

Subject: Re: Price Quote  
From: DrM <notable@mindspring.com>  
Date: Wed, 22 Oct 2014 12:54:53 -0400  
To: Kirk Cottom <kcot@lle.rochester.edu>  
CC: Rebecca Mercuri <notable@notablessoftware.com>

Dear Mr. Cottom --

Attorney Gross called me this morning and we conversed for about 20 minutes. He started out very angrily, saying that this was not going to be a good conversation since I had badmouthed him to his client (you), and that he was only calling me because you had requested that he do so. I informed him that I had not badmouthed him, though I did advise him that I had made you aware of the fact that you could obtain a forensic expert under CJA and had suggested to you that if your attorney was not willing to request that the court approve funding for one, that you should seek another attorney. This seemed to be what he was angry about.

Attorney Gross seemed very skeptical of my credentials, of which he seemed wholly unaware, and tried to insist that I could not possibly have the ability to review and analyze source code. Had he allowed me to answer questions about my background instead of just listening to him speak (he insisted that I was interrupting him, whenever I tried to respond to issues he raised), he would have learned that I had worked as a programmer for numerous Fortune 100 companies, including RCA, Intel, and AT&T Bell Labs. I did manage to interject that I had also taught programming as a college professor and informed him that I had a Ph.D. in Computer and Information Systems from the University of Pennsylvania's School of Engineering. I also made him aware of the fact that I have worked on numerous Criminal Defense matters since 1998 and have been qualified as a computer forensics expert on State and Federal cases.

Since his tactic of attempting to demean my qualifications did not succeed, he then wanted to describe some aspects of the case. He was particularly concerned that I would need to be able to read source code in order to analyze the operations of the NIT that appear central to this matter involving what he claimed to be a child pornography website run by the Government (which I believe is probably not the case, but we can discuss this later), and I assured him that I could read and analyze code. Attorney Gross then went into a lengthy discourse about how he believed the NIT worked, ultimately trying to claim that it had a one-way connection with the "computer" that had initiated the contact with the website that contained the NIT. That was where I stopped him, explaining that the NIT was not accessing the computer, rather it was ... and he interrupted me, saying "the modem." Since he insisted on using the incorrect term, I explained that I had very little time to speak with him and was not going to tolerate listening to statements that I knew to be false. He also asked if I had experience with Tor, which I assured him I did and had used it myself in numerous case investigations.

I then explained that a high percentage of our casework involved CP matters, and from this I know that the NIT could have collected your IP address if it had been used by someone else, other than you, and that it is also necessary to demonstrate knowledge and intent to possess CP in order to convict under the Federal Statute. I indicated that some percentage of my work on your case would involve seeking exculpatory evidence that could help with your Defense, to which he replied that I should not be telling him how to try his case and that it would be up to the Jury to decide. I replied that the Jury could not make a proper decision if they were not presented with all of the exculpatory evidence, to which he then started to rattle off his own credentials, including the fact that he had hired many experts over the time he served as a Prosecutor. (If you do request another attorney, you should insist that one be appointed who has never worked as a Prosecutor.) It is not unusual that someone with a Prosecutorial background would want to dismiss the possibility of investigating exculpatory evidence or limit the scope of the forensic work even if this may be disadvantageous to the Defendant, as Attorney Gross appears to be doing.

I then explained that the way I work in such cases is to request an initial approval for only \$2,400.00, which typically is enough time to collect the materials needed for the review and to assess how long the review would take. This initial work would enable me to then estimate the actual amount of time needed for the review, which would be proposed in phases for subsequent approvals. Attorney Gross tried to claim that there is not months of time for the review, indicating that the last 9 months had been spent attempting to have evidence suppressed, which did not succeed, and indicating that he had a status hearing with the Judge scheduled for October 30. I suggested that would be the time for him to request approval of the forensic expert and noted (over his objections) that when Attorneys have delayed the forensic work, they are typically able to get an expert appointed and also obtain continuances to allow the work to proceed to the point of their being able to issue a forensic report.

His final objection was that the Court would likely want to have a local expert appointed, to which I explained that typically most of my work can be performed at our NJ office or at an FBI Regional Computer Forensic Laboratory.

The conversation concluded with Attorney Gross indicating that he would send me an email requesting additional information from me, so that he can seek court approval for my appointment. At the end, Attorney Gross said that he did not feel that the conversation went well, to which I disagreed, saying that I thought it had gone very well. Subsequently,

he did send email requesting copies of my CV and rate sheet.

My suggestion is that you NOT forward this message to Attorney Gross, since you may want to present this to the Judge, if you are seeking another lawyer. They do need reasons to change the legal representation, and this narrative could help.

Look for some further messages from me shortly,  
Rebecca Mercuri.