

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: 2015-0832 a.m.
Mar: 23/2015
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 XXX of XXXIII
(PA43202 – 43431)**

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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 XXX of XXXIII (PA43202 – 43431)** 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

VIA ELECTRONIC SERVICE

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DATED this 20th day of March, 2015.

By: /s/ PATRICIA FERRUGIA

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| 05/16/2013 | Transcript: Telephonic Hearing on Motion to Extend Stay | XII | PA2307 –11 |
| 09/10/2012 | Transcript: Court's Sanction Hearing – Day 1 – Monday, September 10, 2012 | V | PA753 – 915 |
| 09/11/2012 | Transcript: Court's Sanction Hearing – Day 2 – Volume I Tuesday, September 11, 2012 | V | PA916 – 87 |
| 09/11/2012 | Transcript: Court's Sanction Hearing – Day 2 – Volume II Tuesday, September 11, 2012 | VI | PA988 – 1157 |
| 09/12/2012 | Transcript: Court's Sanctions Hearing – Day 3 – Wednesday, September 12, 2012 | VII | PA1178 – 1358 |
| 03/13/2015 | Transcript: Emergency Motion to Stay | XXXIII | PA43878 – 911 |
| 02/09/2015 | Transcript: Evidentiary Hearing – Motion for Sanctions – Day 1 | XX | PA3975 – 4160 |
| 02/10/2015 | Transcript: Evidentiary Hearing – Motion for Sanctions – Day 2 | XXII AND XXIII | PA4406 – 710 |
| 03/02/2015 | Transcript: Evidentiary Hearing – Motion for Sanctions – Day 5 | XXX | PA43202 – 431 |
| 03/03/2015 | Transcript: Evidentiary Hearing – Motion for Sanctions – Day 6 Closing Arguments | XXXI | PA43432 – 601 |
| 02/11/2015 | Transcript: Evidentiary Hearing re Mot for Sanctions – Day 3 | XXVI | PA15494 – 686 |
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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 03 2015

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

BY, _____
DULCE MARIE ROMEA, DEPUTY

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al.

Defendants

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 5

MONDAY, MARCH 2, 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.
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.

PA43202

1 LAS VEGAS, NEVADA, MONDAY, MARCH 2, 2015, 10:36 A.M.

2 (Court was called to order)

3 THE COURT: Are we ready?

4 MR. RANDALL JONES: We're waiting for Mr.

5 Pisanelli, I believe. He's upstairs in another department.

6 He's going to be doing -- Well, although, I guess we could --

7 THE COURT: So let me ask you some questions
8 because Dulce is not here because it's her flex day that
9 she's out, so she left Andrea a list of things to ask you on
10 the record.

11 So would you like to ask them the list of
12 questions?

13 THE CLERK: Yes, Your Honor. We need to verify the
14 admission of Plaintiff's Exhibit 28 and 38.

15 THE COURT: I show 38 was admitted.

16 MR. MARK JONES: I show 28 was admitted.

17 THE COURT: So we show both are admitted.

18 MR. MARK JONES: Yes, Your Honor.

19 THE CLERK: 38 and 28?

20 MR. SMITH: I agree on 38; I'm unclear on 28.

21 THE COURT: But 28 is your exhibit. Aren't you
22 happy to have it admitted?

23 MR. MARK JONES: If you don't want it in --

24 MR. SMITH: That's a good question.

25 THE COURT: Every time I ask that of a lawyer who's
26 offered the exhibit, it shocks me.

1 MR. RANDALL JONES: You know, Judge, that's what's
2 so crazy about our business because we're so paranoid about,
3 well, did I have a reason for withdrawing that that I can't
4 remember. You know, then you get all nervous about it.

5 THE COURT: Uh-huh. High level of paranoia in what
6 we do.

7 MR. RANDALL JONES: There is.

8 MR. SMITH: I agree, 28 -- 28 is right.

9 THE COURT: Okay, those are both admitted.

10 (Plaintiff's Exhibits 28 and 38 admitted)

11 THE COURT: Your next question?

12 THE CLERK: I think that was --

13 MR. RANDALL JONES: Sands China?

14 THE CLERK: I think there's a question on the
15 Defendant's 339 as well. And Defendant's Exhibit 356A is
16 supposed to be provided because that was missing from your
17 book.

18 MR. MARK JONES: 339 I have admitted.

19 THE COURT: Does anybody disagree that 339 is
20 admitted?

21 MR. SMITH: That's admitted.

22 THE COURT: Okay. And 356A, is someone bringing us
23 356A?

24 MR. RANDALL JONES: Mr. McGinn just told me those
25 will all be replaced today, Your Honor.

1 MR. MCGINN: From 350--

2 THE CLERK: I think she's printing it. I think she

3 said she has a printer. But I just wanted to let you know on

4 the record that that was missing.

5 THE COURT: Okay. What else?

6 THE CLERK: And I believe that's it, Your Honor.

7 THE COURT: That's all Dulce's questions?

8 THE CLERK: Yes.

9 THE COURT: And I got proposed findings of fact

10 from both of you. Thank you.

11 MR. RANDALL JONES: Your Honor, I believe we also

12 have -- I just gave something to Mr. Bice he hasn't had a

13 chance to really look at, but there are some issues that I

14 don't know if Mr. Smith and Mr. --

15 THE COURT: If there's something we can do without

16 Mr. Pisanelli, let's do it.

17 MR. BICE: Sure.

18 MR. RANDALL JONES: Yeah, and this is related to a

19 stipulation.

20 (Mr. Pisanelli enters the courtroom)

21 THE COURT: So do we have some stipulations you

22 want to tell me about?

23 MR. RANDALL JONES: We do.

24 And I don't know, Todd, if you want to have Jason

25 and Ian deal with that while you're reading that thing.

1 MR. BICE: Uh, sure.

2 MR. RANDALL JONES: As it relates to -- Go ahead.

3 MR. MCGINN: Your Honor, we stipulated to -- Do we

4 have that document? There's a chart that shows all of the

5 productions from SCL after December 2012. And we have agreed

6 upon the chart and what's on the chart to show what was

7 produced, when it was produced, and then in agreement to that

8 they've agreed to stipulate to Defendant's Proposed 355

9 through 374, and that includes the 356A -- the ones with A's

10 at the end, also, within that range.

11 THE COURT: And what's the number of the chart?

12 MR. SMITH: The chart will be one of the Court's

13 exhibits.

14 MR. RANDALL JONES: Do you want to just do next in

15 order?

16 MR. SMITH: Or we can have it next in line?

17 THE COURT: Let's mark it your next in order.

18 MR. SMITH: Next in line for plaintiff.

19 THE COURT: Plaintiff's next in order.

20 THE CLERK: Court's indulgence, Your Honor.

21 MR. MCGINN: Thank you, Your Honor.

22 MR. SMITH: May I approach, Your Honor?

23 THE CLERK: I believe it's 381.

24 THE COURT: No, we want a 100 number.

25 THE CLERK: Oh, I'm sorry.

1 MR. SMITH: Plaintiff's.
2 THE CLERK: 216.
3 MR. SMITH: Thank you.
4 THE COURT: Oh, wow. So you are stipulating to
5 the admission of 216 and 355 through 375, along with any A
6 numbers necessary?
7 MR. MCGINN: 374.
8 THE COURT: 374. Is that accurate? I heard a yes
9 from both sides. Yes, Judge, that's great.
10 MR. SMITH: Yes, Judge, that's great.
11 THE COURT: Okay. Any additional stipulations that
12 you want to give me?
13 MR. RANDALL JONES: I, again just gave something to
14 Mr. Bice that he hasn't had a chance to look at. If he will
15 stipulate to the admission of these documents as replacement
16 documents, then I won't have to file this motion.
17 MR. BICE: No, they're going to have to file --
18 this is a motion to strike, as I understand it.
19 MR. RANDALL JONES: Well, I'll withdraw the motion
20 to strike.
21 MR. BICE: Okay.
22 MR. RANDALL JONES: The exhibits can stay in. I
23 don't have a problem with that. But I just want -- I want
24 agreement that the replacement documents be admitted.
25 THE COURT: How about you guys talk about that

1 amongst yourselves and then when you finish that discussion
2 let me know.

3 MR. BICE: Okay.

4 (Pause in the proceedings)

5 THE COURT: Mr. Bice, did you finish looking at
6 whatever Mr. Jones was trying to get you to look at?

7 MR. BICE: Sure, they can offer these three into
8 evidence.

9 THE COURT: Okay. Mr. Jones?

10 MR. RANDALL JONES: Your Honor, if we do that, we
11 would offer them as exhibits -- I'd move to admit them as
12 Exhibits 375 -- well, actually I need to give you --

13 Have we got copies of the documents?

14 MR. MCGINN: They're in the binder.

15 THE COURT: Are they in the binder the clerk has?

16 MR. RANDALL JONES: They are. I've just been told
17 they are in the binders as Exhibits 375, 377 and 378. And
18 for the record, Exhibit 375 is Bates ranges from Sands China
19 Limited -- I'm sorry, 375 is Las Vegas Sands 249040 to 249045
20 and is the Sands China Limited meetings of the audit
21 committee dated May 10, 2010, produced on November 13, 2012.
22 And then Exhibit 377 is Sands China Bates range 163497 to
23 163506, and it's Sands China Limited minutes of meeting of
24 the board of directors dated February 9, 2010, produced on
25 June 27, 2013. And 378 is Las Vegas Sands Bates 119103 to

1 119114, and it's Sands China Limited minutes of meeting of
2 the board of directors dated February 9, 2010, produced June
3 25th, 2012.

4 THE COURT: Is there any objection to 375, 377 and
5 378?

6 MR. BICE: No. I'm confused. What is 376?

7 MR. RANDALL JONES: 376 --

8 THE COURT: Well, hold on. 375, 377 and 378 are
9 admitted.

10 (Defendants' Exhibits 375, 377 and 378 admitted)

11 THE COURT: Now you want to talk about 376? They
12 didn't offer it.

13 MR. BICE: Yeah, that was my confusion.

14 MR. RANDALL JONES: The only other thing I would do
15 is this kind of goes to this rule of completeness issue. I
16 haven't offered this yet, but Exhibit 376 is the redacted
17 version of Sands China Limited Credit Committee Meeting
18 Minutes dated August 4, 201. Mr. Bice got then the
19 unredacted version -- well, partially unredacted version as
20 Exhibit -- Plaintiff's Exhibit 59 is a partially unredacted
21 version of those same meeting minutes. And I haven't had a
22 chance to talk to Mr. Bice about those. I was going to ask
23 the Court about that, but --

24 THE COURT: Then I'll worry about it later.

25 MR. RANDALL JONES: Your Honor, I did want to talk

1 about it now --

2 THE COURT: Okay.

3 MR. RANDALL JONES: -- but I hadn't had a chance to
4 talk about it to Mr. Bice beforehand. And I did talk to Mr.
5 Bice about this one over the weekend, or I guess that was
6 actually Friday evening. In that case they do not contain
7 MPDPA redactions, the exhibit that Mr. Bice got into
8 evidence, Exhibit 59, but it does contain some redactions of
9 customers of the company.

10 THE COURT: And I think I approved that when I
11 reviewed it.

12 MR. RANDALL JONES: You did.

13 THE COURT: To the extent for the customer first.

14 MR. RANDALL JONES: And what I wanted to move into
15 evidence is the initial redacted version that has the MPDPA
16 redactions in it, just as a point of comparison for the
17 Court. So that's what I wanted to introduce, exhibit --
18 Proposed Exhibit 376, which is Sands China Bates range 209127
19 to 209131.

20 THE COURT: Mr. Bice?

21 MR. BICE: Well, I need to see it; number one.
22 And number two, I dispute that these were in fact not MPDPA
23 redactions. We heard a new version of the facts, in our
24 mind, on Friday, and that is that there are redactions that
25 were made on relevancy grounds now. They just happen to be

1 marked -- so that the Court knows this, they're all marked as
2 personal, not confidential, not in the protective order,
3 they're marked personal, MPDPA redactions. What's happened
4 is these documents were in the United States but they
5 redacted them in any event. And now the explanation, when
6 we point this out, is, well, we redacted those under the
7 confidentiality order, even though they're all marked
8 personal under the MPDPA redactions that they already did.

9 THE COURT: Okay. So I won't admit it right now
10 and you guys can argue about it in a little bit.

11 So any other stipulations? Any more stipulations?
12 I'm only on stipulations so far.

13 MR. RANDALL JONES: I can't think of any. Well, I
14 haven't had a chance to talk to Mr. Bice about this, but --

15 (The Court confers with the clerk)

16 MR. BICE: I have no problem with 376 coming in.

17 THE COURT: 376 will be admitted.

18 MR. BICE: Thank you.

19 (Defendants' Exhibit 376 admitted)

20 THE COURT: All right.

21 MR. RANDALL JONES: One other question about a
22 stipulation. Exhibit 95 from the plaintiff's list is a OPDP
23 letter from August 9, 2012. I'm sorry, August 8th, 2012.
24 And I wanted to know if they would stipulate to the admission
25 of that document.

1 THE COURT: It's their proposed document.
2 MR. RANDALL JONES: Well, it's their 95, it's our
3 33. So I just wanted to know if they would stipulate.
4 THE COURT: You don't have a 33.
5 MR. RANDALL JONES: Our 333. I'm sorry.
6 MR. BICE: No, because we would have examined Mr.
7 Fleming about it if it was going to come into evidence, Your
8 Honor.
9 THE COURT: Okay. So at the moment I don't have a
10 stipulation. Any other stipulations?
11 MR. RANDALL JONES: I don't think so.
12 THE COURT: Okay. Mr. Jones, we're in your case.
13 MR. RANDALL JONES: Thank you, Your Honor. I would
14 move the admission of Exhibit 346.
15 MR. MCGINN: 349.
16 MR. RANDALL JONES: I'm sorry, 349. Mr. McGinn
17 corrected me, thank goodness. 349 is an OPDP letter dated --
18 THE COURT: October 28, 2011, from the list.
19 MR. RANDALL JONES: Thank you. And the foundation
20 for that -- and I just forgot to do that with Mr. Fleming.
21 He laid the foundation for that in his affidavit, which then
22 I had read into the record and he agreed everything in that
23 document was true and correct, which specifically referenced
24 his receipt of Exhibit 349. And all the other related letters
25 are in evidence, I believe, so I just missed that one.

1 MR. BICE: Number one, I'd like to see where in the
2 affidavit this exhibit is referenced.

3 MR. RANDALL JONES: Sure.

4 MR. BICE: And more fundamentally, Your Honor, if
5 we would have been permitted to examine Mr. Fleming about
6 this letter. And I don't even know what its date is.

7 THE COURT: It says it's October --

8 MR. BICE: 28?

9 THE COURT: October 28, 2011, from the description
10 in the exhibit list.

11 MR. RANDALL JONES: And it is referenced -- they
12 had every opportunity to examine him about that document.

13 THE COURT: Well, if we could just tell him the
14 paragraph number.

15 MR. RANDALL JONES: Actually, it's in paragraph
16 number -- no, that's the transcript. Where's the affidavit?
17 It's in the transcript, Your Honor, at page 137, lines 4 to
18 8, and it's in paragraph 9 of the affidavit.

19 MR. SMITH: It's not admitted.

20 MR. RANDALL JONES: Right.

21 THE COURT: But it's identified and mentioned.

22 MR. RANDALL JONES: Just for the record, what Mr.
23 Fleming read into the record at page 137, lines 4 to 8 is:
24 "The documents referenced in Exhibits 334, 335, 336, and 349
25 in the exhibits provided to the Court by SCL in preparation

1 for the February 9, 2015 hearing are true and correct copies
2 of correspondence I wrote to or received from the Macau
3 OPDP."

4 MR. BICE: Which declaration are you referring to?
5 We need that.

6 THE COURT: The one right before this hearing that
7 you objected to, which we then had read during part of the
8 hearing.

9 MR. RANDALL JONES: Yeah, this was not introduced
10 in the record. This was just read.

11 MR. BICE: So where is it?

12 MR. RANDALL JONES: It's right here.

13 MR. BICE: I apologize. Where is it at in the
14 transcript then?

15 MR. RANDALL JONES: It's at page 137, lines 4 to 8.

16 MR. BICE: Your Honor, we renew our objection to
17 foundation. All they did was have him read a declaration
18 that listed certain exhibits that were not in front of him.
19 And he's just --

20 THE COURT: They were in front of him. Remember,
21 he had them on the computer screen.

22 MR. BICE: No, he did not. And they never showed
23 him these documents. When they examined --

24 THE COURT: No, they were all on the computer.
25 Remember, they were all loaded there and the other gentleman

1 was sitting there. What was his name, the nice guy --
2 MR. PEEK: Wyn Hughes, Your Honor.
3 MR. BICE: Those were ours, those were not theirs.
4 Those were our exhibits. There's no --
5 THE COURT: He told me he had all of them.
6 MR. RANDALL JONES: Your Honor, he had all of the
7 exhibits.
8 MR. BICE: He was not shown any exhibits when they
9 examined him.
10 THE COURT: He doesn't have to be shown them. If
11 he identifies the number that they've been offered into my
12 evidence and he says, yes, that is a true and correct copy,
13 then, you know, he's identified it by number.
14 MR. BICE: When did he see this number?
15 THE COURT: It doesn't matter when he saw it. He
16 said in the transcript that those numbers are ones and they
17 link to documents from the ODPD.
18 MR. BICE: Okay.
19 THE COURT: OPDP.
20 MR. BICE: Well, we renew our objection in that
21 these documents, he was not asked any questions about these
22 documents by the plaintiffs and he was not -- he was not
23 examined concerning them.
24 THE COURT: Be admitted.
25 (Defendants' Exhibit 349 admitted)

1 MR. RANDALL JONES: Your Honor, now I'd like to
2 turn to Exhibit 333, which was the other OPDP letter that I
3 asked Mr. Bice to stipulate to, which he would not, which is
4 -- again, it's also a Plaintiff's Exhibit 95. But the basis
5 I would move to admit it is, one, it's their exhibit so they
6 certainly didn't contest the authenticity of it. But more
7 significantly, it is referenced in Mr. Fleming's affidavit,
8 which is Exhibit 346 -- 346 at paragraph 16, where he says:
9 "On the evening of August 14, 2012, VML received a
10 confidential letter from the OPDP dated August 8, 2012 in
11 response to VML's letter of June 27, 2012, rejecting the
12 company's outline of a procedure to allow data transfers to
13 the U.S. in connection with the SEC subpoena and Jacobs
14 litigation, absent consent of the subject of the data
15 transfer in favor of procedures available under international
16 legal assistance provisions of the law." And I'm quoting
17 from, again, Exhibit 346, which is in evidence, that makes
18 specific references --

19 THE COURT: But did he discuss it during the
20 hearing that I conducted?

21 MR. RANDALL JONES: He did not, Your Honor. He did
22 not.

23 THE COURT: Okay. Anything else?

24 MR. BICE: I've got to concede, I don't know what
25 they're talking about. Exhibit what now?

1 MR. RANDALL JONES: 346.

2 THE COURT: The first affidavit from Mr. Fleming is

3 346. Mr. Jones is saying that in that affidavit he identifies

4 Exhibit 333.

5 MR. RANDALL JONES: Correct.

6 THE COURT: But he did not discuss exhibit --

7 Proposed Exhibit 333 during my hearing.

8 MR. BICE: Well, the --

9 THE COURT: So do you object to 333, which is the

10 October 8, 2011 --

11 MR. BICE: I do.

12 THE COURT: August 8, 2011.

13 MR. BICE: I do, because once again, Your Honor --

14 THE COURT: The objection is sustained. Next?

15 MR. RANDALL JONES: Your Honor, if I -- just for

16 the record, if I could just address that objection and your

17 ruling. Your Honor, the reason I think it should be allowed,

18 and I know you've ruled but at least I want to make a record,

19 is, one, we have had marked as an exhibit in our exhibits --

20 and Mr. McGinn, if you can remind me of the circumstances, my

21 recollection and understanding that when we had it marked as

22 one of our exhibits, even if we objected to it they were

23 allowed to bring it in since we had marked the same exhibit

24 in our exhibits earlier.

25 I believe that's correct, Mr. McGinn?

1 MR. MCGINN: Yeah. That was on Day 2. It was with
2 reference to Defendant's 329.

3 MR. RANDALL JONES: So we would simply ask for the
4 same ruling in our favor when we want to get an exhibit in
5 that they had on their exhibit list that we had on ours and
6 that they are now objecting to. And secondly, I'm asking the
7 Court to admit it and it's not -- and I understand, you know,
8 hearsay issues or whatever, but I believe, Your Honor, it
9 goes to my client's state of mind at the time with respect to
10 the very subject matter of this hearing. And I believe for
11 that --

12 THE COURT: Can I ask you a question?

13 MR. RANDALL JONES: Sure.

14 THE COURT: Isn't this document, the August 8, 2012
15 letter, part of the briefing that was previously done on
16 these issues?

17 MR. RANDALL JONES: Absolutely it is, Your Honor.

18 MR. BICE: I don't --

19 THE COURT: Okay.

20 MR. BICE: I'm not so sure that that's right
21 because this letter -- I believe this letter came to light
22 after the sanctions hearing, even though it predated the
23 sanctions hearing.

24 THE COURT: Really?

25 MR. BICE: They never disclosed that they had this,

1 and I believe it came to light after the fact. So I don't
2 believe that's right.

3 MR. PEEK: Your Honor, I believe, but I'd have to
4 go back and check as well, but we made a motion for
5 protective order in December of 2012, the Court will recall,
6 and that's when we had the hearing on December 18th and
7 that's when we -- you remember the December 18th hearing,
8 Your Honor, that's when we -- I think you denied our motion
9 for protective order and said go produce documents and do it
10 by January 4th. And I believe that attached to that, but I
11 could be wrong.

12 MR. RANDALL JONES: Well, and just to follow what
13 Mr. Peek said, this affidavit, which was provided, I believe,
14 in connection with that from Mr. Fleming, that is Exhibit 346
15 is dated and executed August 21st of 2012, Your Honor. And
16 that affidavit is in the record in this case, but it goes
17 back to 2012, August of 2012, where as I said, paragraph 16
18 specifically makes reference to this letter.

19 MR. BICE: I don't -- First of all, Your Honor,
20 this issue -- let me be clear about one thing. We stipulated
21 to the admission of 329, so the assertion that somehow they
22 got it in -- it only got admitted over our objection because
23 it was on our list, that's not accurate. And as the Court
24 well knows, a lot of documents can be admitted by one side
25 and not the other. An example are these declarations. They

1 are hearsay if offered by Sands China, they are admissions if
2 offered by Mr. Jacobs, the declarations that come from Sands
3 China. There's a fundamental difference between who can
4 admit evidence of an out-of-court statement and for what
5 purposes. And what they're --

6 THE COURT: Because we don't like bootstrapping.

7 MR. BICE: And what they're now trying to say is,
8 well, these declarations were admitted as impeachment of Mr.
9 Fleming and they make reference to other documents which we
10 now represent are Exhibit 333, and we just want you to admit
11 it even though he wasn't asked any questions about it.
12 Again, there's just simply no foundation for this and we had
13 the witness here to be examined about these documents where
14 he then could have been questioned about them.

15 MR. RANDALL JONES: Well, Your Honor, if I --

16 THE COURT: Hold on a second. Hold on a second,
17 please.

18 MR. RANDALL JONES: I'm sorry. I'm sorry. Sure.

19 THE COURT: I'm trying to at the motion.

20 MR. PEEK: It was either that one, Your Honor, or
21 our opposition --

22 THE COURT: Wait. Can you hold on?

23 MR. PEEK: -- to their motion for sanctions.

24 THE COURT: Can you hold on, please? They're not
25 part of the appendix to the motion for protective order.

1 MR. PEEK: Then, Your Honor, I think when they
2 filed their motion for sanctions after the production in
3 January of 2013, they filed a motion for sanctions, you may
4 recall; we opposed that on February 25th, 2013.

5 THE COURT: Okay, hold on.

6 MR. PEEK: And there's an appendix to that. I
7 believe it's attached in that appendix. I just know it was --

8 THE COURT: Hold on, I'm there.

9 MR. PEEK: Thank you, Your Honor.

10 THE COURT: And luckily your office does a very
11 nice table of contents related to this. It is Exhibit G to
12 the appendix to the opposition to the motion for sanctions,
13 so it is at issue, as well as the November 14th, 2012 letter
14 from VML to OPDP and the November 29th OPDP letter. So I've
15 got three letters, G, H and I that are part of the appendix.

16 MR. PEEK: They're already part of this record.

17 MR. RANDALL JONES: And Your Honor, I would just
18 make the point that when Mr. Bice moves -- that Exhibit 346,
19 the affidavit of Mr. Fleming, we didn't move it's admission,
20 Mr. Bice did. And he moved it -- and I didn't object to it.
21 But that exhibit that he moved into evidence has the
22 reference to this very letter that we're talking about which
23 is before the Court.

24 THE COURT: That's not the basis for it. Okay.

25 MR. BICE: He claimed --

1 THE COURT: So let me ask you a question, Mr. Peek.
2 Your G, H and I, which are an 8/8/2012 letter, 11/14/2012
3 letter and 11/29/2012 letter, what are their numbers for
4 these proceedings?

5 MR. PEEK: The 8/8 letter, I believe, Your Honor,
6 is 333, I believe. That's the one that is the subject matter
7 of this --

8 MR. RANDALL JONES: That is correct.

9 MR. PEEK: -- request to have it introduced.

10 THE COURT: What about H and I, because they look
11 like it's all a series?

12 MR. PEEK: I'm going to have to get with Mr.
13 McGinn, too, as well, Your Honor.

14 MR. BICE: Your Honor, I also want to renew my
15 objection to the prior one because Mr. Pisanelli pointed out
16 to me and we --

17 MR. PEEK: Your Honor, those are --

18 MR. BICE: -- we found it in the transcript that --
19 you'll recall they said that I had the ability to question
20 the witness about these documents. Mr. Fleming testified
21 that he couldn't examine the documents when we examined him
22 because the computer was locked. Do you recall that, Your
23 Honor?

24 THE COURT: Yeah, but he got it unlocked during the
25 hearing. They got it unlocked. There was a little guy who

1 came in. He was on the screen. He did some work; he left.

2 MR. BICE: Ben Toh.

3 THE COURT: No, it wasn't Ben Toh, it was somebody
4 else.

5 MR. BICE: Well, Your Honor, we renew our objection.
6 If these documents were going to be admitted, they should
7 have been admitted by them when the witness was on the stand
8 and he could be confronted concerning the documents.

9 THE COURT: Okay. I understand your position; I've
10 already ruled. Now, H and I to the --

11 MR. PEEK: 334 and 335, Your Honor, which are the
12 two that you just admitted, 334 is the November -- 334 is the
13 November 14, 2012 letter, and you just admitted that
14 previously. And 335 is the November 28th letter.

15 THE COURT: No, I think it's 336 is the November
16 29th letter. The November 28th letter is not part of the
17 original appendix.

18 MR. PEEK: Okay. Yeah, I'm just --

19 THE COURT: 334 and 336.

20 MR. PEEK: Yeah, probably 336 then. We don't have
21 a date on our index here, Your Honor, our exhibit index.

22 THE COURT: I'm inclined to admit 334 and 336 since
23 they're already part of my record from the original sanctions
24 hearing and were part of the basis on which I made a
25 determination to hold a sanctions hearing.

1 MR. PEEK: Same with 333, Your Honor.

2 THE COURT: I already admitted 333.

3 MR. PEEK: Okay.

4 THE CLERK: [Inaudible].

5 THE COURT: 333, 334, 336 are all admitted because
6 they are part of the appendix to the opposition to the motion
7 for sanctions that was previously at issue.

8 (Defendants' Exhibits 333, 334, and 336 admitted)

9 THE COURT: Next?

10 MR. RANDALL JONES: The only other thing I have,
11 Your Honor, is with respect to --

12 MR. BICE: Your Honor, while Mr. Jones is doing
13 that, I just want to make my record for my objection to that.
14 If that -- if the Court was going to deem everything that had
15 previously been submitted with these motions deemed admitted,
16 there would not have been any need to have been offering them
17 as evidence and we could have then chosen which ones we were
18 going to examine their witnesses with. This -- after the
19 fact now we want -- we now just want the Court to deem
20 anything that was previously submitted to the Court as an
21 exhibit in conjunction with this is now deemed admitted, we
22 don't believe was the process going into this evidentiary
23 hearing, wasn't disclosed and witnesses could have been
24 examined about other documents as well in addition to these.

25 THE COURT: The reason I'm admitting them, Mr. Bice,

1 is the Nevada Supreme Court was pretty thorough in saying
2 that I had to include the analysis of the MDPA and why people
3 did what they did as part of my balancing and making a
4 determination as to what sanctions, if any, are appropriate.

5 MR. BICE: I don't -- I'm sorry.

6 THE COURT: And since these letters were part of
7 what I initially formed my conclusions on whether to hold the
8 hearing, I think it's important that they be part of the
9 record. They're already part of the record, you know.

10 MR. BICE: I understand that they're part of the
11 record, but again, to deem them admitted for purposes of this
12 evidentiary hearing when the witness is not on the stand and
13 not subject to examination is -- if they wanted them in,
14 that's when the process should have been handled so that we
15 could then have access to the witness.

16 THE COURT: Okay. Next?

17 MR. RANDALL JONES: Yes, Your Honor.

18 THE COURT: Any more stipulations?

19 MR. RANDALL JONES: No, Your Honor. I have one
20 other -- Not that I'm aware of. I have one other memorandum
21 that I wanted to submit to the Court. It's with respect to
22 the Okada documents and it's the memorandum related to the
23 rule of completeness. May I approach, Your Honor?

24 (Mr. Randall Jones approaches the bench)

25 THE COURT: Are you going to file this?

1 MR. RANDALL JONES: I would like to file it, Your
2 Honor, but let me just tell you what the argument is. The
3 issue, Judge, is the Court has to date not admitted the Okada
4 discovery responses and I understood the ruling was based on
5 the rule of completeness. And the memorandum essentially
6 informs the Court that the rule of completeness is not an
7 exclusionary rule, it is actually an inclusionary rule. You
8 cannot --

9 THE COURT: Okay. So let me ask you the problem.

10 MR. RANDALL JONES: Sure.

11 THE COURT: I didn't say I wouldn't admit it. I
12 just said I wanted the whole thing because there were cross-
13 references, there were general objections, there were issues
14 about the signature. So while I certainly understand that we
15 may not need 800 pages of it, I need what I believe to be a
16 complete document that includes the cross-references but not
17 the reference that said to prior discovery responses. So to
18 the extent there were references to specific responses, I
19 wanted those included. And this is only my request so that I
20 feel my record is complete. And I wanted the general
21 objections. And I wanted the verification page. So what's
22 wrong with my request?

23 MR. RANDALL JONES: There's nothing wrong with your
24 request, Your Honor. I'm not begrudging your request
25 whatsoever. What I'm suggesting, though, is that the rule of

1 completeness under --

2 THE COURT: It has nothing to do with the rule of
3 completeness. It has to do with my personal opinion as to
4 what the scope of that document should be for me to properly
5 consider it as evidence.

6 MR. RANDALL JONES: And my only point to the Court
7 is is I laid the foundation, I believe, with Ms. Spinelli.
8 Well, you actually laid the foundation. By that I mean --
9 let me just qualify that. She admitted that those were the
10 responses that they provided. I believe she acknowledged that
11 was her signature stamp at the end. And that the responses
12 were not complete because it didn't contain all the other
13 responses, including it did not contain the general
14 objections that were at the beginning of the responses to all
15 the responses, which I understood you to say without those
16 general objections then the document is not complete. So
17 that's what I understood you to be saying. And my only point
18 is that is not a grounds to exclude them if we laid a
19 proper foundation. And in fact, the rule says under 47 --

20 THE COURT: Mr. Jones, why is my request so
21 unreasonable?

22 MR. RANDALL JONES: I don't know that it's
23 unreasonable, Your Honor.

24 THE COURT: Then comply with it.

25 MR. RANDALL JONES: I don't have access to the rest

1 of that information. I'm not involved in that case. I had
2 only limited access. And I produced --

3 THE COURT: So where did you get the others?

4 MR. RANDALL JONES: As I indicated before, I got --
5 the Court knows where I got the other parts of the documents
6 and I don't have access to the balance of it. But the rule
7 of completeness says the reason to exclude it is not based
8 upon what's not in the document. If the other side wants to
9 object that they're not complete, then the rule says then you
10 produce what you want to produce that's not been produced by
11 the other side. It's not foundation, it has to do with
12 whether they think there's more that should be provided to
13 the Court.

14 THE COURT: I understand what you're saying, Mr.
15 Jones. I have made what I believe is a reasonable request
16 for me to believe that the document that you are offering
17 will satisfy me that it is a complete copy for what I need to
18 consider it for. If you can't comply with that, that's okay.
19 I understand. But my request to you is not unreasonable.

20 All right. What else?

21 MR. RANDALL JONES: The only other issue that I
22 have this morning, Your Honor, is I just want to file a
23 memorandum with the Court that has to do with the Richmar
24 case and the sanction that Mr. Bice is asking be imposed
25 against my client.

1 THE COURT: Okay. Sure.

2 MR. RANDALL JONES: And I'm not going to argue it
3 this morning. I just wanted to submit it to the Court.

4 (Mr. Jones approaches the clerk)

5 THE COURT: Well, you might argue it later.

6 MR. RANDALL JONES: I might argue it later then,
7 yes. Thank you.

8 THE COURT: All right. So, Mr. Jones, we're now to
9 your case. Do you have any additional evidence that you want
10 to present?

11 MR. RANDALL JONES: Court's indulgence for just one
12 second.

13 MR. PISANELLI: Your Honor, there's no need for any
14 further argument, you've already ruled, but I don't want our
15 silence as to Mr. Jones' representation about the alleged
16 foundation that had been laid for the Okada documents is
17 accurate. We don't believe it was. I'll leave it at that.
18 If you want to hear our position, I'll offer it.

19 THE COURT: I don't need to hear anything and I
20 made what I thought was a reasonable ruling that accommodated
21 all of the interests that are present.

22 MR. PISANELLI: Very good. Thank you.

23 MR. RANDALL JONES: And I believe, Your Honor, the
24 only other evidence that I would like to present to the Court
25 is the testimony of Jason Ray to clarify a point of his

1 earlier testimony.

2 THE COURT: So you're recalling Mr. Ray?

3 MR. RANDALL JONES: Recalling Mr. Ray.

4 THE COURT: Mr. Ray. And if you'd remain standing.
5 Because it's a new day, we've got to swear you.

6 THE WITNESS: Yep.

7 JASON RAY, DEFENDANTS' WITNESS, SWORN

8 THE CLERK: Please be seated. If you'd please
9 state and spell your first and last name for the record.

10 THE WITNESS: Sure. Name is Jason Ray,
11 J-A-S-O-N R-A-Y.

12 DIRECT EXAMINATION

13 BY MR. RANDALL JONES:

14 Q Good morning, Mr. Ray.

15 A Good morning.

16 Q Mr. Ray, do you recall at the hearing where you
17 testified earlier, last week or maybe the week before, I'm
18 losing track of time at this point, in response to a question
19 from Judge Gonzalez regarding what I -- sometimes been
20 referred to as Kostrinsky collection or the transferred data
21 from Macau that you said, and I'm quoting from the transcript
22 here at page 137, "You were given instructions to sequester
23 that data and that it was not allowed to be used or touched
24 by anyone in the United States, and that it was theoretically
25 available to you, but that you were given instructions never

1 to look at it so you didn't use it." Do you remember that
2 testimony?

3 A I do.

4 Q And was that testimony completely accurate?

5 A It was not.

6 Q And could you tell Judge Gonzalez what about that
7 testimony was not completely accurate.

8 A Yes. So I apologize for my poor recollection. We
9 had received instructions to sequester these sources of data.
10 That was a request I received and acted upon.

11 Q You know what, Mr. Ray, let me cut you off. When
12 you say, "these sources of data," would you please explain to
13 Judge Gonzalez what you mean by sources of data that you were
14 referring to in your prior testimony.

15 A Sure. So there are five different data sources
16 that are involved. One is a set of hard drive images from
17 Mr. Jacobs's personal computer in Macau. One is a network
18 share on the Las Vegas Sands's servers that's labeled M Data
19 Share. One of them is a share that is labeled the Macau
20 Share. One is a network share labeled Counsel Legal Share.
21 And the last is, there was a PST file, an email archive on
22 Mr. Kostrinsky's personal laptop that was actually a copy of
23 some data from Mr. Jacobs's computer.

24 Q All right. So with that in mind, how was your
25 prior testimony about never searching that or sequestering

1 that not completely accurate?

2 A So we originally received instructions from Munger
3 Tolles to hold that data and sequester it in July of 2012.

4 Q Okay.

5 A And then soon thereafter in additional
6 conversations with other members of my team there were
7 clarifications to those instructions. The reason for the
8 sequester was that those sources may contain --

9 THE COURT: Hold on. Were these communications you
10 had with Munger Tolles or someone else did?

11 THE WITNESS: The original communication I had with
12 Munger Tolles and the subsequent communication, I was on a
13 distribution list of the email, but I was not the primary
14 recipient.

15 THE COURT: Okay.

16 MR. PISANELLI: Your Honor, I may be
17 misunderstanding the question. But if this witness is now
18 about to tell us what these emails said, I'll object to the
19 hearsay. We need to see the email, they need to come into
20 evidence. He can't talk about what some communications were
21 without any opportunity for us to challenge the reliability
22 of that evidence. He had a direct communication with MTO,
23 we'll challenge that, because he's sitting here. But he read
24 some emails that we don't have. That's hearsay and can't
25 come in.

1 THE COURT: No. He said he was carbon copied on
2 it.

3 MR. PISANELLI: Right. Apparently he's telling us
4 that he read some hearsay, and now he's going to tell us what
5 it said. That's inappropriate.

6 THE COURT: No. He said he was part of the
7 communication.

8 Right, sir?

9 THE WITNESS: Yes, that's correct.

10 MR. PISANELLI: That's still hearsay. It's still
11 hearsay. We don't have the evidence.

12 THE COURT: I understand it's hearsay, but he's one
13 of the recipients of the communication originally. It's not
14 like he reviewed it later.

15 You got it originally when the communication --

16 THE WITNESS: That's correct. I just didn't recall
17 it.

18 MR. PISANELLI: And so this witness, and presumably
19 this set of defendants, has this document that before he can
20 tell us what it says and ask us to take his order for it, a
21 word that he's now telling us is subject to suspect memory,
22 we're entitled to see the document ourselves before he can
23 come in and say anything about it.

24 THE COURT: The objection's overruled.

25 MR. RANDALL JONES: And just for the record, Your

1 Honor, you asked him the question, not me, Your Honor.

2 THE COURT: I did, because I was unclear as to with
3 whom the communication from Munger Tolles occurred, and that
4 was important for me to establish.

5 MR. RANDALL JONES: I have no problem, Judge. I
6 just wanted to make a note, I wasn't trying to bring that
7 information in. The Court asked the question, and I didn't
8 have a problem with the Court asking the question.

9 BY MR. RANDALL JONES:

10 Q And, again, without referring to any documentation
11 I'm just asking for your recollection. And so I think you've
12 already testified initially you were told to sequester the
13 information. What happened after that?

14 A So soon thereafter there was further communication
15 that the purpose -- the reason for --

16 MR. PISANELLI: Objection. Hearsay, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: The reason for the sequestering is
19 that these sources contained data that could be personal for
20 Mr. Jacobs and that that data needed to be not viewed or
21 searched. And then we received, over time, a series of
22 criteria search terms to use to identify what that personal
23 information was. In late July of 2012, the documents were
24 separated between those that potentially contained personal
25 information and those that did not. And those that did not

1 were available for searching.

2 BY MR. RANDALL JONES:

3 Q So did you search -- did FTI search the five data
4 sources you've identified at some point in time excluding the
5 personal data that had been identified that should be
6 sequestered or excluded?

7 A Yes, we did.

8 Q And could you tell the Judge when you first started
9 searching that data, the five data sources.

10 A So for FTI, we began searching that data in late
11 July of 2012, and subsequently. The data was available to
12 Munger Tolles at the same time, and I don't know what
13 searches they may have been running on their own.

14 Q And did you ever conduct any additional searches
15 after those initial searches you just identified?

16 A We did. We used that data during our searching for
17 duplicate documents in the United States to replace redacted
18 documents from the Venetian Macau productions.

19 Q We're going back to the first data searches you
20 told the Judge about when you actually did search these data
21 sources. Who was the client, if you will, when you were
22 doing those searches?

23 A It was -- Munger Tolles also was giving us the
24 instructions and the Las Vegas Sands Corporation.

25 Q All right. So you did the searches for Las Vegas

1 Sands Corporation, those searches?

2 A Yes.

3 Q When you searched it later for the duplicates, who
4 were you doing the searches for at that time?

5 A So those searches were under the Venetian Macau
6 engagement looking for duplicates of Macau produced, redacted
7 documents.

8 Q Can you tell Judge Gonzalez when you first started
9 doing the searches for Venetian Macau of the five data
10 sources.

11 A The initial searches would have begun in late
12 December 2012, as part of the initial engagement to go to
13 Macau and produce documents. And in that situation, and I
14 recall in my prior testimony, in December of 2012 and early
15 January of 2013 we were searching for documents in the United
16 States that matched exactly documents in Macau so that those
17 documents could be reviewed in the United States and produced
18 because of the timeline.

19 The second trip to Macau in March and April of
20 2013, we were doing the searches to replace produced redacted
21 documents with unredacted copies that were in the United
22 States.

23 MR. RANDALL JONES: Your Honor, may I approach the
24 clerk.

25 THE COURT: Sure.

1 (Pause in the proceedings)

2 THE COURT: So you want these, 381 and 382?

3 MR. RANDALL JONES: Please.

4 THE COURT: We have concern on our faces about the
5 numbering system. Come on up.

6 (Pause in the proceedings)

7 MR. RANDALL JONES: You know what? I'm sorry. I
8 wasn't as dumb as I look, Your Honor. We had actually put
9 them on our revised exhibit list as that would be 379. So he
10 actually already just went ahead and --

11 THE COURT: So they're premarked as 379 and 380 on
12 the list, and they just need a sticker?

13 MR. RANDALL JONES: They are premarked on the list.
14 This would be 380. So that one's 379 and that one -- so I
15 was actually right, I just didn't tell the clerk what we had
16 done. So that was our fault.

17 THE COURT: Okay. So we've got Proposed 379 and
18 380. Can you give a copy to the plaintiffs.

19 MR. RANDALL JONES: They have a copy, Your Honor.

20 THE COURT: Mr. Bice, have you got a copy? You and
21 Mr. Pisanelli have a stack there, because they're pretty
22 thick?

23 MR. BICE: Yes.

24 MR. RANDALL JONES: And I have provided Mr. Bice a
25 copy yesterday, as well. But I gave him another -- a hard

1 copy this morning.

2 MR. BICE: Yes.

3 MR. RANDALL JONES: May I approach, Your Honor.

4 THE COURT: You may.

5 BY MR. RANDALL JONES:

6 Q All right. Mr. Ray, would you first look at
7 Exhibit 379.

8 A Yes.

9 Q Do you recognize that document?

10 A I do.

11 Q And how do you recognize this document?

12 A I created this document.

13 Q And could you tell Judge Gonzalez when you created
14 this document.

15 A I originally created the first draft of this
16 document on Friday, and the final draft of the document
17 yesterday morning.

18 THE COURT: So in the last couple of days?

19 THE WITNESS: Yes.

20 BY MR. RANDALL JONES:

21 Q And would you please tell the Court what this
22 document is, what it purports to be.

23 A Sure. So to confirm that these sources were
24 searched for production I ran a report in the case for the
25 Jacobs matter looking for all documents that were produced in

1 the Las Vegas Sands's productions that came from those
2 sources. And this report is a list of all of the documents
3 that were produced from those five sources I mentioned in Las
4 Vegas Sands's productions up to and including, you know, now.

5 Q And would this information that's contained in
6 Exhibit 379 essentially also be available to the plaintiff,
7 Mr. Jacobs, if he ran the right kind of searches? Would he
8 be able to --

9 A It should be, yes.

10 MR. RANDALL JONES: Your Honor, I move for the
11 admission of 379.

12 THE COURT: So, sir, let me ask you a question.

13 THE WITNESS: Yes.

14 THE COURT: So, your firm did the search, you
15 identified certain documents on the five sequestered data
16 sources that needed --

17 THE WITNESS: Yes.

18 THE COURT: -- to be produced, and then you told
19 Munger Tolles to produce them?

20 THE WITNESS: So after that initial sequester the
21 purpose of the sequestering was because there were these
22 potentially personal documents in those sources. Once they
23 had identified criteria to separate the potentially personal
24 sources out, the rest were released for searching. So these
25 are documents that --

1 THE COURT: Even the transferred data?

2 THE WITNESS: Yes. And this report is all of the
3 documents that are from those sources that were produced at
4 some point in the Las Vegas Sands's production.

5 THE COURT: Okay.

6 BY MR. RANDALL JONES:

7 Q And you identify them by Bates number of the
8 production and identified the type of document produced in
9 this exhibit?

10 A That's right. I listed the beginning and ending
11 Bates number of the document, the primary Macau source. I
12 also put a second column for a secondary Macau source, and
13 the reason for that is that some of these documents exist in
14 more than one of those five sources. And then which
15 production, it was in the latest production, and then the
16 date and the title of the document.

17 MR. RANDALL JONES: Your Honor, move it to
18 admission.

19 THE COURT: Any objection?

20 MR. PISANELLI: Yes, Your Honor. It's not a
21 business record. It was created for purposes of litigation.
22 There's prejudice in the fact that it's disclosed after this
23 witness had already testified to the exact contrary of what
24 it contains. It's I guess hearsay at its rankest form, since
25 it can't qualify under any form of an exception. And so I

1 don't see any evidentiary foundation for it other than the
2 fact that he said he did it yesterday or the day before
3 yesterday.

4 THE COURT: Be admitted.

5 (Defendants' Exhibit 379 admitted)

6 BY MR. RANDALL JONES:

7 Q Mr. Ray, would you look at Exhibit 380.

8 A Yes.

9 Q And could you tell Judge Gonzalez what that
10 document is.

11 A So Exhibit 380 is the same report. In this case it
12 was for documents that were produced in Sands China Limited
13 productions and the SCL productions. And it has the same
14 information, the beginning and ending Bates numbers of the
15 document, the sources, which production it was most recently
16 produced in, and then the date and the title of the document
17 that was produced.

18 Q And this document had obviously -- it's a
19 considerably thinner --

20 A Yes.

21 Q -- in the number of pages than Exhibit 379. Why is
22 it thinner?

23 A This document is a report of the U.S. documents
24 that were produced in SCL productions. And the volume of the
25 SCL productions is much more limited than the volume in Las

1 Vegas Sands's production.

2 MR. PISANELLI: Your Honor, I'd move for admission
3 of Exhibit 380.

4 MR. PISANELLI: Same objections, Your Honor.

5 THE COURT: The objection is overruled. Be
6 admitted.

7 (Defendants' Exhibit 380 admitted)

8 MR. RANDALL JONES: Court's indulgence. Your
9 Honor, I will pass the witness.

10 THE COURT: Sir, how did you determine that your
11 prior testimony was inaccurate?

12 THE WITNESS: So I had recalled the request, the
13 original request to sequester the documents, and that's what
14 I testified to. And there were documents that were
15 sequestered that we were not permitted to search, which was
16 true. What I had not recalled was that we had subsequent to
17 that original hold released most of the documents. The only
18 ones that remained sequestered were the ones that met the
19 personal criteria that had been provided.

20 And I just didn't remember that when I was asked --
21 subsequently I got a call from Mr. Jones and said, you know,
22 there may be some difference of opinion on that. I went back
23 and looked at some of my notes and realized that I had not
24 recollected that there had been a release and subsequently
25 produced these reports.

1 THE COURT: Okay. Cross-examination.

2 MR. PISANELLI: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. PISANELLI:

5 Q All right. Mr. Ray, first let's start with
6 understanding what exactly your final testimony's going to be
7 on these topics. Now, when we first started your examination
8 I believe it was Mr. Jones actually asked you of everyone in
9 FTI, as it relates to this project or VML and the search for
10 the Sands, of everyone there, who had the most knowledge,
11 single person with the most knowledge of everything that
12 happened. You said that was you?

13 A That's correct.

14 Q All right. And so now when we got to Her Honor's
15 question, but it wasn't just one question, we had several
16 times this issue come up of what happened to the sequestered
17 documents. You never told us you weren't sure, did you?

18 A I did not.

19 Q You never told us any qualifications to your memory
20 that, you know, the best of my recollection, this is a couple
21 of years back, I think this might have happened, you never
22 had any qualification like that; right?

23 A That's correct.

24 Q Matter of fact, you were taking the same position
25 with this topic that you told me you did with the testimony

1 about who your client was, that you wanted to be exact and
2 precise when you were testifying in this hearing. That was
3 what you told us?

4 A That's correct.

5 Q Right. So I asked you, even before Her Honor got
6 to the point, a hypothetical. Tell me if you remember this
7 question. I said, "A different example, if we have a
8 document that's going to be redacted under the judgement of
9 the Macau team, if under my hypothetical this same document
10 is in what we've characterized as the Jacobs information that
11 has been transported to the United States, that process
12 wouldn't occur and this document would still be redacted;
13 right?" Do you remember what you answered?

14 A I do.

15 Q What'd you say?

16 A I said, I believe it would not have been available.

17 Q No. You didn't say you believe. You said, "That's
18 correct." Remember that?

19 A Yes.

20 Q All right. And then Her Honor had some followup.
21 She asked you something even more direct, because hers wasn't
22 in the hypothetical as I had started. Her Honor said, "Let
23 me go back to the information --" there's a "[phonetic]" but,
24 "-- that was carried out of Macau that wasn't available to
25 you; right?" And then your exact testimony that you told us

1 about, "There's a special distinction about that data." Do
2 you remember saying that?

3 A Yes.

4 Q Again, you didn't tell us that you weren't quite
5 sure of how it was handled. You said, this was a special
6 situation that you, the person most knowledgeable, knew
7 about; right?

8 A Correct.

9 Q Okay. The Court -- you then went on and said, "The
10 data that is believe you're referring to was taken out of
11 Macau when it was identified that it existed in the data in
12 the United States. We were given instructions to sequester
13 that data and that it was not allowed to be used or touched
14 by anyone in the United States." Do you remember that?

15 A That is correct.

16 Q That's right. And you said, "And so although that
17 data is theoretically available to us, we've been given
18 instructions never -- is what you said -- never to look at
19 it. So we didn't use it." It's what you told us.

20 A And that is correct for Mr. Jacobs's personal data.

21 Q Okay. So that was not part of what was available
22 to you, that's correct. Now, you understood, because you
23 just heard it in the earlier testimony, we were talking about
24 the Jacobs data, that was -- we were all bouncing around at
25 how we were going to define the transported data. You're not

1 now telling us that you were being so exact to the Court that
2 you're letting Her believe that you're talking about all of
3 the transported data, but you were only talking about a sub-
4 set? You weren't intending to do that, were you?

5 A I did not completely recall the request to release
6 the remainder of the Jacobs data other than the personal
7 data.

8 Q But you did tell us that you recalled last time you
9 were here that you were told to never look at it and you
10 never did?

11 A And that is correct for Jacobs's personal data.

12 Q Yeah. But you know we're talking about all the
13 transported data; right?

14 A I've already testified that my recollection was
15 incomplete.

16 Q But here's what's really confusing to me, that it's
17 not simply that you didn't recall, but that you were being so
18 exact. On page 257, but it was nearly the last thing you
19 said to this Court. I said to you, "Long and short of it is
20 with or without no consent neither you nor Sands China nor
21 anyone else to your knowledge did a search of terms -- Mr.
22 Jacobs and all the other RFPs for the documents that are here
23 didn't do it." And you said, "We were specifically," was
24 your words "specifically excluded from running searches on
25 Macau data." Not Jacobs data, you said, "Macau data that is

1 present in the United States." Remember that?

2 A I do.

3 Q "Excluded by SCL?" I asked you. Who did the
4 exclusion. "By instructions from counsel." "Sands China's
5 counsel?" I asked. And you concluded -- the last thing you
6 said to this Court, "I believe the instructions came
7 originally from Munger Tolles, and then it was repeated by
8 Mayer Brown." That is very specific. But today, now we have
9 a different story. Today you do -- can see that your
10 original sequestration instruction was from Munger Tolles?

11 MR. RANDALL JONES: Objection, Your Honor.
12 Compound. I don't -- question and answer.

13 THE COURT: Overruled.

14 BY MR. PISANELLI:

15 Q But when you told us at the end that it was
16 repeated by Mayer Brown, are you now saying that Mayer Brown
17 didn't really repeat the Munger Tolles, they modified Munger
18 Tolles's instructions?

19 A No. Mayer Brown repeated Munger Tolles's final
20 instruction, which was to keep the personal data sequestered.

21 Q Now, when you told us that everything had been
22 sequestered didn't you say that Munger Tolles, and then later
23 repeated by Mayer Brown, said to sequester all of the
24 transported data, not just Steve Jacobs's personal
25 information that was on his hard drive?

1 A Yes. My recollection was incorrect.

2 Q Okay. So let's talk about how your recollection
3 was somehow changed. What'd you do? You said you read some
4 notes?

5 A That's correct.

6 Q What notes?

7 A A couple of emails that were sent. One, to me by
8 Munger Tolles on the original request to sequester the data.
9 And then a second one, which was sent, where I was copied,
10 but the primary recipient was another consultant, to separate
11 the documents into potentially personal and non personal.

12 Q All right. So help me first identify. The first
13 email was from Munger Tolles?

14 A Yes.

15 Q Who at Munger Tolles?

16 A It was from Misha Moyzeson.

17 Q Can you spell that for the record.

18 A I don't recall the exact spelling.

19 Q Okay. And do you mind if I just refer to as Misha.
20 I think I can pronounce that one easier. Okay. And that was
21 to you directly?

22 A Yes.

23 Q Anyone else?

24 A No.

25 Q What was the date?

1 A It was July -- I don't remember the exact date. I
2 think July 18th.

3 Q What year?

4 A 2012.

5 Q All right. And how did you find that email?

6 A I used a search program.

7 Q On your own hard drive?

8 A Yes.

9 Q Okay. And when you found it, that email refreshed
10 your recollection about the set of events you've testified
11 to?

12 A It refreshed my recollection that we had been told
13 to sequester all the data. And then the second email that I
14 reference is the one that indicated that we were separating
15 them. And then there was a third email with instructions for
16 what terms should be used.

17 Q All right. So what's the second email?

18 A So that was one directed to Julia Byerson, who was
19 the lead Ringtail consultant on the case at the time, and I
20 was part of the distribution list of it.

21 Q And this is also from Misha?

22 A From Doris Perl I believe. P-E-R-L.

23 Q What firm is Doris with?

24 A Also Munger Tolles.

25 Q Also MTO. The date?

1 A It was later in July 2012.

2 Q I'm sorry. Tell me again what it was that this
3 document refreshed your recollection about.

4 A That there was a separation from all the data that
5 we had sequestered to those things that were potentially
6 personal and the other documents.

7 Q All right. Let's explore that in just a moment.
8 Well, let's do it right now. "Separation of all data." What
9 do you mean by that?

10 A Well, so, again, we originally were sequestering
11 all of the data from these five sources that I mentioned.

12 Q Everything that came to the United States was the
13 equivalent of put in a vault?

14 A That's right. We locked those documents down so
15 they could not be accessed.

16 Q All right. And this second email from Julia
17 Byerson said what?

18 A It was actually from Julia Byerson I believe to
19 Doris Perl recapping a verbal conversation that had been one
20 of the conference calls we had, that she had implemented this
21 separation.

22 Q So this separation from the second email is just
23 that the segregation of --

24 A Non-personal data to personal data.

25 Q Oh. I see. So this is where the MTO instruction

1 of segregation changed, was modified?

2 A Yes.

3 Q Ms. Byerson said, "Let's just take the Jacobs
4 personal information out of those transported sources."

5 A She said, I've completed the separation, and the
6 non-personal data's now in this binder.

7 Q She did that herself?

8 A It was following up to a conference call with
9 Munger Tolles that we were all on.

10 Q You knew that Munger Tolles was doing the
11 separation?

12 MR. RANDALL JONES: Object to the form of the
13 question. Assumes facts not in evidence.

14 THE COURT: Overruled.

15 THE WITNESS: So we received instructions from
16 Munger Tolles about it?

17 BY MR. PISANELLI:

18 Q Counsel's objection, you know, may be on to
19 something, but you and I don't appear to be communicating,
20 and I apologize for that. So let's back up. Who did the
21 separation?

22 A We did, FTI --

23 Q FTI did. Where was it done?

24 A It was -- Julia Byerson is the one who did the
25 separation. She was a consultant based in Chicago.

1 Q Okay. She's an FTI person?

2 A She was an FTI employee, yes.

3 Q Okay. So that was my misunderstanding. I

4 apologize. Okay. So Julia was confirming in this email that

5 she had done the separation of the Jacobs data from the

6 transported data pursuant to instructions given during a

7 conference call --

8 A Correct.

9 Q Do I have it correct? When was that conference

10 call?

11 A It was that day.

12 Q That same day?

13 A Yeah.

14 Q So it didn't take her long to separate it out

15 apparently?

16 A No.

17 Q All right. You were part of the call?

18 A I was.

19 Q Who else was on it?

20 A There were about eight FTI employees on that call,

21 and then Doris Perl and Misha Moyzenson from Munger Tolles.

22 Q Anyone else?

23 A Not that I recall.

24 Q All right. And there was the third email that

25 refreshed your recollection about your testimony?

1 A That's correct.

2 Q Tell me about the third one.

3 A So the process of identifying what documents were
4 potentially personal data from Mr. Jacobs's sources, there
5 had been a request that those documents could be reviewed by
6 another e-discovery firm and was hired by his counsel and
7 that we would be provided with a list of documents that
8 needed to be remediated.

9 That review, there were several iterations of how
10 that review was going to take place. To the best of my
11 recollection that review never actually did take place. And
12 ultimately we received a set of instructions that said, here
13 are a set of search terms that we're to use to search all of
14 the Jacobs sources and any documents that hit on any of these
15 terms are going to remain sequestered.

16 Q What do you mean when you say, "Jacobs sources"?

17 A So the five sources that I previously mentioned.

18 Q Everything that was transported to the United
19 States?

20 A Those are the five sources that we understand were
21 transported to the United States from Macau.

22 Q Now, when you say that you received instructions on
23 searching for the Jacobs data who gave those instructions?

24 A That was Doris Perl at Munger Tolles.

25 Q Is this a fourth email or is this part of the

1 third?

2 A It's part of the third. The third is quite a long
3 string that includes the search terms.

4 Q All right. Now, am I correct in understanding that
5 you went into your own computer and did a search and found
6 these emails to refresh your recollection?

7 A That's correct.

8 Q Did it on your laptop?

9 A That's correct.

10 Q All right. This is the same laptop you just travel
11 with in the ordinary course of your business?

12 A Yes, that's correct.

13 Q Do you have it with you right now?

14 A I do not.

15 Q Where is it?

16 A It's at the Kemp Jones office.

17 Q All right. So for instance you went back over
18 lunch, you'd have no problem pulling up that computer and
19 finding the same exact email?

20 A That's correct.

21 Q Were you instructed not to bring that computer into
22 this courtroom?

23 A No.

24 MR. RANDALL JONES: Your Honor, let me try to
25 resolve this issue. If counsel is seeking copies of those

1 emails, is that what counsel's getting at? I'd just like to
2 know.

3 THE COURT: I don't know that that's what he's
4 getting at. He was asking a question.

5 MR. RANDALL JONES: But he was asking about the
6 laptop and if the information was on the laptop. So I just
7 want to inquire if counsel was seeking the emails.

8 MR. PISANELLI: I would like the emails.

9 THE COURT: And, apparently, yes.

10 MR. RANDALL JONES: You would like the emails? In
11 anticipation of that, and based upon the Supreme Court
12 decision that came out of this very case and having
13 discovered that certain emails were looked at, we have
14 prepared a memorandum we'd like to file in open Court, Your
15 Honor, with respect to the limitation of the disclosure
16 related only to those emails. So as not to slow down the
17 proceeding, I have the emails here. I will provide them to
18 counsel, but I want to make sure that we are on the record
19 that we are not waiving any other privilege. We are limiting
20 the waiver to the emails that he has actually used to refresh
21 his recollection.

22 THE COURT: And I have to do this before I let the
23 witness go.

24 MR. RANDALL JONES: Understood, Your Honor. And
25 that's why I didn't want to have him come back or delay the

1 proceedings. And I anticipated that Mr. Pisanelli --

2 THE COURT: So we have a brief?

3 MR. RANDALL JONES: -- might ask these type of
4 questions being the lawyer that he is. And so in
5 anticipating that, I prepared these documents.

6 THE COURT: So do you have a brief you want to file
7 in open Court?

8 MR. RANDALL JONES: I do.

9 THE COURT: Okay. Did you give a copy to Mr.
10 Pisanelli.

11 MR. RANDALL JONES: I have not yet, but I will do
12 so right now, Your Honor.

13 THE COURT: So, Mr. Pisanelli, it's 11:51. You've
14 just been handed a brief

15 MR. PISANELLI: Uh-huh.

16 THE COURT: And so how about we decide by looking
17 at the brief whether we're going to do something about some
18 emails or whether you're going to take the position that
19 there's a broader waiver. And if you're going to take the
20 position there's a broader waiver then we'll have a
21 discussion, and then I'll determine if the emails are going
22 to be produced. And if they're going to be produced we'll
23 take a break for lunch for you to read them.

24 MR. PISANELLI: Well, it would seem to me, Your
25 Honor, that the production of the emails is not in dispute.

1 It's just how broad the waiver of any privilege or right that
2 may attach to them will be. But the production shouldn't be
3 delayed while we analyze this brief that we just got. I want
4 to be as efficient as I can with our time and with the
5 witness's time.

6 THE COURT: Well, I'm going to break for lunch,
7 because I've been going for a long time. So I'm going to
8 break for lunch sometime in the next eight minutes or so.

9 MR. RANDALL JONES: And I'm happy to proceed as --
10 the Court or Mr. Pisanelli pleasure. I'd like to go as fast
11 as we could, too. Because --

12 THE COURT: So at this point you are producing them
13 without waiving any additional privileges as detailed in the
14 brief you've just filed?

15 MR. RANDALL JONES: Your Honor, to the extent that
16 there has been any evidence establishing that there's been a
17 waiver, I believe there's been an inquiry and Mr. Ray has
18 identified three -- only three documents that have refreshed
19 his recollection in connection --

20 THE COURT: So far.

21 MR. RANDALL JONES: -- with this matter. I believe
22 he's asked him, and he said there was no others. But if he
23 wants to ask him if there's any other documents then have him
24 do that and we'll go from there.

25 MR. PISANELLI: So what I need first is emails.

1 THE COURT: I'm waiting.

2 MR. RANDALL JONES: And, Your Honor, if -- I
3 thought you were going to make a ruling. I'm happy to --

4 THE COURT: Well, no, I think you agree that from
5 our Justin Jones writ that went up that the production of
6 documents that you review in preparation for your testimony,
7 especially when you've testified already and then told me
8 your testimony was wrong, should be produced.

9 MR. RANDALL JONES: Your Honor, I don't like to
10 waive anything. So what I will say is that I understand that
11 case, and based upon --

12 THE COURT: Well, it's this case.

13 MR. RANDALL JONES: Well, I understand -- I'm
14 sorry. I should have said, that ruling. So based upon that
15 ruling we are providing these three emails.

16 MR. PISANELLI: That's fair enough.

17 THE COURT: The last time this came up I then took
18 a break, because there was a writ that got run in the middle
19 of the trial and it's been two years. And I've now forgotten
20 everything else about the trial. So --

21 MR. PISANELLI: So let me go for probably six
22 minutes now. I'll read these emails over lunch and decide
23 what if anything to do with them when we pick up. Fair
24 enough?

25 THE COURT: Do you have some questions you can ask?

1 MR. PISANELLI: Yeah.

2 THE COURT: That'd be lovely.

3 MR. PISANELLI: All right.

4 BY MR. PISANELLI:

5 Q So you testified with a desire of exactness and

6 preciseness, but when you left the stand somehow some way it

7 came to your attention that maybe you need to change what you

8 said. How did that come about?

9 A So I received a call from Mr. Jones --

10 Q Okay.

11 A -- indicating that there was --

12 MR. RANDALL JONES: Your Honor, I would object to

13 the extent that there's any kind of a work product privilege

14 with respect to his communication between Mr. Ray and me.

15 THE COURT: Well, first, which Mr. Jones was it?

16 THE WITNESS: Mr. Randall Jones.

17 THE COURT: Okay. Now, do you want to respond?

18 MR. PISANELLI: Yes. Well, if counsel was having

19 communications with the witness while still testifying --

20 THE COURT: He'd been released.

21 MR. PISANELLI: Well, he's back on the stand.

22 THE COURT: I know. But he's been recalled.

23 MR. PISANELLI: Well, my position would be this.

24 THE COURT: It's a slightly different issue.

25 MR. PISANELLI: I understand your point, but a

1 witness who has been on the stand, the proceedings are still
2 open, they still have not closed their case. They called him
3 back to talk about what he testified to and to let him know
4 that he needs to change his testimony and gave him presumably
5 the reasons why, that seems to be a classic circumstance
6 where I get to find out what it was that was fed to this
7 witness before he was completely and finally released.

8 Had they not called him back, perhaps a good
9 argument can be made that those communications remained
10 privileged with a non-testifying consultant non testifying
11 the day after he left. I'm not even sure that would fly once
12 they've opened the door to voluntarily putting this witness
13 on the stand.

14 He's now a testifying expert with percipient
15 knowledge. So I don't think there's any way to shield
16 anything of what he has to say. Throw in the fact that
17 they're refreshing his recollection, that's a whole different
18 analysis. They've already conceded that that has happened
19 through the emails. So I don't think there's some separate
20 shield or line to be drawn from the person communicating to
21 him about the emails and the emails themselves.

22 THE COURT: Okay.

23 MR. RANDALL JONES: Your Honor, I guess my first
24 point is, the irony of this is sort of shocking in that they
25 actually -- I didn't know this, but they knew about the

1 sequestering, and they knew Mr. Ray's testimony was incorrect
2 -- well, was inaccurate in the first instance, because
3 they're the ones, and I've spoken to Mr. Bice about this
4 before today, they're the ones that actually were concerned
5 about FTI looking at Mr. Jacobs's personal information.

6 THE COURT: I remember.

7 MR. RANDALL JONES: So they know full well this is
8 all true and correct. And so it's irony --

9 THE COURT: Well, I don't know that that's the
10 case. The part we did, and this is four years ago now,
11 maybe, is there was concern about personal communications
12 that Mr. Jacobs may have had related to his children, his
13 wife, or other clearly personal issues, that those be
14 excluded before there was a review done by your client.

15 MR. RANDALL JONES: Understand. I understand that
16 now.

17 THE COURT: I never knew there was a sequestering
18 of data. I didn't understand that until this gentleman
19 testified. I was sort of surprised by it. But I heard him
20 testify about it, I understood what he said, and I assumed
21 you did work some other way.

22 MR. RANDALL JONES: So my point is simply this.
23 Now, I don't know if Mr. Peek has any additional comments
24 about that or not.

25 THE COURT: Mr. Peek's lived the case, too.

1 MR. RANDALL JONES: So he would be more familiar
2 with that issue than I am. But having said that, Your Honor,
3 again, my communications, any communications that I had with
4 Mr. Ray about this were certainly not a part of his earlier
5 testimony, as you said, he's been called back. And I don't
6 believe there's a waiver of any attorney client -- excuse me,
7 attorney work product privilege.

8 THE COURT: So is he a percipient witness or is he
9 an expert? That's really the issue.

10 MR. RANDALL JONES: He is a -- well, Your Honor, as
11 to this particular issue he is certainly talking about his
12 recollection, but I believe he is an expert witness, as well.

13 THE COURT: And when you communicate with an expert
14 and you provide facts and circumstances to the expert for the
15 expert to draw their conclusions, those issues are
16 discoverable.

17 MR. RANDALL JONES: With respect to this
18 conversation that he referred to -- because it's already --
19 he said he'd referred to the conversation he had, had nothing
20 to do with his expert testimony.

21 THE COURT: Really? So why is he telling me it's
22 different than when he was here last time?

23 MR. RANDALL JONES: It has to do with his
24 recollection, Your Honor.

25 THE COURT: Okay. Mr. Peek, is there anything you

1 want to say?

2 MR. PEEK: Your Honor, the only thing I was just
3 going to was to echo Mr. Jones's remarks in the beginning
4 that the plaintiff was involved in this process. I was part
5 of that process, as well.

6 THE COURT: We were all part of that process.

7 MR. PEEK: Yes, we were. And as the plaintiff well
8 knows, they raised the issue with us about the data that had
9 been transferred from Macau to the United States might
10 contain personal data. You recall that Advanced Discovery
11 was the Court appointed vendor to take possession of Jacobs's
12 media devices. Do you remember that?

13 THE COURT: I remember the Advanced Discovery
14 website.

15 MR. PEEK: And remember that there were then search
16 terms. There were search terms to be run against that data
17 that were provided by Jacobs to Advanced Discovery to run
18 those very terms so that we could then look at the data for
19 purposes of identifying later attorney client communications
20 that we claim to be protected. But the data had to be
21 removed first from that collection of Jacobs. The personal
22 data had to be removed before we could even look.

23 THE COURT: No. I knew that.

24 MR. PEEK: So the similar procedure --

25 THE COURT: At least the personal communications

1 from Mr. Jacobs, not personal data, because then I get into
2 the MPDPA. Let's be --

3 MR. PEEK: Yeah. You're right. You're right.
4 You're right. It was really a combination of with his wife,
5 his children and his attorney were the I think the three
6 things. And they ran search terms provided to Advanced
7 Discovery by the plaintiffs. So we did the same thing at the
8 request of plaintiffs. And you'll see this in the emails,
9 and I'm sure that Mr. Jones will bring it out, because we
10 have the same search terms provided to Advanced Discovery.
11 So, for example, you may have remembered this name, as well,
12 from Advanced Discovery, Tien Nguyen I believe is his name.
13 Tien Nguyen is one of the individuals I think that you had
14 some communications with Advanced Discovery when you were
15 trying to do the --

16 THE COURT: When I kept crashing their system?

17 MR. PEEK: Right.

18 THE COURT: Right.

19 MR. PEEK: You couldn't use their system. And so
20 he's involved in this. He's involved in this email string
21 providing the search terms so that they can run those same
22 search terms to then remove the personal data so that FTI can
23 then run searches once the personal data had been removed.
24 Plaintiff was involved in this process from the inception in
25 July of 2012. They --

1 THE COURT: But that's not the sequestered data.
2 That's the Advanced Discovery data from Jacobs's laptop.

3 MR. RANDALL JONES: Exactly.

4 MR. PEEK: No. Your Honor, maybe we're confusing.
5 So let's try to get -- we have the Jacobs data that he took
6 with him when he left Macau.

7 THE COURT: Correct.

8 MR. PEEK: That's one thing that was -- those media
9 devices were all turned over to Advanced Discovery pursuant
10 to the Court order.

11 THE COURT: Correct.

12 MR. PEEK: Then there is the Jacobs data that
13 Kostrinsky asked to be transferred and was transferred in
14 August, September of 2010.

15 THE COURT: Which I defined as the transferred data
16 in my order of July 2012, I think.

17 MR. PEEK: Okay. So I want to make sure that we're
18 on the same --

19 THE COURT: September.

20 MR. PEEK: So it was that data that Las Vegas Sands
21 Corp had in his possession, which --

22 THE COURT: The Kostrinsky transferred data.

23 MR. PEEK: Kostrinsky transferred data. So we'll
24 just make sure we had the Kostrinsky -- I want to make sure
25 I'm on the same page with the Court, because it seems like

1 I'm not.

2 THE COURT: Well, you're confusing me.

3 MR. PEEK: Well, I don't mean to try to confuse
4 you, because I'm not trying to confuse you.

5 THE COURT: I understand, which is why I'm asking
6 you questions.

7 MR. PEEK: Okay. All right. So let me start at
8 the beginning. The Advanced Discovery data -- plaintiff
9 provided to Advanced Discovery its search terms to have the
10 personal data, communication with wife, children and lawyers
11 removed from that, or sequestered on the Jacobs data he took
12 with him. So that's one part of this.

13 THE COURT: Absolutely. That's all on the Advanced
14 Discovery website.

15 MR. PEEK: Right. Those search terms were provided
16 by plaintiffs. Now, let's fast forward to July 2012, when we
17 are trying to run search terms, at the request of plaintiff,
18 on, I'll call it the Kostrinsky data that was transferred
19 into the U.S. That's a broad term. Plaintiff then asked
20 that those same search terms that it had given to Advanced
21 Discovery be run against that Kostrinsky data so that in fact
22 that data would be removed and that data could be -- search
23 terms could run against that data to produce documents to the
24 plaintiff.

25 THE COURT: Okay. That's something I'm not aware

1 of, because I was not involved in that process.

2 MR. PEEK: Right. That's what I'm saying.
3 Plaintiff was involved in that process, that's what Mr. Ray
4 is testifying to. The plaintiff knows that they were
5 involved in that process. And, in fact, this email here
6 confirms that the plaintiff was involved in that process,
7 because the search terms that they provided to Tien Nguyen
8 were then given to FTI to be able to run against the
9 Kostrinsky data.

10 THE COURT: Okay.

11 MR. PEEK: So that that data could then be -- those
12 personal data could be sequestered so that FTI could then run
13 the normal search terms to produce documents that were the
14 subject of the request for production provided to Las Vegas
15 Sands.

16 THE COURT: Okay.

17 MR. PEEK: So I guess all I'm --

18 THE COURT: I now understand what you're telling
19 me. I was unaware of that [inaudible].

20 MR. PEEK: I know you were unaware of it.

21 THE COURT: Because it wasn't a discovery dispute
22 apparently.

23 MR. PEEK: Although, Your Honor, there is a -- if
24 you look at -- if you go back and read your motion for
25 protective order, read the motion that we filed for

1 protective order back in December of 2012. All of this is
2 actually outlined in the motion for protective order, and was
3 provided by affidavit from me --

4 THE COURT: I'm sorry. I forgot.

5 MR. PEEK: I'm sorry, as well, Your Honor. And
6 plaintiff knows that. Plaintiff knows that all of this
7 information that is now being described by Mr. Ray was
8 disclosed in that motion for protective order filed in
9 December 2012, I believe December 2nd, 2012. And my
10 affidavit sets forth all that information. They never
11 contested, they never said it didn't happen, but it became a
12 part of this Court's record on December 2nd, 2012. So this
13 Court was advised of what we did.

14 THE COURT: I will look at that over the lunch
15 hour.

16 MR. PEEK: I would ask that the Court please do
17 that.

18 THE COURT: That's okay. So, Mr. Peek, there's an
19 objection pending. Was there something you wanted to say
20 about that objection other than the discussion you just
21 refreshed my memory on?

22 MR. PEEK: Nothing more other than just to echo the
23 remarks.

24 THE COURT: Mr. Jones?

25 MR. RANDALL JONES: Your Honor, the only point I

1 want to make is because you mentioned something about expert
2 witnesses. I just want to be clear, Judge, while Mr. Ray may
3 have some expertise, we have never offered him as an expert
4 witness. We have never suggested he was an expert witness.
5 He is a percipient witness, and the only testimony we've
6 offered him for is as a percipient witness. While he has
7 certain background and education, we have never offered him
8 as an expert, and the Court has never found him to be an
9 expert witness. And so we have only offered him as a
10 percipient witness in these proceedings.

11 THE COURT: And, Mr. Pisanelli, anything else?

12 MR. PISANELLI: Yes, Your Honor. This entire
13 discussion about the Jacobs personal data being extracted is
14 not exactly a true or complete story. We learned of the fact
15 that hard copies of Mr. Jacobs's personal information and
16 emails have been circulated amongst the defense trial team
17 from MTO. They brought it to our attention in which we
18 expressed obvious and I think even anticipated concern and
19 objection. It was MTO then who gave us the assurance that
20 they put an end to it, that it was Mr. Peek and others that
21 had hard copies floating around and that they would do
22 something about it.

23 With that said of how it came about, how we learned
24 about it, what we did to remedy it has nothing to do with
25 this point at all. All we know is that this witness came in

1 this proceeding and said with multiple instructions from
2 different law firms this information was sequestered, and
3 they never touched it for purposes of complying with Your
4 Honor's order to produce documents by January 2012.

5 They now come in and say that his recollection has
6 been refreshed, that they actually did do it, and they did it
7 in two steps. One step was to take out the Jacobs data that
8 had already been circulating around and then go ahead with
9 the search terms that they already had for the earlier
10 production and start running it, they claim, against the rest
11 of the transported data.

12 We are all learning, like Your Honor, for the first
13 time that the transported data, absent Jacobs's personal data
14 or not, was at first they say excluded, sequestered, now they
15 say included. Whether or not we knew from MTO that they had
16 been improperly reviewing Mr. Jacobs's personal data, emails
17 with his wife, et cetera, has nothing to do with this issue.

18 And now we have Mr. Jones having communications
19 with the witness to refresh his recollection apparently
20 telling him that what you said we don't agree with, we need
21 you to change your testimony. He tells us that he is both a
22 percipient witness and an expert witness. He said it only
23 seconds ago. I don't know that he really had a right answer
24 for that, because either way communications with this witness
25 are discoverable especially when they present him up as an

1 expert.

2 We're entitled to know what it is that they said to
3 him and communicated to him. And the reason why, two fold,
4 they made the decision to put this witness on the stand.
5 They then doubled down on that decision to try and change his
6 testimony, whether it be changed for the positive, changed
7 for the negative, changed in good faith, changed in bad
8 faith, they made the choice to change -- get him to change
9 his testimony. They cannot hide behind any form of
10 privilege, any argument of confidentiality.

11 MR. RANDALL JONES: Object to the characterization,
12 Your Honor.

13 THE COURT: Thank you. The objection is overruled.
14 The witness has testified and provided expert testimony to
15 assist the Court in understanding the data searches that were
16 done by Sands China and Las Vegas Sands to attempt to explain
17 some of the issues that were challenges that represented to
18 Sands China and Las Vegas Sands. For that reason, the
19 discussions with counsel related to the scope of the work,
20 including the recall, is relevant and is not privileged.

21 I am going to take a break for lunch until 1:15.

22 Mr. Pisanelli, after you've reviewed the emails, if
23 you will communicate to Mr. Jones if you have additional
24 issues you're going to bring up when I get back so you can
25 try and resolve that is before I walk in the door at 1:15.

1 MR. PISANELLI: Very good.

2 THE COURT: Okay?

3 MR. PISANELLI: Thank you.

4 (Court recessed at 12:08 p.m., until 1:16 p.m.)

5 THE COURT: Okay. Did you guys talk about anything
6 while I was gone?

7 MR. PISANELLI: We did. We don't necessarily have
8 an agreement on anything, but agreed to not much more than
9 we'll take it on a question by question basis.

10 THE COURT: Okay.

11 MR. RANDALL JONES: Your Honor, just -- because I
12 want to make sure it's clear, you made a comment, and I did
13 say something about, you know, this witness I think is an
14 expert, but I want to make it clear what I said is I think he
15 has expertise. We have never offered him as an expert. He
16 was called as a percipient witness to show what we actually
17 did with respect to the production. He was never designated
18 as an expert. We never asked him hypothetical questions that
19 would call for an expert opinion, and he never offered any
20 expert opinions. All he did was talk about what he did with
21 respect to the production.

22 So I just want to make sure that my position is
23 clear on the record that while he certainly I think has the
24 qualifications to be an expert and to be designated and
25 offered as an expert, we have never designated him, offered

1 him -- or offered him as an expert and have never asked him
2 opinions, expert opinions in this case.

3 THE COURT: So you don't think he's being offered
4 to assist the Court in a specialized area of knowledge where
5 he's especially qualified based upon his training or
6 experience?

7 MR. RANDALL JONES: I do not, Your Honor. What I
8 believe is that we went through is background as part of my
9 general background and experience of any witness, but I only
10 then asked him questions about his -- what he did as a
11 percipient witness. I did not ask him any expert type
12 questions of any kind whatsoever.

13 THE COURT: You asked him about his retention and
14 the scope of his assignment.

15 MR. RANDALL JONES: Right.

16 THE COURT: And how he accomplished that.

17 MR. RANDALL JONES: I did.

18 THE COURT: And he talked about not only his work
19 but also the work of other members on his team that he
20 coordinated.

21 MR. RANDALL JONES: He did.

22 THE COURT: Okay. I understand your position.

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

24 THE COURT: We didn't get an answer to the question,
25 though.

1 MR. PISANELLI: That's right.

2 THE COURT: So, sir, do you remember the last
3 question?

4 THE WITNESS: I believe the question was what Mr.
5 Jones and I talked about.

6 THE COURT: That was it. Very good.

7 MR. PISANELLI: Let me rephrase it --

8 MR. RANDALL JONES: Your Honor, just for the record
9 -- I'm sorry, go ahead.

10 MR. PISANELLI: -- with some foundation, a couple
11 of foundational questions even before we get there. Fair
12 enough? May I, Your Honor?

13 THE COURT: Sure.

14 CROSS-EXAMINATION (Continued)

15 BY MR. PISANELLI:

16 Q So, you may have already told me this and I
17 apologize if you have, but I just want to make sure that I've
18 got it correct. You left this courtroom believing that you
19 had achieved what you set out to accomplish in giving your
20 best and most exact and precise testimony, but something
21 occurred after you left the stand that refreshed your
22 recollection that perhaps a portion of what you told Her
23 Honor was either inaccurate or incomplete. Is that fair?

24 A Yes, that's correct.

25 Q And that initial refreshing of your recollection

1 that something you said was not complete, not accurate, was
2 a discussion with someone else, right?

3 A Yes, that's correct.

4 Q And that discussion was with Mr. Jones?

5 A Yes, that's correct.

6 Q That discussion occurred how long after you left
7 the stand?

8 A I believe it was a phone call about a week after my
9 original testimony.

10 Q All right. And as a result of that phone call,
11 your recollection had been refreshed to a degree that you
12 were, I'll call it inspired enough to now go do a search for
13 additional documentation and information to further refresh
14 your recollection. Is that accurate?

15 A I would not characterize it that way.

16 Q Okay. The inspiration to go and search records was
17 more of an instruction?

18 A No. So --

19 MR. RANDALL JONES: Objection, that assumes facts
20 not in evidence.

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

22 THE WITNESS: So what I -- I received a phone call
23 from Mr. Jones, who said that on this issue --

24 MR. RANDALL JONES: Mr. Ray, again, he didn't ask
25 you what we talked about, he asked you a different question.

1 MR. PISANELLI: Well --

2 THE COURT: Okay. Let's not make speaking
3 objections, so.

4 MR. RANDALL JONES: I'm sorry. Well, Your Honor --

5 THE COURT: Sir, if you could, because I was hoping
6 to finish this hearing today and that has evaporated, if you
7 could only answer the question that's asked and then counsel
8 will follow up.

9 BY MR. PISANELLI:

10 Q I'll help you. I'm going to tee this one up for
11 you. So after you left the stand, you told us that your
12 recollection was refreshed by a conversation with Mr. Jones.
13 Tell me what he said to you.

14 A So --

15 MR. RANDALL JONES: Objection, Your Honor. Same
16 objection. It goes beyond rule -- or excuse me, NRS 50.125
17 that relates to this issue, and that's with respect to
18 documents, not with respect to conversations. So I believe
19 that this is attorney work product and has not been waived.

20 THE COURT: Mr. Pisanelli?

21 MR. PISANELLI: Your Honor, there's no privilege
22 here; certainly no attorney-client privilege. So this
23 communication with this witness falls under one, maybe two
24 different categories. One is that he's communicating with an
25 expert. Before lunch counsel did characterize him as an

1 expert and now has retreated from that, presumably because
2 there's greater shelter if he's a percipient witness. I
3 don't think he gets any greater shelter. There is no further
4 protection that he can get simply because now this witness
5 took the stand. Remember, it was their election to put him
6 on the stand, and he has clearly testified to matters of the
7 expertise of this company and what it was hired to do. This
8 conversation, by the way, further occurred with the clear and
9 obvious expectation that the witness would get back on the
10 stand to change his testimony.

11 It would seem to me that -- I know what Your
12 Honor's standing rule is on communicating with witnesses. I
13 know it well. And if there's ever a circumstance, whether we
14 say that he was finished at the time or not or that he was
15 never finished because the proceeding wasn't completed,
16 clearly a communication occurred with the specific intent of
17 changing the witness' testimony. Otherwise, there's no need
18 for the communication. Otherwise we're not standing here
19 today with the witness back on the stand having now the
20 benefit of the work product, his work product, these
21 documents, and his now claimed refreshed recollection, all
22 because counsel wanted him to change his story. That opens
23 the door that if there ever was a work product privilege, and
24 I don't think it ever applied in the first instance, it
25 evaporated instantly when you're talking to a witness to

1 affect his testimony before he takes the stand.

2 THE COURT: Okay. You said these documents and
3 pointed to something.

4 MR. PISANELLI: I'm sorry; bad habit.

5 THE COURT: What are you pointing to?

6 MR. PISANELLI: Exhibit 379 and 380.

7 THE COURT: So, 379 and 380. Thank you.

8 Mr. Jones, is there anything else?

9 MR. RANDALL JONES: Yes, Your Honor. First of all,
10 I didn't retreat from anything. I think Mr. Ray does have
11 expert knowledge. He just was never designated and was never
12 proffered as an expert witness to this day. It just never
13 happened. And I can't imagine that counsel or the Court
14 could point to any evidence to the contrary where he ever
15 gave expert testimony.

16 But be that as it may, we're not giving -- we're
17 not talking about attorney-client privilege, I'm talking
18 about work product privilege. And I also would certainly
19 dispute Mr. Pisanelli's statement that we were trying to get
20 Mr. Ray to change his testimony. That is not the case.
21 Whether Mr. Ray changed his testimony or not, depending on
22 what Mr. Ray recalled, was the reality of what actually
23 occurred. So that statement is just patently incorrect.
24 And there's no evidence to support it, by the way.

25 So with that said, I believe that you're not

1 waiving a work product privilege by putting Mr. Ray back on
2 the witness stand except to the extent, and that's what came
3 out in this case in the Las Vegas Sands or Jacobs v. Sands
4 in the writ proceedings that any required disclosure of
5 privileged documents, whether work product or attorney-
6 client, under NRS 50.125 would not constitute any further
7 waiver of the work product doctrine or the attorney-client
8 privilege that would have made the documents discoverable at
9 a later point. So it's limited to the information used to
10 refresh his recollection and there is no -- and we've offered
11 those documents.

12 MR. PISANELLI: Your Honor, as a final point,
13 counsel would have you adopt a rule that says every time
14 litigation counsel interviews a witness, talks to a witness,
15 says anything of that, no matter who it is, inside your camp,
16 outside, a third party percipient witness, then you're
17 entitled to keep secret what it is that was said between the
18 counsel and this non-client percipient witness, and that's
19 just not the law. Qualified -- or I'm sorry, the work
20 product privilege is a qualified one. It is only available
21 when you show that there is no substantial need for the
22 information; that information is available elsewhere.

23 There's only two people who have the information
24 available that we need now to find out why this witness has
25 changed his story so dramatically. One of them is Mr. Jones,

1 and I have no intention of calling him as a witness or
2 telling you that I have a right to. I don't. But I have the
3 other recipient or the other participant of that conversation
4 and he's on the stand right now. And this is the classic
5 circumstance where I get to find out what was told to him by
6 someone other than his own lawyer.

7 THE COURT: Okay. The objection is overruled. The
8 witness has specialized knowledge and was being presented to
9 me to assist me in making the determination as to the efforts
10 that Sands China and Las Vegas Sands took both in dealing
11 with the challenges they had in Macau and also related to the
12 prejudice that Jacobs suffered.

13 So you can go ahead and answer.

14 THE WITNESS: I want to be clear, no one, including
15 Mr. Jones, ever suggested to me that I should change my
16 testimony. What Mr. Jones called me and said was that there
17 was one of the things that I testified to, specifically the
18 sequestration of the Macau data, that there was some
19 difference of opinion with other people that he had spoken to
20 and he wanted to ask me if that is my recollection that the
21 data was sequestered. I said that is my recollection, but I
22 can go back and check my notes. He said I would ask you not
23 to do that at this time, but in-between his first voice mail
24 message to me and then my follow-up conversation with him, I
25 independently decided to go and look through my notes to see

1 if I could remember what it was that was different. And I
2 had remembered the sequestration of the data, I had
3 remembered that there is data that is remaining sequestered
4 to this day and that we are not to touch it. I simply did
5 not recollect a significant portion of that data was
6 subsequently released for searching.

7 BY MR. PISANELLI:

8 Q How long did this conversation last?

9 A I believe it was about twelve minutes.

10 Q Twelve minutes. Okay. You just took about twelve
11 seconds or so to summarize it, so tell me now your best
12 recollection, and take as much time as you need because it's
13 important to us, exactly what was told to you. So let's
14 start with Mr. Jones' statement that other people he had
15 spoken to disagreed with your testimony. Did he tell you who
16 those other people were?

17 A He did not.

18 MR. RANDALL JONES: Same objection, Your Honor.

19 THE COURT: Overruled.

20 BY MR. PISANELLI:

21 Q Did he tell you what the other people had informed
22 him?

23 A He did not.

24 MR. RANDALL JONES: Same objection, Your Honor.

25 THE COURT: Overruled.

1 MR. PEEK: Ray, if you'd wait to allow Mr. Jones --
2 BY MR. PISANELLI:
3 Q I heard you but I don't think anyone else did. You
4 said --
5 THE COURT: What?
6 MR. PEEK: If the witness could be --
7 THE WITNESS: Sorry, I will slow down so that --
8 MR. PEEK: -- could be asked to wait to let Mr.
9 Jones --
10 THE COURT: So if you can pause so Mr. Jones can
11 object.
12 BY MR. PISANELLI:
13 Q So what precisely did he tell you?
14 MR. RANDALL JONES: Same objection.
15 THE COURT: Overruled.
16 THE WITNESS: So what he told me was that there was
17 a difference of opinion with some other people he had spoken
18 to about my recollection.
19 BY MR. PISANELLI:
20 Q And he used -- May I interrupt you? Did he same
21 some people, words to that effect?
22 THE COURT: And let's try not to interrupt and
23 let's let him finish and then we can follow up.
24 MR. PISANELLI: Very well.
25 THE COURT: Okay.

1 THE WITNESS: So that is my recollection of the
2 phone call, that he said that there was some difference of
3 opinion with some other people. I don't know which other
4 people. We didn't discuss it.

5 BY MR. PISANELLI:

6 Q Did he tell you what the difference of opinion was?

7 A He did not.

8 Q Well, what else did he tell you then?

9 A So, he told me that there was a possibility that I
10 would have to come back to Las Vegas and testify again and
11 asked me if that would be possible, asked me for my schedule.
12 We discussed logistics.

13 Q Okay. What else?

14 A That's all I recollect from the conversation.

15 Q Over the course of a twelve minute conversation,
16 you recall only the sentence that some people he had spoken
17 to had a difference of opinion and that can you come back.
18 It took twelve minutes to say that?

19 MR. RANDALL JONES: Objection, Your Honor,
20 argumentative.

21 THE COURT: Overruled.

22 THE WITNESS: So, if you want me to go back and
23 check on a billing log for exactly how many minutes the phone
24 call was, I can certainly do that.

25 BY MR. PISANELLI:

1 Q Do you have that with you?

2 A I do not.

3 MR. RANDALL JONES: Your Honor, I would object to

4 the witness volunteering to review any information.

5 THE COURT: The objection is overruled.

6 BY MR. PISANELLI:

7 Q You let me know before the break that you did not

8 bring your laptop in the morning session, you left it at Mr.

9 Jones' office, correct?

10 A That's correct.

11 Q Did you bring it this afternoon?

12 A I did not.

13 Q Did you bring any other form of electronic device,

14 like an iPad?

15 A I have an iPad and an iPhone.

16 Q Can you access your billing records on your iPad?

17 A I cannot.

18 Q You cannot?

19 A I cannot.

20 Q Can you access it on your telephone?

21 A I cannot.

22 Q Okay. So you don't have any way, as you sit here

23 right now, to refresh your recollection of what else was

24 talked about during that twelve minutes?

25 A I don't recall anything else of significance.

1 Q And have you told Her Honor everything you remember
2 from that phone call, significant or otherwise?

3 A I -- Your Honor, I'm sorry. I mean, we talk, we
4 say hello, we say -- you know, Jason, you know, are you able
5 to come back to Las Vegas? I said let me check my calendar.
6 I mean, I don't remember the details of the inconsequential
7 things. I only remember the consequential thing, which was,
8 you know, there was a difference of opinion about this issue;
9 could you come back to Las Vegas and testify if it becomes
10 necessary? And I said yes I could, and we talked about how
11 and when that could happen. And then that was what we
12 discussed.

13 Q So he must have at least described what the issue
14 was?

15 A About -- that there was a difference of opinion
16 about the sequestration of this data from Macau.

17 Q Are those the words he used?

18 A Those are my words. I think he used the same words
19 to me, since I had been the one who had used them.

20 Q Okay. And so you have told us -- told Her Honor
21 everything you remember about that phone call?

22 MR. RANDALL JONES: Objection, asked and answered.

23 THE COURT: Overruled.

24 THE WITNESS: That's all I recall.

25 BY MR. PISANELLI:

1 Q So at the end of this phone call you then do --
2 take some more steps to refresh your recollection, starting
3 with you reviewed your notes. Is that right?

4 A So I ran a search using a desktop search program on
5 my email about the project.

6 Q You did this on your laptop?

7 A Yes.

8 Q Well, let's back up a minute. You used the phrase
9 a couple of times now that you checked your notes. What do
10 you mean when you use that phrase?

11 A So, because of the fact that I travel and I have
12 multiple projects that I work on, I commonly keep my notes in
13 two places. I either document them in emails that I send to
14 myself that then get filed with the project, or I document
15 them in an electronic note-taking program which I use when I
16 am physically present in a meeting.

17 Q Okay. And so when you told me that at the end of
18 that -- or after the phone call with Mr. Jones one of the
19 things you did was check your notes, is it fair for us to
20 understand that you checked both of those sources of notes?

21 A I checked both of those sources. The only notes
22 about this were in my email.

23 Q Email to yourself?

24 A So, emails -- when I search my emails, I ran a
25 search that looked for notes that I had made to myself for

1 communications between me directly and Munger Tolles directly
2 regarding Jacobs data.

3 Q And were there any notes to yourself?

4 A I didn't read any of the documents that came up in
5 the search, other than the ones that were flagged as being
6 mentioning the Jacobs data from Macau, and I read the
7 communication from me to Misha Moyzeson confirming a
8 conversation we'd had on the phone.

9 Q Well, you may have just answered this and I
10 apologize, but it's not clear to me. Did you locate any
11 emails to yourself about the sequestration issue?

12 A I don't believe that I did. I only read the
13 documents that I read, so I don't know for sure, but I don't
14 believe I saw any notes about this.

15 Q Well, you only read the documents that you read.
16 How did you figure out what to read?

17 A Well, so I was looking for information, since I had
18 confirmed my original testimony, I had spoken to members of
19 my team just to let them know what I had recalled, make sure
20 if there was a difference of opinion I could flush that out.
21 So I was looking for communications where the other members
22 of the team were not on the communication.

23 Q Did any of the members of your team agree with your
24 testimony that you gave to Her Honor your first time?

25 A So, unfortunately Julia Byerson, who is the

1 Ringtail consultant who had done this work, is no longer with
2 FTI. The person that is now at FTI in that role, Taylor
3 Beebe, who I had mentioned before, did not recall this work
4 because he wasn't involved in it, so he didn't correct my
5 recollection. And frankly, you know, in preparation for my
6 original testimony I thought we would be talking about the
7 searches that we did in Macau. I didn't realize that this
8 issue would come up, so I didn't specifically research this
9 issue in advance.

10 Q Who was that person that you spoke to?

11 A So, Taylor Beebe is the Ringtail consultant. Lynn
12 Chueh is the project manager. They're the other two people
13 who were involved in virtually all the communications on this
14 project.

15 Q Did you speak to anyone other than Taylor Beebe to
16 confirm whether your original recollection was accurate?

17 A Taylor Beebe and Lynn Chueh, who was the project
18 manager.

19 Q You spoke to both of them?

20 A Yes.

21 Q Is Taylor a man or a woman?

22 A He's a man.

23 Q Okay. And he said he didn't remember doing the
24 searches against the sequestered documents?

25 MR. RANDALL JONES: Objection, misstates the

1 testimony.

2 THE COURT: Overruled.

3 THE WITNESS: So I stated that I recalled that we
4 had sequestered this data from Macau and that we were not to
5 search it. I asked if that was -- if he could confirm that.
6 He said there is data from Macau that we've sequestered and
7 that we can't search, that's correct.

8 BY MR. PISANELLI:

9 Q Okay. And you spoke to Lynn Chueh?

10 A Yes.

11 Q And what did she have to say?

12 A So, she was --

13 MR. RANDALL JONES: Objection, Your Honor. Again,
14 work product privilege.

15 THE COURT: Overruled.

16 THE WITNESS: So she was on the same conference
17 call. She didn't have any different recollection.

18 BY MR. PISANELLI:

19 Q So all three of you had the recollection that there
20 was sequestered data from Macau that your company was not
21 permitted to search?

22 A And that statement is completely factually
23 accurate.

24 Q Okay. Did either of your colleagues say that they
25 recalled searching data that had been transported to the

1 United States from Macau?

2 A So --

3 MR. RANDALL JONES: Objection. Same objection,
4 Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: The instructions that we received
7 from Mayer Brown in searching the U.S. data to find documents
8 that had been redacted in Macau were that we were to search
9 any and all data that was available to us in any of the
10 formats that was available to us to attempt to find these
11 duplicates. No one specifically said search the Jacobs data
12 from Macau. They said search everything and we searched
13 everything. And none of our searches were specifically
14 targeted to one source or another.

15 BY MR. PISANELLI:

16 Q I'm going to ask you so that we don't miscommunicate
17 and that the record is clear to distinguish between the Jacobs
18 data that's been transported and all of the data that was
19 transported. Do you understand the distinction?

20 MR. RANDALL JONES: I'm sorry. Jim, can you speak
21 up a little bit? I'm having a hard time hearing you.

22 MR. PISANELLI: I'll do my best.

23 BY MR. PISANELLI:

24 Q Do you understand the distinction?

25 A So, from FTI's --

1 THE COURT: First, this is a yes or no. Do you
2 understand what he's trying to get you to differentiate
3 between?

4 THE WITNESS: Yes.

5 THE COURT: Okay.

6 BY MR. PISANELLI:

7 Q Okay. So in other words, is it fair to characterize
8 the Jacobs data that was transported from Macau as a subset of
9 a larger collection of data that was transported? Do you
10 understand that?

11 A Yes.

12 Q All right. So when you use the Jacobs data, are
13 you using it as the subset or the totality of everything when
14 you use that term?

15 A So, when we identified the sources that needed to
16 originally be locked down, it was being referred to as the
17 Jacobs data, but it was all five of the sources that I
18 mentioned, which includes Mr. Jacobs' data and also includes
19 other data that came from Macau.

20 Q Okay. And so does that mean that while we can
21 define it differently here, the email traffic at the time may
22 be using Jacobs data in a broader sense of the totality of
23 the data, the sources that were sent here?

24 A It was specifically discussing all of those
25 sources.

1 Q Okay. Well, let's do our best. I will as well in
2 our communications with one another to distinguish which
3 we're talking about so that we don't miscommunicate. Fair
4 enough?

5 A All right.

6 Q All right. So -- and again, I have to apologize,
7 did -- I'll start with Mr. Taylor -- Mr. Beebe.

8 A Mr. Beebe.

9 Q Did Mr. Beebe say that he recalled running searches
10 against the transported data, excluding Mr. Jacobs' personal
11 data?

12 MR. RANDALL JONES: Same objection, Your Honor.

13 THE COURT: Overruled.

14 THE WITNESS: So again, at the pain of repeating
15 myself, we searched all of the data that was accessible to
16 us, which included all of the data that was transported from
17 Macau and all data that was Mr. Jacobs' data that wasn't
18 sequestered.

19 BY MR. PISANELLI:

20 Q Well, let me clarify why I'm confused, because you
21 are qualifying your statement with all the data that was
22 available to you, right?

23 A Yes.

24 Q And you told us the last time on numerous occasions
25 that we've already gone through that the transported data was

1 not available to you, correct?

2 A And I've stated that my recollection was incorrect.

3 Q That's what I'm asking you. I'm not asking you
4 what the company did. I'm asking you what Mr. Beebe said to
5 you when you talked to him to see if he shared your
6 recollection or that that was being offered to you by Mr.
7 Jones in that phone call. Did he say one way or another
8 whether he specifically remembered your company running
9 searches on the data that was transported from Macau to the
10 United States, excluding the Jacobs personal data?

11 MR. RANDALL JONES: Object to the form of the
12 question.

13 THE COURT: Overruled.

14 MR. RANDALL JONES: As well as privilege.

15 THE COURT: Overruled.

16 THE WITNESS: So I'm attempting to make this clear.
17 He did not say I specifically searched Mr. Leven's data. He
18 did not say I specifically searched the Macau data share. He
19 did not say I specifically searched anything. He said we
20 searched all of the sources that were available to us, you
21 know, all of the case books and all of the collections that
22 we've been doing in support of this and other matters, with
23 the exception of the data that we have sequestered, which I
24 now understand is Mr. Jacobs' personal data that was
25 sequestered due to the running of certain search terms that

1 were provided to us.

2 BY MR. PISANELLI:

3 Q Okay. So then with that statement, had your
4 testimony from the last time you were here been accurate, we
5 should conclude that Mr. Beebe was not aware of any search of
6 the sequestered data from Macau, correct?

7 MR. RANDALL JONES: Object to the form of the
8 question.

9 THE COURT: Overruled.

10 THE WITNESS: Mr. Beebe was aware that the data
11 that we have sequestered was not searched. And the data that
12 we have sequestered is Mr. Jacobs' personal data. We did not
13 search that data.

14 BY MR. PISANELLI:

15 Q So can you give me a yes or no whether Mr. Beebe
16 told you that the remaining data that was transported was
17 actually searched?

18 A In that he said we searched all available data,
19 then yes, he did say that.

20 Q Did he say that the available data included what
21 was transported, or are you assuming that's what he meant?

22 A I know that.

23 Q Well, you didn't know it last time you were here.
24 How do you know it now?

25 A Because I refreshed my recollection.

1 MR. RANDALL JONES: Object to the form of the
2 question, Your Honor. Argumentative.

3 THE COURT: Overruled.

4 BY MR. PISANELLI:

5 Q I'm sorry?

6 A Because I've refreshed my recollection about the
7 facts.

8 Q Through these emails?

9 A Through these emails and through investigation of
10 our Ringtail case book that involves this case.

11 Q Well, that's something new, the Ringtail case book.

12 A So, as I'm sure --

13 Q Hold on, hold on. Just -- I want to get the word
14 first. Ringtail case book is what you said?

15 A Yes.

16 Q So before we get into that, let me make sure that
17 I have it correct on the sequence of events that led you to
18 change your testimony. First the phone call from Mr. Jones,
19 correct?

20 A Correct.

21 Q Then a review of what you've characterized as your
22 notes; right?

23 A And email. Yes.

24 Q And the notes being either email to yourself or
25 electronic notes, correct?

1 A Correct.

2 Q You didn't tell me yet but I'll get to that, did
3 you find any electronic notes?

4 MR. RANDALL JONES: Objection, asked and answered.
5 He has --

6 THE COURT: Sustained.

7 MR. RANDALL JONES: He has told you that.

8 MR. PISANELLI: Your Honor, I didn't understand.

9 THE COURT: He said the only electronic --

10 MR. PISANELLI: I thought that he told us that on
11 the email to himself he wasn't sure, but in the electronic
12 program used to take notes, I don't know that I heard the
13 answer to that question.

14 THE COURT: He said he didn't find them. He only
15 found electronic emails. Right, sir?

16 THE WITNESS: That's correct.

17 MR. PISANELLI: All right. I apologize. I didn't
18 hear that portion.

19 THE COURT: It's okay. I've been listening the
20 whole time.

21 BY MR. PISANELLI:

22 Q All right. So you didn't find any notes, you did
23 check for emails to yourself. You don't recall that either?

24 A I did check. I did not see any notes to myself.

25 Q All right. The next source of information was

1 emails from MTO?

2 A From myself to MTO or from MTO to myself.

3 Q All right. And the next source to refresh your
4 recollection to determine whether you would be changing your
5 testimony was conversations with Mr. Beebe and Ms. Chueh?

6 A Yes.

7 Q All right. And then you reviewed the Ringtail case
8 book?

9 A Yes.

10 Q Anything else?

11 A No.

12 Q All right. Mr. Beebe told you that you searched,
13 I believe your phrase was all information that was available
14 to you?

15 A Yes.

16 Q Ms. Chueh said the same thing?

17 A Yes.

18 Q All right. Did she have any recollection at all of
19 searching the transported data?

20 MR. RANDALL JONES: Objection, Your Honor, privilege.

21 THE COURT: Overruled.

22 THE WITNESS: So again, we searched all the
23 available data, so yes.

24 BY MR. PISANELLI:

25 Q So she said the same exact words that Mr. Beebe

1 said?

2 A So again, you know, I hate to keep repeating
3 myself, but when we run a search we have to apply a scope.
4 We specify the scope of the search. Is it to go to this case
5 book, is it to go to this custodian, is it to go to these
6 specific date ranges? When we ran the searches to match data
7 from Macau there were no restrictions at all to any of the
8 searches that we ran, and the only documents that were not
9 searched were this one set of documents which are Jacobs'
10 personal data, which is secured through our document security
11 so that they cannot be returned or searched when a search is
12 run without parameters.

13 Q Let me ask it this way. By the way, and again, I
14 apologize, I do think you answered this. Was this one
15 conversation with all three of you or two separate
16 conversations between you and Mr. Beebe and Ms. Chueh?

17 A It was one conference call.

18 Q One conference call. Did you explain to them what
19 the issue was?

20 A I explained that there was a difference of opinion.

21 Q Did you -- did you tell them --

22 MR. PEEK: Your Honor, can he be allowed to
23 complete his answer?

24 THE COURT: Sir, were you done with your answer?

25 THE WITNESS: I can stop it at that point.

1 THE COURT: Okay.

2 BY MR. PISANELLI:

3 Q Did you tell them that you had testified to Her
4 Honor that you did not search the transported data?

5 A I did not.

6 Q Okay. Did you tell them that Mr. Jones said words
7 to the effect that he spoke to people who think that you did
8 search the transported data?

9 MR. RANDALL JONES: Objection to the form of the
10 question, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: So, what I --

13 BY MR. PISANELLI:

14 Q Yes or no?

15 A The answer to the way you asked the question is no
16 because Mr. Jones didn't tell me that.

17 Q Did you tell them that anyone -- that you had
18 learned that there's anyone out there that was disagreeing
19 with the sworn testimony you gave in this courtroom?

20 A I told them there was a difference of opinion --

21 Q Is that a no then?

22 A -- about whether we had searched -- about the data
23 that was segregated from Macau, whether we had searched it.

24 Q Is that a no to my answer -- my question? I want
25 to know yes or no, did you tell them the way you testified?

1 The answer is no, correct?

2 A I did not tell them the way I testified.

3 Q Did you tell them that you had learned that there
4 are people out there who believe you testified incorrectly?

5 A I did not tell them that there were people who
6 believed I had testified incorrectly. I said there was a
7 difference of opinion and I was asking them to help me
8 refresh my recollection.

9 Q All right. And so what you took from their
10 conversation is you -- your team researched all data
11 available to you?

12 A So, I want to make sure we parse the conversations
13 correctly. What they said in response to that question was
14 that we do indeed have data that is segregated that came from
15 Macau; that we do indeed -- we did indeed not search that
16 segregated data, but in order to determine whether it was a
17 subset or all of it or what was contained within the
18 segregation set, they would have to investigate it. And I
19 said please don't, I'm going to do my own research using my
20 own notes. We did not discuss what they searched. We were
21 only discussing this issue about whether there were documents
22 that had been segregated and whether we had searched those
23 documents.

24 Q You knew at the time what the sources of data were
25 that had been transported to the United States?

1 A The five sources, yes.

2 Q Yes. Your company didn't do that, right? Your
3 company didn't have anything to do with transporting it here?

4 A No.

5 Q Your company didn't have anything to do with
6 segregating it out of what your work was going to do?

7 A Well, we did. We received instructions from Munger
8 Tolles identifying those five sources and also asking us to
9 run additional searches to find any other sources.

10 Q Okay. And so now after all of you learned from
11 these two people, you then reviewed the Ringtail case book?

12 A Yes.

13 Q Now, is the point of reviewing the Ringtail case
14 book that you still had not yet determined whether your
15 company had searched the transported data?

16 A No, that was not the reason.

17 Q You had already decided that you did in fact review
18 the transported data?

19 A I decided from reviewing the emails that what had
20 been segregated was a subset and I went to look to confirm
21 what I believed from reviewing the emails that I reviewed,
22 which was that that subset was based on a set of search terms
23 that were provided to us and that only documents from these
24 sources that matched those search terms were contained within
25 the segregation set and that there were no other documents in

1 the segregation set.

2 Q Did you ever even learn that there was a segregation
3 set prior to these emails?

4 A So, I knew it because I testified to it incorrectly
5 in my first appearance.

6 Q Well, I'm just using bad language because,
7 remember, I don't know your business like you do, so be
8 patient, bear with me. I know -- we know that hard drives
9 and different sources of data were transported here. You
10 learned that as well?

11 A Yes.

12 Q Did you learn that you could gain access to the
13 data that was transported here through some other method?

14 MR. RANDALL JONES: Your Honor, this is way beyond
15 the scope of my direct examination and has nothing to do with
16 the issue of refreshing his memory with respect to the
17 testimony he gave last time. Now we're getting back into all
18 kinds of other issues that are related to a hearing that was
19 a long time ago.

20 THE COURT: Mr. Pisanelli, I'm confused.

21 MR. PISANELLI: Yeah.

22 THE COURT: Can you try and start over and clarify
23 because at this point you've lost me.

24 MR. PISANELLI: Sure.

25 BY MR. PISANELLI:

1 Q Here's what I'm getting at, Mr. Ray. It's -- Let
2 me ask it a different way. If I asked you to go back, you
3 told us in the first search that you did you searched about
4 six to nine custodians, is that right?

5 A That's right.

6 Q And then in the second set some time, April or so,
7 I believe, 2012 --

8 A March, April of 2013.

9 MR. RANDALL JONES: Your Honor, objection. Beyond
10 the scope of my direct. It has nothing to do with the issue
11 of whether or not the five drives at issue have been
12 searched.

13 MR. PISANELLI: Your Honor, this goes exactly to
14 that point and you'll see where I'm going in two questions.

15 THE COURT: The objection is overruled.

16 MR. PISANELLI: Thank you.

17 BY MR. PISANELLI:

18 Q And so pick. Do you remember who any of the
19 custodians were, either from the first set or the second?

20 A So, I didn't remember when you asked that question
21 last time. I don't remember today. If you gave me some
22 specific names, I might recall, but none of the custodians
23 that were in the list specifically I recollect which are in
24 which list.

25 Q Okay. The identity is not important. But if I

1 were to ask you to go back into your records, be it the
2 Ringtail case book or otherwise, and let me know how many
3 documents you hit from a particular custodian, say in the
4 first six, would you be able to tell me that?

5 A Yes.

6 Q Okay.

7 MR. RANDALL JONES: Objection, Your Honor, beyond
8 the scope and irrelevant to these proceedings.

9 THE COURT: Overruled.

10 BY MR. PISANELLI:

11 Q All right. Is that a difficult process?

12 A So, for the documents that were searched in Macau,
13 it would require us to return to Macau and reset the
14 environment up so that we could access the data.

15 Q Okay. That's a fair point, fair clarification.
16 But, you know, travel issues aside, just from a technical
17 perspective is it a difficult thing to research how many hits
18 from a particular custodian occurred?

19 MR. RANDALL JONES: Same objection, Your Honor.

20 THE WITNESS: No, not once the data is available.

21 THE COURT: Overruled.

22 BY MR. PISANELLI:

23 Q Okay. So now --

24 MR. PEEK: Mr. Ray, would you pause before --

25 THE WITNESS: Yeah. I'm sorry.

1 BY MR. PISANELLI:

2 Q Now, let's take a look at Exhibits 379 and 380,
3 okay?

4 A Yep.

5 Q Now, what these documents are intended to show us,
6 if I understood you correctly, was this is the set of
7 documents that were sequestered out of the transported data?

8 A These are all of the documents that exist in this
9 transported data that were subsequently produced in one of
10 the productions, either LVS or SCL.

11 Q All right. So if we want to know then what was
12 taken out, what is sequestered, you don't know that?

13 A So, I do. What is sequestered were documents from
14 these same sources that hit on a list of search terms that
15 were provided by plaintiffs that detailed any documents
16 hitting these search terms were to be sequestered.

17 Q Okay. And you don't have a log of what was
18 sequestered?

19 A I do not have a log of what was sequestered.

20 Q Okay. These two --

21 A I can't access that information.

22 Q These two exhibits are logs of what was produced
23 from the transported data?

24 A Correct.

25 Q All right. And because there are under the primary

1 Macau source column reference to the five different sources
2 you characterized for us, you were of the opinion that
3 therefore all of the transported data was searched?

4 A Actually this only represents four of the five
5 sources. The fifth source, the one document file that was on
6 Mr. Kostrinsky's person laptop --

7 THE COURT: Can somebody bring me [inaudible].

8 THE WITNESS: -- there were no documents from that
9 PST file that were produced. It was searched, but there were
10 just no documents responsive to any of the searches.

11 THE COURT: Thank you, Mr. Peek.

12 BY MR. PISANELLI:

13 Q All right. So can you show me then, if I were to
14 represent to you that --

15 Do we have that exhibit?

16 MR. RANDALL JONES: Jim, what are you looking at,
17 379?

18 MR. PISANELLI: No, a proposed exhibit.

19 Your Honor, may I approach?

20 THE COURT: Uh-huh.

21 MR. PISANELLI: I'd like to offer or have marked
22 Proposed 217.

23 MR. RANDALL JONES: Two what, Jim?

24 MR. PISANELLI: 217.

25 MR. RANDALL JONES: Thank you.

1 THE COURT: Two one seven.

2 MR. PISANELLI: Two one seven. And this is a

3 document, as I understand, Your Honor, that is already in the

4 record in this case, and so I would offer it -- you can take

5 judicial notice of it and I can offer that this is the

6 documents you ordered for the transported data that you

7 wanted put in the court vault.

8 THE COURT: Somebody remind me what I did.

9 MR. PISANELLI: You recall, Your Honor --

10 MR. PEEK: I'll remind you, Your Honor, because I

11 was here. You may recall that just before the commencement

12 of the sanctions hearing Mr. Owens from MTO brought into the

13 courtroom all of the media devices that Las Vegas Sands

14 had --

15 THE COURT: Five of them.

16 MR. PEEK: -- of transported data as per your

17 request. That was given to the clerk and I believe it still

18 should be in this Cannon vault over here on the left of me or

19 it's in some vault of the Court.

20 THE COURT: I think it's in the vault on the third

21 floor.

22 MR. PEEK: Vault on the third floor. And so this

23 is what we produced and provided to the clerk.

24 THE COURT: I remember now. Thank you.

25 MR. PEEK: Yeah, it was 9/10/12, Your Honor, which

1 I think is just the day before the commencement of -- Mr.
2 Owens brought that.

3 THE COURT: Thank you.

4 MR. PISANELLI: So I don't know procedurally if
5 this needs to be offered into evidence. It's already in the
6 record. But just so we have a clear record, I would do so,
7 Your Honor.

8 THE COURT: Okay. Is there any objection?

9 MR. RANDALL JONES: I was not here, but I believe
10 that Mr. Peek has indicated that this seems to him to be
11 accurate.

12 MR. PEEK: Yeah. I mean, it just becomes a
13 question of relevance, Your Honor.

14 THE COURT: Well, but I just counted to see if
15 there were five devices, because when the witness was talking
16 about five sources, I was not recalling five sources.

17 MR. PEEK: Right. There's --

18 THE COURT: Now I do when I look at this list.

19 MR. PEEK: Yeah. And sources I think is not the
20 same thing as devices here, either.

21 THE WITNESS: It is not.

22 THE COURT: Okay.

23 MR. RANDALL JONES: Your Honor, only to the extent
24 that I don't know if the relevance has been established, but
25 that would be my only reservation.

1 THE COURT: Well, this was the transported data, as
2 represented to me.

3 MR. RANDALL JONES: I understand. Again, I don't
4 know how this is connected, but maybe Mr. Pisanelli will
5 connect it.

6 THE COURT: Okay.

7 MR. PISANELLI: May I proceed?

8 THE COURT: You may.

9 MR. PISANELLI: 217. Approach the witness, Your
10 Honor?

11 THE COURT: You may.

12 BY MR. PISANELLI:

13 Q Mr. Ray, showing you what we have marked as Exhibit
14 217, as you have heard from the discussion on the record the
15 first page is called a Vault Exhibit Form. Do you see that?

16 A Yep.

17 Q And there is below the information about the
18 reporter and Judge Gonzalez' name on there, the name of the
19 case, etcetera, there's a list of things that are called what
20 I'm assuming is defendants, Deft. Exhibits. Do you see that?

21 A I do.

22 Q First of all, I know you didn't have anything to do
23 with the preparation of this document. Do you recognize any
24 of these exhibits as they are characterized here?

25 A So, the HDD000 numbers here on the three hard

1 drives --

2 Q Yeah.

3 A -- that's our naming convention and Las Vegas Sands
4 naming convention for dismounted hard drives.

5 Q Okay.

6 A I don't recognize the other hard drive indicator.

7 Q Do you see that there is under Exhibit D a disk?

8 A Yes.

9 Q Do you know whether your team ran search terms
10 against whatever information, if any, is on that disk?

11 A Well, I'd need to know what was on the disk in
12 order to answer that question.

13 Q Okay. Let's turn to the next page. And here we
14 have an FTI document, right?

15 A Yes.

16 Q Do you recognize this document?

17 A I do.

18 Q What is it?

19 A So this is our chain of custody record for
20 transmittal of information. In this particular case it is
21 from Tony Whiddon at Las Vegas Sands to Stein Hajek, who's
22 one of our forensic examiners.

23 Q Okay. There's two signatures down at the bottom.
24 Do you recognize those?

25 A I recognize Stein Hajek's signature and I'm

1 assuming that the first one is Mr. Whiddon's, as it should be
2 based on the document.

3 Q Okay, very good. And do you recognize the
4 terminology that is used here for the description of the
5 evidence?

6 A I do.

7 Q So tell us what you understand the identification
8 and description to be for the very first entry.

9 A 160 gigabyte Western Digital Hard drive labeled
10 Steve Jacobs.

11 Q And can you tell from looking at that description
12 and the identification number whether any documents were
13 produced from that device that you have now listed in
14 Exhibits 379 and 380?

15 A I cannot only with the documents that are in front
16 of me. I can certainly do that based on running the reports,
17 as all of this is tied directly to the same information that
18 I used to generate these reports.

19 Q So tell me mechanically in layman's terms, what do
20 you do to figure that out?

21 A So every time FTI touches a data source we assign
22 it an internal evidence identifier. That evidence identifier
23 carries through our chain of custody system and it carries
24 through our processing. And so for every document that is in
25 a Ringtail case book we can say this document came from this

1 specific evidence I.D. and track that back to a database that
2 shows whether that was a hard drive or a disk or an email
3 file or whatever it was that we collected.

4 Q Okay. So just by way of an example, look at
5 Exhibit 30 and the very first page, about midway down the
6 page, looking in the third column, Primary Macau Source --

7 A Yes.

8 Q You with me so far?

9 MR. RANDALL JONES: Sorry, Jim. Where are you at?

10 MR. PISANELLI: Exhibit 380.

11 BY MR. PISANELLI:

12 Q So about midway down the page, under Primary Macau
13 Source you have Steve Jacobs. You see that?

14 A Yes. I do.

15 Q Should we understand that this document identifier
16 in this entry, the very first one with Steve Jacobs --

17 A Yes.

18 Q -- comes from this Steve Jacobs hard drive?

19 A So not necessarily, because the primary Macau
20 source and the secondary Macau source on these reports would
21 reflect what we would call a custodian or a location of the
22 original source data. So data that came from this hard drive
23 that was labeled "Steve Jacobs" and also other data for Steve
24 Jacobs that came from these other sources would all be on
25 these reports as Steve Jacobs, because they were his data.

1 Q So I wouldn't be able to tell, then, on any of the
2 Steve Jacobs entries whether he was the custodian for that
3 particular record; is that what you mean?

4 A He was the custodian of that record to the extent
5 we could identify it as we were processing the data.

6 Q Well, then I apologize. I lost me. If Steve
7 Jacobs is listed as a primary Macau source, does that mean
8 that he was the custodian for this particular document?

9 A Yes.

10 Q All right. So look on the second entry of
11 Description of Evidence --

12 A Yes.

13 Q -- and here we have a number of names. You see
14 that?

15 A Yes.

16 Q What do all these markings and identifiers mean to
17 you?

18 A So this particular hard drive contained data for
19 four different custodians, Steve Jacobs, Steven Weaver, Mark
20 Brown, and Luis Melo.

21 Q So if I wanted to know, then, in Exhibits 379 and
22 380 what documents were produced from Luis Melo's hard drive,
23 is that identified in here?

24 A It is not, because these reports are limited to the
25 Steve Jacobs M data share and other sources. We did not

1 specifically run the report looking for any other custodians.

2 Q All right. I'm not sure what that means, so let me
3 ask it in my terms. Did your company run search terms
4 against Luis Melo's hard drive?

5 A We did.

6 Q You did. And if I want to know where those
7 documents are, how would I find them in what you've produced?

8 A You would ask me to run a report that would include
9 Mr. Melo as a custodian, and I would run the same report.

10 Q So the Luis Melo documents, if any were produced,
11 are not identified in 379 and 380?

12 A That's correct.

13 Q All right. And if I asked you the same thing for
14 Mark Brown, nothing in 379 or 380 shows us that those records
15 were produced?

16 A That's correct. Unless those documents were
17 contained on one of the network sharers, the M data share,
18 the Macau share, or the counsel legal share, I do believe
19 that some of that data may have been in there, but I can't
20 confirm it. I can go back and run a report that shows it.

21 Q You've answered my next question, I'm positive.
22 But I'm also positive I now am confused and don't understand
23 it.

24 A Okay.

25 Q I thought you to say only a few moments ago that

1 379 and 380 are records of the documents that were produced
2 from the transported data. Is that wrong?

3 A So the definition that is used -- that has been
4 being used here about transported data versus Jacobs data,
5 you know, what we were working with and what we were told is
6 that there was data that was sent from Macau sourced to
7 Jacobs which included potentially Jacobs information, and it
8 was these five sources.

9 If these other documents, Mr. Melo's documents,
10 were transported from Macau to the United States, they were
11 not listed as one of these five sources that was sourced to
12 Mr. Jacobs, but that data does exist in our systems, we did
13 process it, and we did search it. So it is not contained on
14 these reports, but I could produce a report with it.

15 Q How do you know that, for example, Luis Melo's hard
16 drive was searched?

17 A Well, because I know HDD603 was processed and all
18 the data on it is in the case book.

19 Q What were you just reading? You lost me.

20 A My Number 2, HDD000603. I know that that hard
21 drive was processed.

22 THE COURT: But isn't that just email from Luis
23 Melo?

24 THE WITNESS: So I don't know what was on that hard
25 drive. I could go back and run a report and tell you. But

1 anything that was on that hard drive was processed and
2 loaded.

3 THE COURT: Okay.

4 BY MR. PISANELLI:

5 Q And so you cannot -- you don't have any evidence in
6 front of you today to show us that anything from Luis Melo's
7 hard drive was produced?

8 A Not in front of me today.

9 Q Okay. And you don't have anything in front of you
10 today to confirm that anything from Mark Brown's hard drive
11 was produced?

12 A That's --

13 MR. RANDALL JONES: Well, Your Honor, object. Well
14 -- it states -- his testimony he just set up and has this
15 number and he says he knows it was searched.

16 THE COURT: Correct.

17 MR. PISANELLI: Speaking objections, Your Honor.

18 THE COURT: Correct. For HD603 [sic]; right?

19 THE WITNESS: Right.

20 THE COURT: Unfortunately, HD603 may not be
21 people's hard drives. They're their email. They're from an
22 email search.

23 THE WITNESS: That's right. It could be -- it
24 could be anything.

25 MR. RANDALL JONES: Your Honor, again --

1 THE COURT: Because that's why it says email.
2 MR. RANDALL JONES: Your Honor, my objection is
3 this goes far beyond -- we were talking about the five
4 sources. Judge, if I may -- and I'm not -- this isn't an
5 objection. This is just clarification.
6 MR. PISANELLI: Your Honor, these are more speaking
7 objections --
8 THE COURT: Hold on a second.
9 MR. PISANELLI: -- in front of the witness.
10 THE COURT: Let me ask the witness a question.
11 THE WITNESS: Yes.
12 THE COURT: If you could turn to the second page of
13 217 --
14 THE WITNESS: Yes.
15 THE COURT: -- which is the evidence log which is
16 your form for custody.
17 THE WITNESS: Yes.
18 THE COURT: Can you tell me on this form what the
19 five data sources of information transported from Macau are?
20 THE WITNESS: So what is listed on here are a set
21 of hard drives and one CD that contained information. What
22 we searched and used to produce these reports was data that
23 was sourced to Mr. Jacobs as coming from Macau that we were
24 told by Munger Tolles.
25 THE COURT: Let me ask the question differently.

1 There are six items listed in this box.

2 THE WITNESS: Yes.

3 THE COURT: You keep talking about five sources.

4 THE WITNESS: Yes.

5 THE COURT: Are the five sources contained in this
6 box, or are they someplace else?

7 THE WITNESS: The five sources include data from
8 this list.

9 THE COURT: Which ones?

10 THE WITNESS: The Steve Jacobs hard drive is
11 included as Steve Jacobs, the Steve Jacobs data that was on
12 Hard Drive 603 is included with Steve Jacobs. Mr.
13 Kostrinsky's hard drive contains data that is not only about
14 Mr. Jacobs. I know that Hard Drive 593 was processed. I
15 know we've searched it.

16 THE COURT: For this case?

17 THE WITNESS: For this case.

18 THE COURT: Okay.

19 THE WITNESS: For Mr. Bonnar [phonetic] and Cindy
20 Yang's email I know 604 was processed.

21 THE COURT: For this case?

22 THE WITNESS: For this case.

23 The investigations CD, as I recall -- I'd have to
24 go back and look specifically, but, as I recall, that CD is
25 actually a duplicate of other data that's on this list, and

1 therefore once we identified that it was a duplicate I don't
2 believe we processed it. And then the Kostrinsky Lenovo
3 laptop, that was again his personal hard drive, and I know
4 that that's been processed and searched, as well.

5 THE COURT: So, with the exception of the CD
6 investigations, which may be a duplicate --

7 THE WITNESS: Yes.

8 THE COURT: -- when you talk about reviewing the
9 data that you believed was sequestered the last time you were
10 here --

11 THE WITNESS: Yes.

12 THE COURT: -- that data are the items that are in
13 this box on page 2 of Exhibit 217?

14 THE WITNESS: So it is -- again, most of the data
15 that's on this list is what I recall being sequestered. The
16 things --

17 THE COURT: And when you --

18 THE WITNESS: -- that I did not, the confusion was
19 about, for example, Mr. Kostrinsky's data was not sequestered
20 in its entirety, only the data that was sourced to Mr. Jacobs
21 was included in the sequester.

22 THE COURT: And when you say most of the data was
23 searched are you only limiting from all to most the personal
24 information that was limited by Mr. Jacobs, or is there
25 something else that you are limiting from all to get to most?

1 THE WITNESS: Only Mr. Jacobs's personal data was
2 removed.

3 THE COURT: Thank you.

4 BY MR. PISANELLI:

5 Q Now, you told us a moment ago that Mr. -- there was
6 nothing produced from Mr. Kostrinsky's laptop. Did I
7 understand that correctly?

8 A So, again, Mr. Kostrinsky's laptop contained a .pst
9 file that was sourced to Mr. Jacobs.

10 Q Which one of these two Kostrinsky sources are you
11 talking about?

12 A So, as I recall, we found it on his Lenovo laptop
13 was where that .pst was found. And that's included in the
14 sources that were originally sequestered and were
15 subsequently released. And when I ran these reports I
16 included that item in the sources that we were searching for,
17 but there are no items that were produced from it.

18 Q Because there were no hits?

19 A Because there were -- because there were no hits
20 for whatever reason.

21 Q What do you mean for whatever reason?

22 A Well, so keep in mind that documents have been
23 searched and produced from these sources multiple times,
24 multiple different parties, with multiple different criteria.
25 What I had been asked originally to testify to was the

1 matching of documents originally produced out of Macau with
2 redactions to documents in the United States so they could be
3 produced without redactions. When we did that matching
4 search there were multiple searches, there were at least 13
5 searches that I recall we ran to identify candidates. So all
6 of these sources were searched for that matching process.
7 They have also all been sourced in other sources. So, you
8 know, responsive to which terms, there's a bunch of different
9 terms. There were no documents from this one .pst file that
10 was found on Kostrinsky's laptop that were produced in any of
11 the SCL or LVS productions. Why they weren't produced from
12 there I don't know. I'd have to research that.

13 Q So see if I've got this right. If we wanted
14 confirmation that all -- I'm just going to use as an example
15 the four different custodians listed in the second entry.
16 You could have confirmed for us with a log like 379 and 380,
17 whether any documents were produced from those hard drives.

18 A I can.

19 Q But you have not yet done that?

20 A I have not yet done that.

21 Q All right. You weren't asked to do that?

22 A I was not asked to do that.

23 Q Okay.

24 THE COURT: And when you refer to HDD603, that's a
25 single hard drive; right?

1 MR. PISANELLI: I believe that's correct.

2 THE WITNESS: That is correct. It's a single
3 device.

4 THE COURT: That's because it has one number.

5 THE WITNESS: Yeah. It's a single device.

6 THE COURT: It's got one device number.

7 MR. PISANELLI: Correct.

8 THE COURT: I was confused because you were saying
9 "hard drives," Mr. Pisanelli, and there's only one drive
10 there.

11 MR. PISANELLI: Good point. Thank you, Your Honor.

12 BY MR. PISANELLI:

13 Q So let's talk, then, about the emails that you
14 reviewed that confirmed for you that all of these devices
15 have been searched and documents produced, okay.

16 A The emails were to help me refresh my recollection
17 about what was sequestered and what was not sequestered.

18 Q Well, so your testimony is if it was not
19 sequestered, i.e. --

20 A It was searched.

21 Q -- the Jacobs personal data, it was searched.

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

23 Q Now, you also used -- I want to make sure that
24 we're understanding terms. In connection with the Kostrinsky
25 hard drive and the Kostrinsky laptop you used the word

1 processed.

2 A Yes.

3 Q Processed meaning that you ran the search terms and
4 produced everything that was hit?

5 A So I believe I testified to this in my first
6 appearance. The way FTIs, electronic discovery, work flow
7 goes, we take all the documents from these devices and we
8 load them and we remove known system files and things that
9 have no relevance to user data, and then all the remaining
10 data is loaded so it can be searched and only the research
11 results are then promoted to review. So when I say processed
12 what I mean is we brought that data into the system, we
13 removed the system files, and we put all of that data up so
14 that it could then be searched.

15 Q And it was in fact searched?

16 A And it was in fact searched, yes.

17 Q All right. Now, before lunch you told us about a
18 series of three emails. They've been produced to us. I
19 suppose we need to put those in front of you. You don't have
20 those; right?

21 A I don't have them in front of me.

22 (Pause in the proceedings)

23 MR. PISANELLI: That should be 218, 219, and 220.

24 MR. RANDALL JONES: Oh. So they're plaintiff's.

25 And, Jim, just so we know what dates are what number.

1 MR. PISANELLI: Yes. July 17th, the top email --

2 MR. RANDALL JONES: Okay.

3 MR. PISANELLI: -- should be 218.

4 MR. RANDALL JONES: Didn't we just have 218?

5 MR. PISANELLI: I think we just had 217. And the
6 July 31st will be 219, and September 4th will be 220.

7 And before I even start the examination I'd offer
8 all three of them into evidence based upon the examination
9 earlier today about the witness's utilization of these
10 documents to refresh his recollection concerning whether or
11 not the transported data had been searched.

12 THE COURT: For purposes of only this proceeding;
13 correct?

14 MR. RANDALL JONES: That is correct, Your Honor.
15 And -- well, let me -- let me put it this way. I'm not
16 stipulating anything. And so I'm going to object to their
17 admission just for the record, but I just would like to have
18 the witness look at them. I don't know that he has confirmed
19 that these the emails at issue.

20 THE COURT: That's a good point.

21 MR. PISANELLI: That's a fair point. So we'll keep
22 them proposed for now.

23 THE COURT: Mr. Pisanelli, you want to grab the
24 copy, take them to the witness, make sure the witness thinks
25 they are the emails that he reviewed to refresh his memory

1 before coming back to testify this second time.

2 MR. PISANELLI: Yes, Your Honor.

3 BY MR. PISANELLI:

4 Q Mr. Ray, I've handed you three documents that have
5 been marked as Proposed Plaintiff's Exhibits 218, 219, and
6 220. Take a moment, if you will, and look at them. And my
7 first question to you will be whether you recognize, and, if
8 so, if these are the email that you told us about before
9 lunch that refreshed your recollection about the search you
10 did for VML in this case.

11 A Yes.

12 Q Okay. And I just made a compound question, so let
13 me be clear. So, yes, you do recognize them?

14 A Yes, I do recognize them.

15 Q And, yes, these are the three email you referenced
16 in your earlier testimony?

17 A Yes, they are.

18 MR. PISANELLI: Okay. We'll move to admit Exhibits
19 218, 219, and 220, Your Honor.

20 MR. RANDALL JONES: Your Honor, for reasons that I
21 presume would be obvious to the Court, I cannot stipulate to
22 the admission of these exhibits.

23 THE COURT: And you have a written brief with your
24 reasons in there?

25 MR. RANDALL JONES: That is correct, Your Honor.

1 THE COURT: Okay.

2 MR. RANDALL JONES: So to the extent they are
3 admitted I would certainly also object to their admission
4 beyond -- for any purpose beyond these proceedings.

5 THE COURT: As the prior writ in this case seems to
6 appear, at this point I am admitting them only for purposes
7 of this proceeding, not that there won't be another basis for
8 you to offer them at a later stage. But I'm only admitting
9 them for purposes of this proceeding at this point.

10 (Plaintiff's Exhibits 218 through 220 admitted)

11 BY MR. PISANELLI:

12 Q Okay. So let's start with Exhibit -- actually,
13 let's start generally. I need you to break down some of your
14 earlier testimony for me.

15 I know review of these emails was one of the
16 initial steps after the phone call with Mr. Jones that you
17 took to refresh your recollection on this topic. Is that
18 fair?

19 A Yes.

20 Q All right. And tell me, then, after that phone
21 call how you went about searching for emails or potential
22 emails that may refresh your recollection.

23 A So, again, my first search was on documents where I
24 had been the primary sender and someone at MTO had been the
25 primary receiver or vice versa.

1 Q Okay. Let me stop you right there. Why is it that
2 you chose solely to look for emails in that limited term
3 between you and MTO?

4 A Because I recall that I was the one who had been
5 given the instruction to sequester the data, and so I was
6 looking for communications between me and MTO about it.

7 Q But you testified the last time that you'd also had
8 communications with Mayer Brown; right?

9 A That's correct.

10 Q All right. Was there a reason why you excluded
11 emails between yourself and Mayer Brown?

12 A So, you know, my original testimony and my original
13 recollection was that we'd sequestered this data, that Mayer
14 Brown had confirmed that that data was to remain sequestered,
15 and that we did not search sequestered data in our process.
16 I was going back to confirm my own understanding of that
17 sequence when I encountered the fact and remembered that the
18 only data that was sequestered was the personal data. That
19 was enough for me to remember what it was that had happened,
20 because I was there when it happened.

21 Q So does that mean that you remembered what you just
22 told us even before you did your confirmation with this email
23 search?

24 A So I went through and I read these three emails,
25 and when I read the second email, where we're discussing the

1 search terms, I remembered the whole situation with the
2 review of documents by Advance Discovery and there was a lot
3 of debate about how that was going to take place which I was
4 involved in. And I have no recollected that that had ever
5 been resolved, but it had in fact been resolved. And then
6 once I realized that this is what had happened I went back
7 and I checked in the Ringtail case book for what documents
8 were actually in the sequester set.

9 Q Now, surely when you're doing a search for emails
10 in the different manners that you've told us, first from you
11 to MTO, then MTO to you, et cetera, you read more than three
12 documents; right?

13 MR. RANDALL JONES: Objection. Misstates his
14 testimony.

15 THE COURT: Overruled.

16 THE WITNESS: I did not read more than three
17 documents.

18 BY MR. PISANELLI:

19 Q Okay. You did a search for -- let's just start
20 with the first one.

21 A Yes.

22 Q You to MTO.

23 A Yes.

24 Q Learning somewhat the lesson you taught us about
25 how search terms work, was that one criteria, or was that the

1 actual search term itself on your first iteration?

2 A So the specific search that I ran was emails that
3 were notes that I'd emailed to myself that were authored by
4 me or received by me that had MTO as the other participant in
5 the communication and that did not include any of the other
6 team members, because the other team members hadn't recalled,
7 either. And that's when I found Exhibit 218.

8 Q I'm sorry. They hadn't recalled. What did you
9 mean by that?

10 A Again, when I first was preparing for my testimony
11 in my first appearance I had a conference call with the team
12 members, and I believe I mentioned this in my first
13 testimony, and I said, this is my recollection of some of
14 these events and if there are any major discrepancies or if
15 you have a difference of opinion, you know, tell me so that I
16 can determine why we have that difference.

17 This question about did we search all the data,
18 yes, we searched everything except for what was sequestered,
19 that was my recollection, that's what they confirmed. So
20 there was nothing further on that at that time.

21 So when I went to search for this question as to
22 whether my recollection was complete I started with
23 communications that were between me and MTO that did not
24 include the team, that mentioned Jacobs data.

25 Q Tell me, why did you want to exclude the team from

1 the emails that could potentially touch upon whether your
2 company did a search on the transported data?

3 A Because I was trying to determine the accuracy of
4 my own recollection, so I was looking first for information
5 where I was the primary sender or recipient.

6 Q Did you ever go back and broaden the search to
7 other emails to your team?

8 A Well, I did. And that's why I found these others.

9 Q Okay. And so you're telling us, then, when you
10 researched initially just your own isolated communications
11 without team members being involved you read one piece of
12 paper, Exhibit 218?

13 A Correct.

14 Q Didn't read any other email?

15 MR. RANDALL JONES: Objection. Misstates his
16 testimony.

17 THE COURT: Overruled.

18 THE WITNESS: I did not read any other emails.
19 This was the first email that I read.

20 BY MR. PISANELLI:

21 Q Was this the only hit?

22 A Oh, no.

23 Q Okay. So let's see what you learned from this
24 email, then. Well, I've got to tell you I'm a little
25 confused. If you had other hits, why didn't you read them?

1 A Well, I had previously been instructed, as I have
2 testified both in this case and in others, that I should
3 limit my review of documents to documents that I specifically
4 needed for my recollection.

5 Q Who told you that?

6 A I've heard that from many attorneys in many cases.

7 Q You told you in this case?

8 MR. RANDALL JONES: Well, objection, Your Honor.
9 Again, that's work product. What does it have to do with
10 this case? With respect --

11 THE COURT: I've already said he's acting as an
12 expert.

13 MR. RANDALL JONES: Well, with respect to any
14 instructions about limiting a witness to refresh their
15 recollection for the reasons that we're talking about here,
16 Your Honor, it should be obvious you don't want anybody
17 looking at documents that would potentially refresh their
18 recollection, because it could potentially be discoverable.
19 So that's not an improper directive at all.

20 THE COURT: Nobody said it was improper, Mr. Jones.

21 MR. RANDALL JONES: Well, so then it's irrelevant.
22 Then it's irrelevant to the proceedings.

23 THE COURT: Okay. So we're going to stop for a
24 minute and take a break, and I'm going to ask you guys a
25 couple of questions. Because, remember, we had a conference

1 call a week or so ago and I said, how much more time do you
2 need, and you told me and again Mr. Peek is correct and we're
3 wrong.

4 How much longer do you need, Mr. Pisanelli?

5 MR. PISANELLI: Half hour.

6 THE COURT: Then after you finish that, Mr. Jones,
7 what are we doing next?

8 MR. RANDALL JONES: I believe we have no other
9 witnesses or evidence, Your Honor.

10 THE COURT: So then, Mr. Bice, you told me you
11 might have a rebuttal case.

12 MR. BICE: I do not believe we will have any
13 rebuttal at this point, Your Honor.

14 THE COURT: So you guys are still going to finish
15 today?

16 MR. RANDALL JONES: Well, Your Honor, I don't know.
17 That depends on I guess when --

18 THE COURT: He said a half hour.

19 MR. RANDALL JONES: Mr. Pisanelli said a half an
20 hour about 45 minutes ago. And I'm not blaming him for that.
21 I'm just saying that's what he estimated before.

22 MR. PISANELLI: We argue a lot.

23 MR. RANDALL JONES: And so --

24 THE COURT: I know you do.

25 MR. RANDALL JONES: So --

1 MR. PISANELLI: Takes up a lot of time.

2 MR. RANDALL JONES: -- we're going to get to -- if

3 we get to --

4 THE COURT: Have I said already today that Mr. Peek

5 was right?

6 MR. RANDALL JONES: You have.

7 THE COURT: Okay. Mr. Peek's noting it.

8 MR. RANDALL JONES: So I don't know if we'll have

9 -- I guess -- I don't know. I -- whether we have enough

10 today time today or not.

11 THE COURT: Well, the reason I'm trying to make the

12 judgment call is, because one of my other judges is out sick,

13 I'm covering that calendar tomorrow. And if you guys have to

14 come back tomorrow morning to finish, I need to move my trial

15 in CityCenter back. So I'm just trying to get a judgment

16 call from you as to what your plan is, because I have to

17 break at 5:00 o'clock, and it's 2:24.

18 MR. PEEK: Your Honor, we may not want to break up

19 the closings, either.

20 THE COURT: I know. That's why I'm asking these

21 questions. Because I'm thinking ahead.

22 MR. RANDALL JONES: I don't know if we could do it

23 or not, Your Honor. We certainly --

24 MR. BICE: Well, we can't do it, because -- I

25 apologize, Your Honor.

1 THE COURT: You don't have to stand up.

2 MR. BICE: Even if Mr. Pisanelli's done at

3 3:00 o'clock, which I'm expressing my doubts about --

4 THE COURT: You, too, huh?

5 MR. BICE: Me, too.

6 -- Mr. Jones has indicated to me that he's likely

7 to have an hour and a half in closing. And we would, as

8 well. That's three hours. So that's -- I mean, between the

9 two of us it's just not going to happen. And --

10 THE COURT: So what's your plan? How do you feel

11 about tomorrow?

12 MR. BICE: Well, I think tomorrow is a problem for

13 us.

14 THE COURT: It's a problem for you?

15 MR. BICE: I think it is. I'm trying to look at

16 my calendar as we speak, Your Honor. I'd moved a depo that

17 was supposed to be today so that I could do it today, and

18 that's --

19 THE COURT: I understand.

20 MR. BICE: -- I mean, that's --

21 THE COURT: Because I didn't want to be here

22 tomorrow the you guys, because I'm supposed to be in trial,

23 and I've got an international witness travelling to testify.

24 MR. RANDALL JONES: Well, the only thing I could

25 say, Your Honor, is I guess we try to finish as quickly as we

1 can with Mr. Ray, and then I guess we could see if go from
2 there and we could finish today. I'm certainly -- I would
3 like to finish today, as well, Judge, and I'm sure Mr. Bice
4 would, as well.

5 THE COURT: So you're not going to go tomorrow?

6 MR. RANDALL JONES: Well, I think it ends up really
7 on how much time Jim has left and --

8 THE COURT: Assume Mr. Pisanelli estimates a half
9 hour and we triple it.

10 MR. RANDALL JONES: I think we could get it done.

11 THE COURT: You can't. You don't have enough time.

12 MR. RANDALL JONES: I'm sorry. It's 3:00 o'clock.
13 I'm thinking --

14 THE COURT: It's 2:26.

15 MR. RANDALL JONES: We could not do it.

16 THE COURT: And I have to break at 5:00.

17 MR. RANDALL JONES: My calculations were an hour
18 off in my head, Judge. It's all my fault.

19 MR. BICE: That's why I was confused. I thought
20 that maybe I had misunderstood what he had said to me. So I
21 think we all agree --

22 THE COURT: He said he was going to do his closing
23 in three minutes or less, and we don't believe it.

24 MR. BICE: No. He's always told me an hour and a
25 half, so I'm not -- I actually -- I'm confident he is right

1 on that.

2 THE COURT: All right. So then we're going to
3 assume that you're not going tomorrow because Mr. Bice has a
4 depo issue.

5 MR. BICE: We take a break -- no, it's not a depo,
6 actually. The depo's been moved to Wednesday. I have a
7 meeting tomorrow that if we take a break I'm going to go make
8 a phone call and see if we can --

9 THE COURT: Then let's make a break, because I have
10 to do three or things, depending on what you tell me.

11 MR. BICE: Now I need to dig out my cell phone.

12 THE COURT: Mr. Morris.

13 MR. MORRIS: I'm in court in the morning.

14 THE COURT: With whom?

15 MR. MORRIS: Judge Scann.

16 THE COURT: You shouldn't have a problem, because
17 I'm doing Judge Leavitt's calendar in the morning because
18 she's not feeling well. So my calendar at 8:30, her calendar
19 at 8:30. I won't be done until about 10:00. So if you want
20 me to have Judge Scann call you first, I'll tell her.

21 MR. PEEK: Or you'll ask her.

22 THE COURT: I'll ask her.

23 MR. MORRIS: If you'll make that request, that's
24 fine with me.

25 THE COURT: Well, let's wait and see if we can go

1 at all tomorrow.

2 MR. MORRIS: But we can't even get to an agreement
3 here on what to do before 3:00 o'clock.

4 THE COURT: I know that. I just -- I need to be
5 able to start explaining to people what I've got to do if I
6 need to help you.

7 (Court recessed at 2:27 p.m., until 2:34 p.m.)

8 THE COURT: All right. Mr. Bice, what's our plan?

9 MR. BICE: I can go tomorrow.

10 THE COURT: You can come here tomorrow?

11 MR. BICE: I can come here tomorrow.

12 THE COURT: Can you come here tomorrow at 10:00?

13 MR. BICE: Not really, because my colleagues can't
14 be here at 10:00.

15 What time can you be here?

16 MS. SPINELLI: The hearing, Your Honor, that Mr.
17 Morris is talking about, we're in it, as well. It starts at
18 10:00 in front of Judge Scann. There's a 9:00 status and a
19 10:00 o'clock hearing, if you're talking about the same case.

20 THE COURT: On the same case?

21 MS. SPINELLI: Yes.

22 MR. PEEK: Is it just a motion?

23 MR. RANDALL JONES: That's one with Judge Scann,
24 and you've got Judge Scann's calendar, don't you?

25 THE COURT: I've got Leavitt's calendar.

1 MR. PEEK: She's going to ask Judge Scann to maybe
2 take it the top --

3 THE COURT: So you've got a 9:00 and a 10:00 on the
4 same case with Judge Scann tomorrow?

5 Mr. Morris --

6 MR. MORRIS: Yes.

7 THE COURT: -- there's a 9:00 and a 10:00 on the
8 same case with Judge Scann tomorrow?

9 MR. MORRIS: I only know of one.

10 MS. SOLIS-RAINEY: There's a 9:00 o'clock status
11 check --

12 THE COURT: Thank you, Rosa.

13 Let me go call Prestine real quick, and then also
14 call CityCenter.

15 (Pause in the proceedings)

16 THE COURT: Judge Scann only thinks you're on at
17 10:00. She is trying to figure out, and they're going to
18 email me to see if they can have you come in earlier.

19 MS. SPINELLI: Thank you, Your Honor.

20 THE COURT: Okay. Mr. Pisanelli, you were in the
21 middle of a scintillating cross-examination.

22 MR. PEEK: Your Honor, if we can't do it in that
23 morning, what's the rest of -- I mean -- or are you just
24 assuming that Judge Scann can --

25 THE COURT: I am assuming that. You know how I

1 work, Mr. Peek. I just assume it's all going to work out,
2 and then it does.

3 MR. BICE: Your Honor, can I ask one quick
4 question?

5 THE COURT: Of me?

6 MR. BICE: Yes, of the Court.

7 THE COURT: Sure.

8 MR. BICE: Just for scheduling purposes. If it
9 would be easier for everyone to start at 1:00 o'clock, would
10 that work for the Court?

11 THE COURT: Only if you would get done.

12 MR. PEEK: Your Honor, I'm not going to start
13 tomorrow at -- Tuesday at 1:00 o'clock.

14 THE COURT: It wouldn't get done. You wouldn't get
15 done.

16 MR. PEEK: I have a matter at 4:00 o'clock that I
17 have to do at 4:00 o'clock.

18 THE COURT: Okay.

19 MR. PEEK: It involves the other side.

20 MS. SPINELLI: Involves me, Your Honor. But I'm
21 not going to -- but I actually am going to have to cancel
22 that if we move this tomorrow, because I have to defend a
23 depo in a case against City National Bank. So --

24 MR. PISANELLI: So therefore the afternoon is wide
25 open.

1 MR. PEEK: It is not, Your Honor. I'm not going to
2 cancel -- if Ms. Spinelli cancels, she cancels, and we'll
3 deal with it on Thursday at our status conference in Okada
4 and Wynn.

5 THE COURT: Okay. I did read the paper today,
6 anyway.

7 Let's keep going. Where's Bill Urga when you need
8 him?

9 MR. PISANELLI: Ready to go, Your Honor?

10 THE COURT: Oh, absolutely.

11 CROSS-EXAMINATION (Continued)

12 BY MR. PISANELLI:

13 Q All right. So it feels, I'm sure, Mr. Ray, that
14 I'm beating a dead horse, but I am baffled, and I have to
15 ask.

16 You read one document after doing a search for your
17 own isolated communications with MTO, and I don't get how it
18 is that you somehow determined it's this one I'm going to
19 read and I'm going to put blinders on and not read anything
20 else because I don't want my recollection fully refreshed on
21 the issue?

22 MR. PEEK: Objection. Argumentative, Your Honor.

23 THE COURT: Overruled.

24 MR. RANDALL JONES: Objection, argumentative. And
25 also misstates his testimony.

1 THE COURT: Overruled.

2 BY MR. PISANELLI:

3 Q Go ahead.

4 A So my -- what I was attempting to determine was was
5 my recollection correct that there had been a sequestering of
6 this data, was it subsequently changed so that it wasn't all
7 the data, and, if so, what were the -- what were the
8 characteristics of the change. That's what I was looking
9 for.

10 This first email is the communication following up
11 to my phone call with Misha about the sequestering of the
12 data and --

13 Q Sorry. Go ahead.

14 A Yeah. So I read this, I went all right, good, I
15 remember that we sequestered the data, we did. Then I
16 subsequently went on to search for any changes to that
17 information. And when I was looking for communications
18 between MTO and FTI involving Jacobs data I came across what
19 is labelled as Exhibit 219.

20 Q Remember, my question is on the first one. You're
21 getting too far ahead of me. So is it -- are you telling us,
22 then, that Exhibit 218 was the very first email that popped
23 up, the very first one of your hits?

24 A No, it was not the very first document in my list
25 of hits.

1 Q And how did you determine to ignore the other ones
2 so they didn't refresh your recollection but to read 218 so
3 it would?

4 A Because this one was titled "Jacobs Data" and no
5 other subject line, and because there was no one else on the
6 communication.

7 Q Okay. All the other documents you didn't look at,
8 you didn't read the subject line, you didn't do anything?

9 A So there were other documents that mentioned other
10 things, but I read this one first and I said, okay, I now
11 remember that we did in fact do this, and I'm sure we did,
12 and then the subject lines of the other emails in the search
13 result include Jacobs data, Jacobs remediation data. So I
14 remembered the remediation process, and I said, all right,
15 can I find anywhere where there's communication from --
16 between me and MTO that discusses that. I did find another
17 one. And I'm getting ahead, so I won't talk about that.

18 Q But, remember, I'm still talking about --

19 A Just this one --

20 Q -- the list of exhibits --

21 A Yes.

22 Q -- that was just between you and MTO.

23 A That's right.

24 Q You read this one and you --

25 THE COURT: Not list of exhibits, list of email.

1 MR. PISANELLI: I'm sorry. Thank you, Your Honor.

2 BY MR. PISANELLI:

3 Q List of emails in your search, you read this one
4 and didn't read another document that came up from that
5 search, not another hit, you just stopped reading? Is that
6 what you're saying?

7 A I said I read this document that reminded me and
8 confirmed my remembrance that we had received instructions to
9 sequester the data.

10 Q And so therefore, you're telling us, you stopped
11 reading emails from that first search term that was just
12 between you and MTO, you didn't read another one?

13 MR. RANDALL JONES: Object to the form of the
14 question. Misstates the testimony.

15 THE COURT: Overruled.

16 THE WITNESS: I did in fact read some more, and we
17 are going to talk about them when we get to the next exhibit.

18 BY MR. PISANELLI:

19 Q Are these other emails the hits that came up just
20 between you and MTO?

21 A So the second email is, yes. And it's a thread.
22 So, you know, I don't know what search technology you use,
23 but --

24 Q Exhibit 220?

25 A Yes. The search technology that we use includes

1 pulling up email threads. So in this --

2 MR. PEEK: 219.

3 THE COURT: Can you tell us what the date is?

4 MR. PISANELLI: I think Mr. Peek is correct. I
5 think it's 219.

6 THE WITNESS: Yes, 219.

7 So the original email of this thread, which is from
8 Doris Perl to me, and you'll note it does not include anyone
9 else on the team. Says, "We wish to follow up on the
10 remediation process for Jacobs data loaded to Ringtail.
11 We've reached agreement as to handling of this data set. FTI
12 alone is now to run the attached list of search terms,
13 identify any hits." So --

14 BY MR. PISANELLI:

15 Q Hold on. Where are you?

16 A On page 2 of Exhibit 219 in the first paragraph of
17 the email from Doris Perl to me that does not include anyone
18 else on the thread.

19 Q So you're saying in that very first email search
20 you did for communications between you and MTO only --

21 A Yes.

22 Q -- this entire exhibit popped up with the entire
23 thread?

24 A Yes. Because this email is a hit, and this is all
25 part of the same thread.

1 Q All right. Good. Let's go back to 218.
2 A Okay.
3 Q And so in the first email in this thread --
4 A Yes.
5 Q -- from Misha Moyzeson --
6 A Moyzeson --
7 Q That's spelled, for the record, M-O-Y-Z-E-S-O-N.
8 -- she says --
9 A He.
10 Q Sorry?
11 A He. It's a him.
12 Q Oh. Misha --
13 A He's Israeli, I believe.
14 Q I'm sorry. My apologies.
15 He says, "Jason, can you please hold on processing
16 the two sources." See that?
17 A Yes.
18 Q Did you understand -- by the way, let me back up.
19 Do you remember receiving this email when it was
20 first sent in July of 2012?
21 A So once I found it and refreshed my recollection, I
22 recall it, yeah.
23 Q Okay. So then can you tell us what you understood
24 Mr. Moyzeson to be talking about when he said, "please hold
25 on processing the two sources"?

1 A Yes. So we had been in a conference call with them
2 discussing the Jacobs source data and the need to hold it.
3 And we had pointed out that there were two other evidence
4 sources. I'd have to go back to get the specifics for you,
5 but if you -- the vault exhibit form, Exhibit 217 that you
6 showed me, I believe that one of the sources, Hard Drive 603,
7 was one of those. So that source had not yet been processed
8 into Ringtail. The other sources had been. And we had
9 discussed sequestering it and what we were going to do about
10 it. And I had said, if we want to have all the data
11 available, we need to process these other two sources.

12 Q You don't know what those two sources are? Is that
13 what you're saying?

14 A I could go back and look -- I'd have to go back and
15 look at the sequence of the evidence processing, and I can
16 tell you which two sources they were.

17 Q So Mr. --

18 A I'm fairly certain that Hard Drive 603 was one of
19 the two.

20 Q Mr. Moyzeson is saying that he wants you to hold on
21 processing these two sources mentioned today, presumably in
22 your phone call --

23 A Correct.

24 Q -- that may contain Jacobs data. Jacobs data is
25 the personal data we've been talking about?

1 A Yes.

2 Q Okay. Now, there's nothing in here, in this email,
3 that says sequester all of the transported data; right?

4 A Right. So -- right.

5 Q And you said, already holding?

6 A Yes.

7 Q Because you had been told that in the phone call?

8 A In the phone call when we discussed sequestering
9 the data. I immediately put a hold on handling any other
10 data until we had instructions for what to do with it.

11 Q So did you find any email in your search that told
12 you to sequester all of the data --

13 A I --

14 Q -- all of the transported data?

15 A I found this email, which helped me refresh my
16 recollection as to the sequence of events that occurred in
17 sequestering the data. There may be email in my archives
18 that would have more instructions about that, but I didn't
19 look for any more instructions about it, because I did what I
20 had set out to do, which was to remind myself that, yes,
21 indeed we had gone and sequestered the data.

22 Q So since this sentence from Mr. Moyzeson ends in
23 the "Jacobs data" referencing sources that contain Jacobs
24 data, does that mean that the discussion your team had with
25 MTO was centered upon the concept that the transported data,

1 all of it, had to be sequestered because there is personal
2 data in it?

3 A So the term "transported data," which I've heard
4 for the first time today to include other custodians, such as
5 Mr. Melo, is not something that we ever discussed with MTO.
6 It was only a discussion of sources that contained Jacobs or
7 sources that could contain Jacobs data that had been
8 transported from Macau.

9 Q Again -- and I'm sorry to keep repeating this, but
10 it's important for our record to be clear. Jacobs data
11 referencing Mr. Jacobs's personal data and not Jacobs the
12 lawsuit or dispute data?

13 A Referencing data that Mr. Jacobs was a custodian of
14 or involved him. It didn't include just his personal data at
15 the time we were told to sequester it.

16 Q And so what about data that he was not a custodian
17 of or was not a source of the information, like Mr. Melo's
18 email that didn't actually go to Mr. Jacobs?

19 A So, again, there were these five sources which
20 contained data that includes Jacobs's information. There is
21 data in the counsel legal share that is not Mr. Jacobs's
22 data, there is data in the beta share, I believe, that is not
23 Mr. Jacobs's data. But those sources contain Mr. Jacobs's
24 data, and so all of those sources were restricted.

25 Q So now, you've used these phrases in describing the

1 five sources.

2 A Yes.

3 Q If I can find them. Hard drives for Mr. Jacobs,
4 that was one of the sources?

5 A Yes. Hard drive images. Hard drive images from
6 Mr. Jacobs.

7 Q Multiple?

8 A Yes. I believe there were multiple images.

9 Q Okay. And looking at what went into the vault, can
10 you tell me from looking at this document whether there are
11 multiple hard drives -- images?

12 A So, actually, since we were discussing -- if I can
13 turn your attention to Exhibit 219, page 4, is the
14 description of all the sources, and it lists our evidence
15 identifier.

16 Q Oh. Okay. All right. So -- you anticipated my
17 next question. What page were you on?

18 A Page 4.

19 MR. RANDALL JONES: Page 4 meaning marked at the
20 bottom Number 4?

21 THE WITNESS: Yes.

22 MR. RANDALL JONES: Thank you.

23 BY MR. PISANELLI:

24 Q So in July of 2007 you receive an email from Doris
25 Perl; correct?

1 A 2012.

2 Q I'm sorry. July 27th, 2012. And this email
3 references -- or this says "cc Project Nevada." What does
4 that mean?

5 A So inside FTI we assign project names that are
6 somewhat reflective, but not directly reflective. Project
7 Nevada is the Jacobs versus Sands litigation.

8 Q So in this email Ms. Perl says to you, "Following
9 up on our conversation about this process --"
10 Is this that same phone call you've already told us
11 about?

12 A So "Following up on our conversation," that's my
13 email to her.

14 Q I'm sorry.

15 A It was a different conversation than the one with
16 Mr. Moyzeson.

17 Q What was this conversation about?

18 A So, you know, again, you know, we -- we had
19 discussed how could we support a process for Mr. Jacobs's
20 data to be reviewed and personal data identified
21 intermediate. And we had gone back and forth with Munger
22 Tolles and made multiple suggestions as to various ways that
23 could be done. And in the end we arrived at this process.

24 Q Okay. Now, let me put this in a time frame so we
25 understand what's going on. You told us on Day 1 that one of

1 the two reasons this process was so expensive for VML, going
2 from approximately a \$400,000 project to a \$2.4 million
3 project, was the rush. Remember that?

4 A Yes, that's correct.

5 Q That you had like two weeks to get this work
6 finished.

7 A In the first iteration, that's correct.

8 Q Yeah. And that first iteration occurred in January
9 of this year?

10 A It occurred in December of 2012 and January of
11 2013.

12 Q And so then as we look at these emails talking
13 about these different sources is it accurate for us to
14 understand, then, that any work done on searching the
15 transported data, if it occurred at all, occurred months
16 after the Court's order that it be produced within two weeks?

17 A No, not at all. This is in 2012, in July. The
18 Court's order was in December of 2012 into January 2013.

19 Q Okay. And so you were doing these searches six
20 months in advance of being hired for VML?

21 A That's correct. Project Nevada is the Jacobs
22 versus Las Vegas Sands litigation, and this is work that was
23 done for Las Vegas Sands Corporation.

24 Q Okay. And somehow you took this work, incorporated
25 it into the VML project?

1 A So in the VML project in order to produce documents
2 without redaction we were instructed to search any and all
3 data available to us, which included this data.

4 Q So help me understand, then --

5 MR. RANDALL JONES: Your Honor, I'm just going to
6 object. All of this testimony has been given, in fact, the
7 first time Mr. Ray was on the witness stand.

8 MR. PISANELLI: Again with the speaking objections,
9 Your Honor.

10 THE COURT: Overruled.

11 MR. PISANELLI: Thank you.

12 BY MR. PISANELLI:

13 Q Mr. Ray, we went through exhibits, and I can show
14 them to you again, where you were showing me the original --
15 or what you characterized as the final iterations of the
16 search terms that had been prepared by both the legal team
17 and modified by your team. You remember that?

18 A I do.

19 Q When did that occur?

20 A You showed them to me when I was here last.

21 MR. RANDALL JONES: Objection. Asked and answered.

22 BY MR. PISANELLI:

23 Q No. When did the search occur --

24 MR. RANDALL JONES: Objection. Asked and answered.

25 THE COURT: Overruled.

1 BY MR. PISANELLI:

2 Q -- with those search terms, 2013, April?

3 A In the VML engagement searches were run in December
4 of 2012 leading up to January 2013 for six to nine
5 custodians.

6 Q Okay.

7 A And then subsequent searches were run in March and
8 April of 2013 over about 23 custodians, I think. And as I
9 think I testified the last time, I do not recall specifically
10 if the same exact search terms were used each time. I could
11 go back and determine that.

12 Q If those search terms were finalized in the
13 iterative process that you described to us between we'll call
14 it the beginning of the year and 2013 and running throughout,
15 what search terms are being used six months in advance before
16 the VML engagement was ever confirmed on this transported
17 data?

18 A Absolutely. Well, I believe that those search
19 terms are included on page 3 of this document, which are the
20 recommended Jacobs personal search terms that we were using
21 to identify his personal data.

22 Q Okay. So the only search terms that were run at
23 this time was trying to extract the Jacobs data?

24 A To segregate his personal data, yes.

25 Q All right. What I'm getting at is when did the

1 search terms for the VML project get run against these
2 sources of data that had been transported to the United
3 States?

4 MR. RANDALL JONES: Objection. Asked and answered.

5 THE COURT: Overruled.

6 THE WITNESS: So the work that is being done in the
7 Las Vegas Sands case is a different engagement. Work that's
8 being done for VML is a different engagement. The matching
9 process that we undertook was to identify documents that were
10 being produced out of Macau with redactions and find matching
11 documents in the United States that could be produced without
12 redactions. That project did not include searching Las Vegas
13 Sands data for any Las Vegas Sands-related work. And I do
14 not know to what degree or extent Las Vegas Sands data was
15 searched. I do know that in looking at the sources produced
16 a very large number of documents were searched and produced
17 in Las Vegas Sands case. But I don't know if they're the
18 same search terms or not. I could determine that by going
19 back and reading my records.

20 BY MR. PISANELLI:

21 Q But you haven't done that?

22 A I have not.

23 Q And you can't give that evidence today?

24 A I cannot give that evidence today.

25 Q Again, only because I'm not an expert in this as

1 you are, but you cannot tell us when the search terms for the
2 VML project -- that's having to do with the request for
3 production of documents that are the subject of this hearing,
4 you cannot tell us when, if ever, those search terms related
5 to those requests for production of documents were run
6 against the transported data?

7 A In the United States other than as it relates to
8 finding documents produced out of Macau that we produced in
9 unredacted format out of the United States.

10 Q You cannot tell me that?

11 A I cannot tell you today. I could look it up and I
12 could tell you.

13 Q All right. So take a look, then -- you're still on
14 219?

15 A Yes.

16 Q We have a list of -- in your email on page 4 --

17 A Yes.

18 Q -- you have in a big bold heading about a third of
19 the way down "All data from the following evidence items."
20 Do you see that?

21 A Yes.

22 Q What are these evidence items that follow that
23 heading?

24 A So this was again to confirm the definition of what
25 data came from or can be sourced to Steve Jacobs.

1 Q Came from or sourced to.

2 A Yes.

3 Q Came from meaning came from one of the hard drives?

4 A Correct.

5 Q Sourced to meaning what?

6 A Sourced to meaning it came from a source but we can
7 identify he was the custodian or could have been a custodian
8 of the data.

9 Q What does that mean?

10 A Email server, extracted mailboxes. Excuse me.
11 This M-Data Share, which does contain .pst files that came
12 from Mr. Jacobs's hard drive, the Counsel Legal Share, which
13 does contain documents.

14 Q Now, is this list, this list on page 4, does this
15 have anything to do with the sources that you told us about
16 of the transported data?

17 A So it relates to the sources that are on my report
18 for the primary Macau source and secondary Macau source. So,
19 again, "transported data" is a term that has been introduced
20 to me today. It was about these sources and about the
21 Counsel Legal Share.

22 Q Let me ask it this way, then. Do you know what the
23 sources of data were that were transported to the United
24 States?

25 A Only from the documents I've seen today. If what

1 is on this vault exhibit form is the sources of all the
2 transported data, then I now know what it is.

3 Q Okay. And I'm not going to go back and rehash it,
4 but, you know, that confuses me a little bit, so make sure I
5 understand you correctly. You didn't know what the
6 transported data was, yet you're still testifying that all of
7 the transported data was searched with the search terms from
8 January 2013 only because you don't believe it had been
9 segregated?

10 MR. RANDALL JONES: Objection. Misstates his
11 testimony.

12 THE COURT: Overruled.

13 THE WITNESS: And again, as I've repeatedly
14 testified, we were instructed to search all of the data
15 available to us from any sources. I know that this data was
16 processed and was available for searching, I know that we
17 searched everything that we had, with the exception of the
18 segregated data, and I have now refreshed my recollection
19 that the data that was segregated was Mr. Jacobs's personal
20 data responsive to these search terms.

21 BY MR. PISANELLI:

22 Q So, in other words, then, if we look on first
23 entry, evidence type is a cell phone.

24 A Yes. You're on page 4 again of Exhibit 219?

25 Q Yeah. I haven't moved off of Exhibit 219.

1 A Yes.

2 Q Evidence CP, cell phone, notes originally
3 attributed to Eric Chu.

4 A Yes.

5 Q You see that? So does that mean that you ran the
6 search terms that are the subject of this hearing against
7 this device?

8 MR. RANDALL JONES: That source?

9 BY MR. PISANELLI:

10 Q This source.

11 A So again, to restate my testimony, we were
12 concerned with finding documents that were produced out of
13 Macau with redactions, matching them to documents in the
14 United States that could be produced without redactions.
15 That process did not include searching all of the data in our
16 possession using anybody's set of search terms. They
17 involved searching for matching documents that were being
18 produced out of Macau. Yes, this source was one of the
19 sources searched to find matching documents that were
20 produced in redacted form out of Macau.

21 Q So does that mean that this telephone, then, if you
22 were searching it, must have been something, a device, a
23 source that had been removed from Macau for you to actually
24 do searches and have access to it?

25 A That is correct.

1 MR. RANDALL JONES: Objection. Calls for
2 speculation.

3 THE COURT: Overruled.

4 BY MR. PISANELLI:

5 Q Otherwise, you would not have been able to search
6 this device?

7 A Correct.

8 MR. RANDALL JONES: Objection. Calls for
9 speculation.

10 THE COURT: Overruled.

11 BY MR. PISANELLI:

12 Q Because of the reasons you told us earlier about
13 the Macau Data Privacy Act.

14 A So this data existed in the United States.

15 Q This Eric Chu --

16 A All of this data that is on this exhibit page --

17 Q Okay.

18 A -- existed in the United States at the time.

19 Q At what time?

20 A July 2012.

21 Q All right. Can you tell from looking at the
22 evidence number of this first source, the cell phone --

23 A Yes.

24 Q -- attributed to Eric Chu --

25 A Yes.

1 Q -- where that is on the vault information in
2 Exhibit 217?

3 A So I don't see it on the vault information in 217.
4 As I recall, when we actually attempted to process that cell
5 phone there was no data on it.

6 Q Okay. What about the second entry. We're talking
7 about a GS Group Share.

8 A That's the M-Data Share.

9 Q Where is that on the evidence vault?

10 A So again I'd have to go back and run reports to
11 tell you specifically which of the things that are on this
12 vault form match which of our internal evidence ID sources.
13 But I believe that the M-Data Share drive is the data from
14 that first 160-gigabyte hard drive labeled "Steve Jacobs."

15 Q Why do you believe that?

16 A Because of the evidence number. This is one of the
17 first evidence items we processed, and I recall that this was
18 one of the earlier things that we collected and processed.

19 Q What is this third item, E80A evidence number?

20 A 80A and 80B are subsets of extraction. This is
21 actually data that was provided to us by Stroz Friedberg that
22 they had collected. And one set of extractions contained
23 email files only, and one set of extractions contained other
24 items.

25 Q And these two also were items that were transported

1 to the United States, as far as you knew?

2 A This is data that was in the United States at this
3 time.

4 Q And can you find anything on the evidence -- the
5 vault exhibit form that relates to those documents?

6 A Again, I would have to go back and run reports to
7 connect the serial numbers on the hard drives on the chain of
8 custody to our internal evidence identifier. And I can do
9 that.

10 Q You've never done that?

11 A I've done it many times. I've not done it with the
12 vault exhibit form or these specific items, but I have done
13 this process many times.

14 Q This is what I'm asking you. As you look at this
15 list of data sources that you wrote in this email --

16 A Yes.

17 Q -- can you tell Her Honor that all of these sources
18 are the same documents that upon her order were deposited
19 into the court's vault?

20 A Well, I can tell Your Honor that they're not
21 exactly the same, because the list that's on the vault
22 exhibit form contains custodians that are not Steve Jacobs or
23 data that's sourced to Steve Jacobs. This communication from
24 Munger Tolles and all the sequestration involved data sourced
25 to Steve Jacobs. So it only purports to talk about what it

1 talks about.

2 Q So there's the Steve Jacobs sources on your email
3 that you don't believe have been put into the court's vault
4 but that are in the United States?

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

7 THE COURT: Overruled.

8 THE WITNESS: And again, I didn't say that, and I
9 don't believe that. What I'm saying is that in order for me
10 to connect specifically which of these items matched which of
11 these items I'd have to go back and do the reconciliation,
12 which I can do. The data is available.

13 BY MR. PISANELLI:

14 Q I'm just trying to figure out, Mr. Ray, because I
15 can't seem to do it from these documents, whether there is
16 information transported to the United States that are not
17 listed on the court's vault. Can you tell me one way or
18 another whether that has occurred?

19 A Well --

20 MR. RANDALL JONES: Well, Your Honor, I'm going to
21 object. That's beyond the scope of my direct and his
22 testimony. He was just shown this vault document for the
23 first time. He's testified about it many times about his
24 level of knowledge of it. So no matter how many times Mr.
25 Pisanelli asks him the question he's going to get the same

1 answer.

2 MR. PISANELLI: Again, Your Honor --

3 THE COURT: The objection is overruled.

4 MR. PEEK: Your Honor, I --

5 THE COURT: I prefer not to have speaking
6 objections. I am allowing more examination than I typically
7 would given the unusual nature of the witness coming back to
8 tell me about the inconsistency in his prior testimony and
9 his attempts to refresh his recollection. So I certainly
10 understand your frustration. My frustration level is pretty
11 high, but I'm going to allow Mr. Pisanelli to test this. And
12 I know that it is a little broader than we would typically
13 permit, but it's an unusual situation.

14 MR. PEEK: Your Honor, I have an objection that's
15 in the form of a speaking objection, so I don't know how you
16 want to handle it. Because it has to do --

17 THE COURT: Are you going to try and tell the
18 witness what to say with your objection?

19 MR. PEEK: No, I'm not, Your Honor.

20 THE COURT: Great.

21 MR. PEEK: And I don't want to be accused of a
22 speaking objection, but I do have an objection that I think

23 --

24 THE COURT: Tell me, Mr. Peek, in 10 words or less.

25 MR. PEEK: You know I can't do anything in 10 words

1 or less.

2 MR. PISANELLI: Well, then there shouldn't be a
3 speaking objection, then.

4 MR. PEEK: I try not to, Your Honor, but --

5 THE COURT: I know. Just tell me.

6 MR. PISANELLI: Then don't.

7 MR. PEEK: But the Court knows that we disclosed in
8 July of 2012 -- actually earlier than that, I believe, to
9 this Court the transferred data.

10 THE COURT: Yes.

11 MR. PEEK: And it did not always include just,
12 quote, unquote, "media devices."

13 THE COURT: Correct.

14 MR. PEEK: So when he tries to draw this inference
15 that all -- that, okay, these media devices aren't in the
16 Court's safe --

17 THE COURT: Sir, I'm going to have you excused --
18 go out in the little room for just a second so Mr. Peek and I
19 can have a discussion real quick without you.

20 Because I don't want to prejudice you from the
21 discussion.

22 MR. PEEK: I didn't, either, Your Honor. That's
23 why I --

24 THE COURT: I understand. I was just trying to see
25 where you were going, and now I understand what you were

1 trying to tell me. Okay.

2 MR. PEEK: So, Your Honor, many of these questions
3 are without foundation. It's like to say to this witness,
4 when did you stop beating your wife, when we know there's no
5 foundation that he ever did beat his wife. So it's like,
6 when did you not put these devices here, or, did Las Vegas
7 Sands deposit all the devices that it had, when he knows, as
8 well as the Court knows, that there were not always devices
9 that were brought to the courtroom and deposited here in that
10 safe or in the third-floor vault, because there were -- as we
11 disclosed to the Court in July of 2012, there was data that
12 was transferred --

13 THE COURT: In multiple ways.

14 MR. PEEK: -- in multiple ways, some of which were
15 transfer of an actual media device or ghost image of a media
16 device. And so now to question this witness when Mr.
17 Pisanelli knows full well that there were not media devices
18 deposited with this Court is like saying to this guy, when
19 did you stop beating your wife.

20 THE COURT: So let me ask you a question. Are you
21 finished? Because I don't want to interrupt you.

22 MR. PEEK: I am. And also, Your Honor, it was
23 disclosed in the motion for protective order as to what we
24 did, and he knows that, as well.

25 THE COURT: I went and read that again at lunch.

1 So let me ask you a question, Mr. Peek, because you
2 apparently were involved in this process more than most of us
3 in this room.

4 MR. PEEK: As was Mr. Pisanelli.

5 THE COURT: Well, I don't know. Because, remember,
6 Mr. Campbell was involved --

7 MR. PEEK: No. Mr. Campbell got out in August of
8 -- or September 2011.

9 THE COURT: Here's my question. We both know that
10 there were a number of different ways that data was taken
11 from Macau by various individuals and brought to the United
12 States.

13 MR. PEEK: That's right. And we disclosed that.

14 THE COURT: Right. And that data was then reduced
15 to an electronic storage form in the United States unless it
16 had been brought on a separate electronic storage device when
17 it came. Some of those were on servers, some of them were on
18 hard drives that were external, some of them were sent as
19 email attachments, and some of them were on the hard drive
20 that was on the laptop that was brought back. I don't know
21 if there were other ways, but those are the ones I remember.

22 My concern is and the reason I'm allowing Mr.
23 Pisanelli this latitude -- and it may be merely because I
24 misunderstand what happened between your client and his
25 company -- is that they were given all the potential data

1 sources.

2 MR. PEEK: They were. They were given access to
3 all the potential data sources.

4 THE COURT: Okay.

5 MR. PEEK: That's what he has said repeatedly, and
6 that's what I recall from the -- that period of time from
7 July of 2012 all the way through December 18th and then
8 follow-on in the 2013.

9 THE COURT: So how come he has only six on his
10 list?

11 MR. PEEK: Because, Your Honor, these are the media
12 devices that relate specifically to Jacobs for which there
13 was a need to sequester data as per the request of
14 plaintiffs.

15 MR. PISANELLI: That's untrue.

16 MR. PEEK: It's not untrue. And Mr. --

17 MR. PISANELLI: That's untrue.

18 MR. PEEK: You know --

19 THE COURT: Guys. Guys. Wait.

20 MR. PEEK: -- there's a lot that's untrue that Mr.
21 Pisanelli has said, Your Honor. And this is certainly one of
22 the many. Because there's --

23 THE COURT: Here's the reason I am concerned. The
24 second page of 217 is dated July 16th, 2012.

25 MR. PEEK: Correct.

1 THE COURT: Which is about the time I learned about
2 the information that had come from Macau to the United
3 States. It looks like someone went to Las Vegas Sands and
4 gathered some electronic data from whatever source from FTI,
5 and then put it on some data storage devices, and those items
6 are listed on this custody form. And then it looks like FTI
7 took control of those electronically stored information, and
8 then at some point in time and consistent with my order those
9 were delivered to the court, and I put them in that safe
10 pending our sanctions hearing.

11 MR. PEEK: Okay.

12 THE COURT: Is that what happened?

13 MR. PEEK: No.

14 THE COURT: What happened?

15 MR. PEEK: Maybe I'm a little misunderstanding.
16 There were media devices, electronic media devices that were
17 brought over, either by DHL or otherwise, to the United
18 States.

19 THE COURT: Some were hand-carried on airplanes.

20 MR. PEEK: Some were -- I think there was at least
21 one, Your Honor, where there was a description by Mr.
22 Kostrinsky in November of two thousand and whatever. But
23 I'll let that record speak for itself, because I do know that
24 those media devices were media devices that were the
25 transferred data.

1 What the Court is saying to me is that all this
2 data was put on a server in the United States at Las Vegas
3 Sands and then put onto media devices. That's not -- that's
4 not what we're talking about here. What we're talking about
5 is the media devices that actually transferred data from
6 Macau to the U.S., not that went from a server in the United
7 States to a media device. For example, the ghost drive of
8 Jacobs that Mr. Kostrinsky requested be copied and made and
9 sent here. That's one example.

10 THE COURT: Right.

11 MR. PEEK: The CD is another example. So those are
12 media devices, Your Honor, that came from Macau in the form
13 of a -- as I say, an electronic media device, not that was
14 created here in the U.S. from --

15 THE COURT: No. I understand.

16 MR. PEEK: -- from data on the Las Vegas server.

17 THE COURT: But the testimony at the prior
18 evidentiary hearing was that that data from those devices was
19 then uploaded onto a server --

20 MR. PEEK: That's correct.

21 THE COURT: -- where people could review the
22 information.

23 MR. PEEK: That's --

24 THE COURT: And so what I'm trying to find out is
25 did this gentleman's company use only the data that was

1 brought from Macau --

2 MR. PEEK: No.

3 THE COURT: -- or did he also use the information
4 that was on the servers.

5 MR. PEEK: Both.

6 THE COURT: Well, but I need him to tell me, not
7 you.

8 MR. PEEK: And I'm fine with that, Your Honor. And
9 I --

10 MR. RANDALL JONES: Your Honor, I thought he --
11 that's what I thought his testimony has been. But --

12 THE COURT: It is not clear to me what he -- you
13 know, I can understand why he got one hit on an email he
14 determined his recollection was refreshed and then he didn't
15 look at any more. I understand that part, and that part's
16 not a big deal to me. This is a big deal, because I have
17 inconsistent testimony. And the reason he's coming back
18 isn't because he figured it out when he got back and he had
19 an aha moment, it's because one of y'all brought it to his
20 attention. And that always creates issues for all of us when
21 that occurs. It creates issues of credibility, and so I need
22 to have that tested. And right now I've got what is a very
23 confusing recitation from him about what was reviewed and
24 then what is in what appear to be very important documents
25 that he has created in 379 and 380.

1 MR. RANDALL JONES: I think probably the
2 difficulty, Judge, is he's never seen 217 before today, so
3 he's never gone back to do what you're talking about and say,
4 okay, is this the same source as the stuff that we looked at.
5 I can --

6 THE COURT: So the answer should be, I don't know,
7 Judge. And that should have been the answer when he was
8 asked the first time he was here.

9 MR. RANDALL JONES: What he said is that they have
10 -- he's said this repeatedly, we reviewed the -- all the
11 source data, some of which seems to be -- appears to be the
12 same but it's called something different here. And so the
13 issue, Judge, as I understood it, was that he misspoke about
14 or partially misspoke about is the five drives or the five
15 sources. And he has testified he has five sources that he
16 looked at that he reviewed in addition to everything else he
17 did -- FTI did. And so I -- and I'm not -- I guess I'm not
18 following where the confusion is. But obviously the Court
19 doesn't see it.

20 THE COURT: See, there can't be five sources, Mr.
21 Jones. And the reason there can't be five sources is there
22 are five items that were my definition of transferred data,
23 which are the items that were brought to the U.S.

24 MR. RANDALL JONES: Right.

25 THE COURT: Those items, the electronically stored

1 information, were then placed on servers.

2 MR. RANDALL JONES: Right.

3 THE COURT: The servers I'm guessing from some of
4 the stuff I've heard from him were all searched wholesale,
5 without any limitation, because he doesn't know where the
6 source of that information is.

7 MR. RANDALL JONES: No. He does, Judge. And
8 that's what's in this document which he already testified to.
9 It's the -- it's in the Column Number 3 of Exhibit 379, for
10 instance, Counsel Legal Share. And you'll see later on it
11 says --

12 THE COURT: Yeah. But Counsel Legal Share had to
13 come from somewhere.

14 MR. RANDALL JONES: It came --

15 THE COURT: Counsel Legal Share came from the data
16 that was uploaded to the drive that Justin Jones talked about
17 or somebody talked about reviewing over at the Sands offices.

18 MR. RANDALL JONES: And so --

19 THE COURT: And I can't remember who it was. It's
20 been so long ago, and I've done CityCenter since then.

21 MR. RANDALL JONES: So the point is the original
22 source of that information is in your vault.

23 THE COURT: I don't know that, Mr. Jones.

24 MR. RANDALL JONES: Well, that's what he -- that's
25 what --

1 THE COURT: He doesn't know that.

2 MR. RANDALL JONES: Well, he -- he can tell you --

3 MR. PEEK: He does know, Your Honor. He does know.

4 And what we're seeing here is just an effort of obfuscation
5 on the part of Mr. Pisanelli to ask these little questions
6 about, well, you didn't do this, you didn't do that, you
7 didn't do the other. He has said sources and data transfers
8 are not always the same. You know, these things that are
9 listed here of Jacobs are not always the same thing and co-
10 exist as sources.

11 THE COURT: I know that.

12 MR. PEEK: That's what he has said.

13 THE COURT: Yes, he has.

14 MR. PEEK: So he's done more than just this --
15 these sources in Exhibit 219 or those data -- or those
16 electronic devices that are in 217. He has said that he has
17 looked at a broad spectrum of what he characterized as Jacobs
18 data, but included not just data that came from Jacobs's hard
19 drive or this ghost drive or other -- the Kostrinsky laptop.
20 He has said that, Your Honor.

21 THE COURT: I understand, Mr. Peek.

22 MR. PEEK: So I don't -- so I guess I'm a little
23 bit confused by the Court is saying, I'm confused as to
24 whether or not he searched all of the data that was on the
25 server, whether it was uploaded to that or already existed

1 before FTI came into the picture. Because I think that's
2 what the Court is really confused about. I think Mr. Jones
3 can clarify that as soon as we finally finish this half-hour
4 examination that has taken at least another 40 minutes.

5 MR. RANDALL JONES: Well, Your Honor, maybe I have
6 a suggestion. Why don't you ask him the questions that
7 aren't clear to you, and perhaps that will speed this process
8 up. Obviously the Court has a right to do that.

9 THE COURT: Absolutely.

10 MR. RANDALL JONES: And so I'm just thinking that
11 -- I understand you're giving a lot of latitude to Mr.
12 Pisanelli, and, believe it or not, I've tried to restrain
13 myself, because I understand what you're doing. And so I've
14 tried to limit my objections. But if that seems to be source
15 of the Court's confusion, maybe the best way to try to get an
16 answer to that is you ask the question as you want to frame
17 it.

18 THE COURT: I've asked the question, and the
19 answers that I get aren't the same as what Mr. Pisanelli
20 gets. And that's what is sort of surprising to me, because
21 it's not that there's much technical difference in expertise
22 between Mr. Pisanelli and I. Neither of us are very
23 proficient at this. But I get a different answer when I ask
24 the question than when Mr. Pisanelli does.

25 MR. RANDALL JONES: Then, Your Honor, if that's

1 what the Court believes is the case, then clearly we need to
2 have that issue cleared up. Maybe the way to do this is to
3 have the Court ask the question, you seem to answer Mr.
4 Pisanelli this way, yet I thought you answered me this way,
5 could you explain why there appears to be this difference.
6 Because otherwise I don't see how the Court's ever going to
7 clear up the confusion.

8 THE COURT: I understand, Mr. Jones. That's why
9 we're all still here.

10 MR. RANDALL JONES: That was just my suggestion,
11 that's all.

12 THE COURT: So can we get the witness and have him
13 come back in.

14 MR. BICE: Your Honor, before we do that I have --
15 just want to make a point on the record so that we're not
16 accused of having waived it. I dispute the characterization
17 that Mr. Peek said of what your order was about depositing
18 devices with this Court. I'm very concerned about the
19 revelation today that apparently there's some cell phone
20 device that they are now attributing to Eric Chu that
21 apparently wasn't deposited with the Court but now doesn't
22 have anything on it. And --

23 THE COURT: I'd never heard about the cell phone
24 before, and we'll get to that some other -- that doesn't have
25 anything to do with what I'm doing right now --

1 MR. BICE: Well, I'm not --
2 THE COURT: -- I don't think.
3 MR. BICE: The representation that somehow the
4 Court allowed them to only deposit some things is not
5 accurate. They were ordered to deposit everything that they
6 had brought over from Macau.
7 THE COURT: And we will fight about that later,
8 because that's not --
9 MR. PEEK: If he wants to make his motion, Your
10 Honor --
11 THE COURT: We're not going to fight about it right
12 now.
13 MR. PEEK: Thank you.
14 THE COURT: We're going to finish this gentleman
15 and get him out of here.
16 MR. PEEK: Thank you.
17 THE COURT: Sir, I would encourage you to try and
18 limit your answers to the question and do it to the best of
19 your knowledge without making any assumptions.
20 THE WITNESS: Okay. I'll do that.
21 THE COURT: Mr. Pisanelli, would you like to
22 continue?
23 MR. PISANELLI: Yes. Thank you, Your Honor.
24 BY MR. PISANELLI:
25 Q Mr. Ray, I'm still focused on Exhibit 219 on

1 page 4.

2 A Yes.

3 Q Just to be clear, as I understood your testimony
4 all of this data that you're listing there in the middle of
5 the page is data that's in the United States you said;
6 correct?

7 A Yes.

8 Q And how do you know that?

9 A Because we collected this data at Las Vegas Sands
10 Corporation here in Las Vegas.

11 Q All of it?

12 A Yes.

13 Q When you say collected, physically took it with
14 you?

15 A So we either collected it directly, our own
16 forensic examiners collected it, or Stroz Friedberg's
17 forensic examiners collected it and then transported it to
18 us.

19 Q To you where?

20 A To FTI. It was transferred to FTI.

21 Q Where?

22 A Shipped to our Los Angeles forensics lab initially,
23 and then from there uploaded to our servers in [inaudible].

24 Q So if I want to know, for instance, where is this
25 Eric Chu cell phone, where is it?

1 A So that is the image of a cell phone. It is not
2 necessarily the physical device. It's a forensic image of
3 the device. And the forensic image this particular evidence
4 is sitting in our Los Angeles evidence lab.

5 Q Okay. You don't have the physical device, that's
6 your point?

7 A As I recall, that was one of the items that Stroz
8 Friedberg collected, and it is a forensic image.

9 Q All right.

10 (Pause in the proceedings)

11 BY MR. PISANELLI:

12 Q So while we're looking for that exhibit, help me
13 understand some of the terminology --

14 A Okay.

15 Q -- in Exhibits 379 and 380. So let's start at 379.
16 You have a primary Macau source that you call counsel legal
17 share.

18 A Yes.

19 Q What does that mean?

20 A So the counsel legal share is a group share. It's
21 a network file folder on the network at Las Vegas Sands.

22 Q Talk to me like I don't know anything about
23 computers because that's not far from the truth.

24 A Okay. When you want to make electronic documents
25 available, they have to be put on a device somewhere and then

1 you need to be able to access it.

2 Q All right. And that's what counsel legal share is?

3 A Counsel legal share is a folder on the network that

4 was accessible to some people at Las Vegas Sands.

5 Q And where is it housed?

6 A It's housed here in Las Vegas.

7 Q All right. And who created it?

8 A I don't know that we know the answer to that

9 question.

10 Q What do you mean? Do you --

11 A So when a file folder is created on the windows

12 file system it doesn't record the user profile of who created

13 it, so we don't really know who did it. We know when it was

14 created.

15 Q When was it?

16 A I don't know the answer to that question. I could

17 look it up.

18 Q In other words, it's obtainable information, you

19 just don't know?

20 A That's correct.

21 Q Okay. And so some person electronically took data

22 from sources and made it available for sharing purposes on

23 this drive, something to that effect?

24 A I believe so, yes.

25 Q And do you even know the year that this occurred?

1 A So I recall that the folder was created in either
2 late November or early December 2010.

3 Q And the sources of the data, do you know that?

4 A We do not.

5 Q Is that information that is attainable?

6 A It is not.

7 Q All right. So help me understand that. Let's
8 assume hypothetically I have Luis Melo's hard drive.

9 A Yes.

10 Q Information from -- that he's the custodian of and
11 it's located in Macau, okay. If I were of the mind that I
12 wanted to take that information and put it into this counsel
13 legal share, I could do that mechanically; correct?

14 A So -- so the data would have to be transported from
15 its original location in some manner, and then put and copied
16 into this location.

17 Q Could it be done electronically?

18 A Yes.

19 Q All right. So transported doesn't mean physically
20 pick it up and lock it?

21 A It -- it may not mean that, yes.

22 Q So you could from Macau take that information, send
23 it in to this counsel legal share?

24 A Well, in order to answer that question correctly
25 I'd have to look at the permissions and where that folder was

1 accessible from. It may not be accessible from Macau.

2 Q Okay. Did you ever or your team ever do any work
3 to find out what the sources of information were that were
4 put into the counsel legal share here in Nevada?

5 A So there was an investigation, which I led, looking
6 for some data that Michael Kostrinsky may have transported
7 from Macau. And in the course of that investigation we
8 looked at sources that included Steve Jacobs and Macau data,
9 and we attempted to determine whether any of those could have
10 been the resting place of the data that was transported. We
11 were not able to determine that. And as I recall from the
12 investigation, none of these sources were created after the
13 date that Mr. Kostrinsky came back, so all of these sources
14 predated it.

15 Q Predated it?

16 A I believe so.

17 Q So the final date being -- make sure I understand
18 this. If we assume hypothetically that Mr. Kostrinsky
19 physically brought sources of data back from Macau to the
20 United States, anything that was on counsel legal share
21 predated him bringing that information here; is that right?

22 A It predated the date we were asked to investigate
23 it. That's right.

24 Q And you may have already answered this, but can you
25 look at counsel legal share and see when documents were put

1 into that file?

2 A Well, we did -- we did look at that.

3 Q Thank you. You did. And that's how you concluded
4 that it all happened prior to Kostrinsky bringing things
5 back.

6 MR. PEEK: Your Honor, he mischaracterized the
7 evidence. He says prior to the time that we, not prior to
8 the time Kostrinsky.

9 MR. PISANELLI: How about no speaking objections,
10 Your Honor.

11 MR. PEEK: Well, how about, you know --

12 THE COURT: Wait.

13 MR. PEEK: -- being fair --

14 THE COURT: Wait. Wait, don't --

15 MR. PEEK: -- and accurate, Your Honor, in the
16 examination.

17 THE COURT: Your objection is overruled.

18 Counsel, as soon as the witness answers it, I need
19 the telephone brought up here because I have to talk to
20 CityCenter. And I still don't have an answer from Judge
21 Scann.

22 MR. PISANELLI: I think he answered the last --
23 BY MR. PISANELLI:

24 Q Did you answer the last question? I thought you
25 did.

1 A So as I recall, the -- the question about Mr.
2 Kostrinsky was December 10th is when I think he came back.
3 And the creation of these sources as far as we could tell
4 predated. Now, I have to be clear. That information is only
5 from the creation dates in the file system. Those dates can
6 be not correct. There are multiple ways in which they can be
7 not correct. We cannot determine at this point whether or
8 not they were or were not. We just didn't see that that
9 seemed to correlate.

10 Q You did not do any research to determine what the
11 sources of information were that were uploaded into counsel
12 legal share prior to Kostrinsky bringing information to the
13 United States?

14 A We -- we do not know. So if you connect a hard
15 drive to a computer and you copy files from the hard drive
16 that you brought up onto the network, there's no data on the
17 network that tells you where those files came from. So we
18 have no way of determining where they came from.

19 MR. PISANELLI: Okay. Your Honor need to --

20 THE COURT: Take a breath. While -- you're all
21 welcome to stand up while you take your breath or two or
22 three or four.

23 (Court recessed at 3:29 p.m., until 3:32 p.m.)

24 THE COURT: Mr. Pisanelli, you wanted to ask some
25 more questions as we try and focus our inquiry on the

1 problems you're having.

2 MR. PISANELLI: I apologize, Your Honor. Mr. Peek
3 ran to the restroom.

4 MR. RANDALL JONES: I apologize, Your Honor. Mr.
5 Peek ran to the restroom.

6 THE COURT: Get organized, Mr. Pisanelli.

7 MR. PISANELLI: Easier said than done.

8 (Pause in the proceedings)

9 THE COURT: He's back. You can start.

10 MR. PISANELLI: Okay.

11 BY MR. PISANELLI:

12 Q Did I understand you correctly, Mr. Ray, to say
13 that you were engaged to conduct an investigation?

14 A We were asked by Munger Tolles to search for --

15 MR. RANDALL JONES: Your Honor, I've got to -- I
16 would object. Just, again, this goes beyond the scope of
17 this hearing.

18 THE COURT: I think the objection is sustained
19 because it does not relate to this issue. Not that it may
20 not be discoverable on other issues, Mr. Pisanelli, but --

21 MR. PISANELLI: May I make an offer of proof, Your
22 Honor?

23 THE COURT: Absolutely.

24 MR. PISANELLI: Even in front of the witness, this
25 is not -- there's no trick to it. What we're trying to find

1 out here, at least in part, is whether, as this counsel --
2 this witness seems to suggest that all of the search terms
3 for the RFPs that the subject -- that is the subject of what
4 we're doing here were actually run against this data that was
5 transported to the United States. If he was conducting an
6 investigation to find out what was transported to the United
7 States through Kostrinsky and otherwise, I would like to know
8 what it was that he was doing to see if he even found
9 everything that Kostrinsky brought back. Recall there's a
10 missing hard drive as far as we understand.

11 THE COURT: Okay.

12 MR. PEEK: Your Honor, because this deals with Las
13 Vegas Sands, I don't know what he means when he talks about a
14 missing hard drive. Perhaps the Court and -- the Court seems
15 to be --

16 THE COURT: I don't remember a missing hard drive.
17 That doesn't mean that there wasn't a missing hard drive
18 discussed in 2012.

19 MR. PEEK: Well, but that -- but he's attacking the
20 person integrity of myself and my -- and my colleagues at
21 Munger Tolles as to whether or not they did or did not turn
22 over the media devices is -- is -- I don't know if that's
23 where he's going with that.

24 THE COURT: I don't know what he's doing.

25 MR. PEEK: Or --

1 THE COURT: Mr. Pisanelli.
2 MR. PISANELLI: Your Honor, Mr. -- you may recall
3 Mr. Mengee [phonetic] talking about there was a foil envelope
4 that was used but that it couldn't be found when they were
5 going back to assemble everything when we discovered that
6 everything was in the United States.
7 THE COURT: Was he the IT guy?
8 MR. PISANELLI: Yeah.
9 MR. PEEK: Yeah.
10 THE COURT: Okay.
11 MR. PEEK: And that was the subject of a hearing
12 two and a half years ago, Your Honor.
13 THE COURT: It was, and I don't remember the
14 details of that hearing at this point.
15 MR. PISANELLI: They couldn't find what was inside
16 that foil envelope, but he knew it happened and he knew it
17 was transported but somehow we can't find it.
18 MR. PEEK: No.
19 MR. PISANELLI: And I'd like to know if that was
20 part of what he was doing --
21 MR. PEEK: That -- that's not --
22 MR. PISANELLI: -- so that --
23 MR. PEEK: -- the testimony.
24 MR. PISANELLI: I'm not finished.
25 THE COURT: Guys.

1 MR. PISANELLI: So that --

2 THE COURT: I don't know that I care about the foil
3 envelope for purposes of today related to the failure to be
4 honest with me and disclose information that was transported.
5 I've dealt with that issue and I issued sanctions. Part of
6 them were evidentiary, part of them were monetary. We're now
7 on Violation Number 2.

8 MR. PISANELLI: Right. I understand.

9 THE COURT: And I am primarily concerned with the
10 work this witness did to, if possible, determine if there
11 were duplicate copies of documents in the United States that
12 had previously been redacted in Macau so that you were able
13 to receive the information and any other investigation
14 related to that exercise he did. And the reason he's back
15 here, I understand, is because I was very concerned that the
16 sequestered data, which was, in my opinion, the transferred
17 data was not searched.

18 MR. PISANELLI: Understood.

19 THE COURT: Because that's what he told me when he
20 was here before.

21 MR. PISANELLI: Understood.

22 THE COURT: And for purposes of this hearing it's
23 really important. But I told you I'll give you leeway
24 because of the unusual way in which we got here to this
25 afternoon.

1 BY MR. PISANELLI:

2 Q Let me ask you this, Mr. Ray. You told us, I
3 believe, and, again, correct me if I have it wrong, but that
4 in connection with the counsel legal share drive -- well,
5 strike that. Let me just ask and make sure I'm not putting
6 words in your mouth. The search that you did with the hash
7 codes, that hash code search was done in connection with
8 counsel legal share?

9 A Yes, with all the data we had available to us.

10 Q Yes and what?

11 A Yes, with all the data we had available to us.

12 Q Okay. So take out Exhibit 213, please. We talked
13 about this last time you were here.

14 MR. RANDALL JONES: 213? Can we get 213?

15 THE COURT: It's okay. It's over here.

16 BY MR. PISANELLI:

17 Q Let me know when you're there.

18 A Yes.

19 Q Are you there?

20 A Yes.

21 Q Recall this document? You testified at length
22 about it last time. Turn to the third page of the exhibit --

23 A Yes.

24 Q -- where we have an attachment that's called search
25 terms for Macau review. Do you see that?

1 A Yes.

2 Q Do you remember what this document reflects?

3 A Yes.

4 Q What -- what do you understand it to be?

5 A So these were the search terms that were run on the
6 documents in Macau to find potentially responsive documents
7 for review.

8 Q Okay. Were these search terms run on counsel legal
9 share?

10 A Not as part of the VML engagement.

11 Q Okay. So for the productions --

12 MR. PEEK: Can have that answer back? I was -- my
13 back was turned. I -- I'm sorry.

14 MR. PISANELLI: The answer was no.

15 MR. RANDALL JONES: We all missed it.

16 MR. PEEK: Well --

17 THE COURT: Did you need the question, too?

18 MR. PEEK: Yes, Your Honor. I was trying to -- I
19 was trying to find the exhibit.

20 BY MR. PISANELLI:

21 Q The question was whether the search terms
22 identified in Exhibit 213 were run against the counsel legal
23 share drive. And the answer, sir, was?

24 A Was not in the VML engagement.

25 Q Was it in some other engagement?

1 A It may have been done in the Las Vegas Sands
2 engagement.

3 Q You just don't know?

4 A I'd have to research it.

5 Q But you don't know as you sit here whether --

6 A I don't know as I sit here whether they were.

7 Q Okay.

8 MR. RANDALL JONES: Actually, Your Honor, this --
9 this has been asked and answered. They went over this in
10 great detail the first time Mr. Ray was on the witness stand
11 and it's been testified to.

12 THE COURT: Okay. The objection is overruled.

13 BY MR. PISANELLI:

14 Q Okay. So tell me what the Macau share drive is.
15 That's another one of the five sources you told us about;
16 right?

17 A Yes.

18 Q What is that?

19 A So it's another -- excuse me. It's another share
20 on the network. It's labeled Macau share.

21 Q Can you find just quickly any example in 379 or 380
22 where a Macau share document is located?

23 A I believe there was only one document produced out
24 of that share in all of the data.

25 Q All right. No need to find that needle in a

1 haystack, then. Let's use the time that we have. So what
2 was or is the Macau share drive?

3 THE COURT: It's on page 9 of 14.

4 THE WITNESS: Thank you.

5 MR. PISANELLI: Of --

6 THE COURT: The -- of 380.

7 THE WITNESS: Yeah, that's the one document.

8 BY MR. PISANELLI:

9 Q What is this drive?

10 A It is a network share on the Las Vegas Sands
11 network that contains some data. It's just listed as Macau
12 share.

13 Q Okay. And what is your familiarity with this
14 drive? Is that the right word to use, this drive?

15 A It's a folder.

16 Q Folder?

17 A Yeah.

18 Q What's your familiarity with this folder?

19 A My familiarity with it is that it was one of the
20 potential sources of data from Macau.

21 Q Okay. By the way, when you have told us many times
22 that you reviewed all sources of data made available to you,
23 who made the decision of what data would be made available to
24 you?

25 A So the data that was available to us was all the

1 data that FTI had in our possession that we had collected on
2 this or any other case we have done for Las Vegas Sands.

3 Q Well, the Las Vegas Sands or VML set the parameters
4 of what information would be available to you for collection
5 and processing the way you told us the last time?

6 MR. PEEK: Objection. Compound, Your Honor. Can
7 he break it down between LVSC and VML.

8 THE COURT: Can you break it down?

9 MR. PISANELLI: Sure.

10 THE COURT: Or try.

11 BY MR. PISANELLI:

12 Q Did either of those companies set the parameters of
13 what --

14 MR. PEEK: Same objection.

15 BY MR. PISANELLI:

16 Q -- information would be made available to you?
17 It's a yes or no question.

18 THE COURT: Overruled.

19 THE WITNESS: So yes to the extent that when you
20 collect data you target specific custodians and network
21 sources. You do not collect every bit of data in the entire
22 corporation.

23 BY MR. PISANELLI:

24 Q And so when you continue to tell us throughout your
25 testimony that you searched all data available to you, the

1 data -- the parameters or the limits on the data that were
2 made available to you were set by your client; right?

3 A Yes.

4 Q Okay. That's all I'm asking. So this Macau data
5 folder, drive, source, whatever we want to call it, what is
6 it?

7 A Yes.

8 Q What is it?

9 A It's a network folder on the Las Vegas Sands
10 network.

11 Q When was it created?

12 A I don't recall.

13 Q Did you ever know?

14 A I know that we looked at it and that it was not --
15 there was almost no data in it, so it did not -- didn't seem
16 relevant to very much.

17 Q Do you know -- can you describe what is in it?

18 A I -- I don't recall. I mean, a file, there are
19 some files in it.

20 Q Okay. Bates numbers -- there's two entries here on
21 page 9 of 14.

22 MR. PISANELLI: Thank you, Your Honor.

23 BY MR. PISANELLI:

24 Q It appears to just be two, what, one-page
25 documents?

1 A Yes.

2 Q Did you understand --

3 A Three.

4 Q Three? Three. Okay. That's right. Three. Did

5 you understand that the --

6 A The same document, in fact.

7 Q This is the same document three times?

8 A It appears to be the same document three times.

9 Q And did you understand this document to have been

10 originally sourced out of Macau?

11 A So because the share was labeled Macau share, it

12 was assumed that it could contain data that was relevant to

13 Macau.

14 Q And is it your testimony that you never knew when

15 that information came to the United States, or you just don't

16 remember as you sit here?

17 A I don't know when that information came to the

18 United States.

19 Q And you don't remember what this document was?

20 A I don't -- I know nothing about that document

21 specifically.

22 Q Do you know whether the search terms on Exhibit 213

23 were run against this document or this -- it should be this

24 folder?

25 A Well, again, as part of the VML engagement we did

1 not run any search terms on any Las Vegas Sands data. We
2 were matching documents that were produced in Macau. So our
3 entire scope of effort was documents produced in Macau
4 responsive to these search terms and looking for matching
5 documents in the United States.

6 Q Well, this was a Macau source document, though.
7 That's all I'm asking you is whether VML ran its search terms
8 against this Macau document. So --

9 MR. RANDALL JONES: Object to the form of the
10 question.

11 THE COURT: Overruled.

12 THE WITNESS: Again --

13 MR. RANDALL JONES: Unintelligible.

14 THE WITNESS: -- we searched the Macau data for
15 review, and then we searched for matching documents in the
16 United States. If there are matching documents in this
17 source, which there are because they're on the report, then
18 we produced them. But no application of these search terms
19 was run in the United States as part of the VML engagement.
20 It may have been run as part of the LVS engagement.

21 BY MR. PISANELLI:

22 Q Didn't you tell us the first time that because of
23 complexities in the electronic discovery or electronic
24 information storage space that sometimes a document that in
25 everyday parlance is identical one to the other --

1 A Yes.

2 Q -- it doesn't show up with the identical
3 fingerprint in the hash code?

4 A That's correct.

5 Q Okay. So a way to make sure that you're getting
6 all the same documents you were searching for from the
7 documents that had been transported to the United States
8 would have been to run the same -- same search terms against
9 them rather than just the hash code; right?

10 MR. RANDALL JONES: Object to the form of the
11 question.

12 THE COURT: Overruled.

13 THE WITNESS: So that is one mechanism that
14 potentially could have been used.

15 BY MR. PISANELLI:

16 Q And that mechanism was not used; right?

17 A That mechanism was not used because we did other
18 searches.

19 Q Okay. So I think one of the popular sources on
20 these documents is the M data, is that what it's called?

21 A M data share is another network folder on the Las
22 Vegas Sands network that contains, among other things, some
23 Steve Jacobs email data.

24 Q What other things?

25 A Again, I don't -- I don't know the details of the

1 documents. I only know the sources.

2 Q Okay. Do you understand that the Steve Jacobs
3 email data, is that what you said?

4 A They received Jacobs' email data in that share.

5 Q And that data came from Macau, as well?

6 A I believe that's correct.

7 Q Do you know when it was put into the M data folder
8 on Las Vegas Boulevard?

9 A I don't recall off the top of my head. It can be
10 -- we can look it up.

11 Q Okay. Do you know approximately when?

12 MR. RANDALL JONES: Objection, Your Honor.
13 Relevance.

14 THE WITNESS: I don't recall.

15 BY MR. PISANELLI:

16 Q It predated the Kostrinsky transport of information
17 to the United States?

18 MR. RANDALL JONES: Objection, Your Honor.
19 Relevance.

20 THE COURT: Overruled.

21 THE WITNESS: So the -- the Kostrinsky transfer, if
22 we're talking about this one -- this one device, purported
23 device, I -- as I recall from -- from our looking at it was
24 December 10th was the date that he arrived back in the United
25 States, the date he left Macau. All of these sources are

1 dated on the network, as I recollect, prior to that. Now,
2 again, we don't know if those dates on the network reflect
3 when they were copied or they reflect the original date of
4 collection. There's no way for us to tell because we don't
5 know how they were copied to the network.

6 BY MR. PISANELLI:

7 Q Did anyone tell you at VML when this information
8 was put in the M data folder?

9 A No.

10 Q Anyone from LVS tell you?

11 A No.

12 Q Did you ask?

13 A So we attempted to determine that as part of our
14 work, and we reported the results to Munger Tolles and I
15 don't recollect the specific dates.

16 Q You reported in what form?

17 A We reported many results at different times in
18 different formats.

19 Q And all I'm really asking is written forms, written
20 reports?

21 A I'm sure some of them were in email and some of
22 them were on the phone.

23 Q Okay. So does that mean that you actually had an
24 answer for Munger Tolles on when these documents were
25 transported to the United States?

1 MR. RANDALL JONES: Objection, Your Honor. Calls
2 for speculation. It's also outside my direct.

3 THE COURT: Overruled.

4 It's a yes or no, sir, and only if you know.

5 THE WITNESS: I'm sorry. Restate the question.

6 BY MR. PISANELLI:

7 Q It was a simple question that if you reported your
8 investigation about the M data folder and when it was created
9 and when documents went in, does that mean that you actually
10 did figure out all of those questions, you just don't
11 remember them as you're sitting here right now, remember the
12 answers?

13 A The scope of the work that we did was attempting to
14 correlate it with this December 10th event and we reported on
15 the results of that analysis. I don't recall if we had went
16 into more detail than the summary information that we needed
17 to report.

18 Q What do you mean, correlate it with the December
19 10th event?

20 MR. RANDALL JONES: Your Honor, objection again.
21 This goes beyond the scope. It's related to a prior hearing.
22 It's been resolved. It has nothing to do with this
23 proceeding.

24 THE COURT: Overruled.

25 To the extent you can answer, sir.

1 THE WITNESS: So I'm going to have to take a second
2 to explain about copied data to a network so I can --

3 THE COURT: Okay.

4 THE WITNESS: -- be clear. When you copy data from
5 one computer drive to another computer drive, there is a file
6 system. It is the part of the operating system that tracks
7 where the files are stored, what they're named. It tracks
8 the date those files were created at that location and the
9 date they were last modified.

10 Now, if you use certain copying methods such as
11 Windows Explorer, dragging files and dropping them onto a
12 folder, the creation date will be the date that you drag them
13 and drop them into the new location. If, however, you use
14 other methods, including tools that are commonly available to
15 information technology workers at corporations, you can copy
16 the data and preserve the original creation date and the
17 original modification date from the original source. There
18 is no way to tell, looking at the destination, what copy
19 method was used or what the original source was.

20 So in trying to correlate, if you were looking for
21 a device, and a foil wrapped device would probably be a hard
22 drive, if you were looking for that device on December 10th
23 and where the data from it could have been copied, the
24 easiest way to find it would be if somebody created a folder
25 on the network on December 10th or soon thereafter which

1 contained data that looked like it came from where you were
2 trying to find data from. That was what we looked for. We
3 did not find that.

4 BY MR. PISANELLI:

5 Q If you -- I understand your point, but if you're
6 looking at the destination, you can't tell when it came or
7 where it came from, what if you looked at the source, could
8 you tell then?

9 A So you --

10 MR. RANDALL JONES: Objection. Same objection,
11 Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: So you could analyze if you had the
14 actual source and you had the actual destination, you could
15 attempt to reconcile the two and a forensic examiner could
16 make some opinion on whether or not those sources had
17 anything to do with it.

18 BY MR. PISANELLI:

19 Q So pure hypothetical, I wanted to know if the Luis
20 Melo hard drive or information from his hard drive made its
21 way into the M data folder, I could -- although I couldn't
22 tell from the M data folder, I could tell from Luis Melo's
23 hard drive.

24 MR. RANDALL JONES: Objection. If that's a
25 question, Your Honor, I object on the hypothetical. This is

1 not an expert -- not been offered as an expert witness.

2 THE COURT: The objection is sustained. Can you
3 rephrase your question?

4 MR. PISANELLI: Sure.

5 BY MR. PISANELLI:

6 Q All I'm saying is -- is -- and giving a
7 hypothetical or example to make sure I understood your last
8 answer that while the M data review, forensic review, would
9 not reveal when information came in or even where it came
10 from, if I had a reason to believe that it came from a
11 particular source, I could go to that source and confirm
12 whether information came into the M data folder.

13 MR. RANDALL JONES: Objection, Your Honor. Again,
14 it calls for his opinion as an expert.

15 THE COURT: Overruled.

16 THE WITNESS: So you can do analysis to try to find
17 that information.

18 BY MR. PISANELLI:

19 Q Okay.

20 A Whether you would be successful or not depends on
21 the source and the destination.

22 Q Fair enough. Exhibit 213, search terms.

23 A Yes.

24 Q Were they run against the M data folder?

25 A As I previously stated multiple times, we did not

1 run these search terms on any U.S. data source as part of the
2 VML engagement.

3 Q The hard drives that are on Exhibit 217.

4 THE COURT: Do you want to go to the second page
5 again?

6 MR. PISANELLI: Yes.

7 BY MR. PISANELLI:

8 Q Actually, let me broaden the question.

9 A Yes.

10 Q All of the data sources that are on Exhibit 217,
11 page 2, the search terms from Exhibit 213 were not run
12 against any of those sources, either; right?

13 MR. RANDALL JONES: I'm sorry. Could you ask the
14 question again? I couldn't hear you.

15 BY MR. PISANELLI:

16 Q None of the search terms from Exhibit 213 were run
17 against the data sources listed on the second page of Exhibit
18 217; correct?

19 MR. RANDALL JONES: Object to the form of the
20 question. Lacks foundation. Also, it's vague and ambiguous
21 as to LVS or VML.

22 THE COURT: Overruled.

23 THE WITNESS: So I -- I need to -- I need to be
24 clear because when you say running the search terms, in my
25 mind that is taking a list of search terms and running a

1 search.

2 BY MR. PISANELLI:

3 Q These search terms, Exhibit 213.

4 A Running that as a search on a data source.

5 Q Yeah.

6 A However, the documents that were in Macau that were
7 reviewed were identified with these terms. The documents
8 that were reviewed in Macau were looked for in the United
9 States. So, yes, to the extent that we used the documents
10 responsive to these search terms to find documents in the
11 United States, yes, these search terms --

12 Q Well, now --

13 A -- were run on those sources.

14 Q Now, wait a minute, Mr. Ray. You told us only
15 minutes ago that when you ran the search terms in Macau, what
16 you did was take the hash codes to see if they were the
17 identical fingerprint in other sources of Las Vegas Sands;
18 right?

19 A In the first iteration in December of 2012.

20 Q Right. And then after that in April you had some
21 other methods that were employed that might have --

22 A 13 other methods.

23 Q -- that might have caught some of the -- the missed
24 documents that the hash code doesn't pick up; right?

25 A We ran 13 other attempts to try to find matching

1 documents.

2 Q But what could have been the 14th, the actual
3 request, the actual search terms that could have been run
4 against the data that was in the United States, that step was
5 not done.

6 MR. RANDALL JONES: Objection. Misstates the
7 testimony or at least is ambiguous as to is he asking about
8 VML or LBSC.

9 THE COURT: Overruled.

10 THE WITNESS: You -- Mr. Pisanelli, you may not be
11 aware that when you run search terms that search terms have a
12 result that is not completely positive. There are a large
13 number of false positive documents that are returned in the
14 search. It's inefficient to run broad searches and then
15 review every single document. We were looking for matching
16 documents --

17 THE COURT: He knows that because he and I talked
18 about this about two weeks ago.

19 THE WITNESS: I'm sure he does know that. We were
20 looking for matching documents. We used all of the methods
21 that we used to find matching documents to documents that
22 were produced. If those documents were responsive to these
23 search terms and we could find a match for them, we found
24 them. We did not attempt to review every document in the Las
25 Vegas Sands universe that hits any of these search terms for

1 the possibility that it might happen to be a document that
2 matches one in Macau.

3 BY MR. PISANELLI:

4 Q That's not what I asked you. I asked you that you
5 didn't take the step of running the search terms that you
6 worked so hard to create to find documents that were supposed
7 to be responsive to the request for production of documents
8 that had been issued over a year earlier. You did not run
9 those against the actual documents that were in the United
10 States that had been transported from Macau.

11 MR. RANDALL JONES: Objection. Misstates the
12 testimony.

13 THE COURT: Overruled.

14 THE WITNESS: We used 13 more effective, more
15 accurate methods --

16 BY MR. PISANELLI:

17 Q Did you not understand my question?

18 A -- and we did, in fact --

19 THE COURT: Wait.

20 MR. PEEK: Your Honor.

21 THE COURT: You've got --

22 THE WITNESS: -- produce documents --

23 THE COURT: -- to let him finish.

24 THE WITNESS: -- from that source responsive to
25 these search terms as documented on this report.

1 BY MR. PISANELLI:
2 Q Let's try this as a yes or no, see if you can do
3 that. You didn't do it, did you?
4 MR. RANDALL JONES: Objection. Misstates the
5 testimony --
6 THE COURT: Overruled.
7 MR. RANDALL JONES: -- and argumentative.
8 BY MR. PISANELLI:
9 Q You didn't do it, did you?
10 A We did.
11 Q Yes or no. You can answer. Go ahead.
12 A I've already answered that every document that we
13 searched for was found in Macau using these search terms.
14 Q You're not going to give me a yes or no?
15 A We did not separately and independently execute
16 these search terms in the United States as part of the VML
17 engagement.
18 Q All right. So now --
19 A I can't speak to what was done in Las Vegas Sands.
20 Q Did you come to learn -- I'm going to shift your
21 focus a little bit to the time period where you were engaged
22 to sequester Steve Jacobs' personal records.
23 A Yes.
24 Q Okay. Did you come to learn that prior to your
25 engagement to -- to do that work, to pull the electronic

1 information out of the larger body of data, that hard copies
2 of that information had been created?

3 A I was not aware of that.

4 Q Okay. If you were not aware of it, then we
5 probably know the answer to the next question. But did you
6 take any steps to gather the hard copies of that personal
7 information?

8 A We did not.

9 Q All right. Do you know of any steps that were
10 taken to gather that information?

11 A There are many paper documents that have been
12 collected and loaded as part of this litigation. I don't
13 look at the individual documents. I can't speak to what they
14 are.

15 Q Okay.

16 MR. PISANELLI: One moment, Your Honor.

17 THE COURT: Okay. Let me ask the witness a
18 question while you're thinking.

19 MR. PISANELLI: Yes.

20 THE COURT: Sir, looking at the second page of
21 Exhibit 217, which is the log of the transferred data devices
22 --

23 THE WITNESS: Yes.

24 THE COURT: -- that were lodged with the court --

25 THE WITNESS: Yes.

1 THE COURT: Do you know if the data on those
2 devices was ever loaded to whatever system you use to conduct
3 your searches on?

4 THE WITNESS: I do know that.

5 THE COURT: What is the answer?

6 THE WITNESS: They were loaded.

7 THE COURT: Okay. And once --

8 THE WITNESS: With the exception potentially of
9 this investigation CD, which I believe may have been a
10 duplicate.

11 THE COURT: Okay. Once they were loaded to the
12 drive or server that you use to run your searches, were those
13 devices included in a search that included the search terms
14 that Mr. Pisanelli keeps showing you?

15 THE WITNESS: So the data for many of these
16 sources, including Mr. Jacobs' data specifically, that I know
17 exists both in Macau and in the United States. I know that
18 the search terms were run in Macau. I do not know in the VML
19 engagement. We did not run them on that data in the United
20 States. I don't know if LVS did because they were LVS data.

21 THE COURT: So once their data from those devices
22 on Exhibit 217 was loaded to the server or other share device
23 you used, you do not know in the United States if the search
24 terms that Mr. Pisanelli has been showing you, if that search
25 was run on those devices?

1 THE WITNESS: It was not independently run for the
2 VML engagement. It may have been run for LVS.

3 THE COURT: And you don't know?

4 THE WITNESS: I can find out, but I don't know off
5 the top of my head.

6 THE COURT: You don't know as you sit here today.
7 Okay.

8 BY MR. PISANELLI:

9 Q You do know it was not done for the VML engagement?

10 A I do know that there were no independent searches
11 run in the United States.

12 MR. PISANELLI: Okay. I'm going to --

13 THE COURT: Yes, you may consult with your team.
14 And my technical knowledge is just a little less
15 than his.

16 THE WITNESS: And, again, I can only speak to what
17 FTI did. I don't know what Mayer Brown did.

18 THE COURT: I understand. That's why I tried to
19 ask my question the way I did.

20 Mr. Morris, you and your team are supposed to be
21 there at 9:30 in the morning. She's going to call you out of
22 order.

23 MR. MORRIS: 9:30?

24 THE COURT: Uh-huh. Ms. Solis-Rainey was kind
25 enough to arrange that and my law clerk made it happen.

1 (Pause in the proceedings)

2 BY MR. PISANELLI:

3 Q Did you tell us, Mr. Ray, that Mr. Jacobs' data, or
4 that Jacobs' data is in both Macau and Las Vegas?

5 A There is data for Mr. Jacobs in both Macau and Las
6 Vegas.

7 Q Identical source -- or identical sets?

8 A I don't know if they're identical sets.

9 Q Did you come to learn that once Mr. Jacobs' data
10 was transported to the United States that whatever Macau
11 source there was was wiped clean, gone, so that the only
12 source would be the United States source?

13 A Well, that would be an incorrect statement as there
14 is a huge amount of Mr. Jacobs' data in Macau.

15 Q No, I'm asking that -- let me back up, then. Maybe
16 I missed your point. Are you testifying to Her Honor that
17 the two sources of Jacobs data, Macau data and United States
18 data, are identical?

19 A In order for me to testify to that I would have to
20 do an analysis to prove that and we have not done that
21 analysis.

22 Q Okay. So then let me limit my question to avoid
23 the ambiguity hopefully. Have you been made aware that any
24 portion of the Jacobs data that was once in Macau but then
25 transported to the United States had been erased, eliminated,

1 destroyed, any of those words?

2 MR. RANDALL JONES: Object to the form of --

3 BY MR. PISANELLI:

4 Q In whole or in part.

5 MR. RANDALL JONES: I'm sorry. I don't know if he
6 answered. I was starting to make --

7 THE COURT: He hasn't. I was waiting for your
8 objection.

9 MR. RANDALL JONES: I was making an objection.
10 Again, it goes beyond the scope of this proceeding.

11 THE COURT: Overruled.

12 MR. RANDALL JONES: There's been a proceeding
13 previously and it also is based on speculation.

14 THE WITNESS: I am -- I am not aware that any data
15 in Macau was destroyed, wiped, or otherwise made unavailable.

16 BY MR. PISANELLI:

17 Q And I think your answer probably addresses my next
18 question which is far broader than Mr. Jacobs. Did you ever
19 come to learn that any of the custodians whose hard drive was
20 transported to the United States, that the original sources
21 of information in Macau had been destroyed?

22 A I am not aware --

23 MR. RANDALL JONES: Same objection.

24 THE WITNESS: -- of being informed of that.

25 THE COURT: Overruled.

1 BY MR. PISANELLI:
2 Q If -- if that happened, you don't know about it?
3 A That's correct.
4 MR. RANDALL JONES: Same objection.
5 THE COURT: Overruled.
6 MR. PISANELLI: Thank you, Your Honor.
7 THE COURT: Thank you. Redirect.
8 MR. RANDALL JONES: Thank you.
9 REDIRECT EXAMINATION
10 BY MR. RANDALL JONES:
11 Q Mr. Ray, I've -- I've got a question for you.
12 First of all, do you know if there was ever the -- the --
13 whether or not VML or Las Vegas Sands ever had possession,
14 physical possession of a cell phone?
15 A As I recall, what we have is a forensic image of
16 that phone.
17 Q And that's -- that's not the cell phone itself.
18 That's -- that's -- that's data that's been transferred from
19 a cell phone?
20 A That's correct.
21 Q You never saw a cell phone yourself?
22 A That's correct.
23 Q So let me ask you also -- well, first of all, Mr.
24 Pisanelli asked you about who set the parameters for the
25 searches, and I think you said essentially that either Las

1 Vegas Sands in some cases or VML in other cases, depending on
2 who you're doing the work for, do you recall that?

3 A And counsel. That's right.

4 Q And counsel. Is that different than any other case
5 that you've ever been involved with with ESI discovery?

6 A No.

7 Q So there's -- does that seem inappropriate or
8 nefarious or improper for the counsel to tell the forensic
9 ESI company that's doing the -- the searches what the
10 parameters are they need to search?

11 A No, not at all.

12 Q So -- okay. So do you know why Mr. Pisanelli would
13 be asking a question suggesting that that kind of direction
14 is inappropriate in this case?

15 MR. PISANELLI: Objection, Your Honor. He's trying
16 to read my mind. I can't even read my own mind at times.

17 THE COURT: Overruled. We're all going to
18 speculate about what you were thinking.

19 THE WITNESS: We were asked to search all the data
20 that was available to us to find these matching documents out
21 of Macau. The Las Vegas Sands Corporation is a very large
22 corporation with multiple locations. Getting all of the data
23 in the entire corporation available is impractical at best
24 and impossible at worst.

25 In the collection of the data that we did for all

1 of these cases, there is a combination of interviews,
2 discussions, and collections and searches that are done to
3 identify the sources. The network source is the hard drives'
4 custodians. The goal is to find all of the sources. If Mr.
5 Pisanelli is asking, I'm assuming he's trying to suggest that
6 we didn't look for the other sources that could be there.

7 BY MR. RANDALL JONES:

8 Q Did you ever get any indication from anybody at
9 either VML or LVS or their counsel to limit in any way,
10 shape, or form your searches of the data with the exception
11 of the Jacobs personal data that you've talked to Judge
12 Gonzalez about today?

13 A We were not given any limitations at all. We were
14 told to use all of the data available.

15 Q And this whole idea of -- and this is where there
16 seems to be some confusion. I'm not sure why, but there
17 seems to be some confusion about the -- the data searches.
18 If you -- as I understand it, if you search the Las Vegas
19 Sands Data in July, August, September of 2012, was there any
20 limitation on the searches that you did?

21 A So the -- the only --

22 Q Other than -- go ahead.

23 A Yeah, the only limitation on searches that we would
24 have run in that time period would have been the Jacobs
25 personal data that was sequestered.

1 Q And if there are search terms for -- that were used
2 in that case, in the -- with Las Vegas Sands, and you ran all
3 the searches, would that have included, as you, I believe,
4 testified, just to be clear, the five data sources that you
5 understood came from Macau?

6 A So the -- the five data sources that are mentioned
7 here, it would have included those because those sources
8 weren't present.

9 Q So would there be a need, would there be a need to
10 --

11 MR. PISANELLI: Your Honor, before we get to the
12 next question, can we get clarification? The witness was
13 pointing to something saying here. Just what did that mean?

14 THE WITNESS: Oh, I was -- I was attempting to
15 point to the list of --

16 THE COURT: 217.

17 THE WITNESS: -- sources in 217.

18 MR. PISANELLI: He didn't hold up 217.

19 THE WITNESS: 219.

20 THE COURT: Oh, 219.

21 THE WITNESS: The list of sources.

22 THE COURT: Okay.

23 BY MR. RANDALL JONES:

24 Q And with respect to the VML searches, if Las Vegas
25 Sands has already done the searches of all the documents,

1 including the Macau documents, the transferred data that I
2 think the Court has referred to it as, then -- which resulted
3 in, as it relates to the Macau transfer data, which resulted
4 in the documents produced in Exhibit 379; is that not
5 correct?

6 A Correct.

7 Q So there -- it would simply be redundant to search
8 it again for the Macau data under those same search terms;
9 correct? At that point --

10 A That's correct. I mean, there is overlap between
11 the two reports because there were documents produced in LVS
12 productions that also matched redacted documents produced out
13 of Macau in the VML production. And where that happened, the
14 same document was produced twice.

15 Q And I think that is the point that I wanted to get
16 to. Is it -- again, I believe you testified to this on
17 cross-examination. Your understanding is that the Macau
18 data, the Macau, excuse me, transferred data that we're
19 talking about that's referenced in Exhibit 219 as you
20 understand it, was searched in Macau?

21 A So there's data in the United States. There's data
22 in Macau.

23 Q Yes.

24 A There is duplicate data in both locations.

25 Q Sure.

1 A I know for a fact Mr. Jacobs has duplicate data in
2 both locations. The VML searches were all done in Macau, and
3 LVS searches were done in the United States. And there could
4 have been other searches done by Mayer Brown in the United
5 States or by Munger Tolles. You know, we don't have to do
6 all the searches ourselves.

7 Q So, again, to your knowledge, all of the data from
8 the Macau transferred data, the five sources we've talked
9 about, as far as you understand, they were searched?

10 A Yes.

11 Q They were searched with the limited exception of
12 Mr. Jacobs' personal data?

13 A Yes.

14 Q And of --

15 MR. RANDALL JONES: Your Honor, I don't know if
16 that clears up the Court's questions as to this issue, but I
17 don't know how any other way to put it. If there is any
18 question in the Court's mind, that was the one I thought the
19 Court might have so I asked it, but --

20 THE COURT: I asked the questions I was concerned
21 about when Mr. Pisanelli was thinking.

22 MR. RANDALL JONES: Your Honor, I guess I was ask
23 -- I would put it this way. If the Court has any additional
24 concerns about whether the Macau transferred data, the five
25 sources was -- was searched for the productions in this case,

1 I would certainly like to know about it.

2 THE COURT: I have that concern.

3 MR. RANDALL JONES: And --

4 THE COURT: I asked the witness specifically did
5 you upload this information to your search device, server,
6 cloud, whatever it is that you use for that purpose, he said
7 yes. Did you run the search? No, don't know if Las Vegas
8 Sands did, but we didn't do it here.

9 BY MR. RANDALL JONES:

10 Q Well, and I guess Mr. -- Mr. Ray, when you say you
11 didn't run the searches for VML, is that because the searches
12 had already been run to the best of your knowledge either in
13 Macau or by Las Vegas Sands?

14 MR. PISANELLI: Objection. Leading, Your Honor.

15 THE COURT: Overruled.

16 THE WITNESS: So the search terms for the Macau
17 review are the search terms that we used in the Macau review
18 in the VML engagement. There are hundreds of search term
19 families in the Las Vegas Sands case with many, many, many
20 search terms. I don't know which search terms were run in
21 the United States and at what time, but I do know that this
22 list of terms was run in Macau. And then when we matched
23 redacted documents up in the United States, we only used
24 documents responsive to this.

25 BY MR. RANDALL JONES:

1 Q So is it your understanding that at some point the
2 search terms of the VML document were -- excuse me, VML did
3 do search terms of these four documents -- let me rephrase
4 that. Is it your understanding that VML, through FTI, did
5 use the search terms in Macau for these documents?

6 A Yes.

7 Q So as far as your -- is it your understanding that
8 whether it was done again -- well, let me put it another way.
9 Is there any need to do it in the United States if you've
10 already done it in Macau for the same documents as far as you
11 can -- you're aware?

12 A So --

13 THE COURT: I think that's a legal issue.

14 MR. RANDALL JONES: Well --

15 MR. PISANELLI: I'll object in calling for a legal
16 conclusion, Your Honor.

17 THE COURT: Sustained.

18 BY MR. RANDALL JONES:

19 Q Well, let me -- let me rephrase this. Is there any
20 -- to your knowledge would there be any additional
21 information if the same sources, whether they're running
22 Macau or the United States, would the search terms likely
23 result in different hits?

24 MR. PISANELLI: Objection, Your Honor. Incomplete
25 hypothetical. This witness has already said that he doesn't

1 have the proper foundation to answer --
2 THE COURT: It's overruled.
3 MR. PISANELLI: -- that question.
4 THE COURT: You can answer if you can.
5 THE WITNESS: Let -- are -- are these search terms
6 the same set of search terms or the same kind of set of
7 search terms that one would use in the United States to find
8 relevant material in the case as it was used to find relative
9 material in Macau?
10 MR. PISANELLI: Your Honor, is this witness asking
11 to be coached by Mr. --
12 THE WITNESS: No, no, no.
13 MR. PISANELLI: -- Jones?
14 THE COURT: I think he's answering the question by
15 --
16 THE WITNESS: I'm trying to answer the question.
17 THE COURT: -- one of those -- what are those when
18 you make a question and it's really a statement?
19 MR. PEEK: Rhetorical.
20 THE COURT: A rhetorical question. Thank you, Mr.
21 Peek.
22 THE WITNESS: So --
23 THE COURT: I'm having a long day here.
24 THE WITNESS: -- these search terms run in Macau on
25 Macau data produced this number of matches in the United

1 States for documents that were ultimately then produced in
2 unredacted form.

3 THE COURT: This being --

4 MR. PEEK: Give us --

5 THE COURT: -- 380?

6 MR. PEEK: -- the exhibit number.

7 THE WITNESS: This is 380. And in Exhibit 379,
8 these are all the documents from the same sources that have
9 produced in the Las Vegas Sands case. I don't know if these
10 search terms were used to get this, but I think it's --

11 THE COURT: This being 379.

12 THE WITNESS: This being 379. But clearly a lot of
13 documents were produced from these sources. They were
14 searched somehow and they were found somehow and produced.

15 MR. RANDALL JONES: Thank you, Mr. Ray.

16 THE COURT: Anything else, Mr. Pisanelli?

17 MR. PISANELLI: No.

18 THE COURT: Thank you, sir. We appreciate your
19 time. Thank you so much. Have a nice flight back.

20 All right. So it's 4:19. Is there any additional
21 evidence that Sands China wants to present for purposes of
22 this hearing? Can you check to see if the exhibits that you
23 think are admitted are, in fact, admitted by coming to check
24 the clerk's official list. You're not moving very fast.

25 MR. MCGINN: We've done that, Your Honor.

1 MR. RANDALL JONES: So I believe that -- well,
2 we'll double check.

3 MR. PEEK: Mr. McGinn and Mr. Smith are going to do
4 it again, Your Honor, for --

5 THE COURT: That's because that's their job and
6 they're familiar with what they think is in and what isn't
7 in.

8 (Pause in the proceedings)

9 MR. PEEK: Your Honor, while they're doing that,
10 are there other things that we could do to like -- we know
11 the arguments are going to start sometime tomorrow. How is
12 going to progress, who is going to go first, who is going to
13 go second, you know, those kinds of things? I think that --

14 THE COURT: Each side gets to go twice. Remember
15 --

16 MR. PEEK: Each side gets to go twice. Okay.

17 THE COURT: -- each of you have the burden on
18 certain issues, so each side gets to go twice. They start,
19 you get the last word. They go twice; you go twice.

20 MR. PEEK: So they start.

21 THE COURT: Well, not you, but --

22 MR. PEEK: They start.

23 THE COURT: How long is the time?

24 MR. PEEK: Pardon?

25 THE COURT: I gave you a time and you were going to

1 split it up amongst yourselves.

2 MR. PEEK: Well, we had two hours, but, you know, I
3 -- they probably will use less than that. But I -- but I
4 think they've negotiated it down. Because part of my concern
5 was --

6 THE COURT: I did say that you could share time
7 with Mr. Jones and that I would give you --

8 MR. PEEK: Right.

9 THE COURT: -- when we were negotiating, I think I
10 got up to a whole two hours.

11 MR. PEEK: I don't think I will be saying anything
12 at all, but I don't know what Mr. Bice is going to say. So
13 that's why I wanted to at least have an opportunity if he
14 said something wildly imaginative.

15 THE COURT: Okay. So you're going to go first.
16 You're going to go however long you go.

17 MR. BICE: Yep.

18 THE COURT: Then we're going to see how we're
19 doing. You're going to go second. We're going to see how
20 long we go. Tomorrow is Tuesday; right?

21 MR. BICE: Yep. Tomorrow is Tuesday.

22 THE COURT: Tomorrow is Tuesday. Good. So then
23 we're going to see where we go. I have a lunch appointment,
24 so I do plan to break for lunch. But you look like you've
25 got plenty of time if there is no additional evidence for

1 four hours of argument starting at 10:00-ish.

2 MR. PEEK: What time would you like us here

3 tomorrow, Your Honor?

4 THE COURT: 10:00-ish.

5 MR. PEEK: 10:00-ish. Okay. So I'll be here at

6 10:00.

7 THE COURT: So that depends on what time Judge

8 Scann --

9 MR. PEEK: No, no, I know in terms of start time.

10 But I -- I just wanted to know what time I'll be here because

11 I'm not involved in Mr. Morris and Mr. Pisanelli's argument.

12 THE COURT: Well, I may still be next door doing

13 the criminal calendar there. Their criminal calendar starts

14 at 8:30. I should be able to be done with it before 10:00,

15 but you never know.

16 MR. PEEK: Okay.

17 MR. RANDALL JONES: We'll be here -- I'll be here

18 before 10:00, Your Honor, if it's --

19 THE COURT: Well, we'll start when everybody is

20 ready. My civil calendar is down to one thing in the morning

21 at 8:30.

22 MR. PEEK: I just have a hard stop that I need to

23 do a meet and confer at 4:00, so I need to be out of here at

24 3:00.

25 MR. BICE: So I -- so I --

1 MR. PISANELLI: Your Honor, there is no hard stop.
2 The meet and confer is in Wynn Okada and it's not going to
3 happen because of what happened in today's schedule. So we
4 don't have to hard stop ever.

5 MR. PEEK: Your Honor --

6 MR. PISANELLI: We are -- we are switching --

7 THE COURT: How about you and Mr. Peek fight about
8 that issue tomorrow if we get to that point.

9 MR. BICE: I want to address -- I want to, Your
10 Honor, just address the one point that you had said is that
11 we get the last word on prejudice, they get the last word on
12 willfulness. They do not get the last word --

13 THE COURT: That's correct.

14 MR. BICE: -- right? I just want that to be clear.

15 THE COURT: Well, but the issues are interrelated.

16 MR. BICE: Well --

17 THE COURT: You know that, Mr. Bice. So, yes, that
18 is the aspirational goal.

19 MR. BICE: Okay. Thank you.

20 MR. PEEK: At the end of the day, though, Your
21 Honor, it's a sanction to be imposed upon us using two
22 standards, willfulness and prejudice. We should have the
23 last on both. I get that they have the obligation to prove
24 prejudice. I understand that. But in terms of sort of
25 wrapping up, we -- we -- I guess we'd say they haven't met

1 their burden would be our argument, but --

2 MR. BICE: If the law --

3 MR. PEEK: -- I just want to make sure that we have
4 --

5 THE COURT: Okay. Here is how it usually works.
6 And I hate these and I do too many of them. And I would
7 really just like sanctions hearings, but I do them. The
8 willfulness issue is one that is very difficult, especially
9 in a case like this where you have competing interests. I
10 would hope that you would spend a lot of time focusing on
11 that.

12 I understand the ESI issues, which go in large part
13 to the prejudice issues, but the willfulness is one that I
14 have to address. The Nevada Supreme Court has been very
15 clear I have to address the effect of the Macau Data Privacy
16 Act on that willfulness, and so I would hope that you would
17 spend most of the time on the wrap on that, but it's up to
18 you.

19 MR. BICE: And my only point, Your Honor, is that
20 if we have the burden on an issue, we have the last word on
21 it. Those are -- that's the law.

22 THE COURT: That is the aspirational goal, but they
23 --

24 MR. BICE: Thank you.

25 THE COURT: -- are interrelated, as I said.

1 MR. PEEK: Thank you, Your Honor.
2 MR. RANDALL JONES: Your Honor, I think --
3 THE COURT: All right. Did we finish our --
4 MR. RANDALL JONES: -- there is one question --
5 THE COURT: Did we finish our review of the
6 exhibits?
7 MR. SMITH: Yes, Your Honor.
8 MR. MCGINN: There's a couple points.
9 THE COURT: Is there any that were missed?
10 MR. SMITH: Yes. 217, that is the exhibit we've
11 been operating off of.
12 THE COURT: We -- we admitted that earlier today.
13 MR. SMITH: Okay. I just wanted to confirm that.
14 THE COURT: I have a checkmark next to it. And
15 then what else?
16 MR. MCGINN: And then for us it was the ones that
17 were on the -- 333, 334, and 336.
18 MR. PEEK: She admitted those, too.
19 THE COURT: We admitted those earlier today, too.
20 MR. MCGINN: That's it.
21 MR. RANDALL JONES: That's it, Your Honor.
22 THE COURT: Any more?
23 MR. SMITH: No, Your Honor.
24 THE COURT: All right. I have the draft findings
25 of fact and conclusions of law that you sent me. It is

1 unlikely I will have a written decision for you tomorrow, but
2 I will hope to have one by the end of the week.

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

4 MR. MCGINN: Thank you, Your Honor.

5 (Court recessed at 4:25 p.m., until the following day,
6 Tuesday, March 3, 2015, at 10:00 a.m.)

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DEFENDANT'S WITNESSES

| | | | |
|-----------|----|----|-----|
| Jason Ray | 29 | 42 | 212 |
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EXHIBITS

| <u>DESCRIPTION:</u> | <u>ADMITTED</u> |
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| | |
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| 28 | 3 |
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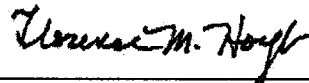
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