

1 contained personal data of Macau residents. Do you recall  
2 that line of questioning?

3 A Yep.

4 Q And presumably the reason he was asking you those  
5 questions is an apparent inconsistency with the position that  
6 Sands China is taking in this case that you can't receive that  
7 kind of personal data outside of Macau without it being  
8 violation of the Personal Data Privacy Act --

9 A It's not -- can I respond very simply?

10 Q Actually, Mr. Fleming, let me --

11 A The situation is that I've had a discussion with  
12 OPDP. They haven't given us a formal response in any way, nor  
13 have I asked for one. But I have had a discussion with OPDP  
14 some time ago because this very issue did come up, and they  
15 take -- I put the proposition that really I could not  
16 function, nor could any other officer in the company or any  
17 other company function properly unless they were in a position  
18 to receive relevant information.

19 I suggested that the fact that we were -- as long as  
20 we only looked at the information as if we were in Macau, in  
21 other words, even though the computer was with us, the actual  
22 -- we were actually in Macau, deemed to be in Macau when  
23 receiving the information. Therefore there would not be --  
24 and as long as we didn't disclose that information to third  
25 parties without the appropriate consent or approval, then we

1 would not be in breach of Macau law.

2           They tend to agree with me, and there's never been a  
3 suggestion since that we would be violating Macau law by  
4 acting in such a manner as long as we stuck to the  
5 understanding that we would not disclose information to third  
6 parties.

7           Q     If you please, Mr. Fleming, that was actually going  
8 to be my question of why wouldn't that be a violation as your  
9 understanding of Macau law. Would you please tell Judge  
10 Gonzalez when approximately you had those discussions with the  
11 OPDP about that issue. Approximately.

12          A     Fairly early on in the piece. I can't recall  
13 exactly when, but it would have been fairly early on in the  
14 piece once I started to get my head around the legislation and  
15 my discussions with OPDP.

16          Q     Do you know if there is personal data that if there  
17 is personal data transferred to the Las Vegas Sands, is that  
18 -- now from Macau, is that always, to your knowledge, done  
19 with consent, or without consent of the parties involved?

20          A     Without consent it doesn't go.

21          Q     All right. So if there is transfers on any kind of  
22 a regular basis, to the best of your knowledge is any transfer  
23 of personal data to Las Vegas Sands or anywhere else other  
24 than the discussion you just told me about about information  
25 that you might receive as general counsel on your computer, is

1 THE COURT: Is there an objection to 215? You are  
2 apparently a recipient, Mr. Peek.

3 MR. PEEK: I am a recipient, Your Honor. And there  
4 are a couple of things that have to do with 215, and that is,  
5 one, this was not disclosed. And I know that there is  
6 additional correspondence in or about this time where there  
7 were refusals about providing additional search terms. This  
8 also deals with LVSC as opposed to SCL, because on its face it  
9 says LVSC, not SCL. And -- well, I don't want to get into  
10 what the document says about Ms. Spinelli.

11 THE COURT: Okay, so here's my question.

12 MR. PEEK: But I know that there are -- and there's  
13 also an incomplete document because there are attachments to  
14 one of the earlier emails that should -- in order to make this  
15 email complete be part of this.

16 THE COURT: Okay. So your objection is that it's  
17 incomplete?

18 MR. PEEK: One, it's incomplete. Two, it's late  
19 disclosed so I don't have notice to be able to put something  
20 into evidence to rebut what it is is the inference that they  
21 want to draw from it, which is that they were providing search  
22 terms.

23 THE COURT: I'm not going to make the determination  
24 it's late disclosed because at the moment we're in his cross-  
25 examination and things come up during cross that you didn't

1 expect. So I'm not going to stand on the late disclosed.  
2 MR. PEEK: I don't think this witness has said that  
3 the Jacobs folks -- I don't think he has stated from an  
4 evidentiary standpoint that he as a matter of fact knows that  
5 requests were made to Jacobs to provide search terms and did  
6 not.  
7 THE COURT: He doesn't know. He's already told us  
8 he doesn't know. What we're trying to do --  
9 MR. PEEK: That's right. So now Mr. Pisanelli is  
10 saying I have this document which rebuts the inference that  
11 somebody stated --  
12 THE COURT: Okay, hold on. We're going to take a  
13 break. Can I have Ms. Spinelli up here, please.  
14 MS. SPINELLI: Sure.  
15 THE COURT: Ms. Spinelli, come on up. We're going  
16 to swear you in.  
17 Sir, step down.  
18 MS. SPINELLI: Up on there?  
19 THE COURT: Yep, right there.  
20 MS. SPINELLI: Okay. May I take that?  
21 THE COURT: Can you hand her a Proposed 215?  
22 THE CLERK: Swear her in?  
23 THE COURT: Yep, swear her in.  
24 //  
25 //



1 DEBRA SPINELLI, ESQ., PLAINTIFF'S WITNESS, SWORN  
2 THE CLERK: Thank you. Please spell your name for  
3 the record.  
4 THE WITNESS: Debra, D-E-B-R-A Spinelli,  
5 S-P-I-N-E-L-L-I.  
6 THE CLERK: Thank you.  
7 DIRECT EXAMINATION  
8 THE COURT: Is Exhibit 215, Proposed Exhibit 215, a  
9 true and accurate copy of an email that you sent to Mr. Peek  
10 and prior counsel?  
11 THE WITNESS: Yes.  
12 THE COURT: Thank you.  
13 Does anybody want to cross-examine her --  
14 MR. PEEK: Yes, I do, Your Honor.  
15 THE COURT: -- on the foundation related to the  
16 document?  
17 MR. PISANELLI: Are you going to do it from here?  
18 MR. PEEK: I don't need to do it from here.  
19 MR. PISANELLI: All right. I appreciate that.  
20 THE COURT: Because he's organized, Mr. Peek.  
21 CROSS-EXAMINATION  
22 BY MR. PEEK:  
23 Q Ms. Spinelli --  
24 MR. PEEK: Your Honor, may I approach the witness?  
25 THE COURT: You can.

1 MR. PEEK: And I apologize, I don't have a copy of  
2 this.

3 THE COURT: Neither do I.

4 MR. PISANELLI: I just gave you a copy.

5 MR. PEEK: This is another document.

6 MR. MCGINN: We've got some copies.

7 MR. PEEK: Okay, we've got some copies.

8 BY MR. PEEK

9 Q Ms. Spinelli --

10 MR. PEEK: I need to mark this, if we could, Ian.

11 THE COURT: It's in the 300 series.

12 MR. PEEK: And give Mr. Pisanelli a copy.

13 THE COURT: Give it to the clerk, not me. I can't  
14 look at it. Next in order three -- three what?

15 THE CLERK: 353.

16 THE COURT: 353, Mr. Peek. Proposed 353.

17 MR. PEEK: Oh, speak into the microphone.

18 THE COURT: Thanks, Ms. Spinelli, for being a good  
19 sport.

20 THE WITNESS: Not at all. I get some M&Ms, right?

21 THE COURT: You do.

22 BY MR. PEEK:

23 Q Ms. Spinelli, did I give you a copy of 315 or did  
24 somebody give you a copy of 315? Or what was it?

25 THE COURT: 353 is the proposed.

1 MR. PEEK: 353.  
2 THE WITNESS: I do not have that.  
3 THE COURT: 215 and Proposed 353.  
4 MR. RANDALL JONES: I'm happy to do this as well.  
5 THE WITNESS: Thanks.  
6 BY MR. PEEK:  
7 Q Ms. Spinelli, this is an email exchange between you  
8 and Mr. Jones, is it not?  
9 A It is.  
10 Q And it also includes me on at least one of the  
11 earlier emails, does it not?  
12 A Yes, the bottom one.  
13 Q And in the top email --  
14 THE COURT: We're not talking about substance, we're  
15 only talking about whether it's a true and correct copy.  
16 BY MR. PEEK:  
17 Q Is this a true and correct copy of an email exchange  
18 that included myself, you, Mark Jones, Eric Aldrian, Mr.  
19 Pisanelli, and then later just you and Mr. Jones, Mark Jones?  
20 A It appears to be so, yes.  
21 THE COURT: Were there any more to make 215  
22 complete?  
23 MR. PEEK: Well, Your Honor, this -- I'm going to go  
24 back to 215 in a minute. I just wanted to --  
25 THE COURT: I just -- I'm not putting her up here to

1 talk about the substance of the communications. You can argue  
2 it once it's in evidence.

3 MR. PEEK: Okay.

4 THE COURT: They're in evidence. 215 and 353 appear  
5 to have a foundation laid for them.

6 MR. PEEK: I know. I'm getting ready to offer 353.

7 THE COURT: I'm going to admit it as soon as you  
8 say.

9 MR. PEEK: I would like to offer 353, Your Honor.

10 THE COURT: 215 and 353 are admitted.

11 (Plaintiff's Exhibit 215 admitted)

12 (Defendant's Exhibit 353 admitted)

13 MR. PISANELLI: Thank you, Your Honor.

14 THE COURT: Now, my question is, the objection was  
15 incomplete. Are there any others that you think require  
16 admission so 215 will be complete?

17 MR. PEEK: Yes, Your Honor, because this --

18 MR. RANDALL JONES: Your Honor --

19 MR. PEEK: Yes, Your Honor, there are. What I just  
20 showed her as 353 does not necessarily complete 315 or 215.

21 353 goes to the other issue of putting something into  
22 evidence. And I'm not going to get into this with Ms.  
23 Spinelli because I don't want to do this with her.

24 THE COURT: I just want to lay the foundation so  
25 that I can look at them so when you argue about it --

1 MR. PEEK: Right. I'm good. Just put it for  
2 argument, Your Honor.  
3 THE COURT: You said that there were issues. I want  
4 everybody to have an evidentiary basis --  
5 MR. PEEK: Right.  
6 THE COURT: -- for the fact you're going to argue  
7 there were issues amongst yourselves.  
8 MR. PEEK: Correct. So I don't have any more --  
9 THE COURT: I know there was an issue because I had  
10 to resolve it.  
11 MR. PEEK: I remember that, too, Your Honor.  
12 THE COURT: Okay.  
13 MR. PEEK: So I don't have any more questions of Ms.  
14 Spinelli, other than just to ask her --  
15 BY MR. PEEK:  
16 Q In 215, Ms. Spinelli, there is a reference in  
17 page --  
18 MR. RANDALL JONES: Before you talk about the  
19 substance, Your Honor, I understand you made a ruling but I  
20 have not had a chance to be heard on this matter.  
21 THE COURT: On whether 215 and 353 should be  
22 admitted?  
23 MR. RANDALL JONES: Yes, Your Honor.  
24 THE COURT: Okay. Hold on a second.  
25 He's asking you if there are some attachments that

1 are needed to complete it.

2 THE WITNESS: Your Honor, for 215?

3 THE COURT: Yes.

4 THE WITNESS: 215 is an email string and there is  
5 not an attachment to the top email, but there --

6 THE COURT: There was?

7 THE WITNESS: For the earlier emails in the string,  
8 there may have been.

9 THE COURT: If someone would like to supplement to  
10 add those additional attachments as 215A, I would be happy to  
11 accept it if you can agree it's a true and correct copy.

12 MR. PEEK: Well, I think Mr. Jones still has an  
13 objection to 215.

14 THE COURT: I know. I'm not there yet. I'm doing  
15 your incomplete issue. Any more on the incomplete, Mr. Peek?

16 MR. PEEK: I'm sorry, Your Honor. I was talking to  
17 my colleague.

18 THE COURT: Any more on the incomplete objection you  
19 made related to 215?

20 MR. PEEK: No, Your Honor.

21 THE COURT: All right. Thank you, Ms. Spinelli.

22 Now, Mr. Jones, you had something else you wanted to  
23 say?

24 MR. RANDALL JONES: Thank you. On behalf of my  
25 client, Sands China, I understand that this hearing is about

1 Sands China and it's not about Las Vegas Sands. It is not  
2 about a production by Las Vegas Sands. And I would object to  
3 -- the line of questioning to Mr. Ray was about search terms  
4 related to Sands China, or it should be about search terms  
5 related to Sands China. Unless there is a foundation laid by  
6 Mr. Pisanelli, who appears to be --

7 MR. PEEK: You can't talk to -- when you're a  
8 witness.

9 MR. PISANELLI: She can't talk to her co-counsel?  
10 She's off the stand.

11 MR. PEEK: No. She's on the witness stand right now.  
12

13 THE COURT: She's off. She's off the witness stand.  
14 You can keep going, Mr. Jones.

15 MR. RANDALL JONES: Thank you. The point is is that  
16 Mr. Pisanelli appeared to be cross-examining Mr. Ray on the  
17 issue of whether or not the plaintiff in this case offered  
18 additional search terms as it relates to Sands China's  
19 productions, which I understood was the subject matter of this  
20 hearing. Unless this --

21 THE COURT: Well, no, Sands China's compliance is  
22 not --

23 MR. RANDALL JONES: Well, I was taking it in the  
24 broadest sense.

25 THE COURT: yeah.

1 MR. RANDALL JONES: I do not believe and I've never  
2 been informed and don't have any documentation that suggests  
3 to me that this is an inquiry into the production of redacted  
4 or unredacted documents of Las Vegas Sands. So this document  
5 has no relevance to the search terms from the plaintiff with  
6 respect to Sands China Limited or VML, for that matter. And  
7 therefore it is not probative of whether or not the plaintiff  
8 ever offered search terms to Sands China, which is the subject  
9 of this inquiry.

10 THE COURT: All right.

11 MR. BICE: Your Honor, I would like to be --

12 THE COURT: Wait. No, I want to rule.

13 MR. BICE: Sorry.

14 THE COURT: Your objection is overruled. The reason  
15 is because this witness has already testified that in doing  
16 the analysis as to whether there were hashtag matches in the  
17 review that they used the Las Vegas Sands data that was  
18 available to FTI, which included not just the information from  
19 this retention but from other retentions, with the exception  
20 that they were told they had to sequester what I refer to as  
21 the transferred data in the order referenced September 14th,  
22 2012. So your objection is overruled.

23 MR. RANDALL JONES: I understand that, Your Honor.  
24 That was not my objection, just to make it clear. I think I  
25 agree with you the witness has testified that he was told to



1 expand the search as broadly as possible by my client. That  
2 does not mean that the plaintiff ever told anybody to expand  
3 the search of Sands China's documents, which is what Mr.  
4 Pisanelli seems to be trying to imply with this exhibit, which  
5 it does not do. So that's my objection, Judge. My client  
6 went ahead and voluntarily expanded the search, but it was,  
7 from my perspective, and I think the evidence is still  
8 consistent with that, with no help or offers of help from Mr.  
9 Jacobs or his counsel.

10 THE COURT: Mr. Jones, just so you know, Patty  
11 Glaser told me that she and her team were going to Macau and  
12 they were going to review every single one of the documents  
13 and they weren't going to do a search. So that's how we  
14 started this case.

15 MR. RANDALL JONES: Judge, I understand that, but  
16 that's not what ended up ultimately happening. I cannot deal  
17 with issues from the past where I wasn't here. But what we do  
18 know is that searches were made and that's what this witness  
19 has testified to. And this document, my only point is this  
20 document does not support the proposition that Mr. Pisanelli  
21 has offered to this Court. It just does not do it. And I  
22 defy them to show any place in this document where it says  
23 that this is about search terms for Sands China. In fact,  
24 since you've admitted it into evidence apparently --

25 THE COURT: You can now read it.

1 MR. RANDALL JONES: If the Court has looked at it, I  
2 would ask the Court to find any place in the document where it  
3 ever suggest that there's a request to add search terms for  
4 Sands China, because I don't believe it exists, Your Honor.

5 THE COURT: Okay, thank you.

6 MR. RANDALL JONES: Thank you.

7 MR. PISANELLI: Your Honor, to complete the  
8 record --

9 THE COURT: Wait. I need to have Mr. Ray come back  
10 up while you're completing the record.

11 MR. PISANELLI: Again, and I mean this respectfully  
12 and not a tit for tat, but a disadvantage that Mr. Jones has  
13 in this discussion is he hasn't been here for the entire time.  
14 Munger Tolles & Olson, the recipient of these search terms,  
15 made their pro hac vice application for one party in this  
16 case. They were allowed to represent one party in this case,  
17 Sands China Limited. This is a communication with Sands China  
18 Limited's lawyers.

19 MR. RANDALL JONES: And Your Honor, if I may, since  
20 he made that point, it may be a communication with Sands China  
21 Limited lawyers, but it's about search terms related to Las  
22 Vegas Sands. That's the bigger point. And, Your Honor, the  
23 only other point I would make is that Mr. Fleming is --

24 THE COURT: We're going to argue about this probably  
25 tomorrow as part of the scope of your argument on the issue.

1 What I'm trying to do is get through the witnesses, especially  
2 this one and the next one who have to travel from out of town.  
3 MR. RANDALL JONES: Yes. Thank you.  
4 THE COURT: And if what I have to do is to have a  
5 document set up so this witness can tell me that the two  
6 search terms are different and then later we can argue about  
7 whether they should have been different or not, that's a  
8 different issue. But I need the evidence before me so that I  
9 can listen to the argument that you want to make. Okay.  
10 MR. PEEK: Your Honor, and I agree because we need  
11 to get this witness done because it's getting close to 2:30.  
12 THE COURT: And I don't think you're going to get  
13 him done before 2:30, but his plane is not until eight  
14 o'clock.  
15 MR. RAY: That's right.  
16 THE COURT: So I've got to get him out of here by  
17 5:00. Right?  
18 MR. RAY: That's right.  
19 THE CLERK: They're both admitted?  
20 THE COURT: Yes, they're both admitted. And if  
21 somebody comes up with the attachments to the prior part of  
22 215, those will be 215A.  
23 THE CLERK: That's right.  
24 MR. PEEK: Thank you, Your Honor.  
25 MR. PISANELLI: Thank you, Your Honor.

1 CROSS-EXAMINATION OF JASON RAY (Resumed)

2 BY MR. PISANELLI:

3 Q Mr. Ray, keep both Exhibit 215 and 213 in front of  
4 you. 213 is on the screen if that's more helpful to you.

5 A Yep.

6 Q Now, in Ms. Spinelli's letter, Exhibit 215, do you  
7 see where she writes at the bottom of the page, RFP6, open  
8 parens, point one and point two?

9 A Yes.

10 Q All right. She adds or recommends a number of  
11 search terms there. Do you see that?

12 A Yes.

13 Q All right. Now, take a look in the first paragraph  
14 that's up on the screen starting -- Do you see the heading,  
15 Search Terms?

16 A Yes.

17 Q Six lines down beginning with, "Sands China or VML."  
18 Do you see that?

19 A Yes.

20 Q Now, as I go off and check off every one of her  
21 recommendations, they are all embodied in the second half of  
22 this paragraph. Do you agree with me?

23 A It's going to take me a minute to go ahead and  
24 confirm that. I can't speak to the definition of a criteria  
25 SCL and all derivatives. I don't know what all derivatives

1 means.

2 Q Do you know of any derivatives other than what's on  
3 that sixth line, Sands China, VML, Venetian Macau Limited,  
4 SCL, Sands China?

5 A If that is -- My interpretation of SCL and all  
6 derivatives is all derivatives of SCL. I don't know what they  
7 all are.

8 Q Fair enough. You didn't write it. That's fair  
9 enough.

10 A So I can't say. I mean, this looks like a list of  
11 things for looking for Venetian Macau Limited or Sands China  
12 Limited and their acronyms.

13 Q Okay.

14 A There is a term here, a single term "leverage." I  
15 don't see that single term in this section.

16 Q Do you see leverage strategy in there?

17 A I do. There's a statement on the end of the second  
18 line, beginning of the third line, Stanley within three of Ho  
19 or derivatives of his name. I see Stanley within three of Ho.  
20 I don't know what other derivatives should or could have been  
21 suggested, but I don't see any derivatives present.

22 Q Okay.

23 A I don't know what derivatives of the two parcels  
24 means on line 3 and I don't see any indication of that, other  
25 than the term for the parcels themselves.

1 Q Do you see all the numbers for two lines there  
2 towards the bottom with six and seven in it?

3 A I do.

4 Q Look like derivatives of that to you?

5 A I don't know what all the derivatives are, so I  
6 don't know if that's what that all is.

7 Q Okay. All right, fair enough.

8 A There's a criteria that says Starwood within three  
9 of hotel. I see the term for Starwood. I don't see the term  
10 for hotel. And that's the end of that paragraph.

11 Q Okay. Now, do you recall from looking at these  
12 terms whether any of these terms that are now highlighted on  
13 the screen were in the search terms for the first go-around in  
14 December-January?

15 A I do not recall.

16 Q Okay.

17 MR. RANDALL JONES: Your Honor, I hate to interrupt,  
18 but just in terms of trying to get --

19 THE COURT: I've got three more minutes. I'm  
20 breaking at 2:25.

21 MR. RANDALL JONES: Thank you.

22 THE COURT: I saw Wayne here.

23 BY MR. PISANELLI:

24 Q None of the terms, although Ms. Spinelli says point  
25 one and point two, none of these terms, other than the Sands

1 China derivatives, find their way into the second paragraph,  
2 however; right?

3 A I'm sorry?

4 Q See the two paragraphs of the search terms, there's  
5 a second date restricter on the second paragraph up on the  
6 screen.

7 MR. PISANELLI: Dustin, expand the screen, please.

8 THE WITNESS: Yeah, I see it in the exhibit in the  
9 exhibit book. I do not see those terms in the second period.

10 MR. PISANELLI: Okay.

11 MR. PEEK: Is this the paragraph beginning -- I  
12 can't read it now. Dustin, or whatever he's doing. Is this  
13 the one you mean search terms for period between 7/23/10?

14 THE COURT: Can you answer that?

15 THE WITNESS: Yes.

16 MR. PEEK: Is that what you're talking about, Jim?  
17 Thank you.

18 THE COURT: We need to stop now, since they're  
19 calling us.

20 MR. PISANELLI: Will do.

21 THE COURT: So we will resume with the second  
22 paragraph of the last page of 213.

23 Did we answer?

24 Mr. Bice, you should be up.

25 Dulce, we have to swear him, since it's a new day.

1                   Sorry, Mr. Pisanelli.  
2                   MR. PISANELLI: That's okay.  
3                   THE COURT: Mr. Bice, you should be up.  
4                   Dolce, we have to swear him since it's a new day.  
5                   Sorry, Mr. Pisanelli.  
6                   MR. PISANELLI: It's okay.  
7                               (Pause in the proceedings)  
8                   THE COURT: Good afternoon, Mr. Fleming. How are  
9 you today?  
10                  MR. FLEMING: I'm awake, Your Honor. I'm awake.  
11                  THE COURT: I'm glad to hear that. Thank you again  
12 for joining us. I'm going to have the clerk swear you in  
13 again, since it is a new day.  
14                  DAVID ALEC ANDREW FLEMING, DEFENDANTS' WITNESS, SWORN  
15                  THE CLERK: Please state and spell your name for the  
16 record.  
17                  THE WITNESS: I beg your pardon.  
18                  THE CLERK: Please state and spell your name for the  
19 record.  
20                  THE WITNESS: David Alec Andrew Fleming.  
21                  THE COURT: Mr. Fleming, it sounds like today we  
22 have less background noise on our connection. I hope you're  
23 able to hear us better.  
24                  THE WITNESS: It seems to be certainly better, Your  
25 Honor.



1 THE COURT: All right. Mr. Bice is ready and will  
2 continue his cross-examination now.

3 THE WITNESS: Very good.

4 CROSS-EXAMINATION (Continued)

5 BY MR. BICE:

6 Q Good morning I guess where you are at. Is that  
7 correct, Mr. Fleming?

8 A It's an early morning, Mr. Bice.

9 Q All right. Thank you for being with us again, sir.  
10 Just as a preliminary, Mr. Fleming, did you do anything else  
11 either last night or yesterday, last night, or this morning to  
12 prepare for your testimony?

13 A No.

14 Q Did you meet and chat with anyone?

15 A No.

16 Q And you didn't review any documents?

17 A No.

18 Q Yesterday, Mr. Fleming, you had indicated -- I just  
19 want to do a couple of clean-up items first. You had  
20 indicated that you'd had communications with a few board  
21 members of Sands China about the redactions. Do you recall  
22 that?

23 A I recall saying that.

24 Q Okay. Who were the board members?

25 A I can't recall. It was 2012. I would -- prior to

1 any board meeting I would be talking to each and every board  
2 member, but I can't recall exactly which board member I would  
3 have spoken to. But more likely it would have been the board  
4 of committee chairman.

5 Q And who was that?

6 A Am I at liberty to disclose? It's a matter of  
7 public record anyway, Your Honor. It's Mr. Ian Bruce

8 THE COURT: Thank you.

9 BY MR. BICE:

10 Q Would you have you discussed the redactions with Mr.  
11 Leven?

12 MR. RANDALL JONES: Well, Your Honor, again, what my  
13 objection would be --

14 THE WITNESS: No. I don't believe -- I don't  
15 believe I did, but I can't guarantee that.

16 THE COURT: Mr. Fleming, I need you to remember to  
17 pause before you answer, so if an objection needs to be made  
18 here the attorneys have a chance to do it.

19 THE WITNESS: My apologies, Your Honor.

20 THE COURT: It's okay.

21 Mr. Jones, did you want to say anything?

22 MR. RANDALL JONES: No. Not at this point.

23 THE COURT: All right.

24 You can continue, Mr. Bice.

25 MR. BICE: All right.

1 BY MR. BICE:  
2 Q Mr. Fleming, you had indicated yesterday that you  
3 had received at least one or two letters from the Office of  
4 Data Privacy; correct?  
5 A Yes.  
6 Q Okay. I'd like you -- can you access the documents,  
7 the exhibits in this case?  
8 A Apparently the password to the computer is locked,  
9 and we don't have access to it at this point.  
10 Q All right. I'll try and go --  
11 THE COURT: You could come back to that.  
12 MR. BICE: Okay.  
13 BY MR. BICE:  
14 Q All right. Well, while we're waiting for that --  
15 MR. RANDALL JONES: Todd, if you have some  
16 provisions that you want to read out of it and read to him, I  
17 don't -- I'm not going to -- we've offered those, so I don't  
18 have any objection.  
19 MR. BICE: Okay.  
20 MR. RANDALL JONES: If that would help.  
21 MR. BICE: All right. Well, let's see if I can do  
22 that first. We'll just do this as quickly as we can.  
23 MR. RANDALL JONES: Again --  
24 MR. BICE: Can I get Exhibit 102.  
25 THE COURT: Mr. Jones, any objection to 102?

1 MR. RANDALL JONES: I haven't got it yet, Your  
2 Honor. But I don't --

3 THE COURT: 11/29/2012 letter from OPDP.

4 MR. RANDALL JONES: I don't believe I have any  
5 objection, Your Honor. Just let me take a look here. Your  
6 Honor, I have no objection.

7 THE COURT: Then it'll be admitted.

8 (Plaintiff's Exhibit 102 admitted)

9 Now, Mr. Bice, if you want to use that document,  
10 let's go.

11 BY MR. BICE:

12 Q Do you recall -- and I'll ask you generally, Mr.  
13 Fleming, do you recall that in the documents -- or that one of  
14 the letters that you received from the Office of Data Privacy  
15 that they advised you that Sands China was relying upon the  
16 wrong provisions to seek their permission?

17 A I don't recall that particular text at all. I'm not  
18 saying it wasn't there, but I just don't recall it. I don't  
19 have the document in front of me, and I haven't read it for  
20 some time.

21 Q Okay. Well, it says -- I'll read you a sentence,  
22 and we'll see if we can follow along. This is on -- the Bates  
23 Stamp on it is APP0523. The last sentence of the first full  
24 paragraph says, "Given that your company has provided neither  
25 sufficient information nor an account of the original purposes

1 of the data collection or the necessity of using personal data  
2 for purposes other than those of data collection, our office  
3 cannot examine or approve the application for permission."  
4 All right. Then the next paragraph goes on to say, "Based  
5 upon the foregoing, our office shall archive your company's  
6 previous notification, declaration and application for  
7 permission, and we hereby recommend that your company  
8 re examine its personal data processing situation, clearly  
9 define its needs to fulfill notification and declaration  
10 obligations and to apply for permission and provide our office  
11 with statutory information for our examination approval  
12 pursuant to the stipulations of Article 23 of the Personal  
13 Data Protection Act."

14 Do you know whether or not you ever submitted the  
15 additional information that they were looking for in seeking  
16 authorization to transfer data?

17 A I think -- I'm pausing here.

18 MR. RANDALL JONES: Go ahead. Go ahead.

19 THE WITNESS: Okay. All right. I think -- if my  
20 recollection -- I can't recall the detail, but I think -- if I  
21 remember correctly, that was contained in the letter that I  
22 received by the very late in November or the very beginning of  
23 December of 2012.

24 BY MR. BICE:

25 Q Correct.

1           A     If I remember correctly, I would have been starting  
2 the process of examining how we would have been able to comply  
3 with the request or suggestions from OPDP. I can't recall  
4 precisely what I did. I would have spoken to those that I was  
5 seeking counsel from as to how we would process it, how we  
6 would carry forward the suggested proposal from OPDP. But we  
7 did not at the end of the day go back to OPDP with the  
8 information they sought. And the reason for that, as I  
9 recall, was that -- and I can't recall the date, but there was  
10 a decision of Your Honor whereby it was stipulated that the  
11 process of production of the documents had to be achieved  
12 whereby I think it was the second week or the end of the first  
13 week in January 2013. And on that basis I don't made the  
14 decision that we would proceed. We didn't have time to go  
15 through the process suggested by OPDP and that we did  
16 everything we could do to comply with Her Honor's request.

17           Q     All right. Mr. Fleming, that was in -- at the end  
18 of 2012; correct?

19           A     It would have been in December 2012, yes.

20           Q     All right. What have you done since December 2012  
21 to the present to address the office's position in that  
22 letter?

23           A     In relation to this specific issue I don't believe  
24 we took it any further.

25           Q     All right. Now, do you recall yesterday we were

1 talking about the fact that the Court's order was entered in  
2 September of 2012? Do you recall us discussing that  
3 yesterday?

4 A I recall.

5 Q All right. Is it fair to say that as of September  
6 2012, it was your understanding that the Macau Personal Data  
7 Privacy Act did not apply if the documents were already  
8 located in the United States?

9 A I believe that was the case, yes.

10 Q Okay. As we talked about yesterday, you understood  
11 when you received a copy of the Court's order that that  
12 applied to the documents that were then located in Macau;  
13 correct?

14 A Right.

15 Q Mr. Fleming, did you know that Sands China had filed  
16 a writ petition at the Nevada Supreme Court -- if I could,  
17 just hold on one second.

18 MR. BICE: Can I get Exhibit 194, please.

19 BY MR. BICE:

20 Q By the way, Mr. Fleming, is someone trying to find  
21 the combination to that computer so that you can have access  
22 to the exhibits?

23 A I believe that's correct. But it's very early in  
24 the morning, and I'm not sure that we're going to be that  
25 successful.

1 MR. RANDALL JONES: I'm sorry, Todd, exhibit --

2 MR. BICE: Exhibit 194.

3 THE COURT: And that's a proposed exhibit.

4 MR. BICE: It is, Your Honor. I'm going to ask him  
5 a date.

6 BY MR. BICE:

7 Q Mr. Fleming, were you aware that in March of 2014,  
8 Sands China along with Las Vegas Sands Corp had filed a  
9 document with the Nevada Supreme Court entitled, "Notice of  
10 filing a related case re; correction of record of March 3,  
11 2014, oral argument?"

12 A I seem to recall that.

13 Q All right. Did you review that document, do you  
14 believe?

15 A I would have done at the time.

16 Q So would you see draft pleadings before they were  
17 filed with the courts here in Nevada on behalf of Sands China?

18 A I probably did.

19 Q Okay. So you were aware, and I'm going to read this  
20 from page since you can't access the exhibits, so I'm going to  
21 read this --

22 THE COURT: Any objection since 194 is not yet  
23 admitted?

24 MR. RANDALL JONES: 194 is Plaintiff's opposition to  
25 Sands China motion to reconsider?



1 MR. BICE: Correct. And we attached the brief as an  
2 exhibit to it.  
3 MR. RANDALL JONES: And so you're looking at the  
4 brief?  
5 MR. BICE: Correct.  
6 MR. RANDALL JONES: I guess my only objection would  
7 be relevance.  
8 THE COURT: Okay. But it's part of my record;  
9 right?  
10 MR. RANDALL JONES: And it's part of your record.  
11 THE COURT: Well, at least the attachment is. So  
12 I'll go ahead and admit it, but I understand your relevance  
13 issue.  
14 (Plaintiff's Exhibit 194 admitted)  
15 THE COURT: It's just for a date purpose, right, Mr.  
16 Bice, context?  
17 MR. BICE: Right.  
18 THE COURT: Okay.  
19 MR. BICE: I apologize. Well, it's hard for me to  
20 hold these books up here.  
21 THE COURT: Do you want us to put the flaps up for  
22 you?  
23 MR. BICE: No. I'm okay, Your Honor.  
24 THE COURT: Kevin, can you put the flaps up for him.  
25 BY MR. BICE:

1           Q     Mr. Fleming, were you aware that on behalf of Sands  
2 China an assertion was made to the Nevada Supreme Court that  
3 the Court's September 14 order -- I'm going to read it.  
4 "Sanctions order cannot and should not be read as prohibiting  
5 redactions of personal data from documents," italics, "that  
6 remain in Macau and have no counterpart in the United States."  
7 The September order to address documents from Macau then in  
8 the United States, were you aware that the company had made  
9 that assertion?

10          A     If it's a matter of record and it's in the document  
11 then the assertion was made. But I don't recall it as I sit  
12 here this morning.

13          Q     I understand, Mr. Fleming. But, Mr. Fleming, you've  
14 already told the Court that you knew that the order, the  
15 September 14 order applied to the documents in Macau, didn't  
16 you?

17          A     That was my understanding.

18          Q     All right. And you knew that at the time that that  
19 document was submitted to the Nevada Supreme Court, didn't  
20 you?

21          A     I think I must have done, yes.

22          Q     Let me ask you a couple of follow-up questions, sir,  
23 about the consents issue that we talked about yesterday. I'm  
24 going to mention some names that I just want to confirm for  
25 the record that no consent was ever sought from them. Ben

1 Toh, no consent was ever sought from Mr. Toh?

2 A Not that I recall specifically.

3 Q Mr. Steven Weaver, or Steve Weaver, no consent was  
4 sought from him?

5 A In relations to these particular documents, I'm not  
6 sure that I -- I can't recall.

7 Q Well, I think, sir, yesterday you testified that you  
8 obtained -- you sought no consents from anyone. So did I  
9 misunderstand you yesterday?

10 A I think generally speaking that was a -- that's a  
11 correct statement. To be honest, I cannot recall --

12 Q Okay.

13 A -- whether I did or did not ask specific people for  
14 consent.

15 Q Well, is there any documents anywhere that would  
16 show who you did or did not seek consent from?

17 A Not that I can recall.

18 Q How about Ed Tracey, your current boss? Was consent  
19 sought from him you believe?

20 A I'm sorry. I can't hear you.

21 Q I apologize. Did you seek a consent from Edward  
22 Tracey?

23 A I do recall asking -- getting Edward Tracey's  
24 consent, yes. Whether it was in relation to these specific  
25 documents or in relation to other documents I cannot recall.

1 Q All right. When approximately would have you  
2 obtained Mr. Tracey's consent?

3 A Well, some time ago. I cannot recall.

4 Q But you don't know whether it pertained to this  
5 proceeding, is that fair?

6 A I simply cannot recall, Mr. Bice.

7 Q Okay. You recall yesterday, Mr. Fleming, that Her  
8 Honor asked you about when you became General Counsel at Sands  
9 China you learned that documents had already been transferred  
10 out of Macau to Las Vegas Sands Corporation, do you recall?

11 A I remember saying that, yes.

12 Q Do you recall -- how soon after you became general  
13 counsel had you learned that information?

14 MR. RANDALL JONES: Objection, Your Honor. Again,  
15 relevance to these proceedings.

16 THE COURT: Overruled.

17 You can answer, sir.

18 THE WITNESS: Okay. Right. I can't remember  
19 specifically, but it wasn't immediately. It would have been  
20 -- I honestly -- I cannot recall exactly, but it would have  
21 been -- I don't recall knowing about it until gosh it would  
22 have been a month or so -- I can't recall precisely.

23 BY MR. BICE:

24 Q I understand you can't recall precisely. Can you  
25 give us an approximation of when you learned.

1           A     There was another lawyer who -- prior to me starting  
2 with Sands China there was another lawyer who was acting as  
3 general counsel at the time, and that lawyer was looking after  
4 the Jacobs related matter, and she would have -- she was  
5 handling all of these issues until I became familiar with --  
6 sufficiently familiar with a number of issues, gradually one  
7 of them being the Jacobs matter.

8           Q     All right.

9           A     It took me some time to work into. So it would have  
10 been a couple of months at least.

11          Q     All right. And, again, just so that the record is  
12 clear, you became general counsel when, sir?

13          A     I believe it was the 10th or the 11th, whichever was  
14 the Monday of that week in 2011.

15          Q     Right. All right. And the attorney that was  
16 handling this before you was whom, the woman?

17          A     Well, again, it's a personal data issue. I remind  
18 counsel.

19               MR. RANDALL JONES: Well, Your Honor, I would ask  
20 that -- again, I don't know the relevance to this proceeding  
21 especially as it relates to violation of Macau law.

22               THE COURT: So Ann Salt appeared in front of me, is  
23 it --

24               MR. RANDALL JONES: Then if the Court knows who it  
25 is, then what's the need to violate Macau law to give this

1 information to the Court? I guess that'd be my point. If the  
2 Judge already -- if the Court already knows the information --

3 THE COURT: Well, that's because she appeared at one  
4 of our conferences.

5 MR. RANDALL JONES: And that's fine, Judge. All I'm  
6 saying --

7 THE COURT: A video conference from Macau.

8 MR. RANDALL JONES: All I'm saying -- well, but then  
9 it's in -- obviously the consent is given if the person  
10 voluntarily appears. So my point is, Your Honor, is there --  
11 I would ask the Court to allow Mr. Fleming not to answer a  
12 question the Court already knows the answer to when he would  
13 otherwise be violating Macanese law. And I think that's a

1 MR. BICE: Can I get Defendants' Exhibit 346. I  
2 take that back. I have it. But it's your Exhibit 346.  
3 THE COURT: Are you stipulating to the admission of  
4 346, or are you just going to use it to examine him?  
5 MR. BICE: I would ask that it be admitted.  
6 THE COURT: You're going to ask that it be admitted?  
7 MR. BICE: Yes, their Exhibit 346.  
8 THE COURT: Are you going to do 346 and 348  
9 together?  
10 MR. BICE: No.  
11 THE COURT: So just 346?  
12 MR. BICE: I think so.  
13 THE COURT: Okay.  
14 (Pause in the proceedings)  
15 MR. BICE: I apologize, Mr. Jones, it's not 346. I  
16 was wrong.  
17 THE COURT: I already admitted 346 based on your  
18 stipulation.  
19 MR. BICE: I need to withdraw it. I think it might  
20 be 96, Your Honor. But I am going to admit 346 at some point.  
21 THE COURT: All right. We'll just leave it --  
22 MR. RANDALL JONES: I actually -- did I -- I don't  
23 think I did stipulate --  
24 THE COURT: Does someone want us to try and put the  
25 Elmo in so Mr. Fleming has a better chance of seeing documents

1 since he can't get someone to unlock the computer he's at at  
2 5:30 in the morning in Hong Kong?

3 MR. RANDALL JONES: The only concern I have, Your  
4 Honor, is I don't want to waste any time. If we can do it by  
5 simply reading the documents to the witness -- if that's --

6 THE COURT: I'm not sure how much time it wastes.  
7 The Elmo's right there, Wayne's right there, the plugs are  
8 right there.

9 MR. BICE: If we can do it I would prefer to do  
10 that.

11 MR. RANDALL JONES: That's fine.

12 THE COURT: We're going to see if it works.

13 Mr. Fleming, we're going to try and hook up a  
14 document camera so you may be able to see documents instead of  
15 us. Okay?

16 (Pause in the proceedings)

17 MR. PEEK: David, you can be heard here.

18 MR. RANDALL JONES: David, I have explained to the  
19 Court your urgent scheduling issues. Mr. Bice has informed  
20 the Court, he said he would take an hour. I understand you  
21 have at most two hours. We have agreed with Mr. Bice that he  
22 can have access to Mr. Toh, and he has indicated to me  
23 yesterday that if we would give him access to Mr. Toh that he  
24 would finish with you in an hour.

25 THE COURT: Mr. Fleming, can you see the document



1 we've placed on the screen?

2 THE WITNESS: Yes. It's not clear, but I can see  
3 it.

4 THE COURT: All right. Well, we can blow it up so  
5 you have a better chance. Can you see it better now?

6 THE WITNESS: It's still not very clear, Your Honor,  
7 but I'll do my best.

8 THE COURT: Can you zoom in some more, Mr. Bice.

9 THE WITNESS: I believe we have a hard copy here.

10 THE COURT: Great.

11 THE WITNESS: Excuse me, Your Honor. Is this the  
12 one? It is August 21st, 2012.

13 MR. PEEK: Is that right, Todd?

14 MR. BICE: I don't believe so. I think this is one  
15 of 2011.

16 THE WITNESS: Your Honor, I have an affidavit dated  
17 21st of August 2012.

18 MR. BICE: No. This one is from July of 2011.

19 THE WITNESS: Oh. I don't have that.

20 THE COURT: Well, then let's see if --

21 THE WITNESS: Oh. Sorry. We do. Your Honor, I've  
22 just been handed a copy of that particular document.

23 THE COURT: Lovely. Thank you so much, Mr. Hughes.

24 THE WITNESS: Mr. Hughes has been very able.

25 THE COURT: And I was able to pick that up even

1     though he's off screen.

2             THE WITNESS: All right.

3             THE COURT: 348?

4             MR. BICE: It is 348, Your Honor --

5             THE COURT: Any objection to 348?

6             MR. BICE: -- my mistake.

7             MR. RANDALL JONES: No, Your Honor.

8             THE COURT: Be admitted.

9             (Defendants' Exhibit 348 admitted)

10            MR. BICE: Thank you.

11    BY MR. BICE:

12            Q     All right. Mr. Fleming, you now have in front of

13    you copy of what's been admitted as Exhibit 348. This is an

14    affidavit that you submitted in support of Sands China

15    Limited's motion to stay proceedings pending root petition on

16    orders shortening time. Do you see that?

17            A     I do.

18            Q     What was the purpose in submitting this document to

19    the Court, Mr. Fleming?

20            MR. RANDALL JONES: Objection, Your Honor, as to --

21    vague and ambiguous as to --

22            THE COURT: Sustained.

23            MR. RANDALL JONES: -- his purpose. Yeah. Thank

24    you.

25    BY MR. BICE:

1           Q     All right. Mr. Fleming, did you submit this  
2 document to the Court in order to obtain a stay of the  
3 proceedings?

4           A     I haven't seen this document for a long, long time.

5           Q     All right.

6           A     I you would give me at least a minute to have a  
7 quick look at the document to try and --

8           Q     Absolutely.

9           A     -- determine what it was all about.

10          Q     Understood. Yes, take -- please review and let me  
11 know when you're done, sir.

12          A     I will be looking at it now. Yes. I seem to recall  
13 this now.

14          Q     All right. And was the purpose of this declaration  
15 by you -- was it to obtain a stay of the Court so that you  
16 would not have to produce documents?

17               MR. RANDALL JONES: I'd object to the extent the  
18 document identifies the purpose.

19               THE COURT: That objection's overruled.

20               Sir, we are treading, as you may know, a line  
21 related to certain attorney/client issues. I am trying to  
22 make sure that the attorney/client privilege is preserved on  
23 items other than the decision making process related to the  
24 redactions and production of information. So you could  
25 answer, but please be mindful.

1           THE WITNESS: Sorry. That was not very clear, Your  
2 Honor. But let me say this, I can't recall precisely why this  
3 document was required other than to say that the thrust and  
4 intent of this document was to make the Court aware of the  
5 current position as it was then of -- and relation to personal  
6 data issues and the current status as we understood it in  
7 terms of the OPDP's interpretation and regulation of the  
8 relevant legislation.

9 BY MR. BICE:

10          Q     All right. Mr. Fleming, if you look at the third  
11 paragraph of this affidavit it starts out saying, "On June 28,  
12 2011," do you see that?

13          A     Yep.

14          Q     How long -- and it says that you attended a meeting  
15 with representatives of the Macau Government's Office of  
16 Personal Data Protection; correct?

17          A     Correct.

18          Q     All right. How long had you been general counsel by  
19 this point in time?

20          A     Well, as I said before, I started on the -- I can't  
21 recall if it was the 10th or the 11th of January 2011.

22          Q     All right. So it was over six months later; right?

23          A     Roughly. Yeah, it would be six months later, yes.

24          Q     Give or take. All right. So by this point in time,  
25 by the time you met with the Office of Data Protection on June

1 28, 2011, you knew about the documents or the data that had  
2 already been transferred to Las Vegas; correct?

3 A I would have done by that time.

4 MR. PEEK: Your Honor, I objection to this line of  
5 questioning. Is this trying to go back and litigate the  
6 September 2012 hearing?

7 MR. RANDALL JONES: And I would join that objection,  
8 Your Honor.

9 MR. PEEK: And it just seems to me that this is  
10 going far afield from what the subject matter of this case is.

11 THE COURT: I believe from what I've heard that Mr.  
12 Bice is attacking the Sands China Limited's activities related  
13 to potential clarification with the OPDP and following up with  
14 them when they had an adequate time to do so.

15 MR. BICE: Correct.

16 THE COURT: Okay. Right? Isn't that what you're  
17 trying to do?

18 MR. BICE: Yeah.

19 THE COURT: Okay.

20 BY MR. BICE:

21 Q Mr. Fleming, so since you knew -- did you know how  
22 much data had been transferred to the United States by the  
23 time that you submitted this affidavit to the Court? Did you  
24 know that it was a substantial amount of data?

25 A I had no idea how much data had gone.

1 Q Okay. Did you know whose data -- did you know that  
2 it included Mr. Jacobs's electronically stored information?

3 A Sorry. You'd have to repeat that.

4 Q Sure. Did you understand that it included  
5 electronically stored information concerning Mr. Jacobs?

6 A I can't recall knowing exactly what was in there. I  
7 knew that data had been taken to the United States, but I was  
8 not aware of the content of that data.

9 Q All right. As of -- at this meeting on June 28,  
10 2011, did you tell the Office of Data Protection what had  
11 happened?

12 A No. I don't believe I did.

13 Q All right. Did you -- why didn't you tell the Court  
14 in this affidavit in July of 2011, what had happened?

15 MR. RANDALL JONES: Objection, Your Honor. That  
16 clearly would invade any attorney/client privilege, work  
17 product. For a start those are my objections.

18 THE COURT: Sustained.

19 BY MR. BICE:

20 Q Mr. Fleming, would you agree with me that part of  
21 the purpose -- at least one of the purposes of this  
22 declaration was to convince the Court that it was too onerous  
23 and expensive to move data relevant to this case into the  
24 United States?

25 MR. RANDALL JONES: Objection, Your Honor. The same

1 objection, but also the document, which is his statement,  
2 explains the purpose of the document. And so he is now asking  
3 about something beyond the document or other interpretation,  
4 or his interpretation of the document which I believe goes  
5 into his state of mind and is objectional.

6 MR. BICE: When a party submits a declaration and  
7 they put their witness as their decision maker, Your Honor,  
8 the witness's motives, purposes, understandings are at issue.  
9 This is a decision that this litigant made was to submit sworn  
10 declarations to the Court and to put this witness -- to prop  
11 this witness up as their decision maker. And this witness --

12 MR. RANDALL JONES: Well, first of all --

13 MR. BICE: And let me finish my statement, please.

14 MR. RANDALL JONES: I will.

15 MR. BICE: And this witness submitted a declaration  
16 to you knowing that data had flowed out of that country to the  
17 United States long ago before he submitted this declaration.  
18 That was material information. It was material information  
19 that was omitted from the Court, and it goes a lot to the  
20 claims of good faith and credibility on behalf of this  
21 litigant.

22 THE COURT: Mr. Jones --

23 MR. RANDALL JONES: Yes, Your Honor.

24 THE COURT: -- do you want to say anything else?

25 MR. RANDALL JONES: I would specifically say that

1 again he is asking to go beyond the document and into issues  
2 that are not contained within the document, and I think it's  
3 an improper attempt to inquire into his state of mind. And I  
4 also would say this, that I object to the pejorative and  
5 editorial comments of Mr. Bice with respect to propping  
6 information up. I think that's inappropriate.

7 THE COURT: The objection is overruled as it relates  
8 to the basis for the statements made in the affidavit.

9 But, Mr. Bice, I'm not sure that the inquiry can go  
10 as far as you indicate you'd like. Hold on. I have a note.  
11 You're talking about 348. Keep going.

12 MR. BICE: All right.

13 MR. RANDALL JONES: So, Your Honor, with that  
14 comment, I want to make sure the witness understands the  
15 Court's comment.

16 THE COURT: He told me that it wasn't clear when I  
17 told him before, Mr. Jones.

18 MR. BICE: I'll re-ask the question.

19 MR. RANDALL JONES: Thank you.

20 BY MR. BICE:

21 Q Mr. Fleming, was one of the purposes in you  
22 submitting this affidavit to the Court was to convince the  
23 Court that it was too onerous and expensive to produce data in  
24 the United States?

25 MR. RANDALL JONES: Same objection.



1 THE COURT: Overruled.  
2 THE WITNESS: No.  
3 MR. RANDALL JONES: The Judge overruled.  
4 MR. BICE: You can answer that. The Judge says you  
5 can answer that one, Mr. Fleming.  
6 THE COURT: You can answer it, sir.  
7 THE WITNESS: Your Honor, I'm not sure what  
8 discussions have taken place between you and counsel, but if  
9 there's been an objection -- there was a bit of a breakdown in  
10 communication here. If there's been an objection, has that  
11 objection been dealt with?  
12 THE COURT: It has. And I've asked you to answer  
13 the question, please.  
14 THE WITNESS: Okay. All right. Look, Mr. Bice,  
15 let's not play around. The facts of the situation is as I  
16 read this document and my best of my recollection it was not  
17 to try and convince the Court of anything, it was to try and  
18 explain the current position as I understood it at that time  
19 as a result of my discussions with OPDP. Nothing more,  
20 nothing less.  
21 BY MR. BICE:  
22 Q I understand that, sir. But you didn't tell the --  
23 you didn't tell OPDP what had already happened; right?  
24 MR. RANDALL JONES: Objection, Your Honor.  
25 THE WITNESS: Probably because I -- it wasn't

1 relevant at that time. At that time we were trying to figure  
2 out how this piece of legislation applied bearing in mind that  
3 OPDP really didn't understand itself how it was to be applied.  
4 BY MR. BICE:

5 Q Well, when is it that you told them that these  
6 documents had been transferred to the United States?

7 A It would have been the following year when after it  
8 became public information as a result of disclosures in the  
9 press.

10 Q It became public information because Her Honor held  
11 a hearing, and it came to light and then press reported upon  
12 it; correct?

13 MR. PEEK: Your Honor, that mischaracterizes the  
14 evidence. We all know it became apparent, because I was here  
15 as a result of disclosures --

16 MR. BICE: Your Honor, this is a speaking objection.

17 THE COURT: Wait.

18 MR. PEEK: -- we made to this Court --

19 THE COURT: Yes. I know, Mr. Peek.

20 MR. PEEK: -- in May/June of 2012, not after the  
21 hearing, not in September.

22 THE COURT: Well, no.

23 MR. PEEK: The hearing in September was a result of  
24 the disclosure.

25 MR. BICE: I didn't say that hearing.

1 THE COURT: The disclosures occurred as a result of  
2 information that you and some of the other folks decided it  
3 was important for me to know.

4 MR. PEEK: That is correct, Your Honor.

5 THE COURT: And then I scheduled a hearing.

6 MR. PEEK: That's correct. But he's saying that it  
7 didn't happen until September, which is incorrect. And he  
8 knows that.

9 MR. BICE: That's not what I said.

10 THE COURT: There was a period of time that it  
11 occurred, and then I scheduled a hearing.

12 BY MR. BICE:

13 Q So, Mr. Fleming, can we agree you didn't go and tell  
14 the Office of Data Protection about this until they found out  
15 about it from the news media; correct?

16 A I can't recall telling them about it prior to the  
17 events that resulted in the disclosure of that information  
18 publicly. And I believe that was right about mid 2012.

19 Q Okay. You indicated that you had a copy of an  
20 additional declaration from yourself dated August 21 of 2012.  
21 Is that true, Mr. Fleming?

22 A Hold on. Just let me check with Mr. Hughes. I do  
23 have a copy, yep.

24 THE COURT: So this is 96. Any objection to 96?

25 MR. RANDALL JONES: No, Your Honor. If it's the

1 same as our Exhibit 346, I don't have any objection. But I  
2 don't have their Exhibit 96 in front of me.

3 Do you have a copy of it, Todd? Wait, wait, here's  
4 96. Looks like it's the same.

5 MR. BICE: Same.

6 MR. PEEK: It's the same, Your Honor. We're fine.

7 THE COURT: 96 and 346 will both be admitted since  
8 they're the same document.

9 (Plaintiff's Exhibit 96 admitted)

10 (Defendants' Exhibit 346 admitted)

11 BY MR. BICE:

12 Q Mr. Fleming, do you have a copy of that declaration  
13 in front of you?

14 A I have a copy of a declaration signed by me and  
15 dated the 21st day of August 2012.

16 Q All right. Mr. Fleming, can you tell who prepared  
17 this declaration for your signature.

18 A I think the actual preparation was done by Munger  
19 Tolles.

20 Q All right.

21 A If I recall correctly.

22 Q Very good. Do you recall whether or not you made  
23 any changes to the draft that they sent you?

24 A There would have been drafts, I'm sure. It was  
25 usually the case.

1 Q Okay. And would you receive those drafts via email?  
2 A More than likely.  
3 Q All right. If you would take a look at this. I'd  
4 like you to start at Paragraph Number 3 on the second page.  
5 A Yep.  
6 Q It says, "Although I am not admitted to the Bar in  
7 Macau I have the following understanding of Macau's Personal  
8 Data Protection Act." Do you see that?  
9 A Correct.  
10 Q Okay. And did you obtain that understanding from  
11 your communications with Munger Tolles & Olson?  
12 A No. As a matter of fact, I did my own research on  
13 that.  
14 Q Okay. So you didn't just get any of this  
15 information from Munger Tolles & Olson in paragraph number --  
16 A Much of the content of this document I believe --  
17 and I haven't read it through, Your Honor, and I apologize,  
18 but I do recall this document to a certain extent. Much of  
19 the content I actually prepared I think originally myself.  
20 Q Okay. So somewhere on your computer you would have  
21 an initial draft of this document, not one prepared --  
22 A No. I did things in manuscript mostly.  
23 Q Okay. And so you believe that the first one would  
24 come from you, and then Munger Tolles would have typed up what  
25 you generated originally?

1           A     I can't recall.

2           Q     All right.

3           A     It would have been telephone conversations, and I  
4 would have imparted my comments to Munger Tolles or whoever it  
5 was that I was speaking to at the time, and they would have  
6 actually, you know, created the document or draft of this  
7 document.

8           Q     Did you get any other input in this document -- or  
9 did you get any input from other people in preparation of this  
10 document?

11          A     Sorry. You'd have to repeat that.

12          Q     Sure. Did you get input from any other people in  
13 the creation of this document, sir?

14               MR. RANDALL JONES: Well, you're -- I'm sorry. My  
15 objection would be with respect to his understanding of  
16 something of just in general. Because if it's just in general  
17 and it didn't inform his understanding, then I believe it's  
18 objectionable.

19               THE COURT: Overruled.

20               But, sir, I don't want you to -- I want you to try  
21 and remember that there are attorney/client issues that may  
22 impact your answers and to be careful and listen for Mr. Jones  
23 and Mr. Peek to make objections. This one's overruled, but  
24 please remember that as you're pausing for me.

25               Mr. Bice.

1 THE WITNESS: I will try, Your Honor. I will try.

2 THE COURT: Okay, sir.

3 BY MR. BICE:

4 Q Mr. Fleming, did you get input from any other  
5 persons in the preparation of this document?

6 A Okay. I would have definitely spoken to people. I  
7 can't recall who I would have spoken to precisely. But I am  
8 pretty certain that I would have spoken to Macau lawyers --

9 MR. RANDALL JONES: Your Honor -- I'm sorry. I  
10 would have to --

11 THE WITNESS: -- to make sure that I understood the  
12 position. I know I did my own research to the best of my  
13 ability, and then I would have formed a view. I am absolutely  
14 certain that I had telephone conversations and discussions  
15 with those who were acting for us in Munger Tolles. I'm  
16 pretty certain that they would have -- they took the views  
17 that I expressed and articulated them in drafts which I would  
18 have seen.

19 BY MR. BICE:

20 Q Okay. Would have you gotten any input on this  
21 document from any of the in-house lawyers at Las Vegas Sands  
22 Corporation?

23 A No.

24 Q Okay. So in your discussions with the lawyers at  
25 Munger Tolles you did not speak to -- no one from Las Vegas

1 Sands was on those calls?

2 MR. RANDALL JONES: Objection, Your Honor.

3 THE COURT: Overruled.

4 And the answer is yes or no, sir.

5 THE WITNESS: I can't -- look, I can't recall.

6 BY MR. BICE:

7 Q All right. And I --

8 A But let me make this absolutely pellucidly clear,

9 Mr. Bice. What I wrote here is what I believed was accurate

10 and correct at that time.

11 Q I understand. And that was what you understood to

12 be accurate and correct based on your conversations with Macau

13 lawyers, the Office of Data protection, as well as the lawyers

14 at Munger Tolles; correct?

15 A Correct.

16 MR. RANDALL JONES: Your Honor, if I may, just

17 because of the situation we have here with the video

18 conference.

19 Mr. Fleming, this is Randall Jones. If I could

20 remind you, please, sir, do not speculate. If you don't

21 remember specifically, please do not speculate.

22 THE WITNESS: All right.

23 MR. RANDALL JONES: Thank you.

24 BY MR. BICE:

25 Q And, Mr. Fleming, it's your recollection that MTO or



1 Munger Tolles confirmed to your views of the MPDPA?  
2 MR. PEEK: Objection, Your Honor. That calls for  
3 attorney/client communication.  
4 THE WITNESS: Not my recollection.  
5 THE COURT: Overruled.  
6 BY MR. BICE:  
7 Q Okay. Who were the Macau lawyers that you would  
8 have consulted on that subject matter of the MPDPA?  
9 MR. RANDALL JONES: And, Mr. Fleming, to the extent  
10 that that is a violation of Macanese law then I would ask you  
11 not to answer the question.  
12 THE WITNESS: I'm not going to answer that question.  
13 MR. BICE: Your Honor, I'm not going to acquiesce in  
14 that.  
15 THE COURT: I understand. We're just going to move  
16 on for a minute, and we'll come back to it.  
17 MR. BICE: You understood that my silence is not in  
18 acquiescence in that. We're going to try and move through  
19 this.  
20 BY MR. BICE:  
21 Q Who were the lawyers at Munger Tolles? I'll give  
22 you some names, and let's see if they ring a bell. Brad  
23 Brian?  
24 A It might help you if we go to the first page. Mr.  
25 Bice.

1 Q Yes, sir.

2 A And you get on the first page look at line 9, it  
3 sets out a number of lawyers.

4 Q Yes.

5 A The only lawyer that I recognize is Henry Weissmann.

6 Q Very good. And did you communicate with Mr.  
7 Weissmann via email?

8 A From time to time I would have.

9 Q Okay. And the Macau lawyers whose identity you have  
10 declined to give us, would you communicate with them via  
11 email?

12 A Generally not, no.

13 Q Generally not?

14 A I don't think I would have done. I would have  
15 spoken to them.

16 Q Understood, sir. How about the representatives of  
17 the Office of Personal Data Protection, would you communicate  
18 with them via email?

19 A In relation to this issue I would not have been  
20 communicating with them via email. I would have been speaking  
21 with them directly.

22 Q Are there other issues upon which you would  
23 communicate with those people via email?

24 A Yeah. If I had to respond to a letter that they  
25 sent to me or that was necessary for me to send a letter to

1 them. Then of course I would have done so in writing. But  
2 otherwise no, I would have spoken to them directly.

3 Q All right. Can you tell me who were the individuals  
4 at the Office of Data Protection that you have communicated  
5 with concerning this matter?

6 MR. RANDALL JONES: Mr. Fleming, I would object and  
7 instruct you not to answer to the extent that an answer would  
8 violate Macanese law.

9 THE COURT: And, sir, if you can follow that  
10 instruction --

11 THE WITNESS: I do not intend to violate Macanese  
12 law, and I'm afraid I will not be able to answer that  
13 question.

14 MR. BICE: Well, Your Honor, again, I have to  
15 enter --

16 THE COURT: I understand your --

17 MR. BICE: He has submitted declaration saying I  
18 spoke to people, and I'll get into this in a moment, and  
19 purporting to recite what they said.

20 THE COURT: I understand. But he's following the  
21 instruction by his counsel, and I understand we're going to  
22 make a record at the conclusion of this related to whether  
23 it's appropriate for them to take the position they cannot  
24 disclose names that they've identified conversations from  
25 those individuals in affidavits.

1 MR. BICE: All right.

2 THE COURT: But instead of us missing the rest of  
3 the sky --

4 MR. BICE: Yes. I understand.

5 THE COURT: -- and so you can finish, let's speed  
6 ahead.

7 MR. BICE: Okay.

8 BY MR. BICE:

9 Q Let's go to Paragraph Number 9, which is on page 3  
10 of this document, Mr. Fleming.

11 A Yep.

12 Q It says, "Beginning on May 13, 2011, and thereafter  
13 representatives of Venetian Macau Limited have had a number of  
14 communications and meetings with the OPDP." Do you see that?

15 A Yes, I do.

16 Q Who are the representatives of Venetian Macau  
17 Limited referenced there?

18 MR. RANDALL JONES: Again, to the extent that  
19 violates Macanese law, Mr. Fleming, I would instruct you not  
20 to answer.

21 THE COURT: And, sir, to the extent you can answer  
22 without violating Macanese law, we would love to have the  
23 answer.

24 THE WITNESS: It is with regret, Madam -- oh.  
25 Sorry. Your Honor, on the advice of counsel I am not going to

1 answer that question.

2 MR. RANDALL JONES: Your Honor, I would also  
3 interpose a further objection that that subject matter of that  
4 paragraph, even if it's in this affidavit, is not relevant to  
5 the hearing at which we are presently convened.

6 THE COURT: Mr. Bice, can we ask another question.

7 MR. BICE: Yes. I can, Your Honor.

8 BY MR. BICE:

9 Q Were you at any of the meetings or communications --  
10 strike that. Let me rephrase it. Were you a participant in  
11 any of the communications that are referenced in this  
12 Paragraph Number 9, you personally?

13 A Give me a minute.

14 Q Of course.

15 A Yes. I was certainly at a number of meetings  
16 concerning the issues raised in Paragraph Number 9.

17 Q All right. Were any U.S. citizens present at any of  
18 the meetings referenced in Paragraph Number 9?

19 MR. RANDALL JONES: Your Honor, again, with respect  
20 to -- Your Honor, can I take a moment.

21 THE COURT: You can.

22 MR. RANDALL JONES: Thank you.

23 THE COURT: Mr. Fleming, we have a brief huddling by  
24 counsel. So it's going to be like a pause. You're not going  
25 to hear hold music, you'll probably hear people visiting on

1 this side.

2 (Pause in the proceedings)

3 MR. RANDALL JONES: I'm sorry. I can't recall if  
4 there was a question pending or if I took the break before a  
5 question was pending.

6 MR. BICE: There was a question pending.

7 I'll repeat it, Your Honor.

8 MR. RANDALL JONES: Thank you.

9 THE COURT: That'd be lovely.

10 BY MR. BICE:

11 Q Mr. Fleming, were there any U.S. citizens present at  
12 any of the meetings that you're referencing in Paragraph  
13 Number 9, sir?

14 MR. RANDALL JONES: Your Honor, I would object and  
15 instruct the witness not to answer as it has no relevance to  
16 these proceedings and otherwise contains -- and, by the way,  
17 we did not offer this affidavit in this proceeding in support  
18 of our position. It was one of our exhibits, but it of course  
19 had not been offered into evidence by us.

20 THE COURT: But it's been filed with me previously.

21 MR. RANDALL JONES: Your Honor, again, but --

22 THE COURT: I understand. But for purposes of this  
23 hearing --

24 MR. RANDALL JONES: -- my point is we have not  
25 offered it in support of our position in these proceedings.

1 And since this particular paragraph and any other paragraphs  
2 that relate to the investigations or other proceedings or  
3 issues concerning the Justice Department and/or the SEC, I  
4 would object to -- and just for brevity instruct Mr. Fleming  
5 not to answer those questions. And I don't know if Las Vegas  
6 Sands has a position with respect to that issue.

7 MR. PEEK: Same thing. Join in that objection, Your  
8 Honor.

9 THE COURT: Mr. Bice, do you want to respond?

10 MR. BICE: Your Honor, this affidavit is attached to  
11 their brief regarding sanctions that is currently pending  
12 before you.

13 THE COURT: Okay.

14 MR. BICE: So this party has once again interjected  
15 information that they now want to obstruct the fact finding  
16 process about. This is their witness. They called him. They  
17 put this -- they have submitted this declaration as an  
18 attachment to their brief on sanctions. Am I wrong on that  
19 team? Okay. So they have put it directly at issue in these  
20 proceedings, and the witness is subject to cross-examination  
21 concerning the basis of it. And he has testified -- you'll  
22 notice, Your Honor, you recall how he had no problem  
23 testifying on direct or yesterday about the identity of  
24 witnesses until late in the day. And now all of a sudden we  
25 can't even know U.S. citizens who were at meetings.

1 THE COURT: The objection is overruled given the  
2 fact the document has been placed in issues by Sands in the  
3 briefing.

4 MR. RANDALL JONES: I understand, Your Honor. And I  
5 would still have to instruct Mr. Fleming.

6 THE COURT: No. I'm not keeping you from  
7 instructing him.

8 MR. RANDALL JONES: I understand. You're making  
9 your record and I'm just making mine.

10 And, Mr. Fleming, I would respectfully instruct you  
11 not to answer the question.

12 And I don't know if Steve, if you have a -- if you  
13 join that objection.

14 MR. PEEK: I don't know that I can instruct him not  
15 to answer, Your Honor. But I join in Mr. Jones's --

16 MR. RANDALL JONES: It was more the joining in the  
17 objection.

18 THE COURT: You already did that.

19 MR. PEEK: I join in his objection.

20 MR. RANDALL JONES: And we note, Your Honor, our  
21 objection that a party is allowed to call a witness, interject  
22 a declaration in the proceedings and then instruct the witness  
23 not to answer questions about the very document that they have  
24 put into the proceedings. I can tell the Court I've never  
25 seen such double speak from a litigant as we have in this



1 proceeding.

2 THE COURT: All right. Well, let's not argue.  
3 Let's try and finish this particular witness so that I can  
4 then get to the part where you're all going to argue about the  
5 evidence.

6 MR. PEEK: Is there a question pending, Your Honor?

7 BY MR. BICE:

8 Q Let's go to Paragraph Number 10. Mr. Fleming, do  
9 you see Paragraph Number 10?

10 A I do.

11 Q It says on March 7, 2012, "A meeting was held OPDP.  
12 The meeting was attended by representatives of Las Vegas Sands  
13 Corporation." Do you see that?

14 A I do.

15 Q SCL and VML. All right?

16 A Uh-huh.

17 Q Who were the attendees on behalf of Las Vegas Sands  
18 Corporation?

19 A I can't recall.

20 MR. RANDALL JONES: Your Honor -- I'm sorry.

21 Mr. Fleming, I've interposed an objection and have  
22 to give you -- with respect to this paragraph since it does  
23 not have anything to do with the Jacobs case specifically --  
24 well, with the sanctions hearing that we're dealing with  
25 today, I would have to instruct you not to answer that

1 question.

2 BY MR. BICE:

3 Q Do you know who attended on behalf of Sands China?

4 MR. RANDALL JONES: Again, same instruction.

5 BY MR. BICE:

6 Q Do you know who attended on behalf of VML?

7 MR. RANDALL JONES: Same instruction.

8 MR. BICE: Your Honor, obviously I'm not acquiescing  
9 in this behavior.

10 THE COURT: Well, and I've already ruled on the  
11 issue. But, Mr. Jones, as I told him earlier, can make the  
12 instructions if he thinks it's appropriate and we can deal  
13 with the impact after we complete the witness's testimony. My  
14 position has not changed.

15 MR. BICE: Thank you, Your Honor.

16 BY MR. BICE:

17 Q Mr. Fleming, you'll see the next sentence, it says,  
18 "Although I did not attend the meeting, I understand there was  
19 a discussion." Do you see that? You understand there was a  
20 discussion?

21 A I don't -- got it. Yep. Third line down.

22 Q Yes.

23 A Yep.

24 Q What is your understanding of that -- let me phrase  
25 it this way first. Tell me where you got the understanding of

1 that discussion.

2 MR. RANDALL JONES: Well, Your Honor --

3 Before you answer, Mr. Fleming, let me just take a  
4 moment here. I want to read this.

5 (Pause in the proceedings)

6 MR. BICE: While he's doing that, I just want to  
7 note for the record, Your Honor. My agreement for one hour  
8 with this witness was based upon getting it through the  
9 examination. There has been an extraordinary amount of  
10 obstruction, and I'm going to complete my examination whether  
11 it's an hour or more, Your Honor, or I'm reserving my right.

12 THE COURT: Well, we're going to let the witness go  
13 when he runs out of time. And then if there --

14 MR. BICE: I understand.

15 THE COURT: -- is an impact to that I will address  
16 it.

17 MR. BICE: Thank you.

18 THE COURT: But he was courteous enough to make  
19 himself available again for a second morning.

20 MR. RANDALL JONES: There has not been an  
21 extraordinary amount of obstruction here.

22 THE COURT: Guys, can we stop arguing and just duly  
23 get --

24 MR. RANDALL JONES: Well, Your Honor, those kind of  
25 comments I think I feel compelled to respond to. So I'm

1 trying to move this along, as well. And as to that specific  
2 question, under the circumstances as I've outlined previously  
3 I'd respectfully have to instruct the witness not to answer.

4 MR. BICE: I need -- so I want to have the record  
5 clear. What is the basis for the instruction?

6 MR. RANDALL JONES: That it has to do with a  
7 discussion or meeting with parties other than those parties  
8 involved in this case.

9 THE COURT: So is that relevance or privilege or  
10 Macau Data Privacy Act?

11 MR. RANDALL JONES: It's relevance and it's  
12 privileged and it's -- and I think that based on what Mr. --  
13 well, depending on the particular question, I don't know if  
14 the last he was asking where his understanding came from. It  
15 could be the Macau Data Privacy Act depending on who that  
16 person was.

17 THE COURT: But you know when you give me an  
18 affidavit the witness is allowed to explain the basis of his  
19 statements that he makes in the affidavit, and we're allowed  
20 to test that understanding. That's part of the process we go  
21 through. And I understand the difficulties you're facing.  
22 And I understand the difficulties the witness is facing given  
23 his concerns about violation of Macau law. But once you place  
24 the affidavit in issue and put the witness on the stand you  
25 really lose many of those protections. So we'll deal with

1 that later. Because I've only got a limited amount of time  
2 with this witness so let's get him finished to the extent we  
3 can and then we'll move on.

4 MR. RANDALL JONES: Thank you, Your Honor.

5 BY MR. BICE:

6 Q What was the basis for your understanding as  
7 referenced in Paragraph Number 10, Mr. Fleming?

8 MR. RANDALL JONES: Again, objection, Your Honor. I  
9 would have to instruct the witness not to answer.

10 THE COURT: Okay. Next.

11 MR. BICE: On grounds of relevancy, Your Honor?

12 MR. RANDALL JONES: On grounds of relevancy, on  
13 grounds of privilege and the Macau Data Privacy Act.

14 MR. BICE: Your Honor, a witness cannot claim  
15 privilege to communications that he is now relaying to the  
16 Court in a declaration. He says, "I understand there was a  
17 discussion." And the only way -- he wasn't at the meetings,  
18 so the only way he understands there was a discussion is that  
19 somebody told him about this meeting, and highly likely that  
20 somebody who told him was a lawyer. And now they're trying to  
21 say, well, we want him to tell you the things we want you to  
22 hear, but don't subject him to cross-examination and the  
23 identity of the person that supposedly told him this  
24 information.

25 THE COURT: Okay.

1 MR. PEEK: Your Honor, may I --

2 THE COURT: Guys, what we're going to do is we're  
3 going to finish the examination of this witness.

4 And then, Mr. Bice, tomorrow when we come back  
5 you're going to either make a motion to strike the testimony  
6 of the witness or you're going to decide you'd rather have the  
7 testimony of the witness in the record. I'm then going to  
8 consider that issue, and then I'm going to make a decision.  
9 But I certainly understand your frustration. But given the  
10 number of instructions that have been given to the witness not  
11 answer questions it creates issues. And I understand what  
12 you're saying, but I've only got an hour left with this  
13 gentleman. I don't even have an hour left.

14 MR. PEEK: Your Honor, may I say something, because  
15 I want to make a closing argument here. Because this  
16 implicates Las Vegas Sands Corporation --

17 THE COURT: Your name's all over this paragraph in  
18 this declaration.

19 MR. PEEK: I agree that my name's all over this  
20 paragraph, Your Honor. My counsel for Las Vegas Sands is in  
21 the anteroom.

22 THE COURT: Okay. Bring him in.

23 MR. PEEK: I would like to consult with him about  
24 this issue. However, he is concerned that if he consults with  
25 me and he's still a witness, that somehow Mr. Bice will then

1 ask --

2 THE COURT: Yep. Mr. Raphaelson? Bless his heart  
3 for thinking of that.

4 MR. PEEK: Yeah.

5 THE COURT: No. I really do, I appreciate that.

6 MR. PEEK: And I don't want to open that door,  
7 because I'm not asking about his testimony --

8 THE COURT: Okay. Hold on a second.

9 MR. PEEK: -- I'm just asking him about a discrete  
10 issue.

11 THE COURT: Let me make a record. My understanding  
12 is that I released Mr. Raphaelson from testimony yesterday,  
13 but he is subject to recall for rebuttal purposes. Generally  
14 that means he is able to then speak with his counsel to the  
15 extent necessary. And it does not waive any privilege because  
16 he's already finished his testimony.

17 So, Mr. Peek, if you need to go speak to Mr.  
18 Raphaelson, he is not currently being a witness.

19 MR. PEEK: Thank you, Your Honor. I would like --

20 THE COURT: But he may be subject to recall, but  
21 your conversation with --

22 MR. PEEK: Correct.

23 THE COURT: -- him will not be subject to any  
24 waivers as a result of that.

25 MR. PEEK: Thank you, Your Honor. I would like to

1 have that opportunity.

2 THE COURT: I just need to finish Mr. Fleming. Do  
3 you guys need a break?

4 MR. PEEK: Yeah. I would like a break, Your Honor,  
5 to speak with him, because this does implicate Las Vegas sands  
6 Corp. So I'd like a break.

7 MR. RANDALL JONES: And, Mr. Fleming, we are mindful  
8 of your schedule still. We'll take a quick break.

9 THE WITNESS: Your Honor, I understand -- can I say  
10 something, please.

11 THE COURT: Yes, please.

12 THE WITNESS: I do understand the fact that we must  
13 get through this cross-examination. But as I said yesterday I  
14 really do -- I postponed a meeting that was scheduled this  
15 morning at 7:00 o'clock or just after 7:00. I really have to  
16 attend this other meeting at 8:30.

17 THE COURT: I understand, sir. And we're going to  
18 get you done in 40 minutes or less.

19 THE WITNESS: Thank you very much.

20 (Court recessed at 3:26 p.m., until 3:32 p.m.)

21 MR. PEEK: Your Honor, the issues that came up  
22 within the body of Exhibit 348, the affidavit of August 2012,  
23 implicated Las Vegas Sands Corporation. So I wanted to  
24 protect the interests of Las Vegas Sands Corporation. And I  
25 have -- after reviewing it and giving more thought to the



1 objections that I had made in joining Mr. Jones, I am  
2 withdrawing the objections and joining in any instruction for  
3 him not to testify to that subject matter, because I'm mindful  
4 of the Court's concern about offering an affidavit in support  
5 of a motion and then not allowing cross-examination on that  
6 affidavit. So I am withdrawing any objections on behalf of  
7 Las Vegas Sands. I'll let Mr. Jones address that issue with  
8 respect to Sands China.

9 THE COURT: Okay. Mr. Jones.

10 MR. RANDALL JONES: Yes, Your Honor. With  
11 respect --

12 And, Mr. Bice, if you'd confirm this.

13 I believe the two areas where I had issued those  
14 instructions, the two pages were 9 and 10 thus far.

15 Is that correct?

16 MR. BICE: I don't recall. I'm not going to commit  
17 that was it.

18 MR. RANDALL JONES: That is my recollection. And if  
19 there are any other ones, I certainly want you to let me know,  
20 because in light of Las Vegas Sands' position the only  
21 objection that I would have -- remaining objection I would  
22 have to inquiry into those paragraphs and any other paragraph  
23 that Mr. Bice believes would relate to an instruction not to  
24 answer, I don't think are other than the names of Macanese  
25 lawyers. And I would even withdraw the objection to this

1 extent, because I believe that Mr. Fleming -- and I'd  
2 forgotten this -- yesterday said there were certain Macanese  
3 officials or OPDP lawyers or officials whose names aren't  
4 public, and they are allowed to be publicized. And so only as  
5 to Macanese lawyers that would be subject to Macau data  
6 privacy law, I would -- that would be my only objection.  
7 Otherwise I would withdraw my objections to paragraphs --  
8 inquiry into paragraphs 9 and 10.

9 THE COURT: Okay. So let's go back 10 minutes and  
10 start over, Mr. Bice.

11 MR. BICE: I think it's more than 10 minutes, but  
12 I'll do my best.

13 BY MR. BICE:

14 Q Mr. Fleming, going back to Paragraph Number 9 --

15 A All right.

16 Q -- it says, "Beginning on May 13, 2011,  
17 representatives of Venetian Macau Limited --"

18 Do you see that?

19 A I do.

20 Q Who were the representatives of Venetian Macau  
21 Limited referenced in Paragraph Number 9?

22 A I would have been involved most definitely.

23 Q Who else?

24 A And one of my subordinate lawyers would have been  
25 involved.

1 Q And who is that?

2 MR. RANDALL JONES: Mr. Fleming --

3 Your Honor, to the extent that that would violate  
4 Macanese law, Mr. Fleming, could I make this offer -- request  
5 of you to as to any Macanese lawyers that were involved in any  
6 of these paragraphs if you could seek consent as soon as  
7 possibly and, if so, if you could provide that to us so we  
8 could provide it to the Court if that -- I don't know if  
9 that's acceptable to the Court, but that would be my offer to  
10 Counsel and the Court.

11 MR. BICE: I would object to that. This declaration  
12 is from 2012, Your Honor. If this was a concern -- first of  
13 all, the MPDPA, this is the first time we've now been told  
14 that it somehow applies to the identity of people for oral  
15 testimony. Under that scenario, Your Honor, they can't talk  
16 about these people on the telephone and no one on the  
17 telephone can know the identity of people. Because that's all  
18 we're doing right here via video conferencing is the same  
19 principle. And that obviously isn't how this law applies.  
20 It's simply being used right in the courtroom as a blocking  
21 statute.

22 THE COURT: Okay. I understand Mr. Jones is making  
23 a direction and an instruction to the witness. If the witness  
24 can provide that information within 10 days, I will consider  
25 it. But I still think it is inappropriate to take this

1 position, and we'll discuss that later after we finish this  
2 witness, because I promised him he will be done in 20-some  
3 minutes.

4 BY MR. BICE:

5 Q You said you were one of the people who had an  
6 intent -- you had meetings or a number of communications and  
7 meetings with the Office of Personal Data Protection; correct?

8 A Correct.

9 Q And you had those regarding subpoenas issued by the  
10 U.S. Government authorities; correct?

11 A It would have been in relation to those.

12 Q As well as -- or and/or in connection with the  
13 Jacobs litigation; correct?

14 A I think it was more to do with the SEC issues.

15 Q Okay. Was there anyone else in attendance at those  
16 meetings with you concerning the SEC issues other than  
17 yourself and the lawyer for whom you decline to identify?

18 A Not that I can recall.

19 Q Was there anyone from Las Vegas Sands present?

20 A Not that I can recall.

21 Q Did you ever have any conference calls with the  
22 Office of Data Protection involving members of Las Vegas Sands  
23 Corporation?

24 A No.

25 Q If you would go to Paragraph Number 11 -- or, I'm

1   sorry, 10.

2           A     I've got it.

3           Q     Do you know who the representatives of Las Vegas

4   Sands Corporation that were at the meeting you've identified?

5           A     I can't recall.

6           Q     Do you know who was there on behalf of SCL?

7           A     It would have been one of -- it would have been my

8   subordinate lawyer.

9           Q     Okay. The same person you're declining to identify?

10          A     Correct.

11          Q     How about on behalf of VML?

12          A     Same person.

13          Q     All right. Do you have any records that would

14   reflect who was the Las Vegas Sands Corporation representative

15   at this meeting?

16          A     There may be. I don't have them available to me at

17   this juncture, and I can't recall.

18          Q     Would have you discussed this meeting with anyone in

19   an email?

20          A     I beg your pardon?

21          Q     I said would have you discussed this meeting with

22   anyone via email?

23          A     Not to my recollection. Possible, but I -- not to

24   my recollection.

25          Q     All right. And then you go on to say, "Although I

1 did not attend the meeting, I understand there was a  
2 discussion." Do you see that?

3 A Yep.

4 MR. RANDALL JONES: I'm sorry. Could you repeat the  
5 question, Counsel? I'm sorry. I just --

6 MR. BICE: It says, "Although I did not intend the  
7 meeting, there was a -- I understand there was a discussion."  
8 I asked him if he saw that.

9 MR. RANDALL JONES: Thank you.

10 BY MR. BICE:

11 Q How did you get that -- how did you get the  
12 understanding?

13 A I see that. Yeah, I see the third line, yes.

14 Q How did you get the understanding?

15 A As a result of discussions I would have had with my  
16 subordinate lawyer.

17 Q Anyone else he would have had those discussions  
18 with?

19 A Probably not.

20 Q If you'd go to Paragraph Number 11, please.

21 A Yes.

22 Q It says, "On May 28, 2012, I met with a  
23 representative of the OPDP --" do you see that?

24 A I do.

25 Q Who was the person?

1           A     That was a direct -- as I recall, that was the  
2 deputy director of OPDP and one of his associates.  
3           Q     And who was his associate, do you know?  
4           A     I can't recall the name.  
5           Q     Do you recall the deputy director's name?  
6           A     No, I -- I don't want to mislead the Court, but it's  
7 a matter of public record. You just simply have to look it  
8 up, Mr. Bice. I think you can do that.  
9           Q     So there's only one deputy director?  
10          A     As far as I'm aware.  
11          Q     Okay. "-- to discuss --" and you go on to say, "--  
12 to discuss past data transfers." Do you see that?  
13          A     Yes.  
14          Q     And did you disclose at this May 28, 2012, meeting  
15 the past data transfers that Sands China had made into the  
16 United States?  
17          A     I don't know whether I actually disclosed it at that  
18 meeting, but it certainly would have been a topic of  
19 discussion at that meeting.  
20          Q     If you would go down to Paragraph Number 13.  
21          A     Yes.  
22          Q     It says, "I am informed and believe --" do you see  
23 that?  
24          A     Yep.  
25          Q     What's the -- how were you informed?

1           A     I can't recall. I really can't recall.  
2           Q     Is it likely that someone told you?  
3           A     I'm sorry. I didn't understand what you said.  
4           Q     Sure. Is it likely that someone told you that?  
5                 MR. RANDALL JONES: Object to the form of the  
6 question.  
7                 THE COURT: Overruled.  
8                 THE WITNESS: It's likely that someone told me that.  
9 I wasn't present at any court appearances in Las Vegas, and I  
10 certainly wasn't privy to any discussions that took place  
11 between the Court and any representatives of SCL.  
12 BY MR. BICE:  
13           Q     All right. Sir, yesterday you had indicated that  
14 SCL had received a fine from the Office of Data Protection; is  
15 that right?  
16           A     Received two fines.  
17           Q     Received two fines? And that -- and those fines  
18 were imposed when?  
19           A     I can't recall the date, but it was I think early  
20 2013, if I remember rightly -- if I remember correctly.  
21           Q     Okay. And that was for transferring the data before  
22 the litigation had commenced with Mr. Jacobs?  
23           A     It was in relation to the transferring of the data  
24 that was made public, and I'm reading here -- I'm looking at  
25 the actual affidavit, by Pro Publica.



1 Q Okay. And that was the data that was transferred  
2 about Mr. Jacobs; correct?

3 A I believe that included data that concerned Mr.  
4 Jacobs. There was -- I'm pretty there might have -- there was  
5 other data there, as well.

6 Q Okay. And what was the total amount of the fine?

7 A Oh, I can't remember. I think it was -- and please  
8 don't hold me to this, but it was in the order of about 30,000  
9 or 40,000 MOP, which is Macau Patacas, which is roughly the  
10 equivalent in Hong Kong dollars. So it would have been thirty  
11 or \$40,000 in round terms Hong Kong for each of the two  
12 breaches.

13 Q Was that about \$2500 in U.S. dollars?

14 A I -- you do the calculation, Mr. Bice. It's in that  
15 order.

16 Q Okay. But there were two, and they were identical;  
17 correct?

18 A I'm sorry?

19 Q You said there were two fines. And were they of the  
20 identical amount?

21 A Yes, same or identical.

22 Q Okay. And there have been no other fines; right?

23 A There have been no other fines since  
24 [unintelligible].

25 Q All right. And yesterday you had indicated -- I

1 think you testified to the Court that each offense could carry  
2 a fine of as much as 10,000.

3 A Each -- sorry. You're talking U.S. dollars?

4 Q No. I'm talking about whatever figure you were  
5 using yesterday.

6 A Oh, no, no, no. I didn't say 10,000 yesterday. I  
7 said a maximum I believed of 80,000 MOP or \$80,000 Hong Kong,  
8 in that order.

9 Q Okay. And do you know what the conversion rate is?

10 A Usually hangs around about 7.8, something like that,  
11 something in that order. There's a small band.

12 Q And when I said the conversion rate I meant the  
13 conversion rate to U.S. dollars. You understood that;  
14 correct?

15 A It's roughly about 7.7. There's a small band that  
16 the two currencies, you know, work within.

17 Q Now, yesterday you said that you had made the  
18 decision to redact the documents based upon your fiduciary  
19 duties to the company; correct?

20 A Not just my fiduciary duty, my professional duty as  
21 general counsel --

22 Q All right.

23 A -- for the company.

24 Q Okay. And that was to follow the wishes of the  
25 Office of Data Protection; correct?

1           A     To abide by the law of Macau, Mr. Bice.

2           Q     And you'd testified -- we don't need to go over this  
3 in great detail, but you testified many times yesterday that  
4 you made that determination in good faith; correct?

5           A     I made it in utmost good faith, mindful of my  
6 obligation wherever possible to meet the expectations of Her  
7 Honor and the Court that we're before today.

8           Q     Well, what was your understanding -- since you've  
9 raised that, what was the understanding that you had of the  
10 consequences of not complying with the Court's order?

11          A     A, the civil penalties in terms of fines.

12          Q     Okay.

13          A     B, the fact that I would have been -- had I not done  
14 what I've done, and I maintain that as far as I'm concerned it  
15 was the correct decision, that I was exposing officers of the  
16 company to possible prosecution, the penalties for which could  
17 be as much as two years imprisonment.

18                I was mindful of the fact that there had been firm  
19 statements made by the Macau Government through the Secretary  
20 of Finance that there would be no tolerance, there'd be zero  
21 tolerance to any transgressions when it came to breaches of  
22 the data privacy legislation, and I was mindful of the fact of  
23 a very strict approach being taken by the Office of Data  
24 Privacy.

25          Q     I think you may have misunderstood my question, but

1 I'll -- let me back up and make sure I understood your answer  
2 on that.

3 Who was it -- on what did you base your  
4 understanding that there could be criminal penalties  
5 associated with this? Was that based on discussions you'd had  
6 with lawyers?

7 A Oh, yes. I mean, it was my reading of the law and  
8 also my discussions with Macau lawyers.

9 Q Understood. And again you would decline to give us  
10 the names of those lawyers?

11 A I am.

12 Q My question before was, and I need to -- let me  
13 rephrase it just so it's clear, what was your understanding of  
14 the consequences, the potential consequences for the company  
15 of not complying with the Court's order.

16 MR. RANDALL JONES: Mr. Fleming, before you say  
17 anything I'm going to instruct you --

18 Your Honor, I would object. That's clearly  
19 attorney-client privilege unless he can lay a foundation that  
20 he got any understanding of the Nevada law from any source  
21 outside of discussions with counsel. That is clearly  
22 attorney-client privilege.

23 THE COURT: So are you directing him not to answer  
24 unless it's something he independently discovered?

25 MR. RANDALL JONES: Well, first of all, Your Honor,

1 I'm interposing an objection based on the attorney-client  
2 privilege to that limited question --  
3 THE COURT: Right.  
4 MR. RANDALL JONES: -- and asking you to rule on  
5 that. And I would hope that you would agree with me that that  
6 limited question is purely attorney-client privilege.  
7 THE COURT: But you're recognizing a limited  
8 exception if it is something he independently investigated?  
9 MR. RANDALL JONES: Yes, Your Honor, I am.  
10 THE COURT: All right.  
11 MR. RANDALL JONES: Absolutely.  
12 MR. BICE: And I --  
13 THE COURT: Sir, to the extent that it is something  
14 counsel told you related to the potential penalties that I  
15 might impose as a result of noncompliance with my order Mr.  
16 Jones is instructing you not to answer, and I'm sustaining his  
17 objection. To the extent of any other discussions or  
18 conclusions that you reached they're fair game.  
19 MR. BICE: Your Honor --  
20 THE COURT: Yes.  
21 MR. BICE: -- I need to be heard on this, because  
22 there has been a --  
23 MR. PEEK: Your Honor, I want to know if Mr. Fleming  
24 heard, first of all.  
25 Mr. Fleming, did you hear the Court's ruling? Mr.

1 Fleming, did you hear the Court's ruling?  
2 MR. BICE: First of all, I'd like to be heard, and  
3 then I --  
4 THE COURT: Well, hold on a second. Let's see if he  
5 heard me.  
6 MR. BICE: Well --  
7 MR. PEEK: The reason I say that is he didn't look  
8 like he was.  
9 Mr. Fleming, could you hear the Court's ruling?  
10 THE WITNESS: Look, it's not clear. Look, I've got  
11 to tell you I'm not hearing you very well.  
12 THE COURT: Is it just me you can't hear, sir, or is  
13 it everybody else?  
14 THE WITNESS: Actually, Judge, you're a little  
15 clearer than most.  
16 THE COURT: All right. Mr. Bice, you wanted to say  
17 something?  
18 MR. BICE: Your Honor, they have put this witness up  
19 and they have said that this witness made the decision. This  
20 witness has said that he did this in good faith. And when you  
21 testify that you made this decision in good faith because of  
22 these consequences in Macau you have put at issue your good  
23 faith. So we are entitled to know what it is he was told  
24 about the consequences for not following the Court's order,  
25 because were those consequences downplayed for him and that's

1 why he would then make the decision? We are entitled to test  
2 that. When a witness takes the stand and says, I made this  
3 decision, I did it in good faith, you have put at issue the  
4 basis upon which you made the decision. And that is what the  
5 caselaw says, and no amount of standing and saying, well, it's  
6 clearly privileged, changes the fact that it clearly was  
7 waived by the conduct at issue. And there is caselaw directly  
8 on this issue. I can just quote it. "By putting lawyers on  
9 the witness stand in order to demonstrate that the prior  
10 lawsuits were pursued on the basis of competent legal advice  
11 and were therefore brought in good faith, defendants waived  
12 the attorney-client privilege as to the communications  
13 relating to the issue of good faith." And that's exactly what  
14 they did.

15 THE COURT: All right. I disagree that this is the  
16 same or analogous situation.

17 To the extent that counsel provided you with  
18 communications or an opinion related to what I would do  
19 related to noncompliance with my order Mr. Jones is  
20 instructing you not to answer, and I'm sustaining his  
21 objection. To the extent you made other conclusions related  
22 to what I might do based upon either reading my order or other  
23 sources of information than your counsel, you are free to  
24 answer.

25 Mr. Bice.

1 BY MR. BICE:

2 Q All right. Mr. Fleming, I'll phrase it this way.  
3 How did you decide that the wishes of the Office of Data  
4 Protection took precedent over the Court's ruling?

5 MR. RANDALL JONES: And, Your Honor, my objection  
6 would only be to the extent that that would invade the  
7 attorney-client privilege I would object. Otherwise I have no  
8 objection to that question.

9 THE COURT: Sir, to the extent it doesn't involve  
10 discussions with counsel here in the litigation you can  
11 answer. If it relates to your own investigations and  
12 conclusions, that's a different issue and you can.

13 Sir, you can go ahead and answer that question to  
14 the extent it does not involve communications from litigation  
15 counsel.

16 THE WITNESS: Look, Judge, it's very difficult --  
17 I'm getting a little bit of this, and it's not clear. But I  
18 think what -- let me try to answer it this way. The bottom  
19 line is that I was not prepared at the end of the day to  
20 breach or allow a situation to occur which would result in a  
21 breach of Macau law. That was it. Fundamentally that was it.

22 BY MR. BICE:

23 Q But you were willing to allow there to be a breach  
24 of a Court order; correct?

25 MR. RANDALL JONES: Well, Your Honor, I'm going to



1 -- that's argumentative.

2 THE COURT: Overruled. You can answer, sir.

3 THE WITNESS: It was a very difficult decision, Your  
4 Honor. A very difficult decision. I have no desire to act  
5 contrary to a decision that you had made. No desire  
6 whatsoever. So I had to look very seriously at the whole  
7 issue. I tried in my own way to try and figure out how I  
8 could comply with your request and your direction and at the  
9 same time not breach Macau law. At the end of the day I came  
10 to the conclusion that I had -- I could not under any  
11 circumstances breach Macau law. I am a paramount, and  
12 therefore with great reluctance I had -- I took the course  
13 that I took.

14 BY MR. BICE:

15 Q Mr. Fleming, would you agree that you had -- that in  
16 doing so you also made the determine [sic] that not under any  
17 circumstances would you comply with the Court's order?

18 MR. RANDALL JONES: Well, Your Honor, object to the  
19 form of the question.

20 MR. PEEK: Argumentative, Your Honor.

21 THE COURT: Overruled. You can answer, sir. You  
22 can answer.

23 THE WITNESS: Oh. Sorry. I think it was not a  
24 question of defiantly saying, I'm not going to comply with  
25 your order, Your Honor. It was a question of weighing it up

1 and saying I would like to comply wherever possible, but I  
2 found myself in a position where I could not comply, and that  
3 was it.

4 BY MR. BICE:

5 Q You had indicated yesterday, sir, that you had hired  
6 Macau lawyers to conduct the review.

7 A Yes.

8 Q And when did you begin hiring them?

9 A It was very difficult. It happened I think just  
10 before Christmas, if I remember correctly, probably about a  
11 week before Christmas, and it was difficult to find any -- and  
12 I've got to be careful what I say here, but difficult to find  
13 any competent Macau lawyers who would be available during the  
14 Christmas period. Now, I remember -- I can't remember the  
15 date, forgive me, Your Honor, but about that time you had made  
16 a decision that production of those documents had to be made  
17 available by the end of the first week or maybe the second  
18 week in January. That gave us an extremely short time to  
19 accommodate your order. So therefore I looked for lawyers, we  
20 managed to get a firm that initially agreed and then said, no,  
21 they couldn't. And finally we got a firm that stepped into  
22 the breach, and that firm carried out the work which was  
23 tremendously large, a huge amount of work, in literally I  
24 think two weeks from memory.

25 Q And how many people did you have reviewing the

1 documents?

2 A I can't recall. There were a number of them.

3 Q Was it more than 10?

4 A There would be something in that order, I would  
5 imagine. You've got to understand, Mr. Bice, that everything  
6 closes down in Macau at Christmas. Everything. The lawyers  
7 take off to Portugal and other parts.

8 Q I understand. Mr. Fleming, do you know when -- do  
9 you know when Mr. Jacobs had served his discovery requests  
10 upon Sands China?

11 A I can't remember.

12 Q Did you know that the discovery requests had been  
13 served upon Sands China's counsel on December 23rd of 2011, a  
14 year before?

15 A I can't recall the date. But I knew that it had  
16 been served.

17 Q Did you -- what efforts were made prior to the  
18 Court's order -- or the Court's directing compliance by  
19 December the 4th -- strike that. Let me rephrase it.  
20 You said that you got lawyers hired right around  
21 Christmas of December 2012; right?

22 A Correct.

23 Q Okay. And so then you had about two weeks to have  
24 all these documents reviewed or to have documents reviewed;  
25 correct?

1           A     Something on that order.

2           Q     Okay. And prior to the hiring of these lawyers  
3 before December of -- before Christmas of 2012 had you hired  
4 any other Macau lawyers to comply with Mr. Jacobs's discovery  
5 requests?

6           A     Not at that time.

7           Q     So that was the first attempt to comply with the  
8 discovery request, was around Christmas of 2012?

9           MR. RANDALL JONES: I'll object to --

10          THE WITNESS: I believe that was correct.

11          MR. RANDALL JONES: Object, Your Honor.

12          THE COURT: Overruled.

13          MR. RANDALL JONES: I know it's a late objection,  
14 but just to the extent of his knowledge.

15          THE COURT: Overruled.

16 BY MR. BICE:

17          Q     And you understood that they redacted all of the  
18 personal names from any of the documents; correct?

19          A     Who redacted?

20          Q     Sands China redacted them.

21          A     What documents are you talking about, Mr. Bice?

22          Q     The documents that you were ordered to produce in  
23 this case. Sands China redacted them; correct?

24          A     Yes. Actually the lawyers -- the Macau lawyers that  
25 we engaged, they redacted them --

1 Q Okay.

2 A -- under our -- on my instructions.

3 Q Understood. And you understood that they were

4 redacting all of the names from the documents; correct?

5 A I understood them and instructed them to redact

6 anything that could be construed as personal data.

7 Q And that would include names; fair?

8 A That would include names.

9 Q Okay. So did you -- did you know that there were a

10 number of discovery requests that concerned certain

11 individuals?

12 A I think I did. I think I did.

13 Q Okay. Such as Charles Hung. You know that name?

14 A Rings a bell.

15 Q Cheung Chi Tai? Do you recognize that name?

16 MR. RANDALL JONES: Your Honor, I'm going to object.

17 THE WITNESS: Oh, everybody in Hong Kong recognizes

18 that name.

19 BY MR. BICE:

20 Q And so when the documents were produced --

21 THE COURT: Is there an objection?

22 MR. RANDALL JONES: Your Honor, I'm going to object.

23 I don't -- maybe Mr. Bice can correct me if I'm wrong. I

24 don't believe those were on a custodian list.

25 MR. PEEK: No, no. I think those were requests --

1 the subject matter requests.

2 MR. RANDALL JONES: Maybe I misunderstood his  
3 question, that he was talking about the request to produce, as  
4 opposed to the custodians. If so, then I stand corrected.

5 MR. BICE: This is requests to produce.

6 THE COURT: Okay. Keep going.

7 BY MR. BICE:

8 Q Okay. And so you understood at that direction that  
9 you gave that all of the names of any individuals that we had  
10 requested documents about, that all their names would be  
11 redacted from them; correct?

12 A I wasn't looking at it from that point of view at  
13 all. I was only concerned with the review of the documents by  
14 external Macau lawyers in order to insure that there was total  
15 compliance with the laws of Macau.

16 Q But you understood, sir, that the effect of what you  
17 were doing would delete all of the names -- or redact all of  
18 the names that you had been ordered to produce documents  
19 concerning; correct?

20 A I don't know that turned my mind specifically to  
21 that, but certainly that would have been the result.

22 Q All right. So you understand, then, that as a  
23 result of your instruction if there's a document that  
24 references Cheung Chi Tai in Macau, it can't be searched  
25 because the name Cheung Chi Tai will not appear in the

1 documents? You understand that?

2 MR. PEEK: Objection, Your Honor. This would go  
3 beyond the -- speculation on the part of the witness as to how  
4 they were searching. We had the FTI guy for that.

5 THE COURT: Overruled.

6 MR. BICE: I'm talking about as they were produced.

7 THE COURT: Okay. You're getting very close to  
8 running out of time with this witness. You have about 15  
9 minutes left.

10 MR. RANDALL JONES: Your Honor, I will have a couple  
11 of questions, but I'd like at least --

12 THE COURT: That's why I'm giving him 15 minutes.

13 MR. RANDALL JONES: Thank you.

14 BY MR. BICE:

15 Q Did you understand my question, Mr. Fleming?

16 A To be honest, Mr. Bice, I did not understand your  
17 question.

18 Q All right. I'll repave it. You understood that as  
19 a result of your directions the documents -- the names would  
20 be taken out of all of the documents; right?

21 A I understood -- now, listen. Let me make it very  
22 clear, Mr. Bice. I understood that the lawyers would act  
23 according to my instructions, and that was very clear redact  
24 anything that would amount to a violation of Macau law if that  
25 information was produced.

1 Q And we've already established that that means  
2 redacting all the names; right?

3 A Of course. That's personal data.

4 Q Right. And you understood that if the Court had  
5 ordered the production of documents concerning certain  
6 individuals, then those documents would never reveal their  
7 names; right?

8 A Not if it offended Macau law, that's true.

9 Q Okay. And that was again a decision that you made;  
10 correct?

11 A I didn't make it. Now, Mr. Bice, be careful here.  
12 I did not make my decision deliberately to act in -- to not  
13 act in accord with the order of the Court. I made my decision  
14 simply to insure compliance with the laws of Macau.

15 Q Sir, as part of your job duties do you travel?

16 A Not very often.

17 Q Okay. You've indicated that you're in Hong Kong  
18 now; correct?

19 A My home is in Hong Kong --

20 Q Oh. I --

21 A -- and I'm in Hong Kong.

22 Q I understand. So do you work out of Hong Kong?

23 A No. I work out of Macau.

24 Q Okay. So do you travel every day?

25 A Nope. I am in residence in Macau.



1 Q Okay. So how often are you in Hong Kong, then, on a  
2 monthly basis?

3 A Not often.

4 Q Okay. And you indicated that you were going on  
5 vacation, you were going to be gone a month; right?

6 A I can't hear you. You're -- I couldn't hear what  
7 you said.

8 Q I apologize. You didn't get -- you were going to be  
9 going on vacation shortly and you're going to be gone a month.

10 A I'll be away tomorrow, and I'll be away for a month.

11 Q Good for you. With respect to that do you have a  
12 laptop computer that you travel with?

13 A I have an iPad.

14 Q Okay. Do you get your emails on your iPad?

15 A I do.

16 Q Do you get emails from people Macau?

17 A If it's necessary. But I don't get many these days.  
18 My functional role is diminished greatly, and I in fact part  
19 company with the company at the end of March.

20 Q Okay. But prior to your announcement that you were  
21 going to retire from the company would you get a lot more  
22 email traffic?

23 A Oh, of course. As general counsel I got a lot of  
24 emails.

25 Q You get emails about disputes with customers;

1 correct?

2 A About what?

3 Q About disputes with customers, anything like that.

4 A I got emails about anything or most things that

5 involved legal input.

6 Q All right. And as part of getting those emails

7 those emails would contain the names of employees or customers

8 or vendors; correct?

9 A Yes, they would.

10 Q And it still goes on to this day, doesn't it?

11 A Sorry? I beg your pardon.

12 Q I said and you still get those emails to this day;

13 correct?

14 A No, not now.

15 Q Not now because of your diminished role at the

16 company?

17 A I'm actually almost on gardening leave.

18 THE COURT: Gardening leave?

19 MR. BICE: Gardening leave, he said, Your Honor.

20 THE COURT: Does that mean retirement, sir?

21 MR. BICE: That means -- yes.

22 BY MR. BICE:

23 Q You're leaving the company I think you had indicated

24 at the end of April.

25 A Nope. I leave the company -- functionally I leave

1 the company after the next company's board meeting in March of  
2 this year, and that'll be my last functional role with the  
3 company.

4 Q All right. When you were more active and receiving  
5 more email you would leave Macau with your iPad; is that fair?

6 A Oh, I'll hand the iPad back to the company.

7 Q Okay. My apologies, sir. I'm not being clear.  
8 When you were working more active with the company and you  
9 would be travelling while you were active on behalf of the  
10 company would you leave Macau with your iPad?

11 A Yeah.

12 Q You'd take it with you; correct?

13 A Yep.

14 Q You'd have data on it; correct?

15 A It had a certain amount of data on it, yep.

16 Q Okay. And you would take it and you would use it  
17 while you were out of Macau?

18 A Yep.

19 MR. BICE: Your Honor, may I have just a break,  
20 short one?

21 THE COURT: You can.

22 MR. BICE: Thanks.

23 THE COURT: But we've only go a few more minutes.

24 MR. BICE: I understand that.

25 (Pause in the proceedings)

1 MR. BICE: I'll pass the witness, Your Honor.

2 THE COURT: Mr. Jones, would you like to inquire?

3 MR. RANDALL JONES: Your Honor, in consultation with  
4 co-counsel --

5 REDIRECT EXAMINATION

6 BY MR. RANDALL JONES:

7 Q Mr. Fleming, I think you'd mentioned who your  
8 associate counsel was yesterday, her name, in connection with  
9 work you do, and since it had been mentioned, Mr. Peek pointed  
10 out that since the name had been mentioned if it was all right  
11 if you would otherwise go ahead and mention that again to the  
12 Court so we don't have to go seek the consent. I don't know  
13 if that's something you can do. But if you can -- if you had  
14 mentioned it before, if you could provide that information, I  
15 would simply ask you if you can provide it, that name of that  
16 attorney that you referred to, to do that, and that will I  
17 guess address one issue.

18 A I'll tell you what I can do. What I am prepared to  
19 do is seek the consent of that individual, and, if I can, I'll  
20 relay it back to the Court through counsel.

21 Q All right. Thank you, Mr. Fleming. I just have a  
22 couple of quick questions. I know you want to get going. But  
23 Mr. Bice asked you at the end of his questioning about whether  
24 or not you had received emails when you were in Hong Kong or  
25 other places in your capacity as general counsel that

1           A     In FTI's definition of project manager a project  
2 manager is responsible for the billing, they're responsible  
3 for insuring that bills are delivered on time, that the  
4 contents of the bills are correct, and that the bills meet the  
5 requirements of the engagement for who they're directed to and  
6 certain charges and how they're applied.

7           Q     Anything else?

8           A     The project manager also does some reporting of  
9 internal activity, such as tracking how much data has been  
10 collected, how many custodians have been collected. And they  
11 do that as part of their work in supporting the billing  
12 process.

13          Q     Does the project manager have access to the actual  
14 data that's being collected?

15          A     The project manager has access to data that has been  
16 processed and is hosted online in our review tool. They do  
17 not have direct access to anything other than that.

18          Q     Explain that. What does that mean to a lay person?

19          A     Sure. So it's FTI's normal practice that when we do  
20 collections the forensic examiner who performs the collection  
21 makes a copy, a forensically accurate copy of the data being  
22 collected, a backup copy of that data. That is then brought  
23 into one of our forensic laboratories where the data is  
24 extracted and documents that are non-business documents that  
25 are known to be irrelevant by definition -- that's the

1 National Standards list of known files -- are removed. And  
2 then the data that remains is staged for processing. The  
3 processing is done. That's where deduplication occurs within  
4 custodians, it's where system files are identified and  
5 removed, and then documents that survive that process go into  
6 the culling and searching environment. The project manager  
7 has access at that point to those documents, and then the  
8 documents promoted to review.

9 Q So Lin Chueh had access to the set of documents that  
10 are prepared for culling and searching for both the VML  
11 project and the Las Vegas Sands project?

12 A She only had access to the Las Vegas Sands data in  
13 the United States. She didn't have access to data in Macau.

14 Q Yet she was the project manager?

15 A That's correct.

16 Q Okay. Are you saying that she didn't have access  
17 from the United States, or she didn't have access at all?

18 A Had she physically travelled to Macau and been in  
19 our technology office in Macau, she would have had access to  
20 the metadata that we had access to for the documents in Macau.  
21 She would never have had access to the documents themselves.

22 Q Okay. Well, since you brought it up, let me clarify  
23 something about metadata. Metadata contains -- I think you  
24 said it -- personal data, doesn't it?

25 A It can.

1 Q Like what?

2 A For Macau it includes email addresses, the subject  
3 line of emails may contain personal information, the path on  
4 which the documents are stored, the name of the folders in  
5 which they're stored could theoretically contain personal  
6 information.

7 Q Personal information is like the names of the  
8 senders?

9 A The names of the individuals or names of the  
10 individuals, yeah.

11 Q So the names of the individuals that are sending the  
12 email, the names of the individuals that are receiving the  
13 emails are all contained in the metadata?

14 A If the email addresses have complete descriptions of  
15 names, the entire name would be available. Otherwise it would  
16 only be that portion of the name which is reflected in an  
17 email address.

18 Q Okay. And so then is it correct for us to  
19 understand that this personal data that's contained or may be  
20 contained in the areas that you've just described were  
21 available to your project manager; right?

22 A It would have been available to her if she had  
23 physically travelled to Macau.

24 Q But even for the people in your company that  
25 travelled to Macau, both the project manager and the people

1 working on the project had access to that personal data --

2 MR. RANDALL JONES: Objection. Misstates his  
3 testimony.

4 THE COURT: Overruled.

5 THE WITNESS: So the project manager did not travel  
6 to Macau. She was not present in Macau. Those employees who  
7 were in Macau did have access to the metadata, because we were  
8 authorized to access it for the purpose of running our process  
9 and our searches.

10 Q Okay.

11 THE COURT: Would this be a convenient time to take  
12 our morning break, since you've paused?

13 MR. PISANELLI: That'd be fine.

14 THE COURT: Okay.

15 (Court recessed at 10:29 a.m., until 10:41 a.m.)

16 THE COURT: Mr. Pisanelli, sorry, we've been  
17 kibitzing. It's your turn now.

18 MR. PISANELLI: Thanks.

19 BY MR. PISANELLI:

20 Q Mr. Ray, you testified this morning that in setting  
21 up the protocol for VML you had to do what you could to make  
22 sure that you were complying with Macau, words to that effect;  
23 right?

24 A Yes. That's correct.

25 Q Yet, you also told us that you've never read the



1 Macau law; right?

2 A That's correct.

3 Q And you've never had an engagement where you had to  
4 deal with the Macau law?

5 MR. RANDALL JONES: Objection. Misstates the  
6 testimony.

7 THE COURT: Overruled.

8 THE WITNESS: So I personally, prior to this  
9 engagement had not had experience with the Macau law.

10 BY MR. PISANELLI:

11 Q And that's all I'm asking. Yet, you knew some of  
12 the restrictions if not all of them. For instance, you told  
13 us that work must be done in Macau; right?

14 A Yes.

15 Q How did you develop that understanding?

16 A FTI has done multiple engagements in Macau prior to  
17 this. And part of the team that was assembled for the work in  
18 Macau is from our Asia operation which does that work.

19 Q Okay. In other words, you had other experts in FTI  
20 help mold the protocol so as to conform with what FTI believed  
21 to be the restrictions under Macau law?

22 A I don't know that that's precisely the way I would  
23 put that.

24 Q How would you put it?

25 A So FTI has internal protocols and procedures about

1 engagements that we have to make sure we don't violate in the  
2 setting up of the engagement. I believe I mentioned earlier  
3 that had -- someone contacted us to engage us to go to Macau  
4 and not comply with the Data Privacy Law, we would not have  
5 taken the engagement. That's the kind of internal control we  
6 have. In addition to that, the specific scope of work and the  
7 way the work is executed is a work plan that is developed in  
8 consultation with counsel. And counsel provides instructions  
9 on what they believe are the requirements that we have to meet  
10 and the parameters within which we operate.

11 Q And which counsel were you dealing with on behalf of  
12 VML?

13 A Most of our communication was with Mayer Brown.

14 Q Most suggests that there were some others?

15 A So I have to be clear, Mayer Brown has two separate  
16 operations. One is in Asia, Mayer Brown JSM, and one is in  
17 the United States. We dealt with people from both of those  
18 groups. And we had a very limited amount of discussion -- or  
19 I should say, documents that were seen by Wyn Hughes at  
20 Venetian Macau.

21 MR. RANDALL JONES: Sorry. I didn't hear the last  
22 part of your answer, Mr. Ray.

23 THE WITNESS: I said there was a very limited amount  
24 of some documents that were seen by Wyn Hughes at Venetian  
25 Macau.

1 MR. RANDALL JONES: Oh. Thank you.  
2 BY MR. PISANELLI:  
3 Q And so ultimately, whose responsibility was it to  
4 determine what restrictions would be a part of the VML  
5 protocol in order to comply with Macau law?  
6 MR. RANDALL JONES: Objection. Lack of foundation.  
7 Also, vague and ambiguous as to who -- the who is that you're  
8 referring to, FTI or some other party.  
9 THE COURT: Overruled.  
10 You can answer if you can.  
11 THE WITNESS: So it was a combination of  
12 instructions received from counsel --  
13 BY MR. PISANELLI:  
14 Q Mayer Brown?  
15 A And from FTI's previous experience in Macau.  
16 Q Counsel being Mayer Brown?  
17 A Primarily Mayer Brown.  
18 Q Or other counsel, Wyn Hughes?  
19 A Again, I don't recall that we received any specific  
20 instruction from Wyn Hughes, but I do know that what we  
21 proposed to do was approved through him.  
22 Q So when you use the phrase "primarily by Mayer  
23 Brown," you mean in addition to whatever role Wyn Hughes had.  
24 Is that right?  
25 A Yes.

1 Q I'm not missing anyone is my point.  
2 A No, you're not missing --  
3 Q All right. Thank you. Who was it, by the way, at  
4 Mayer Brown that was giving the instructions on how to comply  
5 or set up the protocol so as to comply with Macau law?  
6 MR. RANDALL JONES: I'm sorry, Jim. I'm sorry, I  
7 didn't hear you.  
8 BY MR. PISANELLI:  
9 Q Just who the lawyer was at Mayer Brown.  
10 A So there are three lawyers at Mayer Brown that were  
11 involved in the discussion. Richard Tollan, who is at Macau,  
12 Mayer Brown JSM, Michael Lackey, who is a partner at Mayer  
13 Brown U.S., and Kristina Portner, who is an associate of Mayer  
14 Brown U.S.  
15 Q I'm sorry. Last name?  
16 A Portner, P-O-R-T-N-E-R.  
17 Q Thank you. Now, you testified earlier that in  
18 relation to your team's review of metadata that may contain  
19 personal data, you understood your team to have authorization  
20 to that?  
21 A Correct.  
22 Q And you understood that that authorization came from  
23 the OPDP?  
24 A Yes.  
25 Q All right. And how did you develop that

1 understanding?

2       A     We were informed -- when we -- strike that. When we  
3 were setting up the parameters of the engagement and reviewing  
4 it with the FTI Asia operation as to what was required, we  
5 were instructed that we had to restrict our access to any data  
6 that contained personal information. In communications of  
7 that with primarily Kristina Portner, but also Richard Tollan  
8 and Michael Lackey, we received back information from them  
9 that said, FTI is authorized to access the metadata only of  
10 these documents for the purposes of our searches. And we  
11 confirmed with Wyn Hughes that we were in fact authorized to  
12 do so.

13       Q     FTI never had any direct communications with OPDP  
14 beyond that topic?

15       A     That's correct.

16       Q     Never did you or anyone -- strike that. Did you  
17 ever see any written communications from the OPDP that gave  
18 that type of authorization?

19       A     I don't recall seeing any.

20       Q     Best you can recall as you were relying on upon the  
21 advice of VML's counsel for that authorization. Fair enough?

22       A     From the direction of Mayer Brown and with the  
23 approval of VML's counsel.

24       Q     Okay. So let's talk about the actual collection  
25 process that occurred on the VML portion of the project

1 starting sometime I assume in December of 2012 ?

2 A Correct.

3 Q Now, I know you told Your Honor, and I even think  
4 you answered this question, so I apologize, that despite the  
5 relatively short delay between the initial time of contact in  
6 December of 2012, and the engagement letter being executed in  
7 2013, your team went to work even before the execution of the  
8 letter?

9 A No. The engagement letter was -- we were first  
10 contacted December 18th, 2012. The engagement paperwork was  
11 drafted and was ultimately signed on December 20th.

12 Q I see. When did your --

13 A We don't do work without a signed engagement letter.

14 Q Okay. I wish I could say the same, but I digress.

15 A To be precise, we require written approval from FTI  
16 executive management to do work without an engagement letter,  
17 and we rarely choose to seek that approval.

18 Q All right. So give me your best recollection of  
19 when it was that your team started work.

20 A I believe that our Hong Kong operation began in  
21 initial conversations with the Venetian Macau on logistics on  
22 December the 20th.

23 Q Okay. Do you know who the point of contact was at  
24 VML for FTI's work?

25 A As I recall from my communications with them, Wyn

1 Hughes was the only person at VML that we communicated to  
2 directly. He referred our forensic examiners to individuals  
3 at VML's IT group, and I don't recollect the names of those  
4 individuals. They were peripherally involved in the matter.

5 Q The VML employees you don't remember?

6 A That's correct.

7 Q Okay. So after the initial discussions about  
8 logistics your team launches into action shortly thereafter;  
9 right?

10 A Yes.

11 Q And if I understood you correctly, the first step is  
12 to get your hardware into is it VML or Sands China offices?

13 A It was a conference room in the Venetian Macau.

14 Q How long did the hardware take to get set up and  
15 ready to go?

16 A It normally takes about a day. In this case the  
17 hardware we brought was set up within a few hours, and then  
18 subsequently we had to build a dedicated server specifically  
19 for the project, which took two days.

20 Q Why did you have to build one?

21 A So that -- normally speaking, when we go to scope an  
22 engagement we have different levels of hardware that are  
23 capable of being deployed. At the beginning and at the end in  
24 this case are two very powerful configured laptop computers,  
25 one of which runs the processing technology and the forensic

1 tools, and one of which runs the hosting of the review data.  
2 That system can only support about three or four attorneys in  
3 review. And it was the original expectation on December the  
4 18th at the initial conversation that the number of custodians  
5 and the volume of data that was involved we could support  
6 four, possibly five attorneys would be sufficient.  
7 Subsequently, within I believe it was within 48 hours of  
8 starting the work in Macau we realized that was not the case,  
9 the volume of data was much higher, and therefore we needed to  
10 have a bigger system to support the attorneys so that they  
11 could get through the review quickly enough to meet the  
12 deadline.

13 Q Help me understand, so we're in the setup hardware  
14 process, and you're realizing that the volume of data is  
15 larger than you expected. How did you figure that out?

16 A So the team is multiple people. One person was  
17 working with the setup of the hardware, another person was the  
18 lead forensic examiner working with Venetian Macau IT to get  
19 the data, and one of the data sources that we were intending  
20 to use was some material that had been previously loaded into  
21 a tool at the Venetian Macau. The tool is called ClearWell.  
22 And that data included a couple of hundred gigabytes of  
23 material.

24 The original intention that we were going to search  
25 the data in Clearwell using the Clearwell tool and only bring



1 out the data that was potentially responsive so that we would  
2 not have to reprocess all of that information. And  
3 unfortunately the Clearwell appliance failed, and we were  
4 unable to get the data out of it. And even with support from  
5 Clearwell we were unable to get the searches to execute  
6 correctly, and so we needed to remove that data and reprocess  
7 it. And as part of the attempts to get Clearwell to work we  
8 had initial hit counts on the searches within Clearwell of the  
9 documents in Clearwell, and the volume of those hits was large  
10 enough that we knew that a bigger team would be needed.

11 Q You said lots of stuff -- see if I can try and  
12 understand it. This Clearwell database was one, but not the  
13 only data source you intended to utilize?

14 A You know, we ultimately did not use the Clearwell  
15 data source at all. We went back to the originally collected  
16 data that had been processed into Clearwell, and we  
17 reprocessed that data into our tools.

18 Q What ultimately was the source of data that you were  
19 going to use to find documents?

20 A There was a combination of sources. We collected  
21 some data from the email servers at Venetian Macau. We  
22 collected some data from the file servers at Venetian Macau.  
23 We collected some data from individual computers, laptops and  
24 desk tops.

25 Q And how did you determine which of the email

1 servers, file servers and individual hard drives to look to?

2 A So that's developed in combination with the list of

3 custodians whose data is being collected and with discussions

4 with Venetian Macau IT on where that data is kept.

5 Q And you can do all of that before your hardware's

6 even set up?

7 A It was being done in parallel with hardware being

8 set up, yes.

9 Q By FTI?

10 A Yes.

11 Q All right. By the way, do you know who had

12 previously loaded the Clearwell data?

13 A I do not.

14 Q Do you know when it was done?

15 A I do not.

16 Q Do you know why it was done?

17 A I do not.

18 Q That makes this portion of your examination easy.

19 All right. So the list of custodians, how long is that list?

20 A I believe the initial list was nine individuals.

21 Q Six sound more familiar?

22 A Could be. Because six to nine is the range.

23 Q And how did you obtain that list?

24 A It provided to us be counsel.

25 Q Mayer Brown?

1           A     Yes.

2           Q     Do you remember who the custodians were?

3           A     I do not.

4           Q     All right.  If I were to call upon you to do your  
5 best to refresh your recollection on that list, what would you  
6 need to do in order to figure that out?

7           A     There are likely to be individuals that are on that  
8 list who came up as either part of our design process for the  
9 searches, or have come up in subsequent work that we've done  
10 on the project that I would recall, because their names are  
11 distinctive.  There are others which may not have come up  
12 again, and I probably would not be able to remember them.  If  
13 you told me a name I might be able to tell you if they were on  
14 the list.

15          Q     Actually, really my question was simpler than that.  
16 I'm just asking you whether for instance Mayer Brown would  
17 have communicated to you the custodians through an email?

18          A     Oh, yes.  If I had access to review the documents in  
19 the case I could find the exact list.

20          Q     Okay.  In other words, this would be something  
21 easily recreated?

22          A     Yes.

23          Q     All right.  Fair enough.  So now you have this,  
24 we'll call it six to nine, list of custodians.  You have your  
25 hardware set up.  What comes next?

1           A     So while the hardware is being set up be one part of  
2 our Hong Kong operation and the collections process is  
3 beginning with another forensic examiner in the Hong kong  
4 operation, we're flying the U.S. team to Macau to get set up  
5 to be able to do the culling and the analysis to select the  
6 documents that need to be reviewed.

7           Q     Can I slow you down right there. You told me about  
8 the hardware process and the collection process. What do you  
9 mean by collection process? And that's being done in Hong  
10 Kong?

11          A     Collection process is being done in Macau by  
12 personnel from Hong Kong.

13          Q     Oh, I apologize for that. So tell me what that  
14 phrase means that you're Hong Kong personnel now in Macau,  
15 hardware's set up and they're doing the collection process.

16          A     Right.

17          Q     What does that mean?

18          A     So again, there are multiple data sources, email  
19 servers at Venetian Macau, file servers and computers. For  
20 the email servers and the file servers we typically, and in  
21 this case specifically working with Venetian Macau IT under  
22 our direction to export all of the data from the mailboxes of  
23 the named custodians from the email server from the file  
24 folder locations on the network. And then for the individual  
25 computers our forensic examiners did the collection. And in

1 this case I believe all of the collections were forensic  
2 images of the computers in question.

3 Q So for the individual computers, was that also an  
4 exercise of exporting all of the data from the individual  
5 computers?

6 A So when we collected the individual computers we  
7 created a forensic image of each hard drive, which is a  
8 complete copy of everything on the hard drive including  
9 unallocated space.

10 Q Okay. And so tell me, ballpark, when you now  
11 collect -- the collection process is completed with basically  
12 just this big grab of data from six to nine custodians, how  
13 many documents are we talking about?

14 A In this particular case I believe the initial volume  
15 was about 300 gigabytes of data.

16 Q To a lay person, what's that mean by way of pages?

17 A About 1.5 million documents, about 10 million pages.

18 Q Okay. What happens next?

19 A After the data's collected we extract the  
20 information that can be processed. During that extraction we  
21 eliminate files that are know to be non business files known  
22 to be shipped by software manufacturers. So the entire  
23 Windows sub directory for example we don't include that. And  
24 so only documents that are potential business documents or  
25 otherwise unidentified documents are extracted for processing.

1 Q And what volume of data is that?  
2 A Well, so that is in fact the approximately 350  
3 gigabytes --  
4 Q That's the number --  
5 A -- we don't count the previous because it's too  
6 much.  
7 Q Got it. Okay. So you now have the hardware in  
8 place, you've done the collection, and now you've done the  
9 extraction?  
10 A We've done the extraction --  
11 Q What's next?  
12 A The processing of the data, which is using the  
13 processing tool, which does duplicate removal if there  
14 duplicate removal to be done.  
15 Q What's the name of that tool?  
16 A Nuix, N-U-I-X.  
17 Q Duplicates are removed?  
18 A In this case it was within individual custodians  
19 only. So if the same individual had two copies of the same  
20 document on their computer, only one copy would be promoted to  
21 review.  
22 Q Is that unusual?  
23 A It's not unusual at all.  
24 Q Okay. That's standard protocol?  
25 A In many cases you'd do global deduplication where as

1 long as one copy existed in any of the custodian's you would  
2 keep it, but for the Jacobs matter all of the deduplication  
3 has been custodian only.

4 Q All right. And do you know what volume of data was  
5 left after the dedupe process?

6 A I don't specifically recollect that --

7 Q Ballpark it.

8 A Of the 350 approximate gigabytes, after  
9 deduplication and system file removal it was about 250 to 280  
10 gigabytes I think, but I'd have to go back and look at my  
11 records to find out.

12 Q Was there ever anything done now still just within  
13 these first six to nine custodians --

14 A Yeah.

15 Q -- to dedupe the entire database, not just by  
16 custodians?

17 A No.

18 Q All right. So we have no way of knowing of the 250  
19 to 280 gigabytes how much of that was duplications?

20 A We do not.

21 Q Okay. Fair enough. So what comes next?

22 A The documents that remain after that deduplication  
23 process and system file elimination are put into our review  
24 tool, the Ringtail, and they are then indexed and searched  
25 there using search terms, date ranges, custodian's other

1 criteria to select the documents for review.

2 Q So let's start with indexed. How are the documents  
3 that have made it through that process to get to Ringtail, is  
4 indexing just a computer click or is that done manually?

5 A It's a technological process to process the  
6 individual texts within the documents and render it into a  
7 searchable format so that a search can be run.

8 Q Okay. And so after -- is the indexing and searching  
9 the same process or two different steps?

10 A They're two different steps. You have to index  
11 first.

12 Q And what does the index do for your team and the  
13 performance of their work?

14 A It allows us to run the searches that we need to  
15 run.

16 Q Okay. Does that index still exist?

17 A I'm sure it does.

18 Q All right. So the index is created and then the  
19 searches begin?

20 A Yes.

21 Q Now, from FTI's perspective, how does it do a  
22 search?

23 A So within the Ringtail tool we have a type of object  
24 called a search term family. A search term family is a group  
25 of individual criteria that are then applied to a data set.



1 Each criteria can have associated with it a Boolean search of  
2 any level of complexity that's required. And so we build the  
3 search term family with each individual criteria and it's  
4 associated Boolean search. We then apply that search term  
5 family against the index, and we get back a relationship that  
6 is in the database and reportable that says, this document  
7 contains one or more of the criteria from the search term  
8 family.

9 Q So again, let me slow you down and back up. We  
10 build search term family, I think that's what you just said.

11 A Yes.

12 Q Let's start with we. Who's we?

13 A The FTI team, primarily the Ringtail consultant. In  
14 this particular project also the sequel programmer that we had  
15 to send assisted.

16 Q Now you used the term, in creating the search term  
17 family, you use or create Boolean search terms?

18 A Yes.

19 Q What does that mean?

20 A So a Boolean search is a combination of key words,  
21 proximity indicators, and other criteria such as wild cards to  
22 identify the pattern that you're going to be searching for.

23 Q So if I want to find an email that might reference  
24 Judge Gonzalez, I would say by example "Elizabeth or Judge  
25 within three words of Gonzalez," something like that, that's a

1 search term you're referencing?

2 A Yes. We would probably say "Elizabeth or Beth,"  
3 because Beth is a common contraction of Elizabeth.

4 Q Got it. The Boolean search terms and the search  
5 term family, I didn't hear you reference any lawyers being  
6 part of the team that created the search term family.

7 A So the counsel provides us the criteria.

8 Q What do you mean by criteria?

9 A Such as the example we were just using. They would  
10 say, we need to search for Judge Elizabeth Gonzalez. And then  
11 we either will format that into the appropriate Boolean format  
12 for our tools or, as the example we just used, we would  
13 respond back saying, well, Beth is a common contraction and so  
14 therefore we recommend a search term that includes this.

15 Q It's just exactly like what happened with you and I,  
16 you offer consultation because you know this stuff pretty  
17 well. That's the point.

18 A We don't know the subject matter of the case. So  
19 it's usually not possible for FTI to recommend the search  
20 terms to be used from a blank piece of paper. We are usually  
21 provided the initial criteria by counsel.

22 Q Got it. Do you remember specifically whether your  
23 team helped with advice and revisions, et cetera, to help  
24 build the search term family with the Boolean searches?

25 A I'm trying to recall if that's -- yes. My

1 recollection is that we were provided a fairly detailed list  
2 of terms and that we had some feedback on those terms to get  
3 them both into the format for our tool and to make them as  
4 efficacious as possible.

5 Q For all of your -- it was all of the feedback that  
6 your team gave to VML's counsel accepted and utilized?

7 A So our feedback went primarily to Kristina Portner  
8 at Mayer Brown and also to whoever was assigned from Mayer  
9 Brown JSM, and it was approved by them. I don't recall when  
10 Hughes ever actually officially approved any of the searches.  
11 I think it was all from Mayer Brown.

12 Q Okay. I guess all I'm asking is did the suggestions  
13 from FTI actually get utilized in the process?

14 A As I recall, they were.

15 Q All right. You sent the suggestions via email?

16 A Some of the suggestions may have been transmitted  
17 via email in Macau to Mayer Brown. Some of them were done  
18 verbally in the conference room at the Venetian Macau.

19 Q How do you know that?

20 A Because I was in constant communication with Mayer  
21 Brown and with our team in Macau.

22 Q All right. Take a look at Exhibit 213, please.

23 THE COURT: Proposed 213? Or did you stipulate  
24 to --

25 MR. PISANELLI: Yes, proposed.

1 THE COURT: No. It's proposed.  
2 You can just separate the books.  
3 BY MR. PISANELLI:  
4 Q Now, before we get there --  
5 THE COURT: Wayne, why are you here?  
6 UNKNOWN: I was scheduled to do a video conference  
7 as to Hong Kong at 11:00.  
8 THE COURT: Really? I guess we should do the video  
9 conference --  
10 MR. PEEK: I think we should probably do that, Your  
11 Honor, if that's okay. We could take a short break or not.  
12 MR. PISANELLI: This is a fine spot --  
13 THE COURT: I hate having Wayne just sit here.  
14 MR. PISANELLI: I'm perfectly fine --  
15 UNKNOWN: I can come back soon. Maybe the wires  
16 got --  
17 THE COURT: You know, let's see what the deal is  
18 real quick.  
19 MR. PISANELLI: Off the record, Your Honor?  
20 THE COURT: We have to go off --  
21 (Pause in the proceedings)  
22 THE COURT: And we'll see you at 11:50, Wayne, and  
23 we'll break at 11:50 for lunch and then come back at 1:15. I  
24 have a 1:00 o'clock conference call on another case. Bye,  
25 Wayne. Sorry.

1 All right. Mr. Pisanelli, I'm so sorry.

2 MR. PISANELLI: Thank you, Your Honor.

3 BY MR. PISANELLI:

4 Q Mr. Ray, did the search term "family" change over  
5 time?

6 A I believe it did.

7 Q Okay. Tell me about those changes. When did they  
8 occur?

9 A We had one set of criteria that was used and  
10 finalized during our initial round of work in December of  
11 2012, early 2013. And then when we went back to Macau in  
12 March and April of 2013 the number of custodians that we were  
13 searching was expanded. And I believe that it is possible  
14 that some of the search criteria were also modified, other  
15 search terms added if I recall.

16 Q Do you believe that it's possible that search terms  
17 were added?

18 A My recollection is that there were some searched  
19 that were performed on the original six to nine custodians  
20 which would not have been required if the search terms had not  
21 changed at all.

22 Q So back to that first set then. You said that one  
23 set was finalized.

24 A Yes.

25 Q Sounds like that's getting back to a word you used

1 earlier this morning about iterations?

2 A Yes.

3 Q Tell be about that. How many iterations were there,  
4 and how did they come about?

5 A I don't recall how many specifically, as some of the  
6 work was being done on the fly in Macau due to the time frame  
7 and also due to time differences, you know, I have to sleep,  
8 so. There were discussions going on that I was not directly  
9 involved in. I was involved in most of them. But the process  
10 of developing search terms is a proposed search term is  
11 provided or set of search terms, we propose revisions to it

1 or produced a handful like less than 20. And there was a  
2 concern that there was a problem with those terms since they  
3 didn't produce any hits, and they were modified.

4 Q Okay. So does that mean then despite that your team  
5 can't or will not look at the actual documents, the hits, you  
6 can take any search term the was used and determine how many  
7 documents came up?

8 A Yes.

9 Q And you were doing that?

10 A Yes.

11 Q All right. And do you maintain a record of that?

12 A Yes.

13 Q So if I wanted to know now how many hits you got  
14 from a particular search term it's easy to go back and figure  
15 that out?

16 A Yes.

17 Q All right. So let's just do an example. Okay.  
18 Now, in front of you is Proposed Exhibit 213. And this is a  
19 letter that it purports to be from Kent Jones firm dated  
20 January 13, 2015. I'll tell you up front, I don't see that  
21 you're a recipient of this letter. Have you ever seen it?

22 A I have not seen this letter until today.

23 Q Okay. I'm not going to ask you anything about the  
24 letter, but I do want you to look to the back, the search  
25 terms for Macau review. That's the third page of the exhibit.

1           A     Third, fourth and fifth pages of the exhibit. Yes,  
2     that's correct. Yes.

3           Q     So take a look at that and tell me if those appear  
4     to be the search terms that were utilized by your team for the  
5     VML portion of the project.

6           A     The best of my recollection these appear to be the  
7     search terms that were used in the March/April time frame. I  
8     believe that it's a super set of what was used in the original  
9     engagement.

10          Q     What does superset mean?

11          A     It means that the original set of search terms is  
12     included in here, but there are expanded terms in here in  
13     addition to the terms that were used.

14          Q     And what about this exhibit leads you to that  
15     conclusion?

16          A     That's just my recollection of remembering seeing  
17     the search term discussion.

18          Q     In other words, can you look at some of these search  
19     terms and recall that those came in in the second project in  
20     March and not the first?

21          A     I don't recall specifically which terms were  
22     modified or changed. I just recall that there were some  
23     changes. And this looks like the final set of terms, but I'd  
24     have to go back and check my records to be precise.

25          Q     Okay. Your best recollection is that this is the



1 final set of terms that your team used?

2 A Yes.

3 MR. PISANELLI: Your Honor, we'll offer Exhibit 213  
4 into evidence, please.

5 THE COURT: Any objection?

6 MR. RANDALL JONES: No objection, Your Honor.

7 THE COURT: Be admitted.

8 (Plaintiff's Exhibit 213 admitted)

9 BY MR. PISANELLI:

10 Q So now getting back again, to help me, a lay person,  
11 understand the search term review just starting right on Item  
12 Number 1 on the very first entry --

13 A Yes.

14 Q -- we have "Leven within 25 or Steve within -- Leven  
15 within 25 of Steve within three of Jacobs." Do you see that?

16 A Yes.

17 Q So that means to me that if a sentence that  
18 contained Leven and Steve within 25 words, or Leven and Jacobs  
19 would have come up with a hit; right?

20 A Not quite. So what this is -- because of the  
21 parenthesis this is two criteria. One criteria is the word  
22 "Leven," and one criteria is "Steve within three of Jacobs."

23 Q So they both have to be --

24 A So it says if this document has the word "Leven" and  
25 has "Steve within three of Jacobs" and together those criteria

1 are within 25 words of each other, then that would be a match.

2 Q All right. And so then if there was an email that  
3 said, Leven and Jacobs have been talking about this project,  
4 we would never see that email?

5 A Not from that one criteria.

6 Q I got it. Okay. And so if I want to know whether  
7 "Leven within 25 of Steve within three of Jacobs," how many  
8 hits came from that term alone, you can go back into your  
9 files and tell me what that number is?

10 A Well, I would have to go back into our files and  
11 check to see if we independently tested that specific criteria  
12 on its own or whether we tested the entirety of this search.  
13 Each of these items where it says, search terms, each  
14 paragraph is one search term, it's one search term family  
15 item.

16 Q So every time there's an or there's a new search  
17 term?

18 A With it -- so each of these paragraphs is one  
19 search. From this long paragraph that begins with "Leven  
20 within 25 of Jacobs" and ends with "or interim CEO," that is a  
21 single search, and we have hit reports on those searches on  
22 this entire search.

23 Q I see.

24 A We can and in some cases have broken them down into  
25 individualized criteria to report on. I don't recall if we

1 did it in this case.

2 Q Okay. So if you did not do them on the  
3 individualized criteria, back to my example, a email that said  
4 Leven and Jacobs are working on this project, you would never  
5 know unless you did an individual search whether that  
6 particular terms had any hits?

7 MR. RANDALL JONES: Object to the form of the  
8 question.

9 THE COURT: Overruled.

10 THE WITNESS: So I would not be able to go into our  
11 records and determine what the hit count was at the time if we  
12 did not actually run that search at the time. We could of  
13 course run that search at ant time now and get an exact report  
14 now.

15 BY MR. PISANELLI:

16 Q Just to make sure I'm getting this right, and I know  
17 it probably seems tedious to, and I'm being redundant --

18 A Not at all.

19 Q -- and I'm not trying to, when you say that you  
20 would go back before finalization of the search term, you  
21 would see if you got zero hits. And to you, in your  
22 professional capacity, that means we may have to modify this  
23 thing; right?

24 A Correct.

25 Q So the only -- that would mean if we're looking at

1 this search term the entirety of this paragraph, if that  
2 entire paragraph got zero hits then you'd modify the entire  
3 paragraph in some form?

4 A Correct.

5 Q But unless you modified each individual criteria you  
6 may have gotten hits from the others, but you would not have  
7 modified any particular individualized criteria; right?

8 A So that is why I said in many cases we break them  
9 out into individual criteria to test them independently and  
10 then reassemble them. And I don't recall if we did it in this  
11 case. That's the kind of thing that would have been done on  
12 the fly in Macau.

13 Q Okay. All right. And again, I apologize. I know  
14 you answered this question. You can go back and figure out if  
15 there was a search of the individualized terms, figure out if  
16 you did that?

17 A Yes.

18 Q All right. You just don't remember?

19 A Yes.

20 Q All right. So you run a search with these terms,  
21 each paragraph being a separate term; right?

22 A Yes.

23 Q And you get a body of hits from the terms. Do you  
24 remember what the volume of hits was the first time you did  
25 it, first run?

1           A     I recall that the total number of documents that  
2 were reviewed -- selected for review in both the first  
3 iteration in December of 2102 and in the second. The total  
4 was about 70,000 documents selected for review, but I don't  
5 remember the breakdown between how many of those were in the  
6 first iteration and how many were in the second.

7           Q     My question wasn't clear. I'm still on the first  
8 review, January and December. The first time you ran the  
9 search terms do you remember what the hit volume was?

10          A     I don't recall the exact number.

11          Q     And do you remember -- again, I apologize if you've  
12 said this, do you remember if the modification -- any  
13 modifications were made to expand the hits or contract them?

14          A     I know that there were two modifications made to  
15 expand them during the testing, and there were no  
16 modifications made to limit them that I recall.

17          Q     That's on the first one?

18          A     Yeah.

19          Q     Okay. So now let's go back to the process, the  
20 protocol. You make a determination that these search terms  
21 are now finalized; right? Who makes that determination, by  
22 the way, finalization?

23          A     That's counsel. After our final report of the hits  
24 they say, yes, we're going to move forward with this set.

25          Q     Okay. And do you recall whether -- we're talking

1 about Mayer Brown?

2 A Yes.

3 Q Do you recall Mayer Brown actually inquired of the  
4 hits for the individualized terms as I've just described them?

5 A I don't recall if they did. And if they did, it was  
6 in Macau live on the live systems.

7 Q Live, meaning it wasn't through email or  
8 communications, it's people talking?

9 A Correct.

10 Q Okay. So in other words, if I wanted to know if any  
11 records exist of someone from Mayer Brown being concerned that  
12 "Leven within 25 of Jacobs" was not going to be hit by this  
13 individualized term, there's really no way to recreate that  
14 unless somebody remembers it?

15 A If there is a document it would be in Macau with the  
16 data. And if it was not documented it would be based on  
17 individual.

18 Q All right. So now what happens we finalize the  
19 terms, Mayer Brown says, these are good to go, run the search  
20 terms what?

21 A The documents that have been selected by the  
22 entirety of the search term family and other criteria, you'll  
23 note some of the criteria here include dates. Dates are  
24 applied separately from text searches.

25 Q May I interrupt you, because you're using terms that

1 I'm not quite following you.

2 A Yes.

3 Q Search terms are what we have here on the screen --

4 A Yes.

5 Q -- one big paragraph. What are the other things

6 that you just said?

7 A So you'll note in the very first sentence of this

8 highlighted area, "search terms for the period between

9 10/4/2009 and 7/23/2010," that's a date restriction.

10 Q Yep.

11 A So that date restriction is applied based on the

12 metadata. And then the search term underneath that is then

13 run against documents within that date range.

14 Q All right. You see right above that, before we move

15 on, the heading says, "March 8th, 2012, Order Paragraph 9, RFP

16 Number 6, Leven Services." Do you see that?

17 A I do see that.

18 Q What does that mean to you?

19 A It means that there is a specific request for

20 production, paragraph 6, about a request for documents

21 pertaining to Leven services in some capacity and that this

22 set of search terms is intended to find the documents

23 responsive to that particular --

24 Q Did you ever inquire as to why there were no search

25 terms being created for the search term family for RFP's 1

1 through 5?

2 A I did not.

3 Q Okay. That's outside the scope of your engagement?

4 A Yeah. That's a decision by counsel as to which  
5 RFP's are responsive to what and searches are appropriate to  
6 what.

7 Q Okay. So back to the process then. You run the  
8 search terms, what next?

9 A The documents that are identified by those search  
10 terms and all of the family members of those documents are  
11 then promoted to review. And so in our case that means the  
12 documents are analyzed for conceptual similarity, documents  
13 that are similar to each other are grouped together. And then  
14 review assignments are allocated to individual reviewers based  
15 on the number of documents in each assignment decided in  
16 consultation with counsel and the number of reviewers that are  
17 present.

18 Q All right. So break that down for me. You put them  
19 into groups?

20 A Sure.

21 Q Subject matter groups?

22 A So we analyze the documents using the concepts  
23 inside the text, nouns and noun phrases in the text, and we  
24 group documents together based on similarities. So for  
25 example, if in theory all the documents that pertained to one



1 particular kind of contract would be in the same group  
2 conceptually.

3 Q Do you create these groups within the search, the  
4 individual search term?

5 A The groups are created across all of the documents  
6 that had been promoted to review.

7 Q All right. So you may get a bunch of hits under the  
8 search for paragraph 6, an entirely different group of hits  
9 for paragraph 7 and 20, the very next entry, et cetera, et  
10 cetera. And you now group them unrelated to the RFP that  
11 actually triggered the request?

12 A That's correct.

13 Q All right. Got it. So once the groups are created  
14 then what?

15 A We remove the duplicates across custodians for the  
16 purpose of review only. And I should explain that, because  
17 that question came up earlier. So in this case deduplication  
18 during processing was done by custodian. If each of the six  
19 or nine custodians had the same email, there would be six or  
20 nine copies of that email in the selected data. We then  
21 identify using hash codes again, the duplicates within that  
22 set and only provide one of those documents for actual human  
23 review to determine if it is relevant. If that one document  
24 is ultimately selected for production then all six to nine  
25 copies of that document will be produced. If one copy is

1 identified as privileged all six to nine copies would be  
2 identified as privileged.

3 Q If one is determined to be relevant, all copies of  
4 the same relevant document would be produced?

5 A That's correct. But we only cue up one copy to be  
6 human reviewed to minimize the review time.

7 Q So this first level of review is for relevance?

8 A Yes. Usually it's relevance and initial privileged  
9 determination. And what I mean by initial privileged  
10 determination is that there is one attorney review pass where  
11 they say, we believe this document is privileged, and they  
12 generally state what kind of privilege like attorney/client  
13 work product. And then there is a second pass for privileged  
14 logging where they actually go through and determine if the  
15 documents are in fact privileged, and if so, do all of the  
16 coding necessary to produce a complete privilege log.

17 Q All right. So when we say that we're reviewing for  
18 relevance, there is someone who is taking the RFP and looking  
19 and studying and becoming an expert in the RFP and now looking  
20 at the raw data unredacted to see if it is responsive or  
21 relevant to what was requested?

22 A That's correct.

23 Q Okay. And that happened here in this process?

24 A Yes, it did.

25 Q By whom?

1           A     Attorney -- Macau attorneys and Macau citizens under  
2 the direction of Macau attorneys in the second conference room  
3 at the Venetian Macau.

4           Q     What do you mean, Macau citizens?

5           A     So it is my understanding that in some cases in  
6 addition to actually attorneys that are barred in Macau there  
7 may be paralegals or legal secretaries or other people with  
8 legal knowledge or attorneys who are Macau citizens and in  
9 Macau, but they're not barred in Macau that can be used under  
10 the direction of Macau attorneys during the review process.

11          Q     And that happened here?

12          A     I believe so.

13          Q     Who were the Macau attorneys?

14          A     I don't know the names of any of the attorneys that  
15 were involved.

16          Q     Do you know the law firm?

17          A     I do not.

18          Q     All right. Again, you knew it, you just don't  
19 remember it?

20          A     The attorneys were sourced by Mayer Brown JSM and  
21 Venetian Macau Limited. I don't know who they talked to or  
22 where they sourced them.

23          Q     In other words, you were taking these documents that  
24 came up from the search terms and now making them available  
25 for review for Macau attorneys and citizens, and you didn't

1 even know who they were. That wasn't your job?  
2 A That's correct.  
3 Q And I think you said it was actually done in another  
4 room from your team?  
5 A That's correct.  
6 Q All right. What did FTI do to train these Macau  
7 attorneys and citizens in becoming subject matter experts for  
8 their relevancy review?  
9 A We did not do any training of that type.  
10 Q Did anyone?  
11 MR. RANDALL JONES: Object to the form of the  
12 question. Calls for speculation.  
13 THE COURT: We don't want you to assume.  
14 BY MR. PISANELLI:  
15 Q Did you communicate with the Mayer Brown lawyers  
16 about how these Macanese lawyers and citizens were going to  
17 know how to determine whether one document's relevant in  
18 relation to a request for production and how one would not be?  
19 THE COURT: You're asking if he communicated.  
20 MR. PISANELLI: Yes.  
21 THE COURT: Okay.  
22 MR. RANDALL JONES: Your Honor, I'm going to  
23 interpose an objection for this purpose, Your Honor, in terms  
24 of relevance logs, we've already had, as you well know, long  
25 discussions about those issues that don't have to do with I

1 mean this particular witness or this issue. And I'm trying to  
2 be -- to let this go as far as -- because I know you want a  
3 full inquiry so I'm trying to keep quiet here, but this is  
4 not, at least as I understand it, a part of the subject matter  
5 of this discussion in this hearing. That this witness  
6 wouldn't have any knowledge of the relevancy logs and what  
7 this Court went through in the analysis. We went through that  
8 process with you for many days on end. So I understand they  
9 want to talk about what this witness did in terms of  
10 production, but in terms of who made decisions about relevancy  
11 and those kind of issues, you've already made those inquiries,  
12 and this witness obviously doesn't make those calls.

13 THE COURT: But to the extent he was involved in  
14 communicating to someone, his personal knowledge about that is  
15 fair game. So --

16 BY MR. PISANELLI:

17 Q You can answer.

18 A Could you repeat the question, please.

19 Q Sure. Did you have any communications with the  
20 Mayer Brown attorneys of what was being done to train the  
21 Macanese lawyers and citizens to become subject matter experts  
22 of the RFP's?

23 A We did not.

24 Q All right. Do you have any knowledge of whether  
25 that was even done?

1           A     I do not.

2           Q     All right. Do you have -- is it your understanding  
3 that the only people who would know whether these Macanese  
4 lawyers were even trained in the subject matter of this  
5 lawsuit and these RFP's would be the Mayer Brown lawyers?

6           MR. RANDALL JONES: I'm going to object to the form  
7 of the question.

8           THE COURT: Overruled.

9           If you know.

10          THE WITNESS: I would have to speculate.

11          THE COURT: We don't want you to speculate.

12 BY MR. PISANELLI:

13          Q     Don't speculate. You're not aware of anyone in your  
14 company being involved in that process?

15          A     Our company was not involved in the subject matter  
16 training of the review attorneys.

17          Q     Does your company ever get involved in that?

18          A     FTI does provide managed review services on some  
19 projects. And when we provide managed review services we are  
20 responsible for assisting in the training of the review  
21 attorneys on the subject matter, but we are never responsible  
22 for developing the subject matter that is to be reviewed.

23          Q     Sure. Sure. And did FTI offer to provide those  
24 services for the VML project?

25          A     FTI does not have a review center in Macau or any

1 Macau barred attorneys in our managed review service. And so  
2 we couldn't provide services in this case.

3 Q Okay. All right. So if I want to know what if any  
4 training occurred, you're not the guy to tell me about it?

5 A That's correct.

6 Q All right. So tell me then, someone communicated to  
7 FTI that this group of Macanese citizens and lawyers has made  
8 relevance determinations for these RFP's from the hips that  
9 came from these search terms; right?

10 A Correct.

11 Q Do you know who it was that informed FTI that that  
12 process had been completed?

13 A So during the review process on our review tool the  
14 tagging of the documents for relevancy, the tagging of which  
15 issues they are responsive to, whether they are privileged is  
16 all recorder in the database. That information is available  
17 to us.

18 Q Okay. Then what happens after the relevance review  
19 is complete?

20 A So in this particular case I believe that they were  
21 both doing the relevance review and the redactions at the same  
22 time. In many reviews they would be done in two separate  
23 passes, but I believe in this case they were done at the same  
24 time due to time constraints.

25 Q Why do you believe that?

1           A     Due to time constraints, in order for us to do them  
2 at two separate passes there would have to have been a  
3 relevancy review first, then the documents would have to have  
4 been .tif-ed so they could be redacted. Then they would have  
5 to be cued up for redaction. And given the time frame that we  
6 had to operate in, the decision was made not to take that  
7 multi-step approach and instead to tiff all the reviewed  
8 documents immediately so they could be reviewed and redacted  
9 simultaneously.

10          Q     Got it. And who made that decision?

11          A     That was a decision that was part of the design of  
12 the work flow we intended to use in consultation between  
13 myself and Kristina Portner at Mayer Brown and the team that  
14 was actually present at Macau.

15          Q     All right. So in a typical scenario you'd have a  
16 team that does the relevancy review, the relevancy if there's  
17 need for redaction is step two. Now let's take what's  
18 relevant and redact that's either privileged, confidential,  
19 whatever. Got it?

20          A     Correct.

21          Q     But here it was done in one step; correct?

22          A     Correct.

23          Q     What assurance do we have that this process in this  
24 one-step process was not flipped? In other words, the  
25 Macanese lawyers and citizens redacted to comply with what



1 they believed to be the obligations of the Macau law and then  
2 looked at the redacted document to determine whether it was  
3 responsive?

4 A In order for the Macanese lawyers or any lawyer  
5 doing review to choose to redact a document and especially in  
6 this case giving the time frame, redactions are only applied  
7 to documents which are responsive.

8 Q How do you know that? Sorry.

9 A They can't redact them in advance of determining  
10 they're responsive or they would have to redact every non  
11 responsive document in the population, which would have taken  
12 an inordinate time to do.

13 Q So it is the amount of time and the number of  
14 redactions that lead you to conclude that relevance occurred  
15 -- relevance analysis occurred first and redaction second?

16 A In consultation with Kristina Portner at Mayer Brown  
17 in developing the work plan for how we were going to do this  
18 project the work flow of how we were going to cue the  
19 documents up for review, whether they were going to be .tif-ed  
20 in advance, whether they were going to be redacted at the same  
21 time, these were all points of discussion in arriving at the  
22 work flow that was implemented. And so from that discussion  
23 it was very clear that relevancy determination was being made  
24 on the native document unredacted using the views in Ringtail  
25 of the native document and its unredacted text. And that

1 given the document was relevant they would then shift the view  
2 to the tiff view of the document so they could perform the  
3 redaction.

4 Q You learned this from whom?

5 A Again, this was developed by us in how the work flow  
6 was going to be run and how we were developing the training of  
7 the Macanese lawyers on the technology as opposed to the  
8 subject matter.

9 Q Okay. That's where you confused me. I understand  
10 -- I understood that you did not participate in the training  
11 of Macanese layers on the subject matter, but you did  
12 participate in a training in some other form?

13 A Yes. We had to train them on the use of our  
14 technology to do the review --

15 Q Okay.

16 A -- and the redactions.

17 Q And part of that training -- or what was that  
18 training about? What did you teach them, generally speaking?

19 A So we have a demonstration data set. We use a  
20 selection from the Enron data set because it's public and  
21 available for --

22 THE COURT: And because everybody uses it?

23 THE WITNESS: And because everybody uses it. We use  
24 that data set for demonstrations and for general technical  
25 training on the tool.

1 BY MR. PISANELLI:

2 Q All right. So we get this body of evidence sometime  
3 January 2013, that has now been at least your understanding  
4 reviewed for relevance by this Macanese team and redacted;  
5 right?

6 A You and FTI have not seen the unredacted documents?

7 A Correct.

8 Q Mayer Brown, have they seen the unredacted  
9 documents?

10 A It was my understanding that we were not to give  
11 access to the unredacted documents to any of the Mayer Brown  
12 attorneys who were not also Macau attorneys.

13 Q Were there any?

14 A I don't know.

15 Q All right. The only people that you know of that  
16 saw the unredacted documents was the Macanese team?

17 A Correct.

18 Q All right. What happened to the documents that were  
19 reviewed for relevance and then redacted after the Macanese  
20 team completed their work?

21 A So I need to be clear about the redaction process,  
22 because in this particular case the redaction process was very  
23 complicated. Under normal circumstances the way that  
24 redactions are applied is that an attorney looking at the  
25 document, the tiff image of the document, uses their mouse to

1 draw a region on the image that will then be redacted.

2 Q Right.

3 A And in the process of drawing that region they also  
4 tag one of usually a very small number of reasons for why that  
5 redaction's taking place. It's privilege trade secret  
6 personal data. In this particular case we needed to develop  
7 an extensive list of custom redaction reasons so that the  
8 people doing the redactions could say, I'm redacting this area  
9 of the image, it will be reflected on the image as personal  
10 data. It will be stored as a reason Sands Executive, Las  
11 Vegas Sands Executive.

12 So we had to create that relationship so that when  
13 they were doing the redaction we could produce the redaction  
14 log that gave as much information as we could.

15 Q And this redaction log would end up being Sands  
16 Executive 1, Sands Executive 2, et cetera, just for names of  
17 particular people who had been redacted from any of the  
18 document, something like that?

19 A Yeah. So as I recall, the 1 and the 2 is the number  
20 of people on the communication, not necessarily the  
21 individuals. But it could have been the individuals that  
22 mirrored the index.

23 Q Was there any key in creating this log that someone  
24 could go back and say, oh, this was a Leven reference for this  
25 particular document?

1           A     As I recall, we did not and could not have a  
2 specific redaction reason for an individual person. So we  
3 couldn't say for example, Sands Executive 1 is Mike Leven, and  
4 therefore everywhere you see Sands Executive 1 is Michael  
5 Leven. And we couldn't do that because that would be trying  
6 to get around the data protection law. But what we could do  
7 is say that this is a Sands Executive, and you could look at  
8 the document in Macau, and the redaction that is drawn on it  
9 in the review in Macau you can actually see the redaction as a  
10 translucent color so you can see what's underneath the  
11 redaction, and you could see if what's underneath the  
12 redaction matches the description that they chose.

13           Q     In other words, the only way to actually know which  
14 Sands Executive had been redacted is to see the unredacted  
15 form?

16           A     If a redaction was required for that then that's the  
17 only way to see it.

18           Q     Okay. All right. So this Macanese team then  
19 creates its documents, creates this log with categories of  
20 either people or reasons to apply the PDPA, and then what  
21 happens?

22           A     Once the review is completed and the documents are  
23 ready for production, and by ready, we run reports for the  
24 managing associate in the case, that was Kristina Portner  
25 primarily saying this is how many documents have been

1 reviewed, this is how many documents have been tagged a  
2 certain way, and these are the documents we propose to  
3 produce, this list of documents.

4 Q Do you know those numbers, how many reviewed?

5 A I do not know the exact numbers. About 70,000  
6 documents were keyed up for review ultimately.

7 Q How many tagged as relevant?

8 A I believe about 15,000 were tagged as relevant.

9 Q d how many redacted?

10 A It's a complex question, because there were  
11 redactions that were then matched to documents in the U.S. and  
12 actually were produced redacted. I don't recall the exact  
13 number, about 25 percent of the total.

14 Q And that's not my question. You anticipated where I  
15 was going, and it was a vague question. Of the documents that  
16 were hit or tagged as relevant, pre replacement, how many of  
17 those documents were redacted? 15,000 or so were relevant,  
18 how many redacted?

19 A So in the work flow during the identification of the  
20 documents to be cued up for a review, the initial selection,  
21 that was the point where we did the hash code analysis and  
22 transmitted the hash codes to the United States so the  
23 documents could be reviewed in the United States. Any  
24 document that was reviewed in the United States was not  
25 reviewed in Macau. So they was have been removed from the

1 population in Macau completely. They would have been reviewed  
2 and produced here.

3 Q So the 15,000 number are only documents reviewed in  
4 Macau?

5 A My understanding is it was about 15,000 total  
6 documents were produced either from the United States in the  
7 first iteration by hash code in the United States in the  
8 second iteration by duplicate matching or out of Macau with  
9 redaction.

10 Q All right. With that whole process pre replacement  
11 exercise, how many documents were redacted?

12 MR. RANDALL JONES: And, counsel, could you just  
13 define re-replacement and what you mean by that. I'm just not  
14 sure I'm following.

15 BY MR. PISANELLI:

16 Q Do you know what I mean by that?

17 A I believe that you mean the second iteration where  
18 we did the more extensive duplicate match.

19 Q Sure. And then counsel's objection therefore is  
20 well founded.

21 MR. RANDALL JONES: I'm going to object --

22 THE COURT: Could you explain. The objection is  
23 sustained.

24 MR. PISANELLI: I sustained, as well. Being vague  
25 since the witness didn't know what I was talking about.

1 BY MR. PISANELLI:

2 Q We're going to talk about the process. I think one  
3 of the next steps is finding out which of the redacted  
4 documents in Macau were in identical or duplicate form at Las  
5 Vegas Sands and therefore could be removed from the production  
6 list. Do you follow me so far?

7 A Okay.

8 Q My question is, prior to that process of finding out  
9 where the duplicates were in Las Vegas Sands, how many  
10 documents had been redacted?

11 A So the answer would be zero, because we didn't start  
12 reviewing the documents in Macau until after we had identified  
13 the documents available in the United States, and if they were  
14 available in the United States they were never reviewed in  
15 Macau.

16 Q I see. And so once the documents in your  
17 understanding were produced in redacted form there was no work  
18 done to try and find duplicate replacements at Las Vegas  
19 Sands. That didn't happen.

20 MR. RANDALL JONES: I'm sorry. Jim, could you  
21 repeat that just --

22 THE COURT: Can you say it again.

23 MR. PISANELLI: Sure.

24 BY MR. PISANELLI:

25 Q Based upon what you just told us, because the



1 replacement processed happened pre redaction, that's what you  
2 said; right?

3 A In the first iteration where we matched documents in  
4 the United States --

5 Q Yes.

6 A -- that matching was done prior to the reviewing  
7 account.

8 Q Okay. So then you did it prior to the review.  
9 After that you did a redaction of documents, and you didn't  
10 engage in any process to replace the redacted documents at  
11 some later time?

12 A In the first iteration in December and January  
13 2012/2013 we did not do any additional steps beyond the hash  
14 code match.

15 Q Okay. So now we have the redacted documents, what  
16 happens next?

17 A So our production process now is to take the  
18 documents being produced to make the redactions that had been  
19 drawn on the images by the attorneys permanent and burn them  
20 into the image so the actual image itself does not contain  
21 whatever has been redacted. And then we have to OCR, optical  
22 character recognize the redacted image to get the text that  
23 remains unredacted available. Those documents with their  
24 redacted images, their OCR text and whatever metadata we are  
25 told to produce is then packaged for production based on the

1 production specification provided by counsel.

2 Q Who tells you to produce it, the metadata?

3 A What metadata is in the production specification is  
4 between counsel. And we are told what metadata is to be  
5 included.

6 Q Okay. And when you say it's produced, you mean  
7 produced to plaintiff?

8 A Produced to wherever is that it's supposed to be  
9 produced.

10 Q All right. Where did you produce those redacted  
11 documents?

12 A So we generated the productions and we sent them to  
13 Mayer Brown.

14 Q Got it. And after that you don't know what  
15 happened?

16 A I did not transmit them for Mayer Brown.

17 Q From Mayer Brown?

18 A We transmitted them to Mayer Brown -- where -- who  
19 transmitted them from Mayer Brown I don't know, and I wasn't  
20 involved in that process.

21 Q All right. Did --

22 THE COURT: Before we break for lunch let me ask the  
23 witness one question, because I am a bit confused and I want  
24 to clarify it before we break.

25 The search is run in Macau, documents are generated

1 as a result of the search terms, and then before the one-step  
2 review and redaction process that you developed they were  
3 matched with their hash codes to the Las Vegas Sands  
4 documents. Is that right?

5 THE WITNESS: That is exactly right.

6 THE COURT: So nobody did a review and analysis and  
7 redaction if the document existed in the Las Vegas Sands?

8 THE WITNESS: They were reviewed here in the United  
9 States by Mayer Brown attorneys, but there were no redactions  
10 done.

11 THE COURT: Okay.

12 BY MR. PISANELLI:

13 Q Earlier I understood you to say that in this process  
14 where you're taking the hash codes from Las Vegas Sands and  
15 running it against the hits that you have in Macau, that did  
16 not include the hashtags from the documents that had been  
17 removed from Macau and transported to the United States. Is  
18 that right?

19 A That's correct.

20 Q All right.

21 MR. RANDALL JONES: Hash code or hashtags?

22 THE WITNESS: Hash codes, correct.

23 MR. PISANELLI: Did I say hashtag again? I can't  
24 get it --  
25 //

1 BY MR. PISANELLI:

2 Q So again, help me break down the understanding of  
3 this. In the process with using the hash code, pre redaction,  
4 you have a document here that very well may be subject to  
5 redaction. But because we know it's in Las Vegas Sands's  
6 records we take it out of the process, it never gets redacted,  
7 never gets produced. It's going to be produced from Las Vegas  
8 Sands. Is that right?

9 A It's produced from Mayer Brown after getting that  
10 data from the Las Vegas Sands.

11 Q Okay. Now if that -- different example, we have a  
12 document that's going to be redacted under the judgement of  
13 the Macanese team, if under my hypothetical this same document  
14 is in what we've characterized as the Jacobs information that  
15 had been transported to the United States, that process  
16 wouldn't occur, and this document would still be redacted;  
17 right?

18 A That's correct.

19 Q Okay. All right.

20 THE COURT: Can we break for lunch now, because they  
21 have to do the test, and Wayne's supposed to be here now.

22 MR. RANDALL JONES: Your Honor, I just ask to the  
23 extent that Mr. Pisanelli can tell us how much longer he has  
24 just for scheduling purposes approximately. I understand --

25 THE COURT: How much longer have you got?

1 MR. PISANELLI: Half hour.  
2 THE COURT: Best guess, half hour?  
3 MR. PISANELLI: Yeah, half hour.  
4 THE COURT: So when we come back we're going to try  
5 and finish you. If we don't finish you be 2:30, we have to  
6 take a break for the guy in Hong Kong.  
7 THE WITNESS: I understand.  
8 THE COURT: Okay.  
9 THE WITNESS: As long as I can get on my 8:00  
10 o'clock flight that's fine.  
11 THE COURT: That shouldn't be an issue.  
12 (Court recessed at 11:48 a.m., until 1:20 p.m.)  
13 THE COURT: All right. If you'd come on back up,  
14 sir. I'd like to remind you you're still under oath.  
15 Mr. Pisanelli, you were on cross and you said you  
16 had about a half or more left.  
17 MR. PISANELLI: Did I say half hour or half day?  
18 I'm not sure.  
19 MR. BICE: He might have --  
20 THE COURT: And we did do a successful test with  
21 Hong Kong. They had video and much better sound today.  
22 MR. BICE: Excellent.  
23 MR. PISANELLI: Thank you, Your Honor.  
24 //  
25 //

1 CROSS-EXAMINATION (Continued)

2 BY MR. PISANELLI:

3 Q Before we get back to where we were in your  
4 examination, Mr. Ray, can you -- Did you do anything to  
5 prepare for your testimony today?

6 A I'm sorry, say again?

7 Q Did you do anything to prepare for your testimony  
8 today?

9 A I tried to recollect the specifics of what occurred  
10 at the time, so I spent some time trying to do that. I spoke  
11 to a couple of our team members just to confirm things that I  
12 thought I remembered and they did confirm that I remembered  
13 them correctly.

14 Q Okay. Who did you speak to?

15 A I spoke to Lynn Chueh, who is the project manager on  
16 the case, and I spoke to Taylor Beebe, who was the main  
17 Ringtail consultant that was in Macau.

18 Q What were the topics that you were concerned about  
19 that you wanted to refresh your recollection about?

20 A I wanted to confirm that I correctly recalled who  
21 our engagement was with, that I correctly recalled  
22 approximately how many custodians were involved in the first  
23 iteration and the second, and approximately how many total  
24 documents were actually selected for review.

25 Q Did you do anything else?

1           A     No.

2           Q     Do anything to prepare for your testimony over  
3 lunch?

4           A     No.

5           Q     So before we broke we were at the stage of the  
6 protocol and processes, as I recall, where the iterative  
7 process that you've described had taken place, relevance and  
8 redaction reviews had taken place and documents were forwarded  
9 to Mayer Brown for production?

10          A     Yes.

11          Q     All right. Now, as part of that process, when you  
12 say that it went to Mayer Brown for production, I know this is  
13 a silly question but just to be clear, all of these records  
14 were forwarded to Mayer Brown in electronic form, right?

15          A     So, the production that we create includes the  
16 redacted .tif images of the redacted documents. It includes  
17 the metadata that is necessary for the production  
18 specification and any other load file documents that are  
19 required according to the production specifications. That's  
20 what's forwarded to Mayer Brown. So, no, none of the actual  
21 electronic documents were sent to them.

22          Q     Okay.

23                THE COURT: But it was all sent to them  
24 electronically?

25                THE WITNESS: Uh, I believe that the transfer of the

1 actual production was done electronically, yes. It is often  
2 Fed-Ex, but in this case I think it was transferred  
3 electronically.

4 BY MR. PISANELLI:

5 Q And where was it transferred to?

6 A It was transferred to Mayer Brown's office in the  
7 U.S.

8 Q Where?

9 A To Washington, D.C. I don't recall the exact  
10 address.

11 Q And your testimony is at the time of the transfer to  
12 D.C. -- is that what you said?

13 A Yes.

14 Q -- That those records were in a condition to be  
15 produced in the litigation?

16 A Yes.

17 Q All right. Nothing else needed to be done?

18 A That's correct.

19 Q Now, in your declaration that we spoke about  
20 earlier --

21 A Yes.

22 Q -- you testified to an additional step that you did  
23 not talk about here. Help me understand why. Here, or in  
24 your declaration you said that the documents were transferred  
25 to the United States after the iterative process. And in the



1 next paragraph you said after completion of additional review  
2 in the United States. In your declaration from a year ago,  
3 what is the additional review that occurred in the United  
4 States that you haven't told us about today?

5 A Well --

6 MR. RANDALL JONES: Objection, misstates his  
7 testimony.

8 THE COURT: Overruled.

9 MR. RANDALL JONES: Excuse me. Sorry, Your Honor.

10 THE COURT: It's okay.

11 THE WITNESS: So part of there reason that  
12 productions are transferred to counsel rather than directly to  
13 wherever they are going is to give counsel the opportunity to  
14 review those productions to insure that there aren't any  
15 technical problems with them, that they are meeting the  
16 expectations and the production specification?

17 BY MR. PISANELLI:

18 Q You said after that additional review in the United  
19 States FTI created a new .tif image endorsed with a Bates  
20 number for each document. That's not a step you told us about  
21 earlier, either. What is that stuff?

22 A So that includes the integration of the documents in  
23 the United States. You were asking about the documents from  
24 Macau.

25 Q What do you mean by that?

1           A     So, the documents that we had identified existed in  
2 the United States that were replacing Macau documents, the  
3 document itself we knew was an exact duplicate at that time,  
4 we were using hash code analysis, but the metadata about that  
5 document existed in Macau. The metadata in the United States  
6 isn't necessarily the same. So the Macau production included  
7 the metadata about that document that we could produce and  
8 then we had to marry it with the .tif images in documents in  
9 the United States that were reviewed here in the United  
10 States.

11          Q     Okay. But you told us only seconds ago that once  
12 you sent the information over to Mayer Brown in D.C. it was  
13 ready for production here, so how did that process -- is that  
14 a second production?

15          A     So, perhaps my earlier testimony was not completely  
16 thorough. The documents could have been produced as they were  
17 delivered to Mayer Brown directly without additional work.  
18 They would not have included --

19          Q     Okay.

20          A     -- the images from the United States that were  
21 replacements.

22          Q     All right. So now you told us in connection with  
23 this production that occurred that a redaction log was  
24 created. Is that right?

25          A     The redaction log was created, as I recall,

1 subsequent to the creation of the actual production.

2 Q Give me your best estimate, a time frame, how much  
3 longer after the production?

4 A Within days thereafter.

1           A     Okay.

2           Q     So the first column is Count 1, Bates Number

3 Beginning and Ending. Correct so far?

4           A     Yes.

5           MR. RANDALL JONES: I'm sorry, Jim. Could you just

6 wait for one second just so I can get it in front of me?

7           MR. PISANELLI: I'm sorry, I thought you -- No

8 worries.

9           MR. RANDALL JONES: Got it. Thank you.

10          MR. PISANELLI: Okay.

11 BY MR. PISANELLI:

12          Q     So the fourth column, Parent Beginning Bates Number,

13 what does that mean to a lay person?

14          A     So in the event that a document is an attachment to

15 an email, there is a Bates range for the parent document, the

16 email itself, and an attachment -- and a range for the actual

17 attachment document. And the Parent Beginning Bates Number is

18 the beginning Bates number of the parent email.

19          Q     Okay. All right. So then the from column is self-

20 explanatory, so this email or document that has been redacted,

21 instead of putting the person that was the creator of the

22 document, you put the -- we'll call it Code SCL Employee 1;

23 correct?

24          A     So it's SCL Employee and I believe the number

25 reflects the number of entries in that field, not a specific

1 individual.

2 Q So this --

3 THE COURT: So it's not a specific individual who  
4 you've given the identifier of one, it's one employee?

5 THE WITNESS: That's correct. That's my  
6 recollection.

7 THE COURT: Okay.

8 BY MR. PISANELLI:

9 Q Now, earlier in your testimony before the break you  
10 said -- you used instead of SCL employee you used the phrase  
11 SCL Executive. And I don't mean to suggest by this question  
12 that you were being misleading, but I went back over lunch to  
13 look for an executive designation and there isn't any. So is  
14 it fair for us to understand that the way the log was created  
15 was simply employee, the word was used for everyone that was  
16 employed by SCL at the time of the document?

17 A So I'd have to review the entire log to make that  
18 -- to agree to that. I mean, as I recall when we were  
19 discussing the way that we were going to create this customer  
20 action process, there was a discussion about identifying  
21 executives versus non-executives. It's possible that in Macau  
22 during the actual execution of the work counsel decided that  
23 it would be too complicated to be accurate in having all the  
24 reviewers correctly identify who was and was not an executive  
25 and they may have chosen not to move forward with that part of

1 the protocol.

2 Q And I'll represent to you that I did exactly what  
3 I'm doing now, this type of scientific spot check looking for  
4 executive and didn't see any, so --

5 THE COURT: You mean you're randomly flipping  
6 through the pages fast to see if it pops out at you? Yeah.

7 MR. PISANELLI: That's a very clear record of what I  
8 was doing, Your Honor.

9 MR. PEEK: Thank you for that, Your Honor, so the  
10 record is clear.

11 THE WITNESS: I can confirm on page 1 there is no  
12 such designation.

13 BY MR. PISANELLI:

14 Q All right. And so assume for me then, since I'm not  
15 going to have you study about three or four inches of a log  
16 here, assume for the sake of argument that the team, the  
17 Macanese team only used employee. If I wanted to search  
18 through this log for how many times an actual executive was  
19 the subject of a redaction, it seems obvious but that's an  
20 impossibility; right?

21 A If there's no designation for them, you would not be  
22 able to do that.

23 Q And so we also have Goldman Sachs employee. That's  
24 item number 10. Do you see that?

25 A Yes.

1 Q Do you know what that refers to?  
2 A It refers to a Goldman Sachs employee.  
3 Q From Macau?  
4 A From Goldman Sachs. I don't know where because I  
5 never saw the documents.  
6 Q Okay. Help me understand this. We heard some  
7 testimony yesterday and a little bit more today from you about  
8 your team and who is subject to the laws and who are not.  
9 From the instruction that you had received and from your  
10 experience with other projects, it is the identity of Macanese  
11 residents, citizens that have to be protected, is that right?  
12 A I don't think that's the understanding that I have.  
13 I believe it's any personal information that is present in  
14 Macau is protected.  
15 Q For anyone?  
16 A For anyone.  
17 MR. RANDALL JONES: I'm sorry, I couldn't hear that  
18 last answer. I apologize.  
19 THE COURT: Any personal information for anyone,  
20 regardless of whether they're a Macanese citizen or not that  
21 exists in Macau is protected. Is that a fair summary, sir?  
22 THE WITNESS: Yes.  
23 THE COURT: Okay.  
24 MR. RANDALL JONES: Thank you, Your Honor.  
25 //

1 BY MR. PISANELLI:

2 Q So we had -- you were in the courtroom yesterday  
3 with counsel -- for counsel's testimony from VML?

4 A Yes.

5 Q Or SCL. And he was willing to share the identity of  
6 people who were working on a project from the United States  
7 but wanted to retain and keep confidential the identity of  
8 someone from Macau. He distinguished between those two  
9 groups. Do you remember that?

10 A I do.

11 Q Do you simply disagree with his methodology on whose  
12 name and identity gets protected and whose doesn't?

13 MR. RANDALL JONES: Objection, Your Honor. That's  
14 an incomplete hypothetical. It also assumes facts not in  
15 evidence and is not a correct statement of the testimony.

16 THE COURT: Can you rephrase your question, please,  
17 Mr. Pisanelli?

18 MR. PISANELLI: Sure.

19 BY MR. PISANELLI:

20 Q You did not operate in your protocol with that same  
21 dividing line between Macanese residents and non-Macanese  
22 residents, is that right?

23 A So to clarify, in the document review and the  
24 searching we operated under our understanding of the data  
25 protection laws as communicated to us by our prior experience



1 and by counsel. We did not distinguish in that -- in those  
2 documents between employees of one country or another. It was  
3 just any personal data. There are individuals in the United  
4 States now who were in Macau then. There is data in the  
5 United States now that we produced that is a duplicate of data  
6 in Macau. If the documents and the people exist in the United  
7 States, disclosing them in the United States is not a  
8 violation of Macau data privacy as I understand it.

9 Q Okay. All right. So to be clear, I asked you a few  
10 moments ago if I search through the redaction log if I could  
11 find how many documents were redacted that identified Sands  
12 chairman, I think you acknowledged we couldn't figure that out  
13 from the privilege log, correct?

14 A So even in the event that we were able to implement  
15 the work plan that we had originally discussed, you would  
16 still not be able to identify the Sands chairman because that  
17 would be a direct connection between data in Macau and  
18 personal data that needs to be protected.

19 Q Sure. And all I'm getting at is my question was  
20 focused on a review of the log I couldn't find that out. But  
21 to be more accurate, I couldn't even review the documents that  
22 were produced to figure that out either, right, because the  
23 information is redacted?

24 A That's correct. You can't know the information  
25 that's been redacted.

1 Q So --  
2 THE COURT: Mr. Pisanelli, can I interrupt you for a  
3 second?  
4 MR. PISANELLI: Yes, ma'am.  
5 THE COURT: So, sir, if you could go to the second  
6 and third lines of the redaction log in the last column where  
7 it says Redactions to Documents?  
8 THE WITNESS: Yes.  
9 THE COURT: See the first entry in that last column  
10 says Las Vegas Employee and then it has a count --  
11 THE WITNESS: Yes.  
12 THE COURT: -- for both of those?  
13 THE WITNESS: Yes.  
14 THE COURT: Does that mean that this document was  
15 not duplicated and available in the United States?  
16 THE WITNESS: At the time that this log was produced  
17 we had only done the hash code matching to find duplicate  
18 documents in the United States, and it means that that  
19 document was not found by hash code matching.  
20 THE COURT: Even though you have 14 on one and 32  
21 Las Vegas Sands employees that are identified?  
22 THE WITNESS: Yes.  
23 THE COURT: Okay.  
24 MR. PISANELLI: Finished, Your Honor?  
25 THE COURT: Yes. Sorry.

1 BY MR. PISANELLI:  
2 Q And now go to the second page, entry number 23. Here  
3 we have a document that is actually from a Las Vegas Sands  
4 employee.  
5 A Yes.  
6 Q Yet this document was still redacted?  
7 A Yes.  
8 Q Okay. And go back to page one for me on item number  
9 ten. I'm going to use the Goldman Sachs employee example.  
10 MR. RANDALL JONES: Sorry, what page?  
11 MR. PISANELLI: Page one.  
12 MR. PEEK: Page one.  
13 MR. RANDALL JONES: Oh, page one. Sorry.  
14 THE COURT: Bates number 349.  
15 BY MR. PISANELLI:  
16 Q Did your team do anything to do the hash code review  
17 of Goldman Sachs documents so as to see if there was a  
18 document like this in the United States already?  
19 A During the hash code matching process we only had  
20 access to data that was in the custody and control of Las  
21 Vegas Sands Corporation that FTI had available to it. I can't  
22 speculate as to whether we have data from Goldman Sachs or  
23 whether we could have searched it.  
24 Q Fair enough. Now go to the second page again.  
25 Let's use as an example item number 22. Here we have a

1 document from a Sands China employee to a Las Vegas Sands  
2 employee. Do you see that?

3 A Yes.

4 Q Yet that document was redacted as well?

5 A So I need to be clear, as I mentioned in my prior  
6 testimony, the hash code matching of emails is particularly  
7 difficult and there was a significant number of candidate  
8 duplicate documents that were ultimately identified that were  
9 not matched directly by hash code. And this log was prepared  
10 only after the hash code matching process had gone forward.

11 Q Okay. And so then just with all of your experience  
12 in this industry, understanding even the objective of your  
13 assignment here, does it jump out at you as a bit of a red  
14 flag that the process, while largely accurate potentially, has  
15 some flaws or defects when you see documents being redacted  
16 that were either from Las Vegas Sands or to Las Vegas Sands?  
17 Is that a red flag for you?

18 A It is a question that should be investigated. It's  
19 not a problem. There are an enumerable number of valid  
20 circumstances where that would be true.

21 Q Okay. So did your team then go back and investigate  
22 the entries where there is something to or from a Las Vegas  
23 Sands employee to investigate why the document is still being  
24 redacted?

25 A I believe to a great degree that's why we went back

1 to Macau in March and April of 2013. Again, the matching  
2 process that took place during the first iteration was using  
3 hash code direct matching only. Documents that did not  
4 exactly match were not looked at. There are any number of  
5 examples where an email that looks to you or to me or to a lay  
6 person to be identical does in fact contain data that is not  
7 identical, and the data of not being identical will cause the  
8 hash codes to be different. So we knew in advance that we  
9 were not going to get a perfect match of every document only  
10 by hash code, but we were attempting to find as many documents  
11 in the United States as possible to speed up the review to  
12 meet the January 4th deadline.

13 Q Now you just now, like earlier in direct  
14 examination, used the phrase doing everything as much as  
15 possible to make sure that you located the documents in the  
16 United States so that they could be removed from the redaction  
17 process. Fair enough?

18 A Yes.

19 Q All right. So the simple question I have is whether  
20 someone simply went through, found the document that's either  
21 to or from a Las Vegas Sands employee that had nonetheless  
22 been redacted and went and looked at the document in Las Vegas  
23 at the Las Vegas Sands to confirm whether it should or should  
24 not be redacted?

25 A So --

1 Q Every one of them?

2 A On pain of restating what I've already stated, the  
3 hash code matching process is an exact matching process. The  
4 documents that are in Macau are only viewable in Macau. It is  
5 impossible for someone in the United States to look at a  
6 document in the United States without seeing the document in  
7 Macau and tell you whether or not they're identical because we  
8 can't see the information that has to be redacted. It can  
9 only be looked at from Macau coming here.

10 Q You used the word impossible.

11 A Yes.

12 Q It's not really impossible, is it? It's a choice  
13 not to look?

14 A No, it is impossible. It is not possible to view  
15 information that is not visible to you.

16 Q Well, it's possible to get on the email or telephone  
17 and tell someone from Macau to email a document that's in  
18 Sands China so that someone in Las Vegas can see it?

19 MR. PEEK: Objection, argumentative, Your Honor.

20 MR. RANDALL JONES: I join in that objection.

21 THE COURT: Overruled.

22 THE WITNESS: In order for a person in Macau to  
23 request a specific document in the United States, they have to  
24 disclose data in Macau that is protected by data privacy.

25 //

1 BY MR. PISANELLI:  
2 Q I want you to see if you can -- maybe you can't. My  
3 question is kind of simple. Let's put the Macau Data Privacy  
4 Act and the Office, all of that aside and just mechanically as  
5 one human being in Las Vegas to another human being in Macau,  
6 it is not impossible for one person to say I want to check  
7 this record, let me see what it looks like?  
8 A With the stipulation that you're ignoring Macau law,  
9 yes, it is possible.  
10 Q All right. And that wasn't done?  
11 MR. RANDALL JONES: I'm going to object to --  
12 THE WITNESS: We did not ignore Macau law. That is  
13 correct.  
14 MR. PISANELLI: Okay.  
15 THE COURT: Sir, were the Las Vegas Sands documents  
16 that were available to FTI on a server?  
17 THE WITNESS: So, the Las Vegas Sands documents that  
18 are available to us --  
19 THE COURT: Yes.  
20 THE WITNESS: -- come from multiple sources. Some  
21 of them are on servers, some of them are hosted, some of them  
22 are on hard drives in our lab.  
23 THE COURT: Did you host all of -- Were they  
24 remotely available to you?  
25 THE WITNESS: Some of the documents were available

1 on our hosted review systems, some of them were not.

2 THE COURT: So somebody in Macau could review the  
3 hosted documents without any problem at all, not violating any  
4 Macau law; right?

5 THE WITNESS: That's correct.

6 THE COURT: Okay. Now, can I ask before I let Mr.  
7 Pisanelli have you back, what you mean when you say had  
8 available to it?

9 THE WITNESS: Yes. So, FTI has done more than one  
10 engagement with Las Vegas Sands Corporation. In the scope of  
11 those engagements we have collected data on a variety of  
12 individuals and from a variety of sources. Not all of those  
13 individuals or sources are custodians or sources in the Jacobs  
14 matter. But we were directed to use all of the data  
15 accessible to us from any source to perform this matching  
16 process.

17 THE COURT: Okay, say it a different way. I didn't  
18 get it.

19 THE WITNESS: Sorry. So, we have data that we  
20 collected on other matters that we could access because we had  
21 collected data on other matters, and we were told to use any  
22 data available to us, which included data that we had  
23 collected on other matters.

24 THE COURT: Okay. Now, let me go back to the  
25 information that Ms. Haine (phonetic) carried out of Macau.



1 That wasn't available to you, right?

2 THE WITNESS: So, there's a special distinction  
3 about that data.

4 THE COURT: Yes, there is.

5 THE WITNESS: The data that I believe you're  
6 referring to that was taken out of Macau, when it was  
7 identified that it existed in the data in the United States,  
8 we were given instructions to sequester that data and that it  
9 was not allowed to be used or touched by anyone in the United  
10 States. And so although that data is theoretically available  
11 to us, we've been given instructions never to look at it, so  
12 we didn't use it.

13 THE COURT: So that was not part of what you had  
14 available to you?

15 THE WITNESS: That's correct.

16 THE COURT: Okay.

17 BY MR. PISANELLI:

18 Q Instructions from whom?

19 A Mayer Brown. Excuse me, Munger Tolles at the time;  
20 Mayer Brown now.

21 Q All right. Now, still under this category of doing  
22 everything possible to make sure the redaction list is  
23 minimized, did anyone from your team reach out to contact  
24 Price Waterhouse Cooper's to see if they could provide  
25 documents, even sending them to Macau to see if a particular

1 document was available in the United States and therefore  
2 didn't need to be redacted?

3 A So again, under pain of repeating my testimony, this  
4 log was prepared after the first iteration of work in Macau  
5 where the only duplicate matching had been done by hash code  
6 only, only done for data accessible to us. We did not expand  
7 that search to alternative methods, which we did do in the  
8 second iteration in Macau. So to answer the question, no, at  
9 the time that this log was prepared we did not do that.

10 Q Do you know why you didn't do it?

11 A My recollection of the development of the work plan  
12 in December of 2012 was that our objective and the parameters  
13 within which we were designing our solutions was that we  
14 needed to respect the Macau Data Privacy Laws, but that we  
15 needed to find ways to produce as much information as we could  
16 within those limitations in the production.

17 Q All right. So the next exhibit, 329, which I  
18 believe is also in evidence --

19 THE CLERK: It's proposed.

20 MR. PISANELLI: Proposed?

21 THE WITNESS: Just a second. Yeah.

22 MR. RANDALL JONES: 329?

23 MR. PISANELLI: 329.

24 MR. RANDALL JONES: Have you stipulated to this?

25 MR. BICE: We will.

1 MR. PISANELLI: I believe we did, but --  
2 MR. BICE: No, we did not, but we will.  
3 MR. PISANELLI: But we will.  
4 MR. BICE: We thought about it.  
5 MR. PEEK: Now do you want to use it?  
6 THE COURT: Do you want to stipulate to it now?  
7 MR. PISANELLI: Yes, please.  
8 THE COURT: See why I ask you guys about  
9 stipulations ahead of time? Make you think. It will be  
10 admitted.  
11 (Defendant's Exhibit 329 admitted)  
12 MR. RANDALL JONES: I will stipulate to the  
13 admission of Exhibit 329.  
14 THE COURT: Well, it's your document.  
15 MR. RANDALL JONES: That's why I'm stipulating to  
16 its admission, Your Honor.  
17 THE COURT: I asked Mr. Pisanelli and Mr. Bice and  
18 then I gave them a hard time again.  
19 BY MR. PISANELLI:  
20 Q So here we have a document that's entitled, "Sands  
21 China Limited Second Supplemental Redaction Log, January 5th,  
22 2015," correct?  
23 A Yes.  
24 Q And can you just take a moment and look back --  
25 well, maybe you know off the top of your head. Exhibit 329 is

1 not a restated log of Exhibit 327 with additions, it's  
2 actually an independent section of the total log.

3 THE COURT: And it's twice as thick.

4 BY MR. PISANELLI:

5 Q Correct?

6 A Yes.

7 Q All right. So these are all new entries, in other  
8 words?

9 A No, I can't say that. Many of the entries are  
10 probably the same.

11 Q So let me ask it a different way. Does 329  
12 incorporate the entries in 327 or not?

13 A I believe that it does incorporate some of the  
14 entries. I don't know if it incorporates all of them. I  
15 didn't check that.

16 Q All right. Well, what we do know from its date that  
17 this redaction log was created after the second process that  
18 you told us about that occurred in March, correct?

19 A Yes, that's correct.

20 Q And at that second process that you told us about,  
21 you said that more action was taken to confirm or attempt to  
22 make sure that you get all the records produced as possible,  
23 minimizing the redactions, correct?

24 A Yes.

25 Q All right. Now here, again, I just did that

1 flipping thing and I flipped to page 89 of 512.

2 A I have it.

3 Q And so you can see starting at what's called the  
4 count, 1105, 1106 --

5 A Yes.

6 Q -- 1108, here we have documents that are from Las  
7 Vegas Sands employees and to Las Vegas Sands employees still  
8 redacted?

9 A Yes.

10 Q All right. Now, during this process -- let's bounce  
11 back in time a little bit back to the first process, the first  
12 collection. We -- or your team -- Strike that. Did your team  
13 during that first collection process provide any services in  
14 connection with a privilege log?

15 A Yes.

16 Q What role did your team play in the creation of a  
17 privilege log?

18 A We, in consultation with counsel, identified the  
19 fields and the data elements of those fields that are going to  
20 be coded by the reviewers in order to build the basis for the  
21 privilege log.

22 Q Now, the privilege log, if I can find it in my  
23 notes, was produced either the same day or the next day as the  
24 redaction log. Is that right, sound about right?

25 MR. RANDALL JONES: Which -- Counsel, which

1 redaction log, the first or the second?

2 MR. PISANELLI: The first one.

3 THE WITNESS: I believe that's correct.

4 BY MR. PISANELLI:

5 Q Okay. So now you told us the whole process. I  
6 promise I don't want to go back and figure out the whole  
7 process, but let's focus on the Macanese team of citizens and  
8 lawyers you told us about. The Macanese team included  
9 secretaries, paralegals, et cetera, right?

10 A I don't know what it constituted other than I know  
11 that there were Macanese lawyers present and I know that it  
12 has been stated to me that some of the people were not  
13 Macanese lawyers.

14 Q So as I understood the process, unless there was a  
15 Mayer Brown lawyer, and you don't know if there was, Mayer  
16 Brown was not given access to unredacted documents, correct?

17 A Correct.

18 Q And the team of Nevada lawyers were not given access  
19 to the unredacted documents?

20 A That's correct.

21 Q So where in the process did the privilege review  
22 occur?

23 A So, my understanding was the privilege review took  
24 place at the same time immediately following the relevance  
25 review. But remember, there were multiple attorneys and

1 multiple batches of documents being reviewed, so some  
2 privilege review was taking place while some relevancy review  
3 was taking place.

4 Q So is it actually three in one step -- In one step  
5 the Macanese team is reviewing for relevance, for privilege  
6 and for redaction under Macau law?

7 A I don't believe that's the case. The way it was  
8 discussed with us when we set up the work plan and the work  
9 flows in our tool to manage the review, the Macanese initial  
10 review is relevance. At the time of the relevance review they  
11 also performed redactions. And then after that is completed  
12 then the privilege review takes place to fill in the detailed  
13 privilege log, with the understanding that in Macau looking at  
14 these documents in our system in Macau the redactions are  
15 translucent and the person doing the log can see the data that  
16 is being redacted. They're not looking at the .tif images  
17 post-production.

18 Q So who was it that was doing the privilege review?

19 A The coding was being done by lawyers that were in  
20 the room, the Macanese lawyers and their employees.

21 Q The Macanese lawyers did the privilege log under  
22 Nevada law?

23 A The Macanese lawyers did the privilege review in  
24 Macau where they coded the documents to form the basis for the  
25 creation of the privilege log.

1           Q     All right. And then Nevada lawyers would review  
2 their initial coding for confirmation, et cetera?

3           A     I wasn't part of the Nevada lawyers process and  
4 review of the logs, so I can't say.

5           Q     But help me understand this. How could anyone  
6 beyond the Macanese team review for privilege if they were the  
7 only team that could see the unredacted versions? In other  
8 words, hypothetically if this team of lawyers from Nevada were  
9 called upon to confirm the privileges that were being  
10 asserted, they would have to do it on a redacted document.

11          A     So first, I think you're conflating reviewing the  
12 privilege log with reviewing the documents for privilege and  
13 coding for a privilege log. So the Macanese lawyers were the  
14 only ones who could review the documents to do the coding to  
15 put on the draft privilege log the reasons for the document  
16 being privileged. The actual final log itself and the review  
17 and finalization of that log could be done in the United  
18 States looking at the redacted documents and if necessary  
19 accepting or not accepting individual items on the log. And  
20 since you used the word theoretically -- hypothetically, they  
21 could ask people in Macau to look at the documents if they  
22 needed information. But I wasn't part of that process so I  
23 don't really know what they did.

24          Q     But the process that you were a part of, I think you  
25 did agree with me is that the privilege review for Nevada law



1 by non-Macanese lawyers would have had to have been done on a  
2 redacted document?

3 MR. RANDALL JONES: Object to the form of the  
4 question. I think it misstates his testimony I think it also  
5 calls for speculation.

6 THE COURT: Overruled.

7 THE WITNESS: I'm not an attorney, so for me to  
8 state what I think is necessary to make a privilege  
9 determination is by definition speculation.

10 BY MR. PISANELLI:

11 Q That's a fair point. And all I'm really asking you  
12 is is the redaction, because of the process you've described  
13 for us today and the point in the process when the privilege  
14 log -- when the privilege review is taking place by non-  
15 Macanese lawyers, the privilege review would have had to have  
16 been done on a redacted document?

17 A So again, you're conflating reviewing the log --

18 Q No, I'm not.

19 A -- and reviewing the document.

20 MR. RANDALL JONES: Well, Your Honor -- At least  
21 don't interrupt the witness and argue with him. Let him at  
22 least answer.

23 THE COURT: Mr. Pisanelli, let the witness finish.

24 MR. PISANELLI: I'm sorry, Your Honor.

25 THE COURT: Sir, could you finish your answer?

1 THE WITNESS: Sure. So again, the documents,  
2 unredacted documents are reviewed in Macau by Macanese lawyers  
3 or individuals under their direction. Those individuals are  
4 making a determination as to whether that document is  
5 privileged. Those people --

6 THE COURT: The Macanese lawyers?

7 THE WITNESS: The Macanese lawyers are making a  
8 determination whether the document is privileged.

9 THE COURT: Under Nevada law?

10 THE WITNESS: Under the instructions they were  
11 given. I wasn't part of those instructions. They are making,  
12 therefore, the coding in the system that says I am saying this  
13 document is in fact privileged because it's attorney-client  
14 communications between X and Y and it covers these topics.  
15 That log and all of that data is not personal. That log and  
16 the redacted documents are here in the United States and  
17 available to be reviewed by people in the United States. But  
18 the people --

19 THE COURT: But only in their redacted form?

20 THE WITNESS: But only in their redacted form, but  
21 the determination of privilege is being done in Macau by the  
22 lawyers in Macau during the coding of the documents.

23 BY MR. PISANELLI:

24 Q Okay. And I didn't mean -- my questions, I'm sure,  
25 because you did repeat your answer were not clear and I have

1 or I attempted to move off the log and just make this simple  
2 point. If, hypothetically, because I don't know if this  
3 happened, if a Nevada lawyer looking at the log saw that a  
4 document had been flagged for privilege would only have a  
5 redacted document to look at, which would not include the name  
6 of the sender, the name of the recipient or any names of  
7 people that -- or any other personal data in the body of the  
8 document they have available to them, that is correct?

9 A That is correct.

10 Q All right. Now, from a timing perspective, at the  
11 time of this first production and the redaction log and the  
12 privilege log, all of this occurred at the earliest in early  
13 January of 2013, is that correct?

14 A Yes. The work was in January 2013.

15 Q Now, were you aware that all of these documents were  
16 being produced after seven witnesses in this case were already  
17 deposed?

18 A I was not aware of that.

19 Q Okay. All right. That's not anything that was  
20 brought to your attention for purposes of modifying your  
21 schedule?

22 A I was not aware of any of that.

23 Q Okay. All right. So now you've told us a few times  
24 about the second process in 2013 where a couple of things were  
25 expanded. First, custodians were expanded?

1 A Yes.

2 Q And second -- well, you tell me. What else was  
3 expanded beyond the custodians?

4 A The search criteria were modified, is my  
5 recollection.

6 Q Okay. Who did the modification of the search  
7 criteria?

8 A The definition of the changed criteria came from  
9 Mayer Brown, from Kristina Portner.

10 Q Okay.

11 A And the implementation of it was our team in Macau.

12 MR. PISANELLI: So, Dustin, pull up Exhibit 213  
13 again. Your Honor, that's in evidence. And go to the search  
14 terms for Macau review on the third page.

15 THE WITNESS: Yes.

16 BY MR. PISANELLI:

17 Q So again, just to put into context, these are the  
18 search terms that you understood were being used for the  
19 second collection of documents in April, March of 2013?

20 A Yes, that's correct.

21 Q All right. Now, you were told by Mayer Brown that  
22 these search terms were the ones that you should use?

23 A So again, this is a formulated structure of the  
24 criteria that looks to me and as I recollect has our input.  
25 So the actual structure of the term, like where parentheses go

1 and some other things, we contributed to that. But these are  
2 the criteria that were provided to us at that time.

3 Q Okay. Now, provided to you by Mayer Brown?

4 A The criteria were provided to us by Mayer Brown.

5 Q Were you informed by anyone that plaintiff's counsel  
6 had made recommendations for revisions to the search terms?

7 MR. RANDALL JONES: Your Honor, I'm going to object  
8 to the form of the question. It assumes facts not in evidence  
9 and I believe is contrary to the facts.

10 THE COURT: Overruled.

11 MR. RANDALL JONES: Well, then I would --

12 THE COURT: I made changes to the search terms, too.

13 MR. RANDALL JONES: Well, Your Honor, again, that  
14 wasn't the question. But with respect to that question, then  
15 I would say --

16 THE COURT: Well, you know.

17 MR. RANDALL JONES: -- that it is an inaccurate  
18 hypothetical and I certainly have the information to  
19 contradict it.

20 THE COURT: How about we rephrase it to changes were  
21 made to the search terms?

22 BY MR. PISANELLI:

23 Q Well, actually that's what I'm trying to figure out,  
24 if changes were made to the search terms at the request or  
25 recommendation of plaintiff's counsel in this case?

1           A     I would not know the answer to that question.  
2           Q     No one ever informed you of that?  
3           MR. RANDALL JONES: Object to the form of the  
4 question. That calls for speculation.  
5           THE COURT: He said if.  
6           MR. RANDALL JONES: But that's assuming that if he  
7 got any additional, any kind of information, he would know  
8 whether or not the plaintiffs had any input into it.  
9           THE COURT: Right. And he said he wouldn't know.  
10          MR. RANDALL JONES: That's why it calls for  
11 speculation.  
12          THE COURT: And that's a perfect answer.  
13          MR. RANDALL JONES: That's why I said it calls for  
14 speculation, Your Honor.  
15          THE COURT: He doesn't know.  
16          MR. PISANELLI: Let's do this to make this record as  
17 clear as possible. Your Honor, anticipating this discussion  
18 coming in particular from this morning's discussion, I printed  
19 out an email string between Ms. Spinelli on the one hand, Mr.  
20 Peek and former counsel, not the present counsel, that  
21 actually discusses this term. I'd like to do one of two  
22 things or maybe both of them. One, see if this --  
23          THE COURT: You can mark it as your next in order  
24 and then we'll deal with it.  
25          MR. PISANELLI: Okay.

1 THE COURT: Make sure everybody gets a copy.  
2 MR. PISANELLI: I will, Your Honor.  
3 MR. PEEK: Then I can't yell at him for where's my  
4 copy like he did to me yesterday.  
5 THE COURT: I was trying to stop that. I'm trying  
6 -- you guys have been much better today. I'm complimenting  
7 you. So, Proposed 215.  
8 MR. PISANELLI: Proposed 215. Actually, let me have  
9 that one back, Todd.  
10 MR. BICE: Of course.  
11 MR. PISANELLI: Actually, let me give that -- I can  
12 give the official to the witness?  
13 THE COURT: Yes, you can take the official one to  
14 the witness.  
15 MR. PISANELLI: And may I approach the witness?  
16 THE COURT: You may.  
17 MR. PISANELLI: Thank you.  
18 MR. RANDALL JONES: What exhibit is this, Your  
19 Honor?  
20 THE COURT: Proposed 215. I'm not looking at it.  
21 MR. RANDALL JONES: Thank you.  
22 BY MR. PISANELLI:  
23 Q Mr. Ray, we've handed you a document that the Court  
24 has marked as Proposed Exhibit 215.  
25 A Yes.

1           Q     And it purports to be an email string between  
2 lawyers in this case from the plaintiff on the one hand and  
3 defendants on the other. And I'll ask you to take a look on  
4 page 4 of this document in the email that's about two-thirds  
5 -- starts about two-thirds of the way up the page from Debra  
6 Spinelli to a series of people, including Brad Schneider,  
7 Steve Peek and others. Do you see that?

8           A     I do.

9           Q     Now, take a look, and this may take you a moment to  
10 do, take a look at the proposed revisions to the search terms  
11 from Ms. Spinelli and tell me if this document refreshes your  
12 recollection as to whether any of her proposals actually made  
13 their way into the search terms, the finalized search terms  
14 that were used in the second process in 2013 that you told us  
15 about?

16          A     So, I've never seen this document or any copy of any  
17 subset of this document. The search terms that were provided  
18 to us by Mayer Brown were provided to us by Mayer Brown. We  
19 contributed to them to revise them structurally so that they  
20 would work correctly. Where Mayer Brown received their input  
21 on how those terms were constructed or revised is outside of  
22 my knowledge.

23          Q     Okay. Well, help me understand how these Boolean  
24 things work. Even if we don't use it as an exhibit, I'm going  
25 to ask you to use it as an instructive tool.



1 MR. PISANELLI: And Dustin, please put Exhibit 213  
2 back up.  
3 BY MR. PISANELLI:  
4 Q Now let's take a look at paragraph one.  
5 A Yes.  
6 Q There we go. And take a look now in Ms.  
7 Spinelli's --  
8 MR. PEEK: Your Honor, this document is not in  
9 evidence.  
10 THE COURT: This is 213. It is.  
11 MR. PEEK: 215. He's asking him to look at 215.  
12 THE COURT: 213 is what he asked for.  
13 MR. PISANELLI: Yes.  
14 THE COURT: Is this 213?  
15 MR. PISANELLI: 213 is up there.  
16 THE WITNESS: We're looking at 213, Mr. Peek. 213  
17 is in. I have a check mark next to it.  
18 MR. PEEK: May I -- He's asking him now to look at  
19 215 and compare 215 to 213 to see if those -- what's in 215 is  
20 included in 213.  
21 THE COURT: He is.  
22 MR. PEEK: And you can't be -- so he's asking him to  
23 look at -- introduce a document into evidence here through  
24 testimony when this document has not been admitted into  
25 evidence.

1           THE COURT: Well, I don't think was the question. I  
2 thought his question --

3           MR. PEEK: Okay. Well, I'll wait for the question,  
4 Your Honor.

5           THE COURT: Yeah. I'm pretty sure his question was  
6 can you compare 215 and 213 and tell me if 213 reflects what's  
7 in 215 or not?

8           MR. PEEK: That's a way, Your Honor, of having 215  
9 introduced into some kind -- become some evidentiary form here  
10 to show that there's some absence within 215.

11          THE COURT: Well, then I get a yes or no, that it's  
12 yes, it's in there, or no it's not, and then we have a  
13 different issue as to whether we're going to go into the --

14          MR. PEEK: I still think that the question itself is  
15 objectionable and I'm going to stand by that objection.

16          THE COURT: All right. Well, let's wait and see if  
17 we get an actual question.

18          MR. PEEK: Okay.

19          MR. PISANELLI: Let's do this in advance of my  
20 question, which you have perfectly characterized, by the way.  
21 Since there's been an objection only moments ago that I was  
22 mischaracterizing the record and that plaintiff's counsel had  
23 never offered to modify the search terms, I'll offer 215,  
24 which is purely an email between counsel on this exact point,  
25 into the record.

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDS CHINA LTD., a Cayman Islands  
corporation,

Petitioner,

vs.

CLARK COUNTY DISTRICT COURT, THE  
HONORABLE ELIZABETH GONZALEZ,  
DISTRICT JUDGE, DEPT. 11,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed  
Case Number: 2015-08679  
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Tracie K. Lindeman  
Clerk of Supreme Court  
District Court Case Number  
A627691-B

**APPENDIX TO  
PETITION FOR WRIT OF  
PROHIBITION OR  
MANDAMUS  
RE MARCH 6, 2015  
SANCTIONS ORDER**

**Volume XXII of XXXIII  
(PA4406 – 4655)**

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## **CERTIFICATE OF SERVICE**

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE MARCH 6, 2015 SANCTIONS ORDER Volume XXII of XXXIII (PA4406 – 4655)** to be served as indicated below, on the date and to the addressee(s) shown below:

### **VIA HAND DELIVERY (CD)**

Judge Elizabeth Gonzalez  
Eighth Judicial District Court of  
Clark County, Nevada  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155

### **Respondent**

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DATED this 20th day of March, 2015.

By: /s/ PATRICIA FERRUGIA

**APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR  
MANDAMUS RE MARCH 6, 2015 SANCTIONS ORDER  
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COPY

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\*\*\*\*\*

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

FEB 11 2015

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al..

Defendants  
.....

BY,

DULCE MARIE ROMEA, DEPUTY  
CASE NO. A-627691

DEPT. NO. XI

Transcript of  
Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

EVIDENTIARY HEARING RE MOTION FOR SANCTIONS - DAY 2

TUESDAY, FEBRUARY 10, 2015

APPEARANCES:

FOR THE PLAINTIFF:

JAMES J. PISANELLI, ESQ.  
TODD BICE, ESQ.  
DEBRA L. SPINELLI, ESQ.  
JORDAN T. SMITH, ESQ.

FOR THE DEFENDANTS:

J. STEPHEN PEEK, ESQ.  
JON RANDALL JONES, ESQ.  
MARK JONES, ESQ.  
IAN P. MCGINN, ESQ.  
STEVE L. MORRIS, ESQ.

COURT RECORDER:

JILL HAWKINS  
District Court

TRANSCRIPTION BY:

FLORENCE HOYT  
Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

PA4406

1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 10, 2015, 9:05 A.M.

2 (Court was called to order)

3 THE COURT: Who are we starting with this morning?  
4 Why are you standing up, Mr. Pisanelli?

5 MR. PISANELLI: Because I'll be sitting all day. I  
6 don't have anything to say.

7 (Pause in the proceedings)

8 THE COURT: Good morning, Mr. Morris. How are you?

9 MR. MORRIS: Good morning, Your Honor. I'm late.

10 THE COURT: It's okay. Would you like some coffee,  
11 or are you okay?

12 MR. MORRIS: I would like some coffee.

13 (Pause in the proceedings)

14 THE COURT: Who's our next witness?

15 MR. PEEK: Mr. Ray, Your Honor. He was here.

16 THE COURT: It's okay. I'm not trying to rush  
17 anybody. I'm just -- I've got to break for the bench/bar  
18 meeting at noon or a few minutes before so I can get to the  
19 correct floor, wherever that is.

20 Sir, you're up next, so bring whatever you need.  
21 Make sure you bring your glasses, and come on up.

22 MR. MARK JONES: Your Honor, if I may. Housekeeping  
23 issue. You just gave me this envelope yesterday.

24 THE COURT: I did.

25 MR. MARK JONES: This is actually supposed to be for

1 [inaudible].  
2 (Pause in the proceedings)  
3 THE COURT: Dulce, can you go ahead and swear him  
4 in, please.  
5 THE CLERK: Yes, Your Honor.  
6 JASON RAY, DEFENDANTS' WITNESS, SWORN  
7 THE CLERK: Thank you. Please be seated, and please  
8 state and spell your name for the record.  
9 THE WITNESS: My name is Jason Ray, R-A-Y.  
10 (Pause in the proceedings)  
11 THE COURT: You can proceed.  
12 MR. RANDALL JONES: Thank you, Your Honor.  
13 DIRECT EXAMINATION  
14 BY MR. RANDALL JONES:  
15 Q Good morning, sir. Would you please -- I think  
16 you've stated it for the record. Would you please state your  
17 name again for the record.  
18 A Sure. It's Jason Ray, R-A-Y.  
19 Q Mr. Ray, where do you currently reside?  
20 A I reside in Portland, Oregon.  
21 Q Would you tell Judge Gonzalez who your employer is  
22 currently.  
23 A FTI Consulting, Incorporated.  
24 Q And how long have you been employed by FTI?  
25 A Just over eight years now.

1 Q And would you also tell Judge Gonzalez what your  
2 current job title is at FTI.

3 A I'm a managing director.

4 Q And as the managing director could you please tell  
5 Judge Gonzalez what that means as a managing director at FTI.

6 A Sure. So managing directors are what we would call  
7 engagement lead consultants or supervising timekeepers. So  
8 when FTI is approached about an engagement I'm the one throat  
9 to choke to make sure it goes correctly. I scope the  
10 engagement, I make sure that the engagement documents are  
11 correct, I put the team together to deliver the project, I  
12 supervise them, I approve any decisions that are made about  
13 how the project is going to be executed, and I do strategic  
14 consulting in specific areas of my own expertise.

15 Q Since you mentioned specific areas of your own  
16 expertise, would you tell Judge Gonzalez what those areas are.

17 A Sure. So I've been involved in litigation services  
18 since 1979. I've held executive positions and operational  
19 management positions at several litigation support companies.  
20 I also am a computer programmer, software development  
21 executive, and was the CEO of a startup company that did  
22 artificial intelligence software. So my expertise is in the  
23 electronic discovery life cycle as a whole, in specific issues  
24 around artificial intelligence, computer system design, and  
25 execution of complex problems that need to be uniquely solved.



1 Q And would you tell Judge Gonzalez how long have you  
2 worked for FTI.

3 A I've worked for FTI about eight years.

4 Q And you've mentioned areas of expertise. Have you  
5 had any specialized training or taken any specific courses or  
6 have a degree in any areas that would be helpful or useful to  
7 you or that are helpful or useful to you with respect to those  
8 areas of expertise you've outlined for Judge Gonzalez?

9 A So my Bachelors degree program was information  
10 system. Prior to that was physics. I have had multiple  
11 classes and seminars. I speak at conferences, and I deliver  
12 CLE presentations on electronic discovery issues.

13 Q And would you -- since you've talked about  
14 electronic discovery issues, would you explain to Judge  
15 Gonzalez your understanding of -- or your definition, if you  
16 will, of electronic discovery issues, what that entails.

17 A So due to the rise of technology, most business  
18 information today is stored in digital format, Even documents  
19 that are in paper format, the vast majority of them were  
20 digital at one time. And my area of expertise is in how to  
21 find those documents, how to appropriately select documents  
22 that are potentially relevant, how to insure that those  
23 documents are reviewed and produced correctly, and to make  
24 sure that the team that is working on the project understands  
25 both the legal requirements of delivery and the operational

1 and technical requirements of delivery so that we get a  
2 defensible solution.

3 THE COURT: So you're an ESI vendor?

4 THE WITNESS: I work for an ESI vendor.

5 THE COURT: Okay.

6 BY MR. RANDALL JONES:

7 Q Do you have, by the way, any legal training? In  
8 other words, are you a lawyer?

9 A I am not a lawyer.

10 Q All right. But do you work with lawyers?

11 A I work with lawyers a lot.

12 Q And how long have you been working with lawyers?

13 A Since 1979.

14 Q And specifically with respect to electronic storage  
15 -- electronically stored information and the discovery process  
16 how long have you been working with lawyers?

17 A I've been focused only on electronic discovery since  
18 2003. So 12 years.

19 Q And could you tell Judge Gonzalez in how many states  
20 that you've been engaged, either before you worked for FTI or  
21 since you've worked for FTI, in electronic discovery issues or  
22 helping lawyers produce electronically stored discovery over  
23 the course of your career.

24 A States in the United States?

25 Q Yes.

1           A     I don't know an exact number. At least 25 or 30.  
2 Most of my work has been on the West Coast and on the East  
3 Coast.  
4           Q     All right. So, as they say, the flyover states  
5 you've not been [inaudible].  
6           A     There's always litigation somewhere.  
7           Q     Is that both in State, as well as Federal Courts?  
8           A     Yes.  
9           Q     Have you worked on any electronically stored  
10 discovery matters for lawyers in jurisdictions outside of the  
11 United States?  
12          A     Yes.  
13          Q     Could you tell Judge Gonzalez those jurisdictions  
14 outside of the United States where you've been involved in  
15 litigation with electronically stored discovery.  
16          A     Sure. So we've done -- I've done projects in  
17 Brazil, Chile, Mainland China, Taiwan, Hong Kong, Singapore,  
18 Australia. We did one project in New Zealand, and I believe  
19 that we had another -- oh. Several projects in Japan, of  
20 course. And there may have been another project in Asia near  
21 Singapore that wasn't in Singapore.  
22               THE COURT: Have you done projects related to the  
23 European data protection issues?  
24               THE WITNESS: Yes. My apologies.  
25               THE COURT: And then so you've seen the difference

1 between the European data protection issues and the Asian data  
2 protection issues?

3 THE WITNESS: Yes.

4 THE COURT: Okay.

5 MR. RANDALL JONES: Your Honor, you just took away a  
6 couple of my questions.

7 THE COURT: I'm fairly familiar with these issues.

8 MR. RANDALL JONES: I know you are, Your Honor.

9 THE COURT: It's all right. Keep going.

10 BY MR. RANDALL JONES:

11 Q In light of the Judge's comment, I believe Judge  
12 Gonzalez is familiar with not only electronic discovery, but  
13 also Sedona -- I probably get this wrong, she would know --  
14 Sedona Principles or the Sedona Convention or whatever. Are  
15 you familiar with that group?

16 A Yeah. The Sedona Conference is a group that focuses  
17 on electronic discovery, philosophy, strategy, and basic  
18 rules, and the Sedona Principles are set for a variety of  
19 different electronic discovery areas.

20 Q And so you are familiar with that conference and the  
21 principles?

22 A I am.

23 Q All right. Now, you've managed worked for FTI.  
24 Where -- what office are you specifically located in?

25 A So I'm located in our Portland office. I also do a

1 lot of time and was located officially out of our San  
2 Francisco office, which is the home office of the Western  
3 Region for FTI.

4 Q Are there different types of, if you will, offices  
5 that FTI has? In other words, does FTI do things other than  
6 electronic discovery-related matters?

7 A FTI Consulting is a large multinational corporation.  
8 We have five divisions of which the Technology Division is one  
9 of the five. We have offices in 24 countries, but technology  
10 office is not coincident with all of the offices of FTI.

11 Q All right. What is -- just so it's clear, what is  
12 technology office do? What does one of the technology offices  
13 do as compared to the other offices?

14 A So the FTI technology practice is solely focused on  
15 electronic discovery. And where we have technology offices it  
16 means we have forensic data collection individuals, we often  
17 will have legal support consultants for review, production,  
18 and culling, and in many offices we have laboratories where we  
19 have servers and electronic processing technology.

20 Q Would you tell Judge Gonzalez where FTI has the  
21 technology offices in foreign countries or in all the  
22 countries, obviously, presuming the United States, I don't  
23 want to put words in your mouth, but all the countries where  
24 FTI has technology offices focused on electronic discovery.

25 A Yes. In the United States, in Canada, in England,

1 in Japan, in China, Mainland China and in Hong Kong, in  
2 Australia, and in South America, Brazil.

3 Q Thank you. Has FTI been engaged by what I'll refer  
4 to any Sands company or entity, to your knowledge?

5 A Yes.

6 Q Could you tell Judge Gonzalez, if you know, what  
7 Sands entities you believe that have engaged the services of  
8 FTI.

9 A So for the work in the United States and for data  
10 that is resident in the United States our engagements are with  
11 Las Vegas Sands Corporation here in Nevada. For the work that  
12 we did in Macau our engagement is with Venetian Macau Limited.

13 Q And so -- and actually that was actually the intent  
14 of my question, was about specifically the Jacobs case. Are  
15 those separate engagements, or are those the same essentially  
16 overall engagement for the two different companies?

17 A They are two separate engagements.

18 Q And do you have separate agreements for those  
19 engagements?

20 A We do.

21 Q Do you have separate files for those engagements?

22 A We do.

23 Q When I say separate files what I guess I mean by  
24 that is is information stored separately, or is it commingled?

25 A So FTI organizes all of our information, both

1 electronic and paper, into matter-specific topics, matter-  
2 specific files, and we have two separate engagements, so all  
3 of the data is kept in two separate sets of folders.

4 Q Are there separate billings for the two different  
5 companies?

6 A Yes.

7 Q And so would it be -- explain to the Court -- again,  
8 I'm not supposed to lead you, so I want you to explain to the  
9 Court, if you could, how you would separate work you did and  
10 bill to VML, Venetian Macau Limited, versus if you had some  
11 work you had to do for Las Vegas Sands, how you would separate  
12 any time and effort done for that client and bill for it.

13 A So we have to clear conflicts before we can open any  
14 matter for activity. The Conflicts Department sets up a  
15 specific matter number for each engagement, which requires the  
16 filing of the engagement paperwork. And then all time  
17 entries, all expenses have to be allocated to a specific  
18 matter number when they're in.

19 Q With respect to your involvement or role with the  
20 engagement for VML could you tell the Judge what -- or  
21 describe that role -- your role as it relates to the  
22 engagement for VML.

23 A So, as I described my role as managing director,  
24 that was my role in this matter. I was the first person  
25 contacted about needing to go potentially to Macau. I was the

1 person who put the team together. I supervised their  
2 activity. I was in constant correspondence with them and with  
3 the attorneys from Mayer Brown during the process, and I also  
4 did some of the actual design work on some of the unique  
5 solutions we had to develop.

6 Q And what was your role with respect to Las Vegas  
7 Sands?

8 A Much the same. I was the first person contacted by  
9 Munger Tolles & Olson to start work on the U.S. portion for  
10 Las Vegas Sands, and I've been involved from the beginning of  
11 that engagement in the same capacity, assembled the team, have  
12 done quite a bit of the work, have done strategic consulting  
13 on specific issues in the case.

14 THE COURT: So were you involved in the privilege  
15 log issue?

16 THE WITNESS: I was involved in the discussions  
17 about creating the privilege log, about the characteristics of  
18 what was going to be on the privilege log, and the data that  
19 was going to be selected to put on the privilege log. I did  
20 not actually review the privilege log myself.

21 THE COURT: Okay.

22 BY MR. RANDALL JONES:

23 Q Mr. Ray, in the work that you do not just for -- let  
24 me rephrase that.

25 With work you've done for VML, Venetian Macau



1 Limited, and Sands China or any other client that you have  
2 over the course of time that -- I guess since about 2003, you  
3 said you've been doing this kind of work, does your company  
4 and do you consider that work for an attorney, or how do you  
5 view that, how you do your work in connection with the law  
6 firms that you work with?

7 A So that depends on the structure of the engagement.  
8 If we're engaged as independent experts on a matter, then we  
9 are treated as independent experts, and we keep all of our  
10 communications separate. If we're hired for an engagement as  
11 consultants in support of a matter, then we're working under  
12 the direction of counsel, and much of what we do is generally  
13 considered work product. FTI's internal policy is that all  
14 information about a matter in any capacity is confidential,  
15 and we don't release that information or discuss it.

16 Q All right. So how did you -- how did FTI, from your  
17 perspective -- well, from a -- let me rephrase that.

18 What was the engagement with Venetian Macau Limited  
19 in this case? Was it as a consultant, or was it as an expert  
20 witness?

21 A We were consultants in that case.

22 Q What about the engagement with Sands China Limited?  
23 Was it as a consultant, or was it as a expert witness?

24 A I don't believe FTI has ever been directly engaged  
25 by Sands China Limited.

1 Q And I misspoke. I meant to say Las Vegas Sands. I  
2 apologize.

3 A Las Vegas Sands we were consultants.

4 Q Mr. Ray, who would be the person most -- at FTI most  
5 knowledgeable about the overall process and protocol that FTI  
6 used in the work for VML?

7 A That would be me.

8 Q Who would be the person most knowledgeable at FTI of  
9 the overall process and protocol that FTI used in the work for  
10 Las Vegas Sands?

11 A That would also be me.

12 Q Would you please tell the scope of FTI's initial  
13 engagement with VML on the Jacobs case.

14 A So we were engaged to collect or facilitate in the  
15 collection of electronic data for a set list of custodians, to  
16 process that data for culling and search analysis, to select  
17 documents that were potentially relevant for human review, and  
18 to support the human review and ultimate production of those  
19 documents in Macau.

20 Q And would you tell Judge Gonzalez what the scope of  
21 FTI's engagement was for Las Vegas Sands in connection with  
22 the Jacobs case.

23 A The initial scope of our engagement was to acquire  
24 and support the hosting of data that had been collected and  
25 processed by Holland & Hart prior to Munger Tolles & Olson's

1 taking over the case. And then subsequently to that to do  
2 data collections here in the United States, processing, search  
3 term culling, and support the human review and production of  
4 documents here in the United States.

5 Q Could you tell Judge Gonzalez the approximate date  
6 or, if you know, the exact date that you -- that FTI was  
7 engaged to do the scope of work you just described to her for  
8 VML.

9 A So it was December 18th, 2012. That was when I was  
10 first notified that there was an urgent need to have us  
11 potentially go to Macau, and that's when we started the  
12 discussion. The actual paperwork I believe was signed  
13 December 20th.

14 Q And could you tell Judge Gonzalez the date that you  
15 were first engaged by Las Vegas Sands in connection with the  
16 Jacobs case. I know you said it was earlier, but if you could  
17 give her that approximate date.

18 A Yeah. We were first approached by Munger Tolles &  
19 Olson in November of 2011, and the engagement was actually  
20 signed in January of 2012.

21 THE COURT: January 2011, or 2012?

22 THE WITNESS: January 2012.

23 THE COURT: Thank you. So about a month before  
24 started with Las Vegas Sands.

25 THE WITNESS: Yeah. We were contacted initially to

1 see if we could host and transfer the data from Holland & Hart  
2 and in the discussions of what that would entail there was  
3 some design work to do to figure out how to re-use the  
4 processed data without incurring additional costs. And so the  
5 actual engagement wasn't signed for a couple months.

6 THE COURT: Okay. Thank you.

7 BY MR. RANDALL JONES:

8 Q Now, with respect to the engagement for VML would  
9 you tell Judge Gonzalez the protocol that FTI used with  
10 respect to that engagement starting around December 18th,  
11 December 20th of 2012.

12 A Yeah. Protocol --

13 MR. PISANELLI: Your Honor, if I may just object on  
14 the vagueness. If the witness could define what's meant by  
15 "protocol," I think that would be helpful to limit my cross-  
16 examination. It could be a very broad term.

17 THE COURT: Sure.

18 MR. RANDALL JONES: And actually that was probably a  
19 bad question, because that was what the intent of my question  
20 was, is to get him to describe that protocol.

21 MR. PISANELLI: Thank you.

22 BY MR. RANDALL JONES:

23 Q So could you answer actually Mr. Pisanelli's  
24 question about what the protocol was that you developed with  
25 respect to your initial search -- or your initial engagement,

1 I should say, for VML.

2 A Yeah. You know, "protocol" is a very large term. I  
3 mean, it covers a lot of potential ground. So doing work in  
4 Macau the first thing that we have to deal with is that all of  
5 the work has to be done in Macau, which means the technology  
6 has to be brought into Macau, it has to be set up there, we  
7 have to do all of the collections, culling, review, and  
8 production from inside the borders of Macau.

9 Q Let me stop you, actually, Mr. Ray, for just a  
10 moment, because I probably should have asked you some other  
11 questions first. And these kind of go along with some  
12 questions that Judge Gonzalez actually asked you earlier this  
13 morning about your particular knowledge I'm going to ask you  
14 about, but also general your -- well, what FTI experienced  
15 with these data privacy laws.

16 So first of all, do you have -- prior to this  
17 engagement by VML do you have any experience in dealing with  
18 the Macau Data Privacy Act?

19 A Prior to this engagement I had no personal  
20 experience with the Macau Data Privacy Act.

21 Q All right. Prior to this engagement for VML had you  
22 had any experience with the European -- any European Data  
23 Privacy Acts?

24 A Yes.

25 Q And could you tell Judge Gonzalez when you first

1 encountered any European Data Privacy Act.

2 A My first recollection of dealing with European Data  
3 Privacy was in 2005, when I was working at FEUS as the VP of  
4 operations. We had a project in England that we had to adapt  
5 to the requirements of the law there. And then subsequently  
6 at FTI I've done probably a dozen projects in Europe.

7 Q And with respect to China in general had you ever  
8 dealt with any Chinese secrecy laws or other laws in Mainland  
9 China that affect any Chinese possessions prior to the VML  
10 engagement that you had to contend with in connect with  
11 electronic discovery?

12 A Yes.

13 Q Could you tell Judge Gonzalez your experience with  
14 those situations.

15 A So I was involved in three engagements that either  
16 were in Mainland China or a combination of Mainland China and  
17 Taiwan where we needed to deal with the State Secrets Act in  
18 China.

19 Q And were any of those -- well, withdraw that  
20 question.

21 With respect to FTI do you know if FTI has had any  
22 experience in dealing with the Macau Data Privacy Act other  
23 than in connection with the Jacobs case?

24 A Yes. Quite a bit of experience.

25 Q Would you please tell Judge Gonzalez your -- well,

1 what you are aware of with respect to other engagements. And  
2 I don't mean the clients or anything like that. I just want  
3 to know just generally what the other engagements -- how many  
4 other engagements you're aware of that FTI had to contend with  
5 or address the Macau Data Privacy Act.

6 MR. PISANELLI: Objection, Your Honor. Lack of  
7 foundation.

8 THE COURT: Overruled.

9 THE WITNESS: So FTI -- another one of our divisions  
10 is a Forensic Accounting and Investigations Practice. That  
11 practice in Asia has done multiple engagements in Macau and  
12 more in Mainland China. And the Technology Office that's  
13 based in Hong Kong supports that practice.

14 BY MR. RANDALL JONES:

15 Q And do you know if any of the people that were  
16 utilized by FTI in connection with the Jacobs engagement for  
17 VML had prior experience with the Macau Data Privacy Act?

18 A Yes. Some of them were.

19 Q All right. Have you ever read the Macau Data  
20 Privacy Act yourself?

21 A I have not.

22 Q And -- all right. Thank you.

23 And I interrupted your question to ask you some of  
24 the background questions, so let me allow you to proceed with  
25 respect to what you prepared as a protocol for the Macau data

1 processing back in December of 2012.

2       A     So I believe I left off we had to set up all the  
3 equipment in Macau, so we brought custom computers to a  
4 conference room inside the Venetian Macau, where we set up our  
5 technology processing center. We gathered some data that had  
6 previously been collected by Venetian Macau IT personnel, and  
7 then some of our forensic examiners did additional collections  
8 on top of that. All of that data is then processed and loaded  
9 into our case review tool, which is called Ringtail. It is  
10 FTI's normal practice that we do not do any culling other than  
11 mislist system file removal during initial processing. We  
12 load everything into Ringtail for analysis so that we can both  
13 test the searches that are being run and also get accurate  
14 counts on documents that are otherwise unsearchable.

15           The documents are then searched, and there is an  
16 iterative process reporting with counsel on the results of  
17 those searches, at which point after an agreement has been  
18 reached to what document set will be reviewed that document  
19 set is promoted to review.

20           In the case of the VML engagement a second  
21 conference room was set up for the review, because FTI  
22 employees were not permitted to see any of the documents that  
23 we were handling. And so all the documents and document  
24 viewing was done in a separate room, and we supported it from  
25 our Technology Office room.



1           Q     One followup question about -- you mentioned that  
2 there may be documents that are unsearchable. Could you  
3 explain to Judge Gonzalez what you mean by documents that are  
4 unsearchable.

5           A     Sure. There are certain kinds of documents by  
6 classification that cannot be searched, music files,  
7 photographs, for example, and there are also documents which  
8 in theory should be searchable but are not. The most common  
9 of those is Adobe Acrobat .pdf files that don't contain any  
10 text. It is a normal part of our process to identify those  
11 files and to run OCR on them so that they can be searched.

12          Q     All right. And then you just told Judge Gonzalez  
13 that you had these two different conference rooms and there  
14 were certain -- well, the documents that you couldn't look at.  
15 So explain how that worked. In other words, how could you  
16 search documents and run a system search on documents and know  
17 what to give to the Macau lawyers? Again, if you could try to  
18 explain to the Judge how that whole process worked.

19          A     So part of the challenge of doing work in Macau is  
20 this issue that we are not permitted to view the documents,  
21 but we do seek and in this case also were given explicit  
22 authorization to see the metadata of the documents for the  
23 purpose of doing our searching and review management.

24          Q     Who were you given authorization by?

25          A     Well, we were notified by counsel that that

1 authorization had been given.

2 Q By?

3 A Kristina Portner at Mayer Brown.

4 Q But who gave the authorization?

5 A My understanding is it's the Office of Data  
6 Protection in Macau.

7 Q Okay. And so you were allowed to look at the  
8 metadata. Did that allow you to essentially see the private  
9 data?

10 A It didn't allow us to see the documents. I mean,  
11 there's an issue that some of the metadata represents  
12 information that could be personal information, but we were  
13 given permission to use that metadata for the purpose of  
14 running our searches.

15 Q Okay. And then what did you do with the information  
16 that you then got?

17 A So all of our iterations of document search results  
18 and potential queue up for review was exchanged with counsel  
19 and with the Macau individuals that they had present. And  
20 then once that set was defined that set was promoted to  
21 review. So even the attorney from Mayer Brown wasn't looking  
22 at the documents. She was looking at the reports of how many  
23 documents were hitting each term, how many of them were what  
24 kind of documents, how many were Word files, how many were  
25 emails, and then ultimately a decision was made to select that

1 set and move it to review.

2 Q All right. Would you please explain to Judge  
3 Gonzalez the number of people that were involved from FTI in  
4 both United States and in Macau or Hong Kong, as the case may  
5 be, I don't know, to essentially address this issue.

6 A That's kind of a lengthy question. So in Macau we  
7 had four individuals that were from the United States present  
8 in Macau during the initial scope of work, and we had three  
9 individuals from our Hong Kong operation there, as well. In  
10 the United States we had a team of six people in the United  
11 States supporting the work that was going on in the United  
12 States that was specifically relevant to the Venetian Macau  
13 engagement.

14 Q What were the people in the United States office  
15 doing to support this effort?

16 A So because of the time frame that we had to complete  
17 the work in Macau and because of the volume of documents that  
18 needed to be reviewed and potentially produced, it was very  
19 difficult to get the resources in Macau to do the review. And  
20 at the same time we couldn't view any of those documents  
21 outside of Macau. So we recommended and ultimately got  
22 agreement to run a procedure where we took the hash code  
23 values of the documents that were in Macau, the hash codes  
24 themselves do not contain personal information, transmitted  
25 those documents to the -- those hash codes to the United

1 States, and then we searched data we had available in the  
2 United States for documents with the same hash codes so that  
3 those documents could be reviewed in the United States and  
4 produced out of the United States.

5 Q And just for the record, because again I know Judge  
6 Gonzalez is familiar with a lot of this, but for the record  
7 could you define -- explain what a hash code is --

8 A Yes.

9 Q -- or a document with a hash code.

10 A A hash code is a digital fingerprint. It's a  
11 mathematical algorithm that creates a value for a document.  
12 And two documents that have the same identical hash code are  
13 by definition identical, they have the same content, they have  
14 the same internal metadata and everything. So if two  
15 documents match, we know they're the same document, and we use  
16 that to be able to find documents in the United States.

17 Q All right. You said that you had to work within a  
18 certain time frame. Would you please tell Judge Gonzalez the  
19 time frame that you were working within in that -- as you  
20 describe it, the initial search.

21 A Yeah. We were very clear from the first moment of  
22 contact that we had a nonnegotiable deadline of production for  
23 January 4th, 2013, and that all the work needed to be  
24 completed and production completed by that date.

25 Q All right. Did you do -- well, let me first ask

1 you, to your -- well, were any documents that contained Macau  
2 private data ever taken out of Macau by FTI or anyone else?  
3 MR. PISANELLI: Objection, Your Honor.  
4 BY MR. RANDALL JONES:  
5 Q Well, let me just restrict it to FTI. Was any  
6 private data -- any document with private data on it in Macau  
7 ever taken out of Macau?  
8 MR. PISANELLI: Objection, Your Honor. Vague as to  
9 the use of the term "private data."  
10 THE COURT: Overruled.  
11 BY MR. RANDALL JONES:  
12 Q I could have -- but that's fine.  
13 A Not to my knowledge.  
14 Q Have you ever seen -- in your job as the managing  
15 director of this project have you ever seen any documents from  
16 Macau with private data?  
17 A No.  
18 Q Did you -- because you used the reference to an  
19 initial search, did you ever run any other searches on behalf  
20 of VML?  
21 A Yes, we did.  
22 Q Would you please tell Judge Gonzalez when the second  
23 search process began.  
24 A The second search process was in March 2013. It was  
25 completed in April 2013.

1           Q     All right. And could you tell Judge Gonzalez if  
2 there was a difference in terms of the protocol that was  
3 utilized in the March and April searches if that protocol was  
4 changed. If that protocol was changed, could you just explain  
5 or describe the changes in the protocol for Judge Gonzalez.

6           A     So there were two things about the second  
7 engagement. The first one was that there was an expanded  
8 scope of custodians to be searched, so there were more  
9 custodians involved, and then secondly there was an expanded  
10 requirement to find as many ways as possible to produce  
11 documents out of the United States that we could identify as  
12 duplicates of documents in Macau.

13          Q     And just so it's clear on the record, when you  
14 reference duplicate documents what do you mean? What's your  
15 definition in this context of a duplicate document?

16          A     A duplicate document is a document that contains the  
17 same exact content as the document in Macau.

18          Q     And how would you know -- if, for example, you have  
19 a document that has redacted personal data on it, how would  
20 you know if it's the identical or a duplicate or a match for a  
21 document that is not redacted?

22          A     In the initial two iterations of trying to match  
23 these documents up we used hash codes, which, of course, we  
24 know for a fact will tell us that they're identical. However,  
25 there are issues with that. Different email systems will

1 result in different metadata representation, and therefore the  
2 hash codes won't match even though the documents are in fact  
3 the same. So what we needed to do, since we couldn't have the  
4 documents in Macau reviewed in the United States, is we had to  
5 take all of the metadata of documents available to us in the  
6 United States and take it to Macau so that we could run the  
7 searches and comparisons in Macau. And we had to use more  
8 than hash codes. We used a combination -- actually, I believe  
9 it was 11 more separate iterations of searches to try to find  
10 candidate duplicate documents. And by candidate duplicate  
11 documents I mean if a document had the same -- as an email  
12 example, has the same date, has the same send and receive  
13 time, has the same subject line, has the same parties  
14 associated with it, that's a candidate for a duplicate  
15 document. At the end we were looking at documents where some  
16 of the parties were the same, the date was the same, but the  
17 time wasn't necessarily the same. And then we weren't looking  
18 at the content at all, we were just bringing up the candidates  
19 for review in Macau.

20 Q And why did you have to take the U.S. information,  
21 if you will, to Macau to search it there, as opposed to taking  
22 the redacted documents to the U.S. and searching for  
23 duplicates in the U.S.?

24 A Due to the redactions we didn't have access to some  
25 of the content that we needed to have access to in order to be

1 able to run that set of searches.

2 Q And again, in that process were any non-Macau  
3 lawyers provided any access to the personal data files in  
4 Macau?

5 A FTI personnel were explicitly permitted access to  
6 the metadata only. No one other than Macau lawyers or Macau  
7 personnel under their direction were permitted access to the  
8 actual documents.

9 Q Had FTI ever -- to your knowledge, has FTI ever gone  
10 through a search process like the one you just described to  
11 Judge Gonzalez before?

12 A The attempt to find duplicate documents between  
13 Macau and the United States, this is the most complex attempt  
14 we've -- that I know of that we've made to do that kind of  
15 process.

16 Q Well, I'll get to that in a minute.

17 Did FTI use the same staff to perform the work in  
18 the March to April searches that you just described for Judge  
19 Gonzalez?

20 A Some of the personnel were the same, some were  
21 different. One of the challenges was that given the time  
22 frame of both the original engagement and the second  
23 engagement we didn't have the luxury of being able to consult  
24 and iterate through our resources in other countries. All the  
25 resources had to be there so that things could be developed



1 and tested on the fly. So the initial engagement, some of the  
2 personnel that were available at that time were not available  
3 for the second engagement. The same lead consultant in Macau  
4 was available for both engagements.

5 Q And just if you would, would you describe for Judge  
6 Gonzalez the type of backgrounds or expertise of the different  
7 people that were part of the team in the initial search and in  
8 the subsequent search.

9 A Sure. So on the electronic discovery work flow side  
10 you had forensic examiners who were doing the collections and  
11 collection handling and processing of the data, you had  
12 Ringtail review consultants who were supporting the culling  
13 and the review of the documents. You had people with IT  
14 skills to set up and support the actual technology environment  
15 itself, and you had sequel programmers who were necessary to  
16 do some of the custom searches and duplicate matching that we  
17 were required to do.

18 I should point out that in the initial engagement we  
19 not only had to bring over our technology to Macau, which we  
20 do on a routine basis; we actually had to build a server in  
21 Macau so that we could support the number of attorneys they  
22 needed to do the review in the time frame that they had. And  
23 we need to discuss --

24 THE COURT: Can I stop you and go to your expanded  
25 scope issue for a second.

1           The data that you were searching to compare for  
2 duplicates, did that include the drive that had been hand-  
3 carried from Macau to Las Vegas Sands?

4           THE WITNESS: It did not.

5           THE COURT: Okay.

6 BY MR. RANDALL JONES:

7           Q     And I do want to ask you the scope of the overall  
8 search at some point, though I will get to that and maybe you  
9 can expand on that a little bit more.

10          A     I'm sorry. Was that a question?

11          Q     No, it was just an editorial comment that I probably  
12 shouldn't have made.

13          THE COURT: He's making a note that says, we'll all  
14 come back to that later.

15 BY MR. RANDALL JONES:

16          Q     Actually that's -- basically I was thinking out loud  
17 to myself of what I needed to make sure I talked about later.  
18 So I apologize to you and the Court for that.

19                 Okay. And actually, in looking at my notes, I  
20 actually was at that point. So it's a perfect segue.

21                 Could you tell Judge Gonzalez what work you did for  
22 Las Vegas Sands in connection with this whole process, since  
23 we've really been talking about VML, but I don't think, at  
24 least as I understood it, that you've told us about exactly  
25 how Las Vegas Sands and any of its documents came into play in

1 this process.

2 Q So during both the initial engagement work where we  
3 were doing the hash code comparisons to find documents in the  
4 U.S. and in the second phase where we were finding other  
5 documents that were candidate duplicates we were supporting  
6 that work in the United States, as well. So the process in  
7 the second iteration is that we would provide the metadata --  
8 we brought the metadata to Macau so we could do the searches.  
9 We found the candidate duplicates. Although we couldn't look  
10 at Macau documents in the United States from the United  
11 States, we could look at documents in the United States from  
12 Macau. So we set up a connection from our systems in Macau to  
13 the U.S. systems so that the documents in Macau could be  
14 reviewed by Macau attorneys who could also then look at the  
15 candidate document in the United States and determine if it  
16 was in fact a duplicate. And once they had tagged those  
17 documents as being actual duplicates the document identifiers  
18 were then sent back to the United States so that those  
19 documents in the United States could be produced here in the  
20 United States.

21 Q So then in connection with that process do you know  
22 the total number of documents that were ultimately searched in  
23 order to try to find all available duplicates?

24 A So we were instructed to use any and all means  
25 available to us and any and all data available to us to

1 attempt to find duplicates, so we ultimately searched  
2 approximately three and a half terabytes of data, about  
3 24 million documents, trying to find duplicates of the  
4 documents from Macau.

5 Q All right. In connection with this effort that  
6 you've just described to Judge Gonzalez how much was the total  
7 bill that FTI charged VML or Venetian Macau Limited?

8 MR. PISANELLI: Objection, Your Honor. Lack of  
9 foundation. It sounds like a best evidence rule. The bills  
10 would be the best way to see what was charged.

11 THE COURT: Overruled.

12 THE WITNESS: The total on the VML engagement to  
13 date is about 2.4 million.

14 BY MR. RANDALL JONES:

15 Q And why would you know that number? Are you  
16 involved in the billing process?

17 A As the managing director I review some of the bills  
18 and I approve all the scope of work. So I'm required to keep  
19 track of the total billing.

20 Q All right. Do you know what Las Vegas Sands has  
21 been charged as a total bill to date as a result of the  
22 searches that have been performed on the Las Vegas Sands  
23 documents for the Jacobs case?

24 A So I need to clarify. The work that was done for  
25 the VML engagement to find duplicate documents was charged to

1 the Venetian Macau engagement --

2 Q Okay.

3 A -- because that was work incurred there.

4 Q Okay.

5 A The total amount of billing on the Jacobs litigation

6 in the United States for Las Vegas Sands is approximately

7 \$2 million.

8 Q So the total effort, if you will, is about

9 \$4.4 million in connection with the FTI searches and review of

10 the VML Macau-related documents?

11 A No. The 2.4 million is the amount that was involved

12 with the searches for the Macau documents and matching United

13 States. The other 2 million is other work in the Jacobs case

14 that we have done for Las Vegas Sands Corporation.

15 Q That relate to producing documents in the Jacobs

16 case?

17 A Yes.

18 Q And would that be also again related to production

19 that would involve documents, if you will, that came from any

20 source in connection with the Jacobs case, if you will?

21 A So just to be perfectly clear, all of the work that

22 was done by FTI that relates to the Venetian Macau work,

23 including work in the United States, is on that matter.

24 Q Right.

25 A All the other money is for work done in the United

1 States. So the other billing to Las Vegas Sands Corporation  
2 is for all the hosting, consulting, searching, and support of  
3 the Jacobs matter in the United States for all of the work  
4 that's gone on with Munger Tolles and now with Mayer Brown.

5 Q Thank you. Mr. Ray, I believe behind you --

6 MR. RANDALL JONES: And maybe if I can get it, Your  
7 Honor, or your marshal. It's Exhibit 345. I hope it's in our  
8 binder.

9 THE COURT: Proposed 345?

10 MR. RANDALL JONES: Proposed 345, yes, Your Honor.

11 THE COURT: Okay.

12 THE WITNESS: That's the FTI technology summary  
13 fees.

14 BY MR. RANDALL JONES:

15 Q Yes.

16 MR. RANDALL JONES: Could you --

17 (Off-record colloquy - Clerk and Mr. Randall Jones)

18 MR. RANDALL JONES: Maybe so the Court can see it.

19 THE COURT: I can't look at it till it's admitted.

20 MR. BICE: Why is it on the screen?

21 THE COURT: I can't look at it till it's admitted.  
22 Please take it off. Thank you.

23 BY MR. RANDALL JONES:

24 Q Mr. Ray, do you recognize Exhibit 345?

25 A I do.

1 Q And could you tell the Court what 345 is.  
2 A This is an FTI standard summary of fee estimate, and  
3 that's the type of document we prepare as an estimate in  
4 advance of an engagement to give clients a budget for a  
5 potential engagement.  
6 Q And how are you familiar, if at all, with this  
7 document?  
8 A I prepared this document.  
9 Q Tell Judge Gonzalez when you prepared this document.  
10 A January 26th.  
11 MR. PISANELLI: What year, Your Honor?  
12 THE WITNESS: 2015.  
13 MR. PISANELLI: Thank you.  
14 BY MR. RANDALL JONES:  
15 Q And is this a bid that was ever provided to the  
16 Venetian Macau Limited or Las Vegas Sands?  
17 A No.  
18 Q Could you explain what this bid represents.  
19 A I was asked to prepare the estimate based on our  
20 standard estimating protocol and methodology for a project in  
21 Macau with the same number of custodians and the same data  
22 volume and the same ultimate volume of produced documents as  
23 actually existed in the Jacobs litigation in Macau.  
24 Q And who asked you to do that?  
25 A You did, sir.

1 Q And could you tell Judge Gonzalez if you had a --  
2 you did the same process for Venetian Macau Limited when you  
3 were initially engaged in or around December 18th of 2012.

4 A Yes, sir.

5 Q And what was the type of engagement that you had  
6 there? Was it like -- based on this kind of a bid?

7 A So the information that we had available at the  
8 beginning, on December 18th, the number of custodians was  
9 smaller than the total that actually ended up being used. The  
10 data volume that was expected was smaller than actually ended  
11 up being used. And the complexity especially in the managing  
12 of the redactions and the matching of data in the United  
13 States was not discussed on December 18th, so we didn't  
14 include that in our initial scope.

15 Q Did you have a -- did you use your normal bid  
16 process with respect to the engagement for Venetian Macau when  
17 you initially were engaged?

18 A We did.

19 Q And did that come up with a bid of this nature?

20 A It was less than this number based on the fact that  
21 the volume of data and the number of custodians was smaller  
22 and the other issues [inaudible].

23 Q And why -- well, why was -- is the bid amount in  
24 this document, Exhibit 345, the same as the amount that you  
25 were charged in -- ultimately charged VML for doing the work?



1 A No, it is not.

2 Q And why is it different?

3 A When I prepared this estimate I used the data  
4 volumes and the number of custodians that we now know is in  
5 the scope. So it was higher than our original estimate for  
6 VML. But this is also what we would have estimated for a  
7 client doing this work in Macau under normal conditions.  
8 Normal conditions include having sufficient time for us to use  
9 resources outside of Macau to do some of the consultative  
10 work. It includes the time to get a team put together that  
11 has the right skill set at the most effective bill rate that  
12 we can arrange, and it involves executing a review process and  
13 production in the normal way that we do in projects in Macau.

14 The matching of documents between Macau and the  
15 United States is not a normal process for us. The extent to  
16 which we went to do that is not a normal process to us. And  
17 so that's not included in our standard estimating templates.

18 MR. RANDALL JONES: All right. So, Your Honor, I  
19 would move the admission of Exhibit 345.

20 THE COURT: Any objection?

21 MR. PISANELLI: Yes, Your Honor. It's obviously a  
22 document that was created for purposes of this litigation.  
23 It's not a true business record, and therefore it's not an  
24 exception to the hearsay rule, and it doesn't really have  
25 anything to do with what we're debating here, as well. So

1 it's irrelevant.

2 THE COURT: Overruled.

3 (Defendants' Exhibit 345 admitted)

4 BY MR. RANDALL JONES:

5 Q Mr. Ray, again you've kind of described for the  
6 Court before the document was admitted how this bid was  
7 prepared. What is the total estimated cost for doing the work  
8 that you've indicated was the ultimate scope of the work that  
9 you did do for Venetian Macau Limited and this bid, which, as  
10 I understand it, would have considered doing the work in a  
11 less compressed time frame and under less urgent  
12 circumstances?

13 A Correct. \$404,450 is what our template produces.

14 Q Just to make sure that I'm understanding this, the  
15 total bill that you charged Venetian Macau was \$2.4 million.  
16 What is the connection between -- if any, between that  
17 \$2.4 million and this \$404,000 indicated in this bid that was  
18 using your normal protocol under normal circumstances?

19 A So the Venetian Macau actual work performed included  
20 three separate trips to Macau at three different times. It  
21 included significant changes in the scope of work during the  
22 execution of the project, it included putting resources on the  
23 ground in Macau with skill sets that normally we would not  
24 deploy onsite in Macau, and we had to bring those resources  
25 from the United States. Normally we would try to get them

1 from within our Asia operation. And it involved this matching  
2 process to the United States, which is something we've only  
3 done in this case.

4 Q All right. Could you tell Judge Gonzalez how many  
5 large-document cases -- when I talk about large-document cases  
6 I'm talking about cases that are similar in scope to the  
7 number of documents that you've had to review and/or process  
8 in the Jacobs case, so the approximate number of large-  
9 document cases using that definition that FTI has been engaged  
10 with during the course of your career.

11 A So the number of custodians and the volume of data  
12 in this case is what we would consider probably a moderate-  
13 size case on the order of 15 to 30 custodians, on the order of  
14 300 gigabytes to a terabyte. I don't know how many such  
15 matters FTI has been engaged on during my time at FTI. I can  
16 tell you that I have been engaged on more than 40 matters such  
17 as this in the eight years I've been at FTI.

18 Q All right. Was FTI also involved in preparing a  
19 redaction log?

20 A Yes.

21 Q And what did you understand -- well, let me rephrase  
22 that.

23 What was the redaction log?

24 A So in a normal project where we're doing redactions  
25 for privacy the documents are redacted. The reason for the

1 redaction is displayed on the redacted document as a privacy  
2 redaction. And that is the scope of what is done. And if  
3 there are redactions for trade secrets or for privilege, they  
4 are identified as such.

5           In this case we were instructed at the beginning, in  
6 December of 2012, as we were preparing our plan for the work,  
7 that we needed to find ways to produce as much information as  
8 we could without violating the Macau data privacy laws about  
9 any privacy redactions. As a result of that, we had to design  
10 some custom redaction tools and systems for use in this case  
11 so that we could link the individual privacy redactions to  
12 information that was not personal but more explanatory, such  
13 as, this email address was a Las Vegas Sands executive. And  
14 we needed to prepare that, we needed to instruct the reviewers  
15 how to use that information, and then we needed to generate  
16 the redaction log to be able to demonstrate that so that we  
17 could give as much information as possible during the  
18 production.

19           Q     All right. If you could bear with me for just one  
20 moment.

21           MR. RANDALL JONES: Marshal, could you get Exhibit  
22 327 for Mr. Ray.

23           THE WITNESS: 327 is in a different book.

24                   (Pause in the proceedings)

25     //

1 BY MR. RANDALL JONES:  
2 Q Mr. Ray, do you see Exhibit 327?  
3 A I do.  
4 Q Do you recognize that document?  
5 A I do.  
6 Q Could you tell Judge Gonzalez what that document is.  
7 A So this is the redaction log from our productions in  
8 Macau on the VML matter.  
9 Q All right. And you have personal knowledge of the  
10 creation and what this log -- creation of this log by FTI and  
11 what this log looks like; correct?  
12 A I do.  
13 MR. RANDALL JONES: Your Honor, I'd move for the  
14 admission of Exhibit 327.  
15 MR. PISANELLI: No objection, Your Honor.  
16 THE COURT: Be admitted.  
17 (Defendants' Exhibit 327 admitted)  
18 BY MR. RANDALL JONES:  
19 Q Now, specifically with the redaction log that we've  
20 just been talking about have you ever had to create a log like  
21 this for any other case ever at FTI that you're aware of?  
22 A We have not.  
23 Q And with respect to actually the engagement that you  
24 told Judge Gonzalez about today in any case the 40 or so what  
25 you've defined as large-document ESI discovery cases have you

1 ever had a client or been involved with a project where you  
2 have seen a client do more in an effort to provide as much  
3 information as possible under a data privacy law while still  
4 complying with that data privacy law and the Court's orders on  
5 production as occurred in this case?

6 MR. PISANELLI: Objection. Leading and  
7 argumentative.

8 THE COURT: Overruled.

9 THE WITNESS: I have not seen any case where we've  
10 gone to this extent, and I have not had any clients ask us to  
11 go to this extent in any other case.

12 MR. RANDALL JONES: I will pass the witness.

13 THE COURT: Sir, did anybody tell you what happened  
14 before you got retained?

15 THE WITNESS: Prior to Munger Tolles in January of  
16 2012?

17 THE COURT: No. Before you got retained. Anybody  
18 tell you what had been going on on the discovery and  
19 production issues before you got retained?

20 MR. RANDALL JONES: Your Honor, I --

21 THE COURT: He just -- you just asked him if he'd  
22 ever seen a client who did more to try and comply. So I'm  
23 asking him a question.

24 THE WITNESS: I was not made aware of what had gone  
25 on in the case prior to Munger Tolles contacting us.

1 THE COURT: Thank you.

2 MR. RANDALL JONES: Just, Judge, look, I want to do  
3 whatever I can to allow the Court to get its questions  
4 answered. I know this is a sensitive issue. But, Your Honor,  
5 I -- and I --

6 THE COURT: Then don't ask him self-serving  
7 questions that there is absolutely no historical basis to  
8 support.

9 MR. RANDALL JONES: Well, I was specifically talking  
10 about that particular issue. I'm not talking about anything  
11 other than that. And, Your Honor, again, I hope the Court  
12 understands I'm trying to do my best to make sure that I get  
13 the information to the Court while still protecting the work  
14 product privilege. And so I'm trying to be as -- give the  
15 Court as much latitude as possible without interposing an  
16 objection and instructing the witness not to answer. So I  
17 just want you --

18 THE COURT: You can't instruct him not to answer  
19 once you call him as a witness.

20 MR. RANDALL JONES: Well, Your Honor, I don't  
21 believe there's been a waiver of the work product privilege.  
22 Questions of fact are not a waiver of the privilege.

23 THE COURT: Okay.

24 MR. RANDALL JONES: And I believe my questions have  
25 been related to what they did, although there have been a

1 couple of comments about what his understanding was. I  
2 understand there were some of those answers. The vast  
3 majority of my questions were with respect to what he did, not  
4 what he was told to do or how he was told to do anything like  
5 that. And there is I believe a distinction in the law, and  
6 I'm going to try to do my best, Your Honor, to stay within the  
7 rules, just so you're aware, and protect my client's work  
8 product privilege while still giving the Court as much  
9 possible information as I can.

10 THE COURT: Mr. Jones, I'm not going to compel you  
11 to provide me any information at all. It is your burden to  
12 convince me that the violation of my order of September 14th,  
13 2012, was not wilful and that your client had -- and/or your  
14 client had other challenges that prevented their full  
15 compliance. And that's your job. And you can do whatever you  
16 want to do in accomplishing that. I will give you all the  
17 latitude you need. My job is to try and balance the interests  
18 of the parties in determining what sanction, if any, is  
19 appropriate for the conduct that has occurred.

20 MR. RANDALL JONES: And I totally understand that,  
21 Your Honor, as I would hope you would understand that I would



1 the privilege where I can.

2 THE COURT: But here's the issue. Once you make the  
3 decision to call those attorneys and consulting experts who  
4 did that work to try and convince me that there were  
5 challenges in your client's compliance, then I think it is  
6 unfair to all of us for you to then try and short circuit  
7 other answers based on a claim of either work product or  
8 privilege. I understand you and I will probably have a  
9 disagreement about that, and we'll -- as we get to each  
10 question I will try and rule and we'll try and parse it out.  
11 And if it comes to a point where you think it's so  
12 significant, ask me for a stay, and then we'll do what we've  
13 got to do. But what I'm trying to tell you is I think it is  
14 inappropriate to bring the witnesses, the two we've seen so  
15 far, an attorney making decisions and a consulting expert who  
16 did a fine job, it seems like, to go through in very short to  
17 move everything to Macau to do his ESI work. But, I mean, I  
18 think we're going to get in a problem if you keep trying to  
19 say there's a privilege there, because there may be a  
20 privilege for some things, but not related to the issues he's  
21 testified about.

22 MR. RANDALL JONES: Well, and, Your Honor, again, I  
23 respectfully disagree that all of his testimony was not  
24 factual, and I do have some familiarity with this issue,  
25 because I was involved in cases related specifically to this

1 issue. And so to the extent that you and I get to a point  
2 where we do disagree, we'll -- as you say, we'll cross that  
3 bridge when we get there. But my --

4 THE COURT: And it won't bother me if you ask me to  
5 do stuff. It doesn't bother me. It's whether you and I have  
6 a philosophical disagreement.

7 MR. RANDALL JONES: And that's the only point I want  
8 to make, Judge, is that I'm trying to do my best to make sure  
9 I protect the client, while I understand what your job is, as  
10 well.

11 THE COURT: Thank you.

12 MR. RANDALL JONES: With that, I will pass the  
13 witness.

14 THE COURT: Mr. Pisanelli.

15 MR. PISANELLI: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. PISANELLI:

18 Q Good morning, Mr. Ray.

19 A 'Morning.

20 Q Let me preface my questions with a warning that I'm  
21 not nearly the expert in this area as you are, so if I ask you  
22 a question that just doesn't make any sense because of my lack  
23 of knowledge of your business, please let me know. I'll do my  
24 best to bring my answer up to your level, and hopefully you'll  
25 bring your answers down to mine. Fair enough?

1           A     I have significant experience doing that.

2           Q     Good. As do people in my own office. So --

3                 Let's start at the end. I'm going to bounce around

4 a little bit, and so contextually if I lose you, let me know.

5 Let me start at the end with this cost estimate which I think

6 was marked as Exhibit 345.

7                 If I understood your answer correctly, generally the

8 point you're making with this cost estimate is that absent

9 extraordinary circumstances this is what your company would

10 have expected to charge for the work on a project like this.

11 Fair enough?

12          A     Yes, that's correct.

13                 MR. RANDALL JONES: And, Jim, if you wouldn't mind,

14 if you could speak up a little bit. My hearing's not what it

15 used to be.

16                         (Pause in the proceedings)

17 BY MR. PISANELLI:

18          Q     Okay. And if I also understood you correctly, the

19 two primary factors that elevated this work from we'll call it

20 ballpark \$400,000 to \$2.4 million was that it was rushed and

21 the replacement document exercise; correct?

22          A     Correct.

23          Q     All right.

24          A     And there were three iterations of trips to Macau,

25 rather than one.

1 Q Yeah. That's part of -- the combination of the two  
2 caused the extra; fair enough?

3 A Fair enough.

4 Q Okay. So let's talk about the rush. Now, you're  
5 aware, are you not, that the request -- well, let me back up a  
6 minute.

7 If I understood correctly, you were engaged  
8 December 19th, 2012.

9 A So we were contacted on December 18th. The actual  
10 paperwork was signed on the 20th.

11 Q All right. So now on this concept of rushed.  
12 You're aware that the actual request for production of  
13 documents that you were hired to assist with were served a  
14 year earlier, December 23rd, 2011?

15 A I was not aware of that.

16 MR. RANDALL JONES: Object to the form of the  
17 question.

18 THE COURT: Overruled.

19 BY MR. PISANELLI:

20 Q So simple point being had you been hired a year  
21 earlier, December of 2011, the added costs associated with the  
22 rush would have never been there. Fair enough?

23 A I think that's fair.

24 Q All right. And now with the replacement documents  
25 what we're talking about here is you helped create a set of

1 redacted documents, and in order to reduce the number of  
2 redacted documents this replacement process you explained of  
3 hash tags and the other iterations was designed to limit that  
4 number; right?

5 THE COURT: Not hash tags. Hash codes.

6 BY MR. PISANELLI:

7 Q Hash codes. Sorry. I'll do that probably 10 more  
8 times in this examination. Sorry.

9 A So there were two factors. The first iteration, the  
10 first engagement in December of 2012 we did it for timing to  
11 assist in producing as much information in the time frame as  
12 possible and also to provide as much unredacted information as  
13 possible, and then the second one was all about the redaction.

14 Q Yeah. So you'll agree with me, then, that had no  
15 redactions taken place -- let's just set aside the reasons for  
16 doing it, whose decision it was, put that aside. In this  
17 hypothetical world had you been charged with the assignment of  
18 simply doing the document collection and processing as you  
19 described with no redactions and therefore no search for  
20 replacements, that, too, would have reduced Sands'  
21 expenditures substantially; fair enough?

22 A In Macau?

23 Q Yeah.

24 A I'm not sure I can answer that question. I'm not  
25 sure FTI would have taken an engagement where we didn't do

1 redactions in Macau.

2 Q Well, here's my point only. We're talking about  
3 costs right now. We know that part of the cost was rushed --  
4 because you were rushed, and had you started earlier that  
5 would have been eliminated. We know another part of the high  
6 cost is because there was redactions. Had that been  
7 eliminated the cost would have come substantially down, as  
8 well.

9 A Yes. Had it been eliminated the cost would have  
10 been reduced.

11 Q Okay. So fair from your experience that had you not  
12 been rushed, had there been no redactions your costs would  
13 have been as you predicted in Exhibit 345, about \$400,000?

14 A Yes, that's correct.

15 Q Okay. So now let's go to the beginning. Help me  
16 understand a few points.

17 You said that you had two different engagements, one  
18 with VML and another with Las Vegas Sands; correct?

19 A Yes, that's correct.

20 Q All right. Let's start with the VML. You actually  
21 went so far as to say that you were -- and I wrote the quote  
22 down, you were never engaged by Sands China Limited. Did I  
23 hear you correctly?

24 A That's correct. We have no engagement paperwork  
25 with Sands China.

1 Q And it sounds like you're very careful -- correct me  
2 if I'm wrong -- to make sure that you do the distinction  
3 between VML and Sands China Limited on whose work you were  
4 engaged to perform. Did I interpret you correctly?

5 MR. RANDALL JONES: I'm sorry, Jim. Not only did I  
6 not hear the question. Is it possible -- I don't know if I --  
7 maybe I have to move. I can't see the witness.

8 MR. PEEK: You can't see the witness. You're right.

9 THE COURT: It's an odd setup of where my lectern  
10 is. I am sorry.

11 MR. RANDALL JONES: That's all right. I'll just  
12 move.

13 THE COURT: And it wasn't created by CityCenter.  
14 It's been here since we moved in.

15 (Pause in the proceedings)

16 MR. RANDALL JONES: If you could repeat that last  
17 question.

18 MR. PISANELLI: I'll restate it. I think it was not  
19 a very clear question.

20 BY MR. PISANELLI:

21 Q But it's important to you, especially in dealing  
22 with Macau in these, to distinguish between one company and  
23 another of who you're actually being hired to perform work on  
24 behalf of; right?

25 A It is important for me to testify to the exact truth

1 of the documents that we executed, and so I have to be precise  
2 about the entities that are engaged. It's actually not my  
3 position to determine which of the entities is the right  
4 entity.

5 Q Okay. It's your job to be exact in your testimony  
6 of who hired you?

7 A Yes.

8 Q And it's your job to be exact in setting up  
9 protocols to make sure that you're preserving the  
10 confidentiality of one particular client versus another;  
11 right?

12 A Yes, that's correct.

13 Q All right. And that's why you were clear to tell us  
14 that you were hired by VML and not Sands China?

15 A I said we were hired by VML and not Sands China  
16 Limited because the engagement paperwork is signed by VML and  
17 directed to them and not Sands China Limited.

18 Q Well, let me ask you this. Did you merge the two  
19 companies for purposes of your work? Did you not draw any  
20 distinction between one and the other?

21 MR. RANDALL JONES: Object to the form of the  
22 question. The two questions you're referring to is VML and  
23 Sands China?

24 MR. PISANELLI: Yes.

25 MR. RANDALL JONES: No objection.



1           THE WITNESS: So we were engaged by Venetian Macau  
2 Limited, and the data that we collected, processed, and  
3 produced was under their control and custody. As far as I  
4 know, we didn't do any work for Sands China Limited  
5 specifically.

6 BY MR. PISANELLI:

7           Q     Yeah. With the work -- I'm sorry. With the  
8 instruction that you were given concerning the work for VML  
9 was it made clear to you that if you're gathering this  
10 information owned and controlled by VML you were to take  
11 measures to make sure that it wasn't inadvertently delivered  
12 or given to Sands China or any other entity without specific  
13 instruction; is that right?

14          A     It is common practice for us on any engagement to  
15 insure that no one other than the authorized clients have  
16 access to the data.

17          Q     And you followed that practice?

18          A     Yes.

19          Q     All right. So here's what I'm getting at and here's  
20 where I'm a little confused. This isn't the first time that  
21 you've provided sworn testimony to Her Honor in this case, is  
22 it?

23          A     I did a declaration prior.

24          Q     And in your declaration you actually talked about  
25 the very engagements that we've been talking about this

1 morning?

2 A Yes.

3 Q And in that declaration it's fair for us to  
4 understand, Mr. Ray, isn't it, that you were trying to be as  
5 truthful and exact there as you've been trying to be here?

6 A Yes.

7 Q Okay. You're aware that in that declaration you --  
8 contrary to what you said today, you testified that FTI was  
9 engaged by Sands China Limited in 2012?

10 A I don't recall that, but if it is in the  
11 declaration, then that's what's in the declaration.

12 Q Okay. Let's see if we can just refresh your  
13 recollection. In Sands China Limited's Exhibit 347 right  
14 behind you is a copy of your declaration.

15 THE COURT: 347?

16 MR. PISANELLI: Yes, ma'am.

17 THE COURT: Proposed. I know. Just got to write  
18 the numbers down.

19 THE WITNESS: I see that.

20 BY MR. PISANELLI:

21 Q What is this document?

22 A I'm sorry. Say again.

23 Q What is this proposed exhibit?

24 A This is a declaration that I generated in regards to  
25 this matter.

1           Q     Turn to page 3.  There's a signature down at the  
2 bottom.  Do you see that?

3           A     I do.

4           Q     Whose signature is that?

5           A     That's my signature.

6           Q     And just above your signature you declared to the  
7 Court that under penalty of perjury under the laws of the  
8 State of Nevada that the foregoing is true and correct?

9           A     Yes.

10          Q     Okay.  So but almost a little more, week or two more  
11 than two years ago today you testified that you were engaged  
12 by Sands China, and today you're testifying that you were  
13 never engaged by Sands China.  Do I have it right?

14          A     That's correct.

15          Q     Okay.  So now let me talk about these teams that you  
16 told us about.  You told us that you had an engagement.  Who  
17 do you want me to refer to as your client, Sands China, or  
18 VML?

19          A     VML is the one who signed the engagement.

20          Q     All right.  So let's go with VML, then.  So you had  
21 a team that you put together actually first for Las Vegas  
22 Sands?  Is that the prior first engagement for FTI?

23          A     Yeah.  The first engagement for FTI was with Las  
24 Vegas Sands in the United States.

25          Q     All right.  And you put together a team to perform

1 that work?

2 A Yes.

3 Q All right. And I think you described that work when  
4 going over the expenses as \$2 million or so for work that was  
5 done on the Jacobs matter; correct?

6 A Yes, that's correct.

7 Q What do you mean when you use the term "Jacobs  
8 matter" as it relates to the work done by FTI for Las Vegas  
9 Sands?

10 A So, again, FTI before we were engaged in any  
11 engagement we do the conflict check, we prepare a specific  
12 matter number, we set up files, and we set up databases  
13 specifically for individual cases. So when we were first  
14 contacted by Munger Tolles & Olson transferring data from  
15 Holland & Hart it was data in the Jacobs litigation.

16 Q When you are engaged to perform work like this are  
17 you typically given the requests for production of documents  
18 that have triggered the need to assemble records and  
19 electronic discovery?

20 A In many cases, but not all.

21 Q Okay. What about in this one?

22 A I don't recollect seeing the RFPs for this  
23 particular matter.

24 Q Okay. Do you know when we're talking about the  
25 Jacobs matter, the work FTI did for the Jacobs matter, do you

1 know if that included the assembly of documents for the  
2 production to some other person or entity besides Mr. Jacobs?

3 A To the best of my recollection all the work that  
4 we've done on the Jacobs matter in the United States has  
5 related to the jurisdictional questions about the case, and  
6 that productions that were delivered to the law firms, Munger  
7 Tolles or Mayer Brown, in that matter were prepared in regards  
8 to the jurisdictional case. I don't know where those  
9 productions ultimately were delivered.

10 Q All right. So when we're talking about the  
11 \$2 million spent by LVS on the assembly of these records do  
12 you know whether that includes work that was done to produce  
13 records for instance to the SEC?

14 MR. RANDALL JONES: Well, Your Honor, I'm going to  
15 object. I don't know the answer to that question, but I'm  
16 going to object. And that certainly has nothing to do with  
17 any door I opened. It has nothing to do with any of his  
18 testimony, and I certainly want to make sure to protect -- and  
19 I honestly tell you I do not know the answer to that question.  
20 I think it's incumbent upon me to object if he's trying to go  
21 beyond the scope of any affidavit or any other direct  
22 testimony, and I would object as not only irrelevant but  
23 improper attempt to invade attorney work product privilege.

24 THE COURT: Mr. Pisanelli.

25 MR. PEEK: And, Your Honor, I would join in that

1 objection on behalf of Las Vegas Sands.

2 MR. PISANELLI: Your Honor, my point is simply this.  
3 The defendants took -- or made the choice to tell you how much  
4 money they spent and are therefore asking you to take it into  
5 consideration of what a burden this has been upon them. And  
6 as it relates to Las Vegas Sands they tell you that they spent  
7 \$2 million in relation to the assembly of documents and  
8 records from Las Vegas Sands. I'm entitled to challenge  
9 whether that includes work that this company did to assemble  
10 records that were delivered to the Department of Justice or to  
11 the SEC, whether it was triggered by this lawsuit or not, but  
12 it had nothing to do with production to us. This \$2 million  
13 number may be a fraction of that once we carve out the work  
14 that they had to do in relation to those two regulatory or  
15 investigative bodies. In other words, I'm entitled to  
16 challenge this number of \$2 million. I didn't bring the topic  
17 up, they did.

18 MR. RANDALL JONES: Your Honor, may I --

19 THE COURT: The objection is sustained.

20 MR. RANDALL JONES: Thank you.

21 MR. PISANELLI: May I ask the question just to  
22 preserve the record, Your Honor?

23 THE COURT: You can.

24 MR. PISANELLI: Okay.

25 THE COURT: And I think you already did.

1 MR. PISANELLI: There's really just two. There's  
2 two.

3 BY MR. PISANELLI:

4 Q First of all, do you know whether FTI was engaged to  
5 assemble records for production to the Department of Justice?

6 MR. RANDALL JONES: Again, Your Honor, same  
7 objection.

8 THE COURT: Sustained. The objection is sustained.

9 BY MR. PISANELLI:

10 Q And do you know whether FTI was engaged to gather  
11 and produce documents to the Securities and Exchange  
12 Commission?

13 MR. RANDALL JONES: Same objection, Your Honor.

14 THE COURT: Sustained.

15 BY MR. PISANELLI:

16 Q So let's now talk about the teams, starting with the  
17 initial team that was engaged to perform services for Las  
18 Vegas Sands. Do you know who the members of that team were?

19 A I recollect most, if not all of them. I may  
20 recollect all of them.

21 Q Okay. How many people are we talking about?

22 A There are six that are doing regular work, and there  
23 are a much larger number that do peripheral work.

24 Q Are any members of the team -- strike that. Were  
25 there any members of the team that were working on the Las

1 Vegas Sands portion of the project also engaged to work on the  
2 VML portion of the project?

3 A Not at that time.

4 Q Did that change over time?

5 A Because of the experience that one of the  
6 consultants had that was sent from the United States to Macau,  
7 that consultant has done some support work for the work done  
8 in the United States for Las Vegas Sands.

9 Q Now, you said not at that time, and that confuses me  
10 a little bit, because I was intending to ask you questions  
11 about the work that was being done for the Las Vegas Sands  
12 long before the VML engagement even occurred. So bear with me  
13 just so I clarify.

14 Did there come a time when you were putting the team  
15 together for the VML portion of the work that you were using  
16 FTI employees that were also or had also worked on the Las  
17 Vegas Sands portion of the work?

18 A The only person who worked in any way on both  
19 matters was the project manager who prepares the bills. All  
20 of the other consultants and technical people were unique to  
21 each engagement.

22 Q All right. Who was the project manager?

23 A Her name is Lin Chueh, C-H-U-E-H.

24 Q What were or what do you expect the project  
25 manager's responsibilities to be generally?