLeod.

7 Q And it was Mr. McLeod I believe, as you testified
8 to in your 30(b)(6) deposition, who told you that
9 the search for and production of documents
10 relating to redistricting applied to documents
11 predating the enactment of Acts 43 and 44,
12 correct?

12:38PM

13 A That's correct.

14 Q The next sentence states that you performed a
15 search of your records at the time and produced
16 documents in your possession that predated the
17 August 2011 passage of Acts 43 and 44. Do you see
18 that?

12:38PM

19 A Yes.

20 Q What is the reference that you make in there to my
21 records at the time? What was it that was
22 included within that?

12:39PM

23 A The records that I had both in my E-mail account,
24 my State E-mail account, my G Mail account on my
25 redistricting computer and at my workstation in

12:39PM

1 the offices of Michael Best.

2 Q I'm sorry. I cut you off.

3 A And at my offices at Michael Best & Friedrich.

4 Q Did that include Mr. Handrick's computer at that
12:39PM 5 time as well?

6 A No.

7 Q Did it include the hard drive that was attached to
8 your computer?

9 A Could you clarify that?

12:39PM 10 Q There was a hard drive that was attached to the
11 computer you were using at Michael Best's offices,
12 correct?

13 A Are you referring to the internal hard drive or
14 the external hard drive?

12:39PM 15 Q I'm sorry. That's a distinction we do need to
16 make. The external hard drive.

17 A I did not perform an independent search of the
18 external hard drive.

19 Q Why did you not?

12:40PM 20 A It was my understanding that that was only a
21 backup of materials that were on the internal hard
22 drive.

23 Q Is it your understanding or was it your belief at
24 the time that anything that was on the external

12:40PM 25 hard drive should have been on the internal hard

1 drive as well?

2 A That's correct.

3 Q What about for Mr. Handrick's computer? You said
4 you did not search for and produce documents from
12:40PM 5 the redistricting computer Mr. Handrick was using?

6 A I assisted in the production of documents on his
7 computer. I did not conduct the search.

8 Q Who was primarily responsible for conducting the
9 search of that computer?

12:40PM 10 A I don't know if -- I think Joe looked at it. I
11 don't know if Adam was involved in looking or
12 simply in the production.

13 Q Did you personally search the external hard drive
14 that was attached to the computer Mr. Handrick was
12:41PM 15 using?

16 A I did not.

17 Q Do you know whether anyone else did?

18 A I don't believe so, but I don't know.

19 Q Similarly, you did not -- strike that question.

12:41PM 20 In the next sentence you state, "I understand the
21 Court ruled on February 25, 2013 that documents
22 that postdated the enactment of Acts 43 and 44 and
23 that related to SB 150 should have been produced."
24 Do you see that statement?

12:41PM 25 A Yes.

1 Q Where did you gain that understanding?

2 A That was from counsel at Whyte Hirschboeck.

3 Q At that time were you instructed to search for any
4 documents that postdated Acts 43 and -- the

12:41PM

5 enactment of Acts 43 and 44 that hadn't previously
6 been produced?

7 A Not at that time.

8 Q Have you subsequently been instructed to do that?

9 A I have subsequently been instructed to search my
10 E-mail for such documents.

12:42PM

11 Q And, as we discussed before, you don't currently
12 have the redistricting computers in your
13 possession, correct?

14 A That's correct.

12:42PM

15 Q So you personally can't undertake that search,
16 correct?

17 A That's correct.

18 Q Now, what about the SB 150 documents? I know that
19 you did testify about this in your 30(b)(6)
20 deposition, but has anyone asked you now to go
21 back and look for the SB 150 documents?

12:42PM

22 A Yes.

23 Q Who asked you to do that?

24 A Counsel at Whyte Hirschboeck.

12:42PM

25 Q Is that something that you have begun to do?

1 A I have begun to do that. Yes.

2 Q The next sentence in your declaration states,
3 "However, that was not the advice and direction I
4 had received at the time from the Senate's
12:42PM 5 attorney." Do you see that statement?

6 A I do.

7 Q Again, Senate's attorney that's referred to there,
8 is that Mr. McLeod?

9 A That is correct. Joe Olson may have been involved
12:43PM 10 in that instruction. I'm not certain.

11 Q And then you say, "I simply followed the
12 attorney's direction and I did not withhold any
13 documents based on their content," correct?

14 A That's correct.

12:43PM 15 Q The attorney's direction -- again, that's
16 Mr. McLeod and Mr. Olson?

17 A That's correct.

18 Q Your next statement that says, "I did not withhold
19 any documents based on their content" -- did you
12:43PM 20 withhold documents for any other reason?

21 A I withheld them -- I may have withheld them if
22 they postdated the enactment of Acts 43 and 44,
23 and I may have withheld them if they related
24 solely to SB 150.

12:43PM 25 Q Do you have any estimate as to when you will be

1 finished looking for documents in your E-mail that
2 postdate the enactment of Acts 43 or 44 or that
3 relate to SB 150?

4 A I hope that I can finish doing that search today
12:44PM 5 or tomorrow.

6 Q Were there any other computers including a
7 personal computer that you used to do any of your
8 redistricting work?

9 A No.

10 Q So the computer and the equipment over at Michael
11 Best & Friedrich was the only equipment that you
12 used to do your redistricting work?

13 A That's correct.

14 Q Who made the final decision as to whether a
15 document should be produced to the plaintiffs?

16 A That was Senate counsel. Either Eric McLeod or
17 Joe Olson.

18 Q Paragraph Three of your declaration, which is on
19 page 3, relates to the notice of preservation
12:45PM 20 demand letter that Mr. Earle sent, correct?

21 A That's my understanding.

22 Q And you have testified about that in your 30(b)(6)
23 deposition, correct?

24 A That's correct.

12:45PM 25 Q In the last sentence of Paragraph Three you say,

1 "Nonetheless, I continue to preserve documents
2 pertaining to the redistricting process on my
3 computer." Do you see that?

4 A Yes.

12:45PM

5 Q Which computer are you referring to there?

6 A The computer that I used for redistricting and
7 subsequently used for other legislative
8 activities.

12:46PM

9 Q Does that also include the hard drive that was
10 attached to that computer?

11 A I never made any changes to the configuration of
12 the hard drive, so -- I never saved anything
13 independently to that hard drive. So that would
14 only be backing up the redistricting maps is my
15 belief.

12:46PM

16 Q What about the computer that had been assigned to
17 you but used by Mr. Handrick for the
18 redistricting? Would that statement apply to that
19 computer as well?

12:46PM

20 A With the exception of the maps that we discussed
21 earlier.

22 Q Paragraph Four refers to your installation of
23 CCleaner on your redistricting computer, correct?

24 A That's correct.

12:46PM

25 Q And we have discussed that in some level of detail

1 in your 30(b)(6) deposition, correct?

2 A That's correct.

3 Q I want to go over a couple of things here. You
4 have a statement that says, "The purpose of such
12:47PM 5 software is to allow the computer to run faster
6 including Internet Explorer, temporary files,
7 history, cookies, super cookies, and index.dat
8 files." Do you see that?

9 A Yes.

10 Q Where did you gain that understanding?

11 A That was my understanding from the website of the
12 software.

13 Q And then it goes on and says, "It does the same
14 for Google and other system related files as
12:47PM 15 opposed to individual files." Do you see that?

16 A Yes.

17 Q Do you know whether it will clean any artifacts or
18 any of those kinds of files that might be used by
19 G Mail?

12:47PM 20 A I'm not aware.

21 Q So you don't know if it does or if it doesn't?

22 A I don't know. Yes. That's correct.

23 Q Did you ever ask anybody if CCleaner would delete
24 any artifacts that relate to G Mail messages?

12:47PM 25 A I did not.

1 Q In the next sentence you say, "The CCleaner
2 software was not used on my computer to clean
3 files that I had saved including redistributing
4 files." Do you see that?

12:48PM

5 A Yes.

6 Q What do you mean by that sentence?

7 A That I never used the software to delete any files
8 that I had saved to a specific folder other
9 than -- it may clean out a download folder. I'm
10 not certain.

12:48PM

11 Q Was there anything that you had downloaded onto
12 that computer for the purpose of redistributing?

13 A The only thing I had downloaded onto the computer
14 for the purpose of redistributing were -- there
15 were some patches that LTSB had referred me to,
16 and there may have been some census data that they
17 sent me a link to.

12:48PM

18 Q Do you have any recollection of actually
19 downloading anything that LTSB had sent you a link
20 to?

12:49PM

21 A Yes.

22 Q And what did you download?

23 A There was a patch I believe to the Autobound
24 software I specifically remember downloading.

12:49PM

25 Q Anything else?

1 A Nothing specific that I recall.

2 Q You say in the next sentence, "There's nothing
3 inconsistent with my having CCleaner software on
4 my computer and maintaining all of my
12:49PM 5 redistributing files." Do you see that?

6 A Yes.

7 Q Is that something that you wrote? Did you write
8 that sentence?

9 A I don't recall if I wrote that or modified it or
12:49PM 10 if it was there.

11 Q You don't know if that was a sentence in the draft
12 that you received?

13 A I can't recall.

14 Q The next sentence says, "It is not the purpose of
12:50PM 15 CCleaner software to destroy files that had been
16 preserved on the computer." Do you see that?

17 A Yes.

18 Q Do you know whether CCleaner could be used for
19 that purpose?

12:50PM 20 A I don't know.

21 Q Could you use CCleaner to identify specific files
22 you're going to wipe out, you're going to delete?

23 A I'm not aware.

24 Q You say in there that you never did use it to
12:50PM 25 destroy any files, correct?

1 A That's correct.

2 Q And that's a true statement?

3 A Yes.

4 Q And by destroy you mean delete, eradicate, wipe,
12:50PM 5 make them unavailable? Are those all included
6 within that statement destroy?

7 A I believe so. Yes.

8 Q Was CCleaner ever used to maintain any of the
9 files on the external hard drive that was
10 connected to your computer?

11 MS. BUCHKO: Object to form.

12 A Not that I'm aware of.

13 Q Do you know whether the settings were done so that
14 it would only work on the hard drives that were on
15 the redistributing computer and not work on the
16 external hard drive?

17 A I'm not aware.

18 Q Did you have any settings where you could set it
19 to look at certain parts of the computer and not
12:51PM 20 others?

21 A The only settings I recall changing are whether or
22 not to clear out the browser cookies and cache.

23 Q And what did you do with respect to those
24 settings?

12:51PM 25 A Sometimes I would uncheck the Google cookies if I

1 wanted to save some cookies on Google.

2 Q Why would you do that?

3 A If there were certain passwords I had saved in
4 there or -- Google Chrome has your most frequently
12:52PM 5 visited web pages on the front page. If you wipe
6 out all of the cookies, it deletes all of that
7 information.

8 Q So you could go and physically select what was
9 going to be retained, the cookies that would be
10 retained?

11 A You could select by browser whether or not you
12 wanted it to -- so either check to eliminate all
13 of the cookies in Google or none of them.

14 Q Paragraph Five says, "My computer was not used
12:52PM 15 solely for redistricting. While I maintained
16 redistricting files on my computer, I continued to
17 use my computer for my other legislative
18 activities." Do you see that?

19 A Yes.

12:53PM 20 Q All right. What were the other -- I want to talk
21 about the time prior to the service of the
22 subpoenas --

23 A Okay.

24 Q -- in December of 2011. Did you use your computer
12:53PM 25 for other legislative activities between

1 January 1, 2011 and the time that your subpoenas
2 were served in December 2011?

3 A I did.

4 Q What other things were you working on?

12:53PM

5 A There may have been constituent letters that they
6 would ask me to either write the letter or write
7 some text to include in the letter. I don't know.

8 There may have been other memos on other topics
9 that I was asked to write. I can't recall of any
10 other specifics at this time.

12:53PM

11 Q You were doing all of that work on the
12 redistricting computer that was located at Michael
13 Best & Friedrich's offices, correct?

14 A That's correct.

12:54PM

15 Q You had mentioned or you testified before that you
16 had another computer that you had previously used
17 before the redistricting process started, and that
18 was in your office back over at the capitol
19 building, correct?

12:54PM

20 A That's correct.

21 Q After you moved offices over to Michael Best, you
22 no longer used that computer?

23 A Extremely infrequently. It was kind of hard to
24 get into the building for a long time.

12:54PM

25 Q And you didn't do any redistricting work on that

1 computer, right?

2 A That's correct.

3 Q Paragraph Number Five -- I'm sorry. Paragraph
4 Number Six in your declaration talks about the two
12:55PM 5 internal hard drives and the external hard drive.

6 Do you see that?

7 A Yes.

8 Q There's a reference to the mirrored internal hard
9 drives, correct?

12:55PM 10 A Correct.

11 Q Where did you gain that understanding that the
12 internal hard drives were mirrored hard drives?

13 A That was a discussion with LTSB when we were
14 talking in the legislature about what computers
12:55PM 15 and what features to select for the redistricting
16 computers that were purchased for all four
17 caucuses.

18 Q So this is something that you knew before the time
19 that the computers themselves were deployed and
12:55PM 20 used?

21 A That's correct.

22 Q Why did you decide that you wanted to have the
23 mirrored hard drives?

24 A I think the discussion was and the recommendation
12:55PM 25 was from LTSB given the large amount of data and

1 the difficulty if you were to lose that data that
2 multiple redundancies was recommended.

3 Q Is that why there was an external hard drive that
4 was purchased as well to back up the internal hard
12:56PM 5 drives?

6 A That's correct.

7 Q You have a sentence in Paragraph Six that says,
8 "While I cannot explain why one external hard
9 drive became corrupted, that does not indicate
12:56PM 10 destruction of documents." Do you see that?

11 A Yes.

12 Q Do you know which external hard drive it was that
13 became corrupted?

14 A I don't.

12:56PM 15 Q Was the hard drive that was maintained with
16 Mr. Handrick's redistricting computer, originally
17 connected to Mr. Handrick's redistricting computer
18 -- did that stay with that computer when it was
19 moved to that conference room between the Senate
12:56PM 20 majority and Senate minority leaders offices?

21 A I don't know. LTSB handled the move with the
22 computers.

23 Q You don't know how they set it up then when it was
24 in that conference room?

12:57PM 25 A They loaded them both up on the cart I believe at

1 the same time and hauled the cart downstairs and
2 then put both computers in the two locations.

3 Q When the computer that Mr. Handrick had been using
4 was located in that conference room as you
12:57PM 5 described in your previous deposition, did you
6 have an opportunity to see it in there?

7 A I saw that it was in there. That conference room
8 also contained a refrigerator and a microwave and
9 a sink. So I saw that it was in there.

10 Q Did you see any external hard drive attached to
11 the computer while it was in that conference room?

12 A I believe the external hard drive was sitting on
13 top of the computer.

14 Q Did you ever see anything happen to it physically?
12:57PM 15 Did you ever see it fall or something dropped on
16 it?

17 A Not that I observed.

18 Q When was the last time that you knew or understood
19 that that external hard drive was operating?

12:57PM 20 A Specifically the Handrick --

21 Q Correct.

22 A -- computer?

23 Q The hard drive attached.

24 A I don't know that I ever had occasion to see if it
12:58PM 25 was operating or not.

1 Q You didn't do anything yourself to cause that hard
2 drive to become inoperable; is that correct?

3 A That's correct.

4 Q Do you have any other information about anyone who
12:58PM 5 did something that caused that hard drive to
6 become inoperable?

7 A Only what I read in the declarations about the
8 examination at PLA.

9 Q And what was it that you read about the
12:58PM 10 examination of PLA?

11 A That the hard drive was inoperable when they
12 received it; that they took off the outer housing
13 and tried to directly interface with the hard
14 drive.

12:58PM 15 Q In Paragraph Seven of your declaration -- this is
16 where you refer to the placement of Mr. Handrick's
17 redistributing computer in the conference room.
18 Was that a location that you directed it be placed
19 in?

12:59PM 20 A That, and I believe we touched on this yesterday,
21 I spoke with the chief of staff at the time, said
22 *Where are we going to put this*, and we decided to
23 put it in -- that there was only room for it in
24 the conference room.

12:59PM 25 Q Your testimony in your declaration states that

1 that room was generally accessible by cleaning
2 staff and generally accessible by the public as
3 well; is that correct?

4 A That's correct.

12:59PM

5 Q Why was that computer placed in a location that
6 was generally available or open to the public?

7 MS. BUCHKO: Objection, asked and
8 answered multiple times.

01:00PM

9 A That was the conference room assigned to the
10 minority leader. When we had interns that we
11 didn't have space for, that's where they would be
12 working out of.

01:00PM

13 Q In the next sentence you say that you were
14 uncomfortable about the possibility of having
15 anyone access the various versions of the
16 redistricting maps that had been created during
17 the redistricting process. Do you see that?

18 A Yes.

01:00PM

19 Q Now, those were maps that had been turned over to
20 the plaintiffs in litigation, correct?

21 A That's correct.

22 Q So why were you uncomfortable about the
23 possibility of having anyone access them?

01:00PM

24 A Because to my knowledge those maps, those versions
25 of the maps, had never been referred to or

1 displayed or printed anywhere that I had seen
2 publicly.

3 Q But they had been turned over in the litigation,
4 correct?

01:01PM

5 A That's correct.

6 Q Did you have some expectation that the versions
7 that were produced to the plaintiffs wouldn't be
8 made available to the public or couldn't be made
9 available to the public?

01:01PM

10 MS. BUCHKO: Objection; foundation,
11 competency.

12 A At that point, given that they hadn't been made
13 available to the public, I didn't have any
14 expectation that they would become available to
15 the public.

01:01PM

16 Q Did you discuss with anyone else the possibility
17 that those maps could be available to the public
18 if they were left on that computer?

19 A Not that I recall.

01:01PM

20 Q Is that a decision that you made on your own?

21 A I believe so. Yes.

22 Q Did you consult with any legal counsel before you
23 decided to delete those maps?

24 A I did not.

01:01PM

25 Q Was there anything other than maps that you

1 deleted?

2 A Not that I recall.

3 Q Those deletions, what was the form of the files?

4 Strike that. What was the format of the files

01:01PM

5 that you deleted pertaining to the maps?

6 A I recall deleting the folders that were within the

7 map folders. I don't recall the specific file

8 designations or if there were sub folder titles.

9 Q We have talked about some different kinds of

01:02PM

10 files. Do you know anything about the kinds of

11 files they were? Were these data files that were

12 used to compile the maps?

13 A Very little.

14 Q I believe you testified that you did not

01:02PM

15 investigate the possibility of securing

16 Mr. Handrick's computer through some kind of

17 password protection or log on protection; is that

18 correct?

19 A The computer was password protected. Anyone

01:03PM

20 logging onto it with a legislative ID could access

21 it. I wasn't aware of any other further

22 possibilities of encryption or a password

23 protection.

24 Q Anyone with a password could log on to the

01:03PM

25 computer and access the computer, correct?

1 A Correct.

2 Q But simply because they could log on and access
3 the computer did not mean they could log on and
4 access the maps; isn't that correct?

01:03PM

5 A The maps were stored on the C drive. It was my
6 understanding that if you had access to the
7 computer, you could access the C drive.

8 Q Did you ever ask anyone at LTSB about that?

9 A Not at that time. No.

01:03PM

10 Q Have you asked anybody at LTSB about that since
11 that time?

12 A I did have a conversation with Jeff.

13 Q Ylvisaker?

14 A Thank you. And he said possibly that would be the
15 normal explanation. But he wasn't sure in this
16 instance.

01:03PM

17 Q Have you talked with -- when was that conversation
18 with Mr. Ylvisaker?

19 A When I was preparing for the 30(b)(6) deposition.

01:04PM

20 Q So Mr. Ylvisaker told you it was possible that
21 somebody who might log on to that computer with a
22 password could have accessed the maps that were on
23 the C drive on the Handrick computer?

01:04PM

24 A He said that would be the normal expectation, that
25 you would have access to the C drive, but he

1 wasn't sure in this instance.

2 Q Have you talked with him subsequently about that?

3 A I have not.

4 Q In the last sentence you have on page 5 of your
01:04PM 5 declaration you say, "To the contrary, plaintiffs
6 received electronic copies of all of those maps
7 well before the electronic versions of the maps
8 were deleted from Mr. Handrick's computer." Do
9 you see that?

01:04PM 10 A Yes.

11 Q Again, you haven't compared what plaintiffs
12 actually received with what you deleted, correct?

13 A That's correct.

14 Q So that when you say, "I was aware of that when I
01:05PM 15 deleted the maps thinking they were just an extra
16 copy," you were aware that the electronic copies
17 of what -- you were aware that the files that you
18 deleted you had put onto a CD or a DVD and
19 provided to Mr. McLeod for production to
01:05PM 20 plaintiffs, correct?

21 A That's correct.

22 Q At the time of those deletions in July of 2012,
23 was it your understanding that there was any kind
24 of litigation hold in place on that computer?

01:06PM 25 A The only litigation hold I was aware of at that

1 time was related to a potential open meetings
2 lawsuit.

01:06PM

3 Q Paragraph Eight of your declaration, your second
4 sentence, you state, "I did not produce documents
5 postdating the enactment of Acts 43 and 44 or that
6 related to SB 150. I did not do so only because I
7 was told by the Senate's attorney that the
8 subpoena did not require production of those
9 documents." Do you see that?

01:06PM

10 A Yes.

11 Q And Senate's attorney there refers to Mr. McLeod
12 and Mr. Olson?

13 A That's correct.

01:06PM

14 Q In the next sentence you state, "I produced large
15 volumes of documents and information to the
16 Senate's attorneys and relied on them to make the
17 decision as to what to produce." Do you see that?

18 A Yes.

19 Q And that's a correct statement?

01:07PM

20 A It is.

21 Q Senate's attorneys there again refers to
22 Mr. McLeod and Mr. Olson?

23 A That's correct.

01:07PM

24 Q In the next sentence you state, "On several
25 occasions the attorneys reviewed the documents on

1 my computer with me and designated which should be
2 produced." Do you see that statement?

3 A Yes.

01:07PM

4 Q So this is a separate process than when you
5 printed the documents out and gave them to the
6 Michael Best attorneys for production review,
7 correct?

01:07PM

8 A This, I believe, is what I referred to yesterday
9 when there were certain electronic files that were
10 too large to print out that those were then
11 reviewed on the computer and produced
12 electronically.

01:07PM

13 Q Was there ever a time when Mr. McLeod -- strike
14 the question. Did Mr. McLeod participate in that
15 on screen review of documents?

16 A I can't remember if that was McLeod or Olson.

17 Q Could it have been both?

18 A Potentially.

01:08PM

19 Q Do you have any recollection of a time when you
20 brought a document up on the screen and they said
21 *No. Don't produce that?*

01:08PM

22 A That could have happened. I don't have a specific
23 recollection except to the extent that I think
24 some of the census data that was produced for both
25 Adam Foltz and my deposition -- they discussed

1 that there was probably not a need to produce that
2 identical information twice.

3 Q You state in the next sentence, "I never reviewed
4 any documents and elected not to produce them."

01:08PM

5 Do you see that?

6 A Yes.

7 Q Now, you did testify before that you did not
8 produce documents pertaining to SB 150, correct?

9 A That's correct.

01:08PM

10 Q So you did elect not to produce those documents,
11 correct?

12 MS. BUCHKO: Object to form,
13 mischaracterizes his previous testimony.

01:08PM

14 A Right. I did not to produce documents that I --
15 in the subject areas that I was asked to search
16 for.

17 Q So you elected not produce documents pertaining to
18 SB 150 because your counsel told you you didn't
19 need to?

01:09PM

20 A That's correct. I believe that sentence all hangs
21 together and not by its first part there.

22 Q All right. You're tying the first part of that
23 into the other statement at the end because you
24 thought they might aid plaintiffs' opposition to
25 the redistricting?

01:09PM

1 A That's correct.

2 Q I see. Outside of the context then of whether
3 they might or might not aid the plaintiffs'
4 opposition to the redistricting, did you ever
01:09PM 5 review any documents and elect not to produce
6 them?

7 A Only to the extent that it was outside of the
8 parameters I was asked to search.

9 Q And those would be the date parameters and SB 150?

01:10PM 10 A Yes.

11 Q Were there any other parameters that were given to
12 you by Mr. McLeod or Mr. Olson where they said you
13 don't need to produce certain kinds of things?

14 A I don't recall.

01:10PM 15 Q Turning to Paragraph Number Nine. Looking about
16 halfway down that paragraph on page 6, you say,
17 "If I am provided access to my computer, I could
18 conduct that search and turn over such documents
19 so the forensic examination of my computer could
01:10PM 20 at least be stayed until all such documents are
21 produced." Do you see that?

22 A I do.

23 Q And you are essentially saying there that if you
24 got access to those hard drives that you could
01:11PM 25 search for the SB 150 documents and you could

1 search for the extended date range documents?

2 A That's correct.

3 Q Is that anything you have discussed with anybody?

4 A Just generally with counsel.

01:11PM

5 Q In the last sentence in that paragraph that

6 appears on page 6 you state, "As I indicated, I

7 did not delete redistricting documents so they

8 would not be available for review by the

9 plaintiffs." You then go on to say, "Rather, as

01:11PM

10 described above, the only documents I deleted were

11 deleted to avoid public disclosure of Senate

12 information, and while I was acting" -- let me

13 just stop there a second. When you say public

14 disclosure of Senate information, what do you mean

01:12PM

15 by that?

16 A That refers to the maps. That it was my

17 understanding -- that on the computer used by

18 Mr. Handrick had not been viewed publicly.

19 Q And you believe that it was improper for that

01:12PM

20 information to be made available to the public?

21 A Yes.

22 Q Why did you have that belief?

23 A Typically drafts of legislation that do not become

24 introduced are not typically shared with the

01:12PM

25 public or even with other members of the caucus.

1 Q So the maps that you had deleted from
2 Mr. Handrick's computer were not the final maps;
3 is that correct?

01:12PM

4 A There may have been a version of the final map on
5 his computer. But, if so, the same version was on
6 Adam's and my computer.

7 Q So was it --

8 A But there were draft documents on his computer
9 that were not the final map.

01:13PM

10 Q Were the maps that you printed from Mr. Handrick's
11 computer and produced -- do you know whether those
12 were designated as exhibits in the trial?

13 A No. I don't believe any -- I didn't print any
14 maps from Joe's computer. I electronically copied
15 maps from Joe's computer. And it's my
16 understanding that -- I don't believe any of those
17 were used as exhibits in the trial.

01:13PM

18 Q In Paragraph Number Ten you state in the first
19 sentence, "When I first began doing work relating
20 to redistricting in or about early 2011, I do not
21 recall being instructed by the Senate's attorneys
22 to retain all E-mail or electronic documents or
23 hard copy documents." Do you see that?

01:14PM

24 A Yes.

01:14PM

25 Q Again, the Senate's attorneys -- that's Michael

1 Best & Friedrich, correct?

2 A That's correct. As well as Attorney Troupis.

3 Q And then you go down -- in the next sentence you

4 say, "I recall seeing that instruction some time

01:14PM

5 after the initiation of this lawsuit." Do you see

6 that?

7 A Yes.

8 Q Now, in your previous testimony you said the first

9 time you were so instructed was when the subpoena

01:14PM

10 was issued to you; is that correct?

11 A That's correct.

12 Q And then you state, "As a result, I did delete

13 some E-mail and documents relating to the

14 redistricting," correct?

01:15PM

15 A That's correct.

16 MR. JACOB: I'm going to object to

17 the form of the question.

18 Q The next sentence you state, "To the best of my

19 recollection, however, any deleted E-mail or

01:15PM

20 documents were non-substantive, e.g. containing no

21 meaningful information." Do you see that?

22 A Yes.

23 Q What do you mean by non-substantive?

24 A I believe they were on the order of what we

01:15PM

25 discussed yesterday, Google alerts related to

1 redistricting, things that may have talked about
2 redistricting. But I don't recall them being
3 related to the materials requested as part of the
4 subpoena I received in December.

01:15PM

5 Q Did you show those to anybody before you made that
6 decision?

7 A No. I don't recall doing that.

01:16PM

8 Q The parens you have says, "E.G. containing no
9 meaningful information." What do you mean by
10 meaningful information?

11 A It's my understanding or my recollection that it
12 wouldn't have contained any information that would
13 have been used in the drawing of the map or the
14 defending of the map or the explanation of the
15 map.

01:16PM

16 Q Do you know whether any of the deletions that
17 you -- material that you did delete can be
18 recovered from the computers from which it was
19 deleted?

01:16PM

20 A I don't know.

21 Q Have you had a conversation with anyone about
22 that, whether it's recoverable?

23 A I have not.

01:16PM

24 Q Have you discussed that issue at all with counsel
25 or with PLA?

1 A I don't believe so. About recoverable?

2 Q Correct.

3 A Recoverability? I don't believe so.

4 MR. POLAND: I don't have any

01:17PM

5 further questions at this time.

6 MR. EARLE: I have very few.

7 MS. BUCHKO: You promised.

8 EXAMINATION

9 By Mr. Earle:

01:17PM

10 Q To follow up on one thing that Mr. Poland asked
11 you about, you said that you edited your
12 declaration, correct?

13 A That's correct.

14 Q So you received a copy of your declaration that
15 had been written up by somebody else, correct?

01:17PM

16 MS. BUCHKO: Objection,
17 mischaracterizes his previous testimony.

18 A I received a copy of my declaration to review.

19 Q So somebody else had drafted what you received to
20 review, correct?

01:17PM

21 A That's correct.

22 Q And then you went through it and you made some
23 changes you said, correct?

24 A That's correct.

01:17PM

25 Q Did you eliminate anything?

1 A I don't recall what the edits were.

2 Q Would you take the yellow marker there by your
3 counsel's side and highlight the areas that you
4 added to your declaration.

01:18PM

5 A I don't recall what was specifically added, what
6 might have been modified, or what might have been
7 deleted.

8 Q You have no recollection whatsoever?

01:18PM

9 A Not of the specifics. No. It went through more
10 than one version.

11 Q Was there any part of your declaration that you
12 reviewed that was given to you that you disagreed
13 with and asked that it be removed?

14 A There may have been.

01:18PM

15 Q Tell me.

16 MS. BUCHKO: I'm going to actually
17 instruct him at this point not to disclose
18 specific attorney-client privileged
19 communications. I think it's fair to ask him
20 if he assisted in writing this, if these are
21 his words, but the drafts that go back and
22 forth I'm asserting attorney-client privilege
23 and instructing him not to answer.

01:18PM

24 Q Are you going to follow the advice of your lawyer
25 and not tell me which parts of your declaration --

01:18PM

1 strike that. Are you going to follow the advice
2 and tell me which parts of the proposed
3 declaration you reviewed you disagreed with and
4 struck?

01:19PM

5 A I'm going to follow counsel's advice not to
6 answer.

7 Q Did you add any information to the declaration
8 that was not in it when it was provided to you by
9 counsel?

01:19PM

10 A I believe so. Yes.

11 Q Would you identify the parts that you added with
12 the highlighter, please.

13 A I don't recall specifically, as I mentioned
14 before, where I added, where I modified.

01:19PM

15 Q Okay. You said that the -- now I'm characterizing
16 your testimony. I don't want to mischaracterize
17 it. So when I frame this question, you tell me if
18 I'm wrong or I'm right. Okay?

19 A Okay.

01:19PM

20 Q You understand that? Okay. Drawing your
21 attention to Paragraph Number Four. I thought you
22 said that you had taken the description about what
23 CCleaner does from the website of CCleaner.

01:20PM

24 A I believe what I said was specifically to
25 temporary files, history, cookies, super cookies,

1 and index files I had seen on the website.

2 Q And that's what you saw on the website when you
3 went to the website to download it the first time?

4 A I don't know when I saw it on that website, and I
01:20PM 5 don't know specifically if I saw it on the
6 CCleaner website or a tech website that
7 recommended CCleaner.

8 Q But the question I'm asking you is whether when
9 you wrote that information in your declaration on
01:20PM 10 Paragraph Number Four you were operating off of
11 your memory from when you downloaded CCleaner onto
12 the computers or whether you went back to the
13 website to reconstruct that information.

14 A I did not personally go back to the website at
01:20PM 15 that time.

16 Q So you were working off your memory?

17 A I believe somebody had gone to the website and
18 checked some of the terms, and I confirmed that
19 that was my recollection of what it did.

01:21PM 20 Q So you had a recollection of that when you signed
21 off on this declaration?

22 A I had a recollection of what the purpose of
23 CCleaner was. Yes.

24 Q Unlike your recollection of what you signed off on
01:21PM 25 and changed?

1 MS. BUCHKO: Objection,
2 argumentative and also mischaracterizes his
3 previous testimony.

4 A What is the question?

01:21PM

5 Q I'm just curious as to why you would remember
6 something like that from when you downloaded
7 CCleaner some time ago but you can't remember what
8 you added to the declaration just a short time
9 ago.

01:21PM

10 MS. BUCHKO: Same objection.

11 A Because I use CCleaner on my home computers and I
12 recollect what I use it to do.

01:22PM

13 Q Okay. Now, when you went to the CCleaner website
14 or the tech site that provided it, did you read up
15 on CCleaner before you downloaded it onto the
16 State's redistricting computer that you were
17 assigned?

01:22PM

18 A Years ago I had read up on it, and I had had it on
19 other computers that I owned. When I downloaded
20 it onto the State's computer, I didn't reread the
21 information.

22 Q So you were aware of how CCleaner was marketed,
23 correct?

01:22PM

24 A My recollection of learning about CCleaner was
25 from another tech website that described what it

1 did, that they liked it and had a link to download
2 it. I don't know if it was downloaded directly
3 from the CCleaner site or from a mirror site.

01:22PM

4 Q Is it accurate to say that that website described
5 how CCleaner could be used to wipe hard drives?

6 A No. It is not accurate.

7 Q At the time you downloaded CCleaner, you knew that
8 it could be used to wipe hard drives, didn't you?

9 A I did not.

01:23PM

10 Q Is it your testimony here today that you did not
11 use CCleaner to wipe portions of your hard drive
12 when you used it on July 25, 2012?

13 MS. BUCHKO: Object to form.

01:23PM

14 A I used it for the purpose as described. Whenever
15 I used it, I used it to clean out temporary
16 internet files, registry files, that sort of
17 thing. That is the only purpose I recall having
18 used it for.

01:23PM

19 Q I understand that's your testimony. You said that
20 yesterday. I'm asking you a direct question under
21 oath about whether you used CCleaner to wipe out,
22 eliminate, or destroy information on the computer
23 that was related to redistributing on July 25,
24 2012.

01:24PM

25 A I answered in the way I did because I don't know

1 if those activities I described to you would be
2 characterized as deleting files off the hard drive
3 or not.

01:24PM

4 Q I'm not talking about cookies. I'm talking about
5 whether or not you used CCleaner to wipe
6 redistributing information from your computer on
7 July 25, 2012. I'm asking you that question
8 because you're under oath in a deposition and I
9 want an answer to that question.

01:24PM

10 A I did not use CCleaner --

11 MS. BUCHKO: Let me object.

12 Object to form.

13 Now go ahead.

01:24PM

14 A I did not use CCleaner to delete files related to
15 redistributing stored in any folder or elsewhere.

16 Q Do you know if your use of CCleaner on July 25,
17 2012 resulted in the wiping of files related to
18 redistributing from your computer?

01:25PM

19 MS. BUCHKO: Object to form,
20 foundation.

21 A Not that I'm aware of.

22 Q Do you know?

23 A I don't know. I'm not aware of it. No.

01:25PM

24 Q So is it your testimony that you don't know and if
25 it did you're not aware of it? Is that what

1 you're saying?

2 A That's correct.

3 Q Have you ever used CCleaner to wipe any other
4 specific files intentionally on your computer?

01:25PM

5 MS. BUCHKO: Object to form.

6 A Other than what I have previously described,
7 that's the only way I've used CCleaner.

8 MR. EARLE: I have no further
9 questions.

01:26PM

10 MS. BUCHKO: Ms. Lazar?

11 MS. LAZAR: I have no questions for
12 Mr. Ottman.

13 MS. BUCHKO: Mr. Jacob?

14 EXAMINATION

15 By Mr. Jacob:

16 Q You may have been asked this. I apologize. When
17 were the copies of the previously produced map
18 files deleted from the redistricting computer that
19 Mr. Handrick had used?

01:27PM

20 A I believe it was sometime at the end of July. It
21 was shortly before the computer was moved into the
22 conference room.

23 Q July of what year?

24 A Of 2012.

01:27PM

25 Q Just directing you back to Paragraph Nine where

1 you indicate at the tail end of that page that you
2 acted under the understanding that there was no
3 litigation hold. Do you see that phrase?

4 A Yes.

01:27PM

5 Q Even though that was your understanding, you
6 continued to make efforts to preserve documents
7 relating to redistricting; isn't that correct?

8 A That's correct.

01:27PM

9 Q And you only removed those files because it was
10 your understanding that they were previously
11 produced?

12 A That's correct.

13 MR. EARLE: Object to form.

14 MR. POLAND: Object to form.

01:28PM

15 MR. JACOB: That's all I have.

16 MS. BUCHKO: I have a question.

17 EXAMINATION

18 By Ms. Buchko:

01:28PM

19 Q Mr. Ottman, did you install CCleaner on your
20 redistricting computer with the intent of keeping
21 documents from the plaintiffs in this case?

22 A I did not.

23 MR. POLAND: Object to the form.

24 MS. BUCHKO: I just had one. I'm

01:28PM

25 done.

1 MR. EARLE: Just one follow-up.

2 RE-EXAMINATION

3 By Mr. Earle:

01:28PM

4 Q Did you use CCleaner on your computer the same day
5 that you deleted large numbers of documents from
6 Joe Handrick's computer?

7 MS. BUCHKO: Object to form.

8 A It's possible.

9 Q Is there a reason -- strike that.

01:28PM

10 MS. BUCHKO: Okay.

11 MR. POLAND: Okay. We're done.

12 THE VIDEOGRAPHER: We are going off
13 the record. This concludes the video
14 deposition in the individual capacity of
15 Mr. Tad Ottman. The time is 1:28 p.m. It
16 consists of one DVD.

01:29PM

17 (Adjourning at 1:29 p.m.)

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1 STATE OF WISCONSIN)
2 COUNTY OF DANE) ss.
3

4 I, SUSAN C. MILLEVILLE, a Court Reporter
5 and Notary Public duly commissioned and qualified in
6 and for the State of Wisconsin, do hereby certify
7 that pursuant to subpoena, there came before me on
8 the 30th day of April 2013, at 12:34 in the
9 afternoon, at the offices of Godfrey & Kahn, S.C.,
10 Attorneys at Law, One East Main Street, the City of
11 Madison, County of Dane, and State of Wisconsin, the
12 following named person, to wit: TAD M. OTTMAN, who
13 was by me duly sworn to testify to the truth and
14 nothing but the truth of his knowledge touching and
15 concerning the matters in controversy in this cause;
16 that he was thereupon carefully examined upon his
17 oath and his examination reduced to typewriting with
18 computer-aided transcription; that the deposition is
19 a true record of the testimony given by the witness.

20 I further certify that I am neither
21 attorney or counsel for, nor related to or employed
22 by any of the parties to the action in which this
23 deposition is taken and further that I am not a
24 relative or employee of any attorney or counsel
25 employed by the parties hereto or financially
interested in the action.

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In witness whereof I have hereunto set my
hand and affixed my notarial seal this 4th day of May
2013.

Notary Public, State of Wisconsin

My commission expires
June 23, 2013

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§AO88 (Rev. 12/07) Subpoena in a Civil Case

**Issued by the
UNITED STATES DISTRICT COURT
Eastern District of Wisconsin**

ALVIN BALDUS, et al.

SUBPOENA IN A CIVIL CASE

V.

Members of the Wisconsin Government Accountability Board,
each only in his official capacity: MICHAEL BRENNAN, et al.

Case Number:¹ 11-CV-562-JPS

TO: Tad Ottman
Wisconsin State Capitol
2 East Main Street, Room 211 South
Madison, WI 53707

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case. The deposition will be recorded by stenographic and audiovisual means.

PLACE OF DEPOSITION GODFREY & KAHN, S.C. One East Main Street, Suite 500, Madison, WI 53703, Ph: (608) 257-3911	DATE AND TIME 4/30/2013 12:00 pm
---	-------------------------------------

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rule of Civil Procedure 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)  Counsel for Plaintiffs, Alvin Baldus, et al.	DATE 4/22/2013
---	-------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
Attorney Douglas M. Poland, GODFREY & KAHN, S.C., One East Main Street, Suite 500, Madison, WI 53703,
Telephone: (608) 284-2625, Email: dpoland@gklaw.com, Counsel for Plaintiffs, Alvin Baldus, et al.

(See Federal Rule of Civil Procedure 45 (c), (d), and (e), on next page)

¹ If action is pending in district other than district of issuance, state district under case number



AO88 (Rev. 12/07) Subpoena in a Civil Case (Page 2)

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on	DATE	SIGNATURE OF SERVER
		ADDRESS OF SERVER

Federal Rule of Civil Procedure 45 (c), (d), and (e), as amended on December 1, 2007:

(c) PROTECTING A PERSON SUBJECT TO A SUBPOENA.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) DUTIES IN RESPONDING TO A SUBPOENA.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

Godfrey & Kahn, S.C.
One East Main Street
Madison, WI 53703

04-19-2013 OTTMAN, TAD

58518

058518

DATE	INVOICE #	CLIENT / MATTER #	GL # / DESCRIPTION	AMOUNT
04-19-13	13041901	010175-0001	WITNESS FEES/MILEAGE	41.13

GODFREY & KAHN

Godfrey & Kahn, S.C.
One East Main Street
Madison, WI 53703

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT, PLEASE NOTIFY US PROMPTLY, NO RECEIPT DESIRED.

58518

058518

DATE	INVOICE #	CLIENT / MATTER #	GL # / DESCRIPTION	AMOUNT
04-19-13	13041901	010175-0001	WITNESS FEES/MILEAGE	41.13

GODFREY & KAHN

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

GODFREY & KAHN S.C.

One East Main Street
Madison, WI 53703

M&I MARSHALL & ILSLEY BANK
MILWAUKEE, WI 53202

058518

12-5
750

VOID AFTER 90 DAYS

PAY

FORTY-ONE AND 13/100

DATE

AMOUNT

04-19-2013

\$ 41.13

TO
THE
ORDER
OF

TAD OTTMAN
WISCONSIN STATE CAPITOL
2 EAST MAIN STREET
MADISON, WI 53703

Janet R. Berg
AUTHORIZED SIGNATURE

⑈058518⑈ ⑆07500005⑆ 00122⑈63064⑈

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, TRAVIS THYSSEN,

Plaintiffs,

TAMMY BALDWIN ET AL., 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.

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

Plaintiffs,

v.

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

WHD/9447373.3



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.

DECLARATION OF TAD OTTMAN

I, Tad Ottman, declare, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I have bachelor of science degrees in English and Political Science from the University of Wisconsin-Madison. I am, and I was during the 2011 redistricting process, a legislative aide for Senate Majority Leader Scott Fitzgerald. I used my computer at work during the redistricting process.

2. I received a subpoena to provide testimony prior to the redistricting trial. I was advised by the Senate's attorney that I needed to search for and produce documents related to the redistricting process that pre-dated the enactment of Acts 43 and 44. I performed a search of my records at the time and produced documents in my possession that pre-dated the August 2011 passage of Acts 43 and 44. I understand that the Court ruled on February 25, 2013, that documents that post-dated the enactment of Acts 43 and 44 and that related to SB 150 should have been produced. However, that was not the advice and direction I had received at the time from the Senate's attorney. I simply followed the attorney's direction and I did not withhold any documents based on their content.

3. After the Court issued its decision in the redistricting case, the Senate's attorney provided me with an April 10, 2012 letter titled "NOTICE OF PRESERVATION DEMAND" served on the Wisconsin State Senate by the plaintiffs in regards to a potential open meeting violation. I was directed by the Senate's attorney to continue to retain files based on the Preservation Notice but that the obligation to do so was related only to documents relevant to an alleged open meetings violation. Nonetheless, I continued to preserve documents pertaining to the redistricting process on my computer.

4. I installed commonly available software entitled "CCleaner" on my computer. The purpose of such software is to allow the computer to run faster and clean Internet Explorer temporary files, history, cookies, super cookies and index.dat files. It does the same for Google and other system related files as opposed to individual files. The CCleaner software was not used on my computer to clean files that I had saved, including redistricting files. Accordingly, there is nothing inconsistent with my having CCleaner software on my computer and maintaining all my redistricting files. It is not the purpose of CCleaner software to destroy files that had been preserved on the computer and I never used it to destroy such files. Instead, it is to clean out unwanted Internet caches and temporary Internet files and system files that make the computer run more slowly.

5. My computer was not used solely for redistricting. While I maintained redistricting files on my computer, I continued to use my computer for my other legislative activities. Accordingly, there would naturally be many deletions of information on my computer, but those deletions are not deletions of redistricting files. I created much information on my computer after the redistricting trial as it related to my legislative responsibilities and much of that information was supplemented and deleted during the ordinary course of my

activities. It is not surprising, therefore, that a forensic analysis of my computer would show many deletions, but that does not indicate destruction of redistricting documents.

6. The redistricting computers, including mine, were set up with two internal hard drives and one external hard drive. The two internal hard drives were mirror images such that all redistricting documents were saved to both internal hard drives as a redundancy back-up safety precaution in case one of the hard drives became corrupted. Similarly, the external hard drive was a second safety back-up in the event that both the internal hard drives became corrupted. This was to ensure that all documents relevant to the redistricting process would be protected against computer failure. While I cannot explain why one external hard drive became corrupted, that does not indicate destruction of documents. That would have meant only that the second safety redundancy precaution had failed but the two internal hard drives would contain the same documents that had existed on the one external hard drive that became corrupted. In any event, I never did anything to destroy or interfere with any hard drive.

7. In paragraph 7 of the Third Declaration of Mark Lanterman, Mr. Lanterman describes deletions of “hundreds of thousands of files” from Sen Republican WRK 32864 on July 25, 2012 by a user logged into the system as “tottman.” That was the computer that had previously been used during the redistricting process by Joseph Handrick. When Mr. Handrick’s responsibilities for redistricting were over, his computer was initially placed in an office on the third floor of the south wing of the Wisconsin Capitol and subsequently placed in a conference room on the second floor of the Wisconsin Capitol located between the Senate Minority Leader’s and Majority Leader’s offices. Because this second floor conference room was a room used primarily by interns who had no dedicated office space and was generally accessible by cleaning staff and, in fact, by the public (there were no security restrictions to access the conference room

and I have been informed by other persons working at the Capitol that they have found members of the public in or even sleeping in such rooms), I was uncomfortable about the possibility of having anyone access the various versions of the redistricting maps that had been created during the redistricting process. At the time of Mr. Handrick's deposition, I had created separate folders for the maps to be copied and produced to the plaintiffs on Mr. Handrick's computer, as those folders are identified by Mr. Lanterman in paragraph 7 of his declaration. I checked the maps after they were electronically copied against the folders that I had created to ensure that all of the maps had been copied for production to plaintiffs. They were then produced during discovery to the plaintiffs in response to Mr. Handrick's subpoena. However, it was my understanding that those maps were never made publicly available. Accordingly, when Mr. Handrick's computer was placed in the conference room, I deleted the maps for two reasons. First, I thought it inappropriate to have the various versions of the redistricting maps available to interns and potentially other members of the public who accessed the conference room and the computer formerly used by Mr. Handrick. The computers available to interns are sometimes left logged in for their use, so anyone in the area could access information on the computers. Furthermore, the maps were stored on the hard drive and would be accessible to anyone with a login id. Most importantly, I knew that the maps had already been produced to the plaintiffs and, accordingly, there was no need after the litigation had been completed to preserve maps that the plaintiffs had already received during discovery. Accordingly, while Mr. Lanterman is correct that the map folders were deleted, that does not mean that those maps were destroyed and not provided to the plaintiffs. To the contrary, plaintiffs received electronic copies of all of those maps well before the identical electronic versions of the maps were deleted from Mr. Handrick's computer, and I was aware of that when I deleted the maps, thinking they were just an extra copy.

8. It is my understanding that the Court has stated that “some form of ‘fraud, misrepresentation, or misconduct’ likely occurred” during the production of documents in the redistricting process. While, as explained above, I did not produce documents post-dating the enactment of Acts 43 and 44 or that related to SB 150, I did not do so only because I was told by the Senate’s attorney that the subpoena did not require production of those documents. In the course of discovery, I produced large volumes of documents and information to the Senate’s attorneys and relied on them to make the decision as to what to produce. On several occasions the attorneys reviewed the documents on my computer with me and designated which should be produced. I never reviewed any documents and elected not to produce them, nor did I ever delete documents from either my or Mr. Handrick’s computer during the discovery process because I thought they might aid in plaintiffs’ opposition to the redistricting. Deletions appearing on my computer or in the map folder on Mr. Handrick’s computer do not equate to destruction of redistricting documents, as described above.

9. Prior to the Court’s February 25, 2013 ruling that documents that post-dated Acts 43 and 44 and documents that related to passage of SB 150 should have been produced, I had turned over my computer to the Legislative Technology Services Bureau (“LTSB”) so that the hard drives could be copied for the forensic examination. Thus, I have not had the opportunity to search for the documents that the Court has now ruled should have been produced. If I am provided access to my computer, I could conduct that search and turn over such documents so that the forensic examination of my computer could at least be stayed until all such documents are produced. As I indicated, I did not delete redistricting documents so that they would not be available for review by the plaintiffs. Rather, as described above, the only documents I deleted were deleted to avoid public disclosure of Senate information, and while I was acting under the

understanding that there was no litigation hold (other than for open meeting documents, which I did not think these were), and when I believed I was doing nothing more than deleting an extra copy of information that had already been provided to opposing parties in the litigation.

10. When I first began doing work relating to redistricting in or about early 2011, I do not recall being instructed by the Senate's attorneys to retain all email, electronic documents, or hard copy documents. I recall receiving that instruction sometime after the initiation of this lawsuit. As a result, I did delete some email and documents relating to redistricting. To the best of my recollection, however, any deleted email or documents were non-substantive (*e.g.*, containing no meaningful information). Again, I never deleted or discarded documents because I thought they might aid a future opposition to the redistricting. During my pre-trial discovery depositions in December 2011 and February 2012, the plaintiffs' counsel asked about these issues, and I disclosed the deletions at that time.

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

Dated this 25th day of April, 2013

/s/ Tad Ottman
Tad Ottman