

In the Matter Of:  
The Catalyst Capital Group Inc. v.  
Brandon Moyse et al

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KEVIN LO  
May 14, 2015

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141 Adelaide Street West | 11<sup>th</sup> Floor  
Toronto, Ontario M5H 3L5  
1.888.525.6666 | 416.413.7755

1 Court File No. CV-14-507120

2  
3 ONTARIO

4 SUPERIOR COURT OF JUSTICE

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6 B E T W E E N:

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8  
9 THE CATALYST CAPITAL GROUP INC.

10 Plaintiff

11 - and -

12 BRANDON MOYSE and WEST FACE CAPITAL INC.

13 Defendant

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18 -----  
19 --- This is the Cross-Examination of KEVIN LO, on his  
20 affidavits sworn May 12, 2015, and April 2, 2015, taken  
21 at the offices of Davies Ward Phillips & Vineberg LLP,  
22 40th Floor, 155 Wellington Street West, Toronto,  
23 Ontario, on the 14th day of May, 2015.

24 -----  
25

1     A P P E A R A N C E S:

2

3     Andrew Winton, Esq.                             for the Plaintiff.

4

5     Kristian Borg-Olivier, Esq.                     for the Defendant  
6   Brandon Moyse

7

8     Matthew Milne-Smith, Esq.                     for the Defendant  
9   West Face Capital  
10   Inc.

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12                             REPORTED BY: Terry Wood, RPR, CSR

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I N D E X

WITNESS: KEVIN LO

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KEVIN LO

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\*\*\*The following list of undertakings, advisements and refusals is meant as a guide only for the assistance of counsel and no other purpose\*\*\*

INDEX OF REFUSALS

The questions/requests refused are noted by R/F and appear on the following pages/lines: None.

INDEX OF UNDERTAKINGS

The questions/requests undertaken are noted by U/T and appear on the following pages/lines: 17/9, 19/12.

INDEX OF UNDER ADVISEMENTS

The questions/requests taken under advisement are noted by U/A and appear on the following pages/lines: 19/19.

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INDEX OF EXHIBITS

NUMBER/DESCRIPTION

PAGE NO.

None.

1 --- Upon commencing at 10:27 a.m.

2 KEVIN LO, SWORN;

3 CROSS-EXAMINATION BY MR. WINTON:

4 1 Q. Good morning, Mr. Lo.

5 A. Good morning.

6 2 Q. Mr. Lo, in this proceeding, you  
7 have sworn two affidavits, correct?

8 A. That's correct.

9 3 Q. The first affidavit was sworn on  
10 April 2nd, 2015, correct?

11 A. Correct.

12 4 Q. And the second affidavit was sworn  
13 on May 12th, 2015?

14 A. That is correct.

15 5 Q. And you understand that when you  
16 swear an affidavit that you are swearing to tell the  
17 truth in your affidavits?

18 A. I do.

19 6 Q. You also understand that, both in  
20 your affidavits and during this cross-examination, it's  
21 important to be telling the truth?

22 A. Yes, I do.

23 7 Q. And you understand that the  
24 evidence you gave in your affidavits and that you are  
25 giving today is for use in a court proceeding?

1 A. Yes.

2 8 Q. And it's in your Exhibit B to your  
3 affidavit, which you can turn up, you understand from  
4 signing the acknowledgment of expert's duty form that,  
5 among other things, it's your duty to provide opinion  
6 evidence that is fair, that's objective, and  
7 nonpartisan, correct?

8 A. I do.

9 9 Q. You understand that's important in  
10 your evidence, both in affidavit or today, in both  
11 forms, that it's important to be forthcoming in the  
12 evidence?

13 A. Yes.

14 10 Q. Now, reviewing your CV at Exhibit A  
15 to your affidavit, I notice, in your consulting  
16 experience, you list several different examples of the  
17 type of work you have performed, correct?

18 A. Yes.

19 11 Q. Now, what I was looking for and  
20 what I didn't find is have you testified as an expert  
21 on issues concerning forensic investigations in the  
22 past?

23 A. Yes, I have.

24 12 Q. Okay. Is that listed in your  
25 consulting experience?

1                   A.     It may or may not.  I don't  
2 remember what version it is.

3     13               Q.     Okay.

4                   A.     It may not, yeah.  Actually, no,  
5 there's a second-last bullet point there -- no, no,  
6 actually, sorry.  It may not be included, so in this --  
7 yeah, but I have testified in -- I have testified as an  
8 expert --

9     14               Q.     Okay.

10                  A.     -- before, yes.

11     15               Q.     Okay.

12                  A.     In different occasions.

13     16               Q.     Okay.  But just not -- there  
14 doesn't seem to be --

15                  A.     No, not in there, yes.

16     17               Q.     Okay.  Now, looking through the  
17 consulting experience, if we can start with the first  
18 bullet point.  It's page 143 of the record.  It's the  
19 first page of your CV.  It states you led the  
20 electronic data acquisition procedures on a number of  
21 civil search orders, referring to Anton Piller orders,  
22 correct?

23                  A.     That's correct.

24     18               Q.     And the data acquisition procedures  
25 involves I guess imaging hard drives?

1 A. That would be part of it, yes.

2 19 Q. Okay. What else would it involve?

3 A. Well, it's a little bit wider scope  
4 than that. So it's the -- essentially, it's the  
5 identification of the forensic evidence and then the  
6 preservation of the forensic evidence and then the  
7 collection of the forensic evidence.

8 20 Q. Right. Okay. So those are the  
9 steps that are similar to, in this proceeding -- you  
10 may or may not understand this from -- depending how  
11 much you have reviewed the record, but that's what was  
12 performed back in July of 2014 when Mr. Moyse's hard  
13 drive was imaged, correct?

14 A. That's my understanding, but I did  
15 not conduct that procedure.

16 21 Q. Right.

17 A. Yes.

18 22 Q. Agreed. Okay. But, similarly, the  
19 acquisition of the evidence is through imaging of a  
20 hard drive, and it's a similar task as what you  
21 describe there?

22 A. Typically, yes.

23 23 Q. Right. Now, turning over to the  
24 next page and the next bullet point, "Oversees Data  
25 Preservation and Collection". Is that a similar

1 exercise as what you are describing in the first  
2 bullet?

3 A. Very similar, but this is more in  
4 the context of electronic discovery.

5 24 Q. Yes.

6 A. Yeah. But the procedure is very  
7 similar.

8 25 Q. And so we are talking about, again,  
9 imaging hard drives and preserving evidence?

10 A. That will be part of the exercise,  
11 yes.

12 26 Q. Yes. Anything else as part of the  
13 exercise?

14 A. Yeah. Meet and confer session,  
15 discussion with -- come up with a litigation plan,  
16 doing analysis of the data, that type of things.

17 27 Q. And by "analysis of the data", you  
18 mean for ediscovery purposes?

19 A. For ediscovery purposes, yes.

20 28 Q. Right. And so, similarly, then,  
21 the next bullet point, where you describe "Managed a  
22 number of document-scanning projects", then, again,  
23 there, that is more of an ediscovery-related task?

24 A. That's correct, yes.

25 29 Q. And that is not something that's

1 similar to what you were doing for this particular  
2 engagement?

3 A. Not that I know of, no.

4 30 Q. Right. The next bullet point:

5 "Participated in an engagement where  
6 electronic surveillance (computer  
7 activity logging) and video surveillance  
8 were conducted."

9 Again, that's not tasks that are related  
10 to this engagement?

11 A. No.

12 31 Q. Next bullet point:

13 "Handling of noncomputer data, such as  
14 video and audio, for investigative  
15 purposes."

16 That's not a task that's related to this  
17 engagement?

18 A. No.

19 32 Q. The next bullet point:

20 "Acted as a third-party inspector  
21 under Court order to preserve and  
22 extract electronic data."

23 Is that similar to the first point in  
24 terms of -- like an Anton Piller order-type of  
25 proceeding to image a computer hard drive?

1                   A.     Yeah, but it's more than that, as I  
2     said.  Preservation of the electronic data is only part  
3     of the exercise.  It's not necessarily the only thing I  
4     do.

5     33               Q.     Right.

6                   A.     Yeah.

7     34               Q.     So what else would you do that  
8     would be captured under that bullet point?

9                   A.     Can you repeat that bullet point  
10    there.

11    35               Q.     It's the acted as a third-party  
12    inspector.

13                   A.     Oh, so I would be -- so I would  
14    be -- act as neutral party where I will be taking --  
15    conducting whatever instructed by me through a common  
16    agreed protocol.

17    36               Q.     Okay.  And so under that protocol,  
18    you may be asked to run certain searches of the data  
19    that was preserved?

20                   A.     Searches, analysis, extraction.

21    37               Q.     Right.  And not to diminish it, but  
22    the role is to execute searches that others assign to  
23    you?

24                   A.     That would be asked of me, yes.

25    38               Q.     Yes.  And those searches are asked

1 of you, and then you conduct the searches and then  
2 report back on the results?

3 A. That would be correct, yes.

4 39 Q. The next bullet point describes a  
5 task. You:

6 "Advised a client (in-house counsel)  
7 on conducting investigation of  
8 employees' inappropriate behaviours."

9 A. Yes.

10 40 Q. I take it that's unrelated to the  
11 task at hand in this engagement?

12 A. No. There are some similarities.

13 41 Q. How so?

14 A. Well, it's -- it's a case where we  
15 have to analyze the forensic evidence to find out what  
16 happened to certain piece of data that is relevant to  
17 this -- to any particular case.

18 42 Q. So you were analyzing a hard drive  
19 in that case?

20 A. Well, it could be many hard drives,  
21 could be also data from network servers, it could be  
22 e-mail from e-mail servers, it could be a variety of  
23 sources of electronic data.

24 43 Q. Okay. Well, without asking you to  
25 give too many specifics such that you are breaching

1 whatever obligations of confidence you have, I am  
2 referring to the task described in this specific bullet  
3 point.

4 A. Uhm-hmm.

5 44 Q. So you said "could be, "could be,  
6 "could be". I want to know what forensic tasks you  
7 performed in relation to that bullet point.

8 A. So we would investigate any, let's  
9 say, mobile devices, so such as a smart phones or  
10 tablets or mobile phones.

11 45 Q. Yes.

12 A. We would investigate -- do --  
13 perform analysis on computers --

14 46 Q. Yes.

15 A. -- that were assigned to certain  
16 individuals. We would be tasked to do analysis of  
17 network data, so, for example, from file servers,  
18 e-mail servers, and so on. And then we would come up  
19 with a report that would come up with any of our  
20 findings.

21 47 Q. Okay. So in this case, you were  
22 looking at the usage, the computer usage, that a person  
23 under investigation made of their devices?

24 A. That would be one of -- that could  
25 be one of the tasks involved, yes.

1           48           Q.    Okay.  Did it involve a forensic  
2 review of imaged hard drives?

3                    A.    Sometimes, yes.

4           49           Q.    Well, I'm asking about this  
5 specific point, sir.

6                    A.    Uhm-hmm.

7           50           Q.    I'm not asking about what you do  
8 sometimes; I'm asking about this one that you are  
9 describing here in your CV.  Did that involve a  
10 forensic review of a hard drive?

11                   A.    Yes.

12           51           Q.    Okay.  Now, I noticed in your CV  
13 there's no reference to working on fraud  
14 investigations.  Have you been specifically tasked with  
15 working on investigations where fraud is a component of  
16 the investigation?

17                   A.    Yes, I have, yes, I have.

18           52           Q.    But that doesn't appear to be  
19 listed on your CV.

20                   A.    Yes, it was -- yeah.  I can --  
21 yeah.  The CV may not be the most up-to-date document.

22           53           Q.    Understood.  Okay.  Turning back to  
23 your affidavit sworn April 2nd, 2015, you were  
24 engaged by Paliare Roland, correct?

25                   A.    Yes.

1       54               Q.     Do you recall when you were first  
2 retained by Paliare Roland?

3                       A.     I do not know right now. I have to  
4 go back to our engagement letter or engagement e-mail,  
5 yes.

6                       MR. WINTON: Okay. Well, maybe we can  
7 go off the record and see if we can do that now rather  
8 than by way of undertaking.

9                               -- RECESS AT 10:40 --

10                              -- RESUMING AT 10:41 --

11                       BY MR. WINTON:

12       55               Q.     And I understand, from paragraph 6  
13 of your affidavit, that your firm was provided with  
14 forensic images of -- it states relevant devices  
15 belonging to Mr. Moyse for the purposes of your  
16 analysis, correct?

17                       A.     That's correct, yes.

18       56               Q.     And so you were provided with  
19 images of both Mr. Moyse's personal computer? Yes?

20                       A.     Yes.

21       57               Q.     And also his mobile devices, his  
22 iPad and his smart phone?

23                       A.     Yes.

24       58               Q.     But I think just to -- let's close  
25 off an avenue of questioning. For the purposes of the

1 affidavits you have sworn, you did not analyze the  
2 images of the mobile devices, correct?

3 A. That's correct, yes.

4 59 Q. Okay. Now, from whom did you  
5 receive the copy of the forensic image of Mr. Moyse's  
6 personal computer?

7 A. From counsel of Paliare Roland.

8 60 Q. So it was Paliare Roland. Okay.  
9 And in what form was it provided to you?

10 A. Physical format. It's a computer  
11 hard drive.

12 61 Q. Okay. Was it provided in an  
13 evidence envelope?

14 A. It was in some container. It  
15 may -- it was in some form of a pocket or plastic bag,  
16 like an anti-static bag, I believe, yes.

17 62 Q. Okay. And was it accompanied by a  
18 chain of evidence form?

19 A. We sign off -- we have evidence  
20 form to say when we took custody of the device.

21 63 Q. Right. You have a form for when  
22 you took custody of the device --

23 A. Yes.

24 64 Q. -- but was there was a form handed  
25 to you or is there a related form for -- that showed

1 where the device came from prior to you receiving  
2 custody of it?

3 A. I have to get back -- I will have  
4 to look into my records, yes.

5 MR. WINTON: Okay. Counsel, if there's  
6 a -- I'd like to have production of Mr. Lo's chain of  
7 evidence form but also any other chain of evidence  
8 forms that exist in relation to this image.

9 U/T MR. BORG-OLIVIER: Okay.

10 BY MR. WINTON:

11 65 Q. Do you know when the image was  
12 created?

13 A. I do not.

14 66 Q. Are you aware of the circumstances  
15 of what led to the creation of the image?

16 A. Yes, I do.

17 67 Q. So what's your knowledge of those  
18 circumstances?

19 A. My knowledge is that there is an  
20 independent solicitor supervisor.

21 68 Q. Yes.

22 A. And then he -- it's my belief that  
23 the ISS had retained a forensic firm to conducts the  
24 forensic imaging and collection of the -- of the  
25 evidence.

1           69           Q.     Right.  And for that purpose, an  
2 image was created and provided to the IT expert  
3 retained by the ISS, correct?

4           A.     That's my understanding, yes.

5           70           Q.     That's your understanding?

6           A.     Yes.

7           71           Q.     Right.  But that's not the actual  
8 hard drive you analyzed, correct?  The hard drive that  
9 was provided to the ISS' IT expert?

10          A.     I do not know the protocols between  
11 the ISS and the -- and the forensic expert retained by  
12 ISS.

13          72           Q.     Right.  I guess what I'm asking is  
14 you were -- the physical hard drive you examined is, to  
15 your understanding, not the same physical hard drive  
16 that had been provided to the ISS expert?

17          A.     I do not have knowledge to answer  
18 that question.

19          73           Q.     Okay.

20          A.     Yes.

21          MR. WINTON:  Counsel, can you assist on  
22 that?

23          MR. BORG-OLIVIER:  I believe the answer  
24 is it's not, but I would have to get back to you on  
25 specifically when the image was made.

1 MR. WINTON: Okay.

2 MR. BORG-OLIVIER: My understanding is  
3 that a separate image was made at the time for  
4 Mr. Moyse's counsel, but, as you know, we weren't  
5 counsel at the time, so I can get back to you with that  
6 information.

7 MR. WINTON: Right. I guess what I'm  
8 trying to understand is how does it come to pass that a  
9 second image is retained by counsel and used for  
10 counsel's purposes without -- when it doesn't appear to  
11 have been pursuant to the Court order.

12 U/T MR. BORG-OLIVIER: Okay. I will make my  
13 best efforts to determine that and get back to you.

14 BY MR. WINTON:

15 74 Q. Thank you. And I will ask -- this  
16 is more directed to counsel than to you, Mr. Lo -- if a  
17 copy of the image can be made available to Mr. Musters  
18 for his analysis.

19 U/A MR. BORG-OLIVIER: I will take that  
20 under advisement

21 BY MR. WINTON:

22 75 Q. Now, Mr. Lo, did you understand at  
23 the time you were performing the work that is the  
24 subject matter of your two affidavits that you had  
25 access to evidence that Mr. Musters did not have access

1 to?

2 A. Through Mr. Musters' affidavit, I  
3 think he did make mention of that, but, frankly, it  
4 wasn't my -- it wasn't my -- it wasn't a big concern of  
5 mine, because that wasn't my -- yeah.

6 76 Q. So you didn't turn your mind to the  
7 question of whether or not it was possible for  
8 Mr. Musters to access the same computer image that you  
9 were analyzing when you prepared your affidavit?

10 A. That wasn't the scope of my task.

11 77 Q. No. It's not really about the  
12 scope but just a question of your understanding that  
13 you had access -- let me back up for a second.

14 You understood you have access to an  
15 image of Mr. Moyse's computer hard drive?

16 A. That's right.

17 78 Q. You understood that an image had  
18 also been provided to an independent IT expert who was  
19 not associated with Catalyst?

20 A. That's my understanding.

21 79 Q. Right. And you may not have turned  
22 your mind to it, but you understand now as well that  
23 Catalyst and its expert do not have access to that  
24 image. Correct?

25 A. I -- I just learned it now, yes.

1           80           Q.    Okay.  As part of the investigation  
2 or work you performed that led to the creation of  
3 these -- swearing of these affidavits, did you have any  
4 communications with Brandon Moyse?

5           A.    No.

6           81           Q.    You only communicated with counsel?

7           A.    That's correct.

8           82           Q.    Now, in your experience as an IT  
9 expert, you're familiar with what information is  
10 retained on computers and what information is not  
11 retained, correct?

12          A.    Yes.

13          83           Q.    And, for example, an Internet web  
14 browser retains, in the normal course, a log of all the  
15 websites that a user accesses through the browser?

16          A.    That wasn't the scope of this  
17 report.

18          84           Q.    Yes.

19          A.    However, if you go away from this  
20 report, generally, yes, there is record -- there are  
21 records, yes --

22          85           Q.    Right.  It's known as the web --

23          A.    -- of the web browser.

24          86           Q.    -- usually, people call it their  
25 web history?

1                   A.     That -- yes, that's the generic  
2 term, yes.

3     87             Q.     You are familiar with that term?

4                   A.     Yes, I am.

5     88             Q.     And you are aware that the history  
6 log in a web browser would record, for instance, a  
7 user's searching activity?

8                   A.     Typically.

9     89             Q.     Right. Typically, when they visit,  
10 for instance, the Google site?

11                  A.     Once again, away -- totally away  
12 from the scope of this report, but in a general  
13 computer -- in the general daily usage by regular user,  
14 that would be the -- that may be the case, yes.

15     90             Q.     Right. And the search terms that  
16 the user uses within Google would be recorded in the  
17 web history? You understand that?

18                  A.     That may be true, yes.

19     91             Q.     Well, in what circumstances would  
20 it not be true?

21                  A.     Well, there are a variety of  
22 things, right? For example, web browser may have  
23 settings that disable logging, maybe.

24     92             Q.     Yes.

25                  A.     Maybe. So, once again, I -- this

1 is outside the scope of this report, but ...

2 93 Q. I'm asking you general questions  
3 about forensic IT research.

4 A. Okay. Yes.

5 94 Q. If the browser disables the  
6 logging, that's applicable to all the web browsing  
7 activity that's being logged?

8 A. I believe so, yes.

9 95 Q. So so long as the history is being  
10 recorded, it's your understanding that that record  
11 would also include a record of Google searches being  
12 conducted?

13 A. It should.

14 96 Q. And you understand that if a user  
15 deletes their web history, then they are deleting the  
16 record of those searches?

17 A. Can you repeat that question.

18 97 Q. If a user deletes their web  
19 history, they are deleting the record of their  
20 searching activity?

21 A. Yes.

22 98 Q. And you understand that if a user  
23 is accessing Dropbox, the online storage service,  
24 through their web browser, then the web history would  
25 record that activity, correct?

1 A. Yes.

2 99 Q. And the web history would record  
3 not only the fact that they accessed Dropbox, it would  
4 also record what Dropbox folders they were accessing?

5 A. That would be -- commonly, that  
6 would be the case.

7 100 Q. Yes. And it would record the files  
8 that the user viewed in Dropbox if they are using their  
9 web browser to view those files?

10 A. That may or may not be the case.  
11 I'm not a hundred percent sure.

12 101 Q. You are not sure about that?

13 A. Yes.

14 102 Q. Okay. Would you agree with me  
15 that, by deleting the web history, the user would also  
16 be deleting the record of their activity of accessing  
17 Dropbox?

18 A. Generally, yes.

19 103 Q. How would it not also delete that  
20 activity?

21 A. Once again, I haven't done -- in  
22 this particular case, I didn't do any analysis on  
23 Dropbox, so I'm just making -- I'm answering all these  
24 questioned based on my general knowledge.

25 104 Q. Exactly. I'm only asking for your

1 general knowledge, not based on your review of  
2 Mr. Moyse's hard drive, but, generally speaking, the  
3 deletion of the web history also deletes the record of  
4 activity of using Dropbox through a web browser?

5 That's correct?

6 A. Yes.

7 105 Q. If a user is accessing gmail or  
8 Hotmail through their web browser, the web history log  
9 would record that activity, correct?

10 A. Yes, it should, yes.

11 106 Q. And, to your knowledge, when it  
12 records the user accessing gmail or Hotmail, it also  
13 records what e-mail messages the user views?

14 A. That may not be always the case.

15 107 Q. When would it not be the case?

16 A. I don't have any specific, but from  
17 my experience --

18 108 Q. Yes.

19 A. -- sometimes it's pretty  
20 inconsistent what people can -- what Internet history  
21 can show in terms of web-based e-mail can access.

22 109 Q. But in some cases, it can show the  
23 e-mail messages that are being viewed in the web  
24 browser?

25 A. It can and cannot. Once again,

1 it's not consistent.

2 110 Q. But it can show the --

3 A. As a possibility, yes.

4 111 Q. Thank you. You agree with me that,  
5 by deleting the web history, the user's also deleting  
6 the record of their activity; that whatever has been  
7 recorded in the web history for gmail or Hotmail, that  
8 activity has been deleted when the web history is  
9 deleted?

10 A. That's correct.

11 112 Q. Now, if you can turn to the second  
12 affidavit sworn by Martin Musters, and that is the  
13 April 30th affidavit in the supplementary motion  
14 record. It's at tab 2 of the record. Your counsel is  
15 going to show it to you.

16 And you reviewed this affidavit prior to  
17 swearing your second affidavit, correct?

18 A. Yes, correct, yes.

19 113 Q. And at paragraph 3 through to  
20 paragraph 5, Mr. Musters' evidence is that cleaning up  
21 the registry on a computer does not help a user delete  
22 their web history. Do you want to take a moment and  
23 review those paragraphs?

24 A. No, I see that.

25 114 Q. You are familiar with that evidence

1 from Mr. Musters?

2 A. Yes, I am, yes, I am.

3 115 Q. Do you agree with that statement  
4 from Mr. Musters, that general premise, that cleaning  
5 up the registry would not help a user delete their web  
6 history?

7 A. That's correct.

8 116 Q. Now, we're going to continue to  
9 speak generally for a second, but it relates to your  
10 experience as a forensic IT investigator, and I just  
11 want to make sure we -- everyone understands how the  
12 technology works.

13 In the normal course, when a user  
14 deletes a folder using the ordinary Windows delete  
15 function, you understand that does not actually delete  
16 the file from the hard drive, correct?

17 A. Yes.

18 117 Q. What happens is it may prevent the  
19 ordinary user from being able to access that file if it  
20 has been -- if you empty the recycling bin?

21 A. Yes, generally.

22 118 Q. Generally?

23 A. Yes.

24 119 Q. But the data itself is not actually  
25 deleted?

1 A. That -- in a general sense, yes.

2 120 Q. Right. Instead -- and I'm going to  
3 try to describe this in layman's terms, not too  
4 technical terms -- what happens is by deleting it using  
5 the ordinary function, it's telling the computer that  
6 the space on the hard drive previously occupied by that  
7 file is now available to be overwritten, correct?

8 A. That is correct.

9 121 Q. But until that space on the hard  
10 drive is actually overwritten, it's potentially  
11 possible to recover that data through a forensic  
12 analysis of the hard drive?

13 A. That is correct.

14 122 Q. But if the data is, in fact,  
15 overwritten, then it's highly unlikely that it can be  
16 recovered?

17 A. Yes. But with -- it all depends on  
18 the overwriting. So sometime -- if you take up all the  
19 space, yes, that was available.

20 123 Q. Right. If you take up all the  
21 space that was used by the data --

22 A. Yes.

23 124 Q. -- the data would be unrecoverable?

24 A. That's right. So a complete  
25 overwriting, yes.

1           125           Q.     Complete overwriting.  And when  
2 users are particularly concerned about ensuring their  
3 data is unrecoverable, they may overwrite more than  
4 once?

5                    A.     That would be -- yes, it can be  
6 done, yes.

7           126           Q.     Right.  The software that is used  
8 to permanently, let's say, delete data often overwrites  
9 those sectors of the hard drive two, three, multiple  
10 times, correct?

11                   A.     Depends on the software used,  
12 depends what you choose.  Some of them do have that  
13 feature, yes.

14           127           Q.     Yes.  Now, through the course of  
15 this retainer, you became familiar with the software  
16 program known as Secure Delete, correct?

17                   A.     That is correct.

18           128           Q.     And you came to understand that  
19 Secure Delete is a tool that a user can use to  
20 permanently delete data from a hard drive?

21                   A.     According to the product  
22 description, yes.

23           129           Q.     You have no reason to doubt the  
24 accuracy of the product description?

25                   A.     No.

1           130           Q.     And in layman's terms or one might  
2 refer to running a Secure Delete-type program as wiping  
3 or scrubbing the data? Are you familiar with those  
4 terms?

5                   A.     Yes, I am.

6           131           Q.     Do you use those terms around the  
7 office sometimes? Do you call it a scrubber?

8                   A.     It's a genetic term. It's a  
9 day-to-day conversation term, yes.

10          132           Q.     Right. And a day-to-day  
11 conversation term, one might use the term "scrubber" to  
12 describe a program such as Secure Delete?

13                   A.     Yes.

14          133           Q.     So if I use that term in the course  
15 of this examination, you know what I'm referring to?

16                   A.     Yes, I do.

17          134           Q.     Thank you. And in the case of  
18 Secure Delete, you understand that the program  
19 overwrites data that's being deleted with a random  
20 sequence of characters?

21                   A.     Yes.

22          135           Q.     The point of using a random  
23 sequence of characters is then it is impossible to tell  
24 from forensic review that the Secure Delete program had  
25 been run to delete those sectors of the hard drive?

1 A. Not necessarily true.

2 136 Q. Okay. Why not?

3 A. Because some software, they will  
4 leave a distinct -- the randomness becomes a distinct  
5 signature where it could be a red flag in a forensic  
6 examination that would tell me that maybe a -- a delete  
7 software, deletion software, were utilized.

8 137 Q. But in that case, do you agree with  
9 me, then, it's not a truly random sequence of  
10 characters because it's almost a repeated random  
11 sequence of characters?

12 A. No. It's -- once again, it all  
13 depends. Sometimes, the randomness itself can be an  
14 indication that it's -- in itself is a pattern. The  
15 randomness itself. That would indicate that a  
16 software -- a deletion software was utilized.

17 138 Q. Okay. But if the random pattern is  
18 not discernible in that way, then one could never tell  
19 that the program had been used?

20 A. Yes. That's a possibility.

21 139 Q. Are you familiar with the random  
22 sequence of data that's used by the Secure Delete  
23 software?

24 A. I do not know the -- what kind of  
25 random generator it uses, no.

1           140           Q.     So you don't know whether Secure  
2 Delete is one of these programs that leaves what you  
3 described and what I will describe from your evidence  
4 is a signature random sequence versus a truly random  
5 sequence that would be undiscernible?

6           A.     I did not conduct tests on that --  
7 in that regard, so I cannot comment on it.

8           MR. WINTON:   Okay.  Let's go off the  
9 record for a second.

10                       -- OFF THE RECORD --

11           BY MR. WINTON:

12           141           Q.     And I assume -- correct me if I'm  
13 wrong, Mr. Lo -- that in the course of this retainer  
14 that led to the creation of your affidavits, you were  
15 not asked to examine the image of Mr. Moyse's personal  
16 computer to attempt to detect a discernible random  
17 pattern of the data?

18           A.     No -- hmm, no.  That -- more  
19 specifically, we were asked -- as outlined in this  
20 affidavit, we were asked to determine whether or not  
21 the Secure Delete software was utilized.  That's one of  
22 the things.

23           142           Q.     Right.  And I understand that.  But  
24 I guess in the course of that retainer, what you did  
25 not do is analyze the data on the hard drive to look

1 for telltale random sequences of data?

2 A. No, that's -- no. As part of the  
3 task to determine if Secure Delete was utilized, we  
4 looked for red flags. So such as the -- one of them  
5 would be the patterns that you just mentioned --

6 143 Q. Yes.

7 A. -- to see if there's any evidence  
8 to show that a scrubber, like, the term that we agreed  
9 to establish, was utilized.

10 144 Q. Where is that stated in your  
11 affidavit?

12 A. Well, the -- let me see. Let's go  
13 back to my affidavit.

14 145 Q. Yes. Sure.

15 A. It would be paragraph 11.  
16 Actually, in the general section of -- that is -- would  
17 be the indicator is saying that that was all that was  
18 asked of me to do.

19 146 Q. And I want to distinguish, sir,  
20 between what was asked of you and what you did. So I  
21 understand you were asked to provide your own analysis  
22 and to provide an opinion on the conclusions of  
23 Mr. Musters' affidavit.

24 A. That's correct.

25 147 Q. And you were asked to provide an

1 opinion on the evidence from the ISS report in relation  
2 to the Secure Delete folder; that's correct?

3 A. That is correct, yes.

4 148 Q. But what your affidavit does not  
5 state is that you reviewed the hard drive and looked  
6 for telltale signs of random sequences of data?

7 A. No. The Court -- as I stated  
8 earlier, one of my tasks was to determine if the Secure  
9 Delete application was utilized, and part of that  
10 exercise to determine if the program was utilized is  
11 also to look for telltale signs, red flag, that -- that  
12 a -- that the software was utilized, and then that  
13 would be random sequence or certain patterns of  
14 overwriting occurred.

15 149 Q. Sir, my question to you is that  
16 information is not put forth in your affidavit?

17 A. Yes, that's correct, yes.

18 150 Q. Right. Your affidavit makes no  
19 reference to telltale signs of random sequences of  
20 data?

21 A. That's because there's nothing to  
22 report. So it doesn't mean that we didn't look at it.

23 151 Q. Your affidavit does indicate that  
24 you looked at the Secure Delete log on Mr. Moyse's  
25 computer?

1                   A.     That's one of the thing that we  
2     have done, yes.

3     152            Q.     Right.  And there is nothing to  
4     report; there is no findings from the Secure Delete log  
5     that led you to believe he had run the Secure Delete  
6     program, correct?

7                   A.     That's one of -- yes.

8     153            Q.     Right.  There is no mention in your  
9     affidavit that you looked for random sequences of data?

10                  A.     That's correct.

11     154            Q.     And in any event, you'll agree with  
12     me that if the Secure Delete program does not leave  
13     telltale random sequences of data, then the fact that  
14     you didn't see any is not indicative of the fact that  
15     it was or was not run?

16                  A.     Can you repeat that, please.

17     155            Q.     Sure.  You'll agree with me that  
18     the fact that you did not find any of these telltale  
19     random sequences of data may not be indicative of  
20     whether or not the program was run?

21                  A.     That on its own, yes.

22     156            Q.     Because you don't know whether  
23     Secure Delete leaves a telltale sign --

24                  A.     That's correct.

25     157            Q.     -- or whether it leaves a truly

1 random sequence?

2 A. That's correct.

3 158 Q. Now, Mr. Lo, if the purpose of your  
4 retainer was to conduct this independent analysis of  
5 the conclusions of Mr. Musters and the ISS expert, and  
6 you were swearing an affidavit that set out all the  
7 evidence you relied upon to support your opinion that  
8 you believe Mr. Musters -- Mr. Moyse had not run the  
9 Secure Delete program to delete files, why did you  
10 leave out the mention of the fact that you looked for  
11 telltale random sequences of data?

12 A. As I said before, forensic analysis  
13 is an exercise where we would look for a number of  
14 things. So at this -- in this particular case, we did  
15 not see any telltale sign that would raise my alarm  
16 that I should look deeper into it. So it was a -- it  
17 wasn't -- we just don't think it's needed to be  
18 reported.

19 159 Q. Okay. How many hours were spent  
20 reviewing the hard drive looking for telltale random  
21 sequences of data?

22 A. Once again, it's not a specific  
23 task where we would be doing it. Whenever we do a  
24 forensic analysis on a computer hard drive image, we  
25 would be doing many things. We could be doing many

1 different things at once. So if you ask me to tell you  
2 exactly how many minutes I spent just looking for  
3 random patterns, I cannot tell you. Because from our  
4 experience, we could tell -- we could see things that  
5 it may be out of line, out of -- out of norm, and those  
6 would be red flags, and I can't tell you how many  
7 minutes I spent to look for those.

8 160 Q. Well --

9 A. We -- based on our experience.

10 161 Q. Okay. What's the capacity of the  
11 hard drive you analyzed?

12 A. I do not have that report right now  
13 on me.

14 162 Q. Okay.

15 A. But I can get that for you in -- if  
16 I'm given a chance to.

17 MR. WINTON: Let's go off the record for  
18 a second.

19 -- OFF THE RECORD --

20 BY MR. WINTON:

21 163 Q. So just while we were off the  
22 record, we determined that, for the purposes of my  
23 question -- the question I'm interested in, Mr. Lo, is  
24 how much data was written onto the hard drive that was  
25 being analyzed? I understand that what we are going to

1 do is, while I'm continuing with your examination,  
2 someone will call your office and try to get that  
3 information to me --

4 A. Yes.

5 164 Q. -- and I will have some questions  
6 to follow up on once we get that information, okay?

7 A. Okay.

8 165 Q. So let's just park that issue.

9 A. Okay.

10 166 Q. Pending that answer. Thank you.

11 Now, turning to paragraph 13 of your  
12 affidavit, you state that you ran Secure Delete on a  
13 test computer, and that's a defined term. That just  
14 refers to a Microsoft Windows computer. Do you see  
15 that?

16 A. Yes, I do.

17 167 Q. And is that a computer that's owned  
18 and controlled by your firm?

19 A. It is.

20 168 Q. It's not a computer that had loaded  
21 up Mr. Moyse's --

22 A. No, not in this case.

23 169 Q. -- hard drive? And in  
24 paragraph 13, you state that, when you launched Secure  
25 Delete, a folder named "Secure Delete" was created and

1 you gave a file path. The file path includes a  
2 backslash, users, backslash, Brandon Moyse, backslash,  
3 appdata, and then we will just -- and continues from  
4 there, and ends with a backslash, Secure Delete.  
5 Right?

6 A. That's correct, yes.

7 170 Q. So how does Brandon Moyse become  
8 part of the file path on a computer that's owned and  
9 operated by your firm?

10 A. So allow me to clarify that  
11 paragraph.

12 171 Q. Sure.

13 A. So the task we have performed is  
14 twofold. So, one, we would -- from a forensic image,  
15 we make a copy of a forensic image so it is an exact  
16 copy of the forensic image. With that image, we can --  
17 we have the ability to launch it in -- as a -- what we  
18 call a virtual environment. So -- and under this  
19 virtual environment, we can run tests as if we are  
20 running on Moyse's computer; however, we do not make  
21 any changes to the forensic evidence. That's  
22 assimilation.

23 The second part of it is we also conduct  
24 this test on a clean, freshly installed Microsoft  
25 Office environment.

1                   So that's why this -- I apologize, this  
2 paragraph seems a little bit confusing, but I want to  
3 clarify on the record that's what we did. That's the  
4 step we took.

5           172           Q.    Okay. But my understanding would  
6 be that, in a clean Microsoft environment that has  
7 nothing to do with Mr. Moyse's forensic image --

8                   A.    Yes.

9           173           Q.    -- the file path shouldn't have  
10 Mr. Moyse's name at user, correct?

11                   A.    That is correct.

12           174           Q.    So is there --

13                   A.    But, once again -- once again, that  
14 is the result of us mounting -- it's a forensically  
15 sound method of mounting a copy of the Moyse's forensic  
16 image. From that image, we mount it as a virtual -- a  
17 virtual machine environment, which we can simulate  
18 actions as if we were right in front of the actual  
19 computer of Mr. Moyse.

20           175           Q.    I understand that. But I'm -- what  
21 I took from paragraphs 12 and 13 was that, separate and  
22 apart from any mounting of Mr. Moyse's image, you had  
23 installed Secure Delete on a completely unrelated  
24 computer?

25                   A.    That's right. It's two different

1 things, yes.

2 176 Q. Right. And on that other unrelated  
3 computer, a folder was created, correct?

4 A. Can you repeat that question.

5 177 Q. On that other computer.

6 A. "Other", meaning the one with the  
7 freshly clean -- yes.

8 178 Q. The fresh computer.

9 A. Yes, yes.

10 179 Q. Let's call it the fresh computer.

11 A. Yes. Okay.

12 180 Q. Okay. On the fresh computer on  
13 which Secure Delete was installed, you launched the  
14 Secure Delete program?

15 A. Uhm-hmm.

16 181 Q. Can you say "yes" for the record.

17 A. Yes.

18 182 Q. And you're telling me that the file  
19 path on the fresh computer included Brandon Moyse as a  
20 user?

21 A. It would not, it would not.

22 183 Q. Right. So the file path reproduced  
23 in paragraph 13 is not the file path that was created  
24 by the test computer, correct?

25 A. That is correct, yes.

1           184           Q.    Okay.  And in paragraph 14, you  
2   state that you attempted to determine whether you could  
3   reach any conclusion as to whether or not Mr. Moyse had  
4   used Secure Delete to delete files from his computer.  
5   That was your task, correct?  Paragraph 14?

6                    A.    Yes.  I'm looking at it right now.

7           185           Q.    Yes.

8                    A.    Yes.

9           186           Q.    And, in essence, that is what the  
10  purpose of your retainer was was to make this  
11  determination as to whether you could reach any  
12  conclusions as to whether or not Mr. Moyse had used  
13  Secure Delete to delete files from his computer?

14                   A.    That's correct.

15           187           Q.    And let's jump forward to  
16  paragraph 20.  After conducting the analyses that are  
17  described between paragraphs 14 and 19, you reached a  
18  conclusion at paragraph 20(b) that the Secure Delete  
19  program on Mr. Moyse's computer was not used to delete  
20  files or folders from that computer, correct?

21                   A.    That is correct, yes.

22           188           Q.    That is your conclusion at the time  
23  you swore the affidavit?

24                   A.    That is correct, yeah.

25           189           Q.    Does that remain your conclusion

1 today?

2 A. Yes, it does.

3 190 Q. In your affidavit, the conclusion  
4 is based on the fact that the Secure Delete log on  
5 Mr. Moyse's computer did not summarize any deletion  
6 activity, correct?

7 A. Actually, we cannot locate a log  
8 that would indicate any deletion.

9 191 Q. Well, you attached a Secure Delete  
10 log as Exhibit D to your affidavit, so why don't we  
11 turn to that. You might want to put a finger at  
12 Exhibit D to your affidavit, and then -- okay. And  
13 then also look at paragraph 18.

14 A. 18, yes.

15 192 Q. Right. And so I guess you are  
16 right. You refer to the Secure Delete log. That's the  
17 information that would exist in the registry on his  
18 computer if there had been --

19 A. Deletion.

20 193 Q. -- deletion?

21 A. Yes.

22 194 Q. And what you rely on, I guess, is  
23 the fact that there is nothing in the log, right? That  
24 was one fact you relied on?

25 A. There's no log.

1 195 Q. There was no log?

2 A. No log, yes.

3 196 Q. Right. And you reproduce here the  
4 screen shot at -- here, at Exhibit D to your affidavit,  
5 it's the screen shot of the system summary for Secure  
6 Delete that was on Mr. Moyse's computer, correct?

7 A. That's correct, yes.

8 197 Q. Which shows that no wiping had been  
9 performed?

10 A. That's correct.

11 198 Q. And it was based on the absence of  
12 a Secure Delete log and the information in the system  
13 summary that led you to reach the conclusion set out in  
14 paragraph 20(b) of your affidavit?

15 A. That's correct.

16 199 Q. And in your affidavit, those are  
17 the only facts that you rely upon to support that  
18 conclusion?

19 MR. BORG-OLIVIER: There's the balance  
20 of the affidavit.

21 BY MR. WINTON:

22 200 Q. Right. But I -- the balance of the  
23 affidavit sets out what he did, but I just want to make  
24 sure I understand the basis --

25 A. Can you repeat that statement,

1 then.

2 201 Q. -- the basis for your conclusion,  
3 the only basis for the conclusion, was the absence of  
4 the Secure Delete log and the information in the system  
5 summary?

6 A. Yes.

7 202 Q. Now, you recently reviewed  
8 Mr. Musters' April 30th, 2015, affidavit?

9 A. April 13th.

10 203 Q. That's the one from the  
11 supplementary record there, and that's at tab 2,  
12 towards the very back of the supplementary record.

13 A. Thank you. Yes.

14 204 Q. You recall reviewing this affidavit  
15 prior to swearing your second affidavit, correct?

16 A. Yes.

17 205 Q. And starting at paragraph 8 of  
18 Mr. Musters' April 30th affidavit, continuing to  
19 paragraph 19, Mr. Musters sets out a sequence of steps  
20 that a user can take to delete the Secure Delete log  
21 from one's registry, right?

22 A. That's -- yes.

23 206 Q. And in doing so, essentially reset  
24 the system summary for Secure Delete, correct?

25 A. Yes.

1           207           Q.     And you agree with me that a user  
2     who takes those steps -- you don't disagree with the  
3     steps that Mr. Musters says he took and the data -- it  
4     had that cause and effect on the Secure Delete?

5           A.     I believe so. I did not replicate  
6     his exercise, but I believe -- I have no -- yeah, I  
7     have no reason to doubt what he said.

8           208           Q.     Okay. Let me just -- so you didn't  
9     attempt to replicate what Mr. Musters did? You did not  
10    attempt to do that?

11          A.     No.

12          209           Q.     But you have no reason to doubt the  
13    accuracy of what he says he did?

14          A.     If for -- yes.

15          MR. WINTON: Let's go off the record for  
16    one second.

17                   -- OFF THE RECORD --

18          BY MR. WINTON:

19          210           Q.     Now, let's talk about the registry  
20    for a second, because, as I understand the evidence  
21    from your second affidavit, you were suggesting in this  
22    second affidavit sworn May 12th, 2015, that you  
23    concluded Mr. Moyse had not used the Registry Editor to  
24    delete data from the registry on his computer, correct?  
25    That's what you concluded here?

1 A. We found no evidence, yes.

2 211 Q. That's right. So you found no  
3 evidence that he had used the Registry Editor?

4 A. That's right.

5 212 Q. And to support this conclusion that  
6 there was no evidence, you refer to the fact that the  
7 metadata for the Registry Editor showed the system  
8 default dates, correct?

9 A. Yes.

10 213 Q. And after swearing this affidavit,  
11 you had an opportunity to review the third affidavit  
12 from Mr. Musters?

13 A. That's correct, yes.

14 214 Q. The affidavit of Mr. Musters sworn  
15 yesterday, May 13th, explains how the metadata for the  
16 Registry Editor, by default, is not updated in Windows  
17 operating systems, correct?

18 A. That's correct, yes.

19 215 Q. You know that to be the case  
20 yourself?

21 A. Now I do.

22 216 Q. You didn't know that before you  
23 swore your affidavit?

24 A. It did not occur to me at that  
25 time.

1           217           Q.    It did not occur to you at the  
2    time?

3                    A.    That's correct.

4           218           Q.    Was it a fact -- now that it's been  
5    brought to your attention, is that a fact that you may  
6    have known prior to swearing your affidavit and may  
7    have just forgotten?

8                    A.    Exactly. I may have known and it's  
9    just at that particular point in time it didn't occur  
10   to me.

11          219           Q.    Okay.

12                   A.    Yes. We failed to run a  
13   comparative analysis, which we -- if we were have given  
14   the time to run a -- conduct a comparative analysis, we  
15   would have used a better example of why we believe  
16   Mr. Moyse did not use the Registry Editor program.

17          220           Q.    Okay. In your affidavit, you rely  
18   on the metadata and the absence of change in the  
19   metadata, correct?

20                   A.    Can you repeat that.

21          221           Q.    In your affidavit, this second  
22   affidavit of yours --

23                   A.    Yes.

24          222           Q.    -- you are referring to the absence  
25   of the metadata? The lack of change to the metadata?

1 A. That's correct.

2 223 Q. But do you agree with the  
3 information in Mr. Musters' affidavit that that  
4 information is not probative, positive or negative, as  
5 to whether the Registry Editor was, in fact, used?

6 A. I agree.

7 224 Q. So now if we go back to your first  
8 affidavit.

9 A. Yes.

10 225 Q. Do you agree with me that the  
11 absence of a Secure Delete log and the absence of any  
12 record of activity in the system summary is not  
13 conclusive as to whether or not a user ran Secure  
14 Delete on Mr. Moyse's computer to delete files or  
15 folders?

16 A. It's not conclusive to show -- can  
17 you repeat that statement, please.

18 226 Q. Sure. It's a bit of a double  
19 negative --

20 A. Yes.

21 227 Q. -- but the point is it's not  
22 conclusive to support the conclusion you reach at  
23 20(b), which is that the computer was not used to  
24 delete files or folders.

25 A. No. I still stand by 20(b). I

1 still stand by that.

2 228 Q. Okay. Well, Mr. Lo, it's possible  
3 that the Secure Delete log had been deleted?

4 A. But we have no evidence to show  
5 that.

6 229 Q. And the reason we have no evidence  
7 is because the registry doesn't record evidence of  
8 deletions, manual deletions, from the registry,  
9 correct?

10 A. But that yet we did not find any  
11 evidence that Registry Editor was run.

12 230 Q. Right. Because Registry Editor  
13 doesn't record evidence that it was run, correct?

14 A. No. There are other records on the  
15 computer which would indicate Registry Editor was run.

16 231 Q. None of those are in the record  
17 before us, are they?

18 A. Not on -- not recorded in  
19 affidavit, but after Mr. Musters' last affidavit, we  
20 took -- we took another look. We look at other  
21 forensic evidence on the computer that would indicate  
22 operation of the Registry Editor, and we found none.

23 232 Q. Okay. Well, we don't have the  
24 benefit of any evidence of those, and we have no way to  
25 test that. So you are telling me that sometime in the

1 past 24 hours you ran additional tests on Mr. Moyse's  
2 image?

3 A. That is true, yes, yes.

4 233 Q. All right. And, again, this is an  
5 image that Mr. Musters does not have access to?

6 A. I don't know what Mr. Musters have  
7 and have not, but I --

8 MR. WINTON: Okay. Counsel, do we agree  
9 Mr. Musters doesn't have access to it?

10 MR. BORG-OLIVIER: We do agree with  
11 that.

12 BY MR. WINTON:

13 234 Q. Okay. So you accept that now?

14 A. Okay. I accept that now, yes.

15 235 Q. Right. Okay. And so based on  
16 these other tests that aren't described in your  
17 affidavit that you ran, you are now saying again that  
18 the Registry Editor wasn't used?

19 A. We still found no evidence that the  
20 Registry Editor was run.

21 236 Q. Okay. You found no evidence that  
22 the Registry Editor was used?

23 A. Yes.

24 237 Q. And that's the highest that you can  
25 put it at: That you have no evidence that the Registry

1 Editor was used?

2 A. That's correct.

3 238 Q. Okay. You can't state here today  
4 conclusively the Registry Editor was not used?

5 A. I have found no evidence that the  
6 Registry Editor was --

7 239 Q. Right. And so that's why I'm  
8 putting it a different way. You cannot state today  
9 conclusively that it was not used?

10 A. I prefer the statement that I found  
11 no evidence that it was run.

12 MR. WINTON: That's fine. Let's go off  
13 the record.

14 -- OFF THE RECORD --

15 MR. WINTON: So just to clean up a  
16 question from earlier on in the cross-examination,  
17 Counsel, I understand from what you told me while we  
18 were off the record that your firm retained Mr. Lo's  
19 firm on or about February 20th, 2015, correct?

20 MR. BORG-OLIVIER: That's correct. And  
21 that's the best we can figure out while sitting here at  
22 this point. If I find anything that turns out that's  
23 incorrect or if I can further refine that, I will let  
24 you know, of course.

25 MR. WINTON: That's fine. The on or

1 about February 20th is fine for my means. Thank you.

2 So if we can go back off.

3 -- RECESS AT 11:28 --

4 -- RESUMING AT 11:41 --

5 BY MR. WINTON:

6 240 Q. So while we were off, we got a  
7 response to the question I had asked earlier regarding  
8 the capacity of the hard drive and how much data was  
9 using up that capacity, and just to clarify, I  
10 understand, Mr. Lo, that the hard drive itself has a  
11 capacity of approximately 750 gigabytes?

12 A. Uhm-hmm.

13 241 Q. Yes?

14 A. Yes.

15 242 Q. And I understand that, from the  
16 analysis conducted by your firm, you determined that  
17 approximately 150 gigabytes of that capacity was used  
18 up with or taken up with data on the hard drive?

19 A. That's correct, uhm-hmm, yes.

20 243 Q. And so in reviewing 150 gigabytes  
21 of data to look for random sequences of data writing,  
22 you would agree with me that would take a considerable  
23 amount of time?

24 A. Yes and no. The reason why I say  
25 yes and no is if you were to look at every single byte

1 for randomness, yes, that would take a long, long time;  
2 however, we are, at this point, once again, going back  
3 to the point that we look for generically known as red  
4 flag, if -- because out of that, we could -- through  
5 our forensic software, we could quickly scan through  
6 the bits and bytes and determine if we see certain  
7 random patterns or just patterns that would be -- that  
8 would call for our attention, and we did not see any.

9 244 Q. Okay. But you don't recall exactly  
10 how much time was spent doing that analysis?

11 A. No, I do not.

12 MR. WINTON: Okay. Well, I don't think  
13 there are any undertakings outstanding.

14 MR. BORG-OLIVIER: I think there are.

15 MR. WINTON: Are there?

16 MR. BORG-OLIVIER: Yes. We have  
17 undertaken I think to produce the chain of evidence.

18 MR. WINTON: Right.

19 MR. BORG-OLIVIER: And to advise on how  
20 we ended up with a separate image of the hard drive.

21 MR. WINTON: Right.

22 MR. BORG-OLIVIER: And we've taken under  
23 advisement the question of whether we would provide a  
24 copy of the image to Mr. Musters for analysis.

25 MR. WINTON: Okay. Subject to the

1 answers to those questions, this cross-examination is  
2 concluded.

3 MR. BORG-OLIVIER: I've just got a few  
4 in re-exam.

5 MR. WINTON: I just want to make it  
6 clear, before you -- I want to have a chance to  
7 possibly object, given the prolonged absence during the  
8 break.

9 MR. BORG-OLIVIER: That's fine. Yes.

10 MR. WINTON: I understand he's going to  
11 answer anyways, but let me at least see if I register  
12 an objection.

13 MR. BORG-OLIVIER: Yes. Let's go off  
14 the record for a second.

15 -- OFF THE RECORD --

16 RE-EXAMINATION BY MR. BORG-OLIVIER:

17 245 Q. Mr. Lo, you recall Mr. Winton was  
18 asking you questions about your most recent affidavit  
19 and the one from Mr. Musters that came in yesterday?

20 A. That's correct.

21 246 Q. And Mr. Winton asked you certain  
22 questions pertaining to the metadata, which may or may  
23 not show use of the Registry Editor program?

24 A. That's right.

25 247 Q. And you agreed with Mr. Winton that

1 Mr. Musters was correct in noting that the metadata in  
2 the Windows environment wouldn't reflect the use of the  
3 Registry Editor?

4 A. Yes.

5 248 Q. And you recall that you told  
6 Mr. Lo (sic) that there was -- that there were other  
7 steps that could be taken to determine whether the  
8 Registry Editor program had been run?

9 A. That's correct.

10 249 Q. Okay. And I don't believe  
11 Mr. Winton asked you, so I would like to ask you what  
12 sort of other steps were you referring to there.

13 MR. WINTON: That's okay.

14 THE WITNESS: Okay. So, once again, on  
15 a Windows computer, "Windows computer" meaning a  
16 computer that runs a Windows operating system, there  
17 are many evidence or references that would point to the  
18 launch or use of any applications or access to certain  
19 files, and one of those would be called link files.  
20 Link files are basically like shortcut files that  
21 would -- it's kind of like a recording that points to  
22 applications that were used or documents that were  
23 accessed, that type of things.

24 So in this particular case, we took a  
25 second look in response to Mr. Musters' latest

1 affidavit and to see if we could identify any evidence  
2 showing the usage of Registry Editor on the link files  
3 record, and we did not find any.

4 BY MR. BORG-OLIVIER:

5 250 Q. And what would you expect to see if  
6 the Registry Editor had been run in the link files? Is  
7 it a link files program? How do we refer to it?

8 A. No. Link files is a feature of the  
9 operating system. All it is is provide kind of like  
10 efficient shortcuts for user to know some of the paths,  
11 documents, that have been accessed, as I said before,  
12 or application that was used.

13 251 Q. And what would you expect to see  
14 there if the Registry Editor program had been run?

15 A. I would -- I would -- I would  
16 expect some references to the launch of the Registry  
17 Editor executable recorded in the link files.

18 252 Q. And how far back in time would  
19 those link files be recorded?

20 A. From my memory, we believe we have  
21 seen applications as far back as 2012 that was recorded  
22 in the link file analysis -- in the link files records.

23 253 Q. So what conclusions, if any, do you  
24 draw from that?

25 A. Based on our analysis of the link

1 file records, we do not see any evidence that the  
2 Registry Editor was used.

3 254 Q. Okay. And you'll recall that the  
4 software suite that was referred to that includes,  
5 among other things, the Secure Delete program was known  
6 as the Advanced System Optimizer. Do you recall that?

7 A. Yes, I do. In fact, I think I  
8 recorded that on my first affidavit, yes.

9 255 Q. Okay. And do you see any evidence  
10 among the link files that that program was used?

11 A. Yes, I do.

12 MR. BORG-OLIVIER: Those are my  
13 questions in re-exam, Mr. Winton.

14 MR. WINTON: Okay. I do have some  
15 questions arising out of that.

16 CROSS-EXAMINATION BY MR. WINTON: (Cont'd)

17 256 Q. You conducted your second look  
18 yesterday?

19 A. After we received Ms. -- yes, so  
20 that would be yesterday, I believe, yes. Yes, that's  
21 correct.

22 257 Q. You didn't conduct this analysis,  
23 you say, regarding the link files prior to swearing  
24 your May 12th affidavit, correct?

25 A. No.

1           258                   Q.    Okay.  You understood at the time  
2   you were swearing an affidavit in response to  
3   Mr. Musters' affidavit that you were providing evidence  
4   as to whether or not the information in Mr. Musters'  
5   affidavit was accurate, correct?

6                           A.    Which --

7           259                   Q.    The second one.

8                           A.    The second one.  Yes, yes, that's  
9   right, yes.

10                           MR. WINTON:  No further questions.

11   --- Whereupon the cross-examination concluded at 11:49  
12   a.m.

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REPORTER'S CERTIFICATE

I, TERRY WOOD, RPR, CSR, Certified  
Shorthand Reporter, certify;

That the foregoing proceedings were  
taken before me at the time and place therein set  
forth, at which time the witness was put under oath by  
me;

That the testimony of the witness and  
all objections made at the time of the examination were  
recorded stenographically by me and were thereafter  
transcribed;

That the foregoing is a true and correct  
transcript of my shorthand notes so taken.

Dated this 21st day of May, 2015.

*Terry Wood*

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NEESONS

PER: TERRY WOOD, RPR, CSR

CERTIFIED COURT REPORTER

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