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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA PLAINTIFF
v. CASE NO. 5:21-CR-50014
JOSHUA JAMES DUGGAR DEFENDANT

JURY TRIAL
VOLUME 4 OF 8
BEFORE THE HONORABLE TIMOTHY L. BROOKS
DECEMBER 3, 2021
FAYETTEVILLE, ARKANSAS

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I N D E X

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18
19
20
21
22
23
24
25

	Page
In-Chambers Hearing with Juror Number 18	566
JAMES FOTTRELL (Cont'd)	
Direct Examination by Mr. Clayman	584
Cross Examination by Mr. Gelfand	673
Redirect Examination by Mr. Clayman	822
Recross Examination by Mr. Gelfand	862
Redirect Examination by Mr. Clayman	880
Reporter's Certificate	893

E X H I B I T S

Received

1			
2			Received
3	Court's Exhibit 3	Victim Identification Key	570
4	Government's Exhibit 61	Print Screens from MacBook Examination	591
5	Government's Exhibit 63	Apple Notes Information	606
6	Government's Exhibit 64	E-mails from MacBook	608
7	Government's Exhibit 66	Torrent files from MacBook	610
8	Government's Exhibit 69	Covenant Eyes e-mail	612
9	Government's Exhibit 70	Covenant Eyes e-mail	612
10	Government's Exhibit 71	Photos and EXIF Data from iPhone 8	622
11	Government's Exhibit 72	Text Messages from iPhone 8	625
12	Government's Exhibits 73-81	Photos & Messages from iPhone 8	635
13	Government's Exhibit 83	TORsec Media History	665
14	Government's Exhibit 85	Fottrell Summary Exhibit	668
15	Defendant's Exhibit 48	Caleb Williams e-mails	728
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

8:21AM 1 (In-Chambers Hearing)

2 THE COURT: So Sheri got word that one of the
3 jurors wanted to pass along some information to me. She
4 went down. It was Mr. Juror Number 18. Mr. Juror
8:21AM 5 number 18 said that he's been thinking about -- this is
6 third hand by this point -- thinking about social media
7 contacts and he wasn't sure, and somehow he's figured out
8 that when he first started watching the show or something
9 like that, he did something to become Facebook friends
8:21AM10 with -- I don't know how this works -- either the show or
11 Josh, not sure which. He said it's just in his friends.
12 He said he didn't have any communication, didn't ever use
13 it, it's been a long time ago, blah, blah, blah. That's
14 all I know.

8:21AM15 Juror Number 18 is front, center, Brandon Wayne
16 Davis. Brandon Wayne Davis on the venire list. Lists job
17 as "communications." He's 38 years old. I did a rough
18 search of the real-time transcript. The only responsive
19 question that I could find -- well, there are a couple of
8:21AM20 responsive during voir dire on the questions about, of
21 those that had watched reality programming, he
22 characterized his viewing as "occasionally." I don't show
23 that he responded to any other particular question that I
24 had, but he was the person that Ms. Marshall chose to pick
8:21AM25 on about what they had for breakfast. And protein shake.

8:21AM 1 Then you came back to him and asked to pick on him again
2 and you asked what he did for a living. I'm in telephone
3 communications. I work for -- and this is rough --
4 Cricket, sales executive, over all of the retail locations
8:21AM 5 in northwest Arkansas and River Valley. So managing or
6 working on phones is what your job is? More in the
7 management role. I travel around, visit all the
8 locations, make sure they are complying with all the
9 trainings, make sure they are treating our customers
8:21AM 10 right, make sure the stores look good and that type of
11 thing.

12 What's the favorite part of your job?
13 Relationships. Something, something, get to know
14 different people, getting out and about in the stores
8:21AM 15 daily and getting to build relationships with everyone.
16 Something was -- I can't really read Ms. Marshall's
17 question, but his response was -- maybe what you don't
18 like about the job. Having to tell people when they are
19 not doing the right thing and then having to correct them
8:22AM 20 and guide them in that direction. And that's all the
21 references that I could find in a quick word search.

22 What would you all like to do? I'm happy to
23 bring him up here so that we can further voir dire him
24 about Facebook postings.

8:22AM 25 MR. GELFAND: Clarify one thing, Your Honor. Did

8:22AM 1 he self-report this?

2 THE COURT: Yes.

3 MR. ROBERTS: That was weighing on me also. I
4 like the fact that he self-reported it. Can we confer?

8:22AM 5 THE COURT: Yes.

6 (off-the-record discussion)

7 MR. ROBERTS: Judge, you are not going to believe
8 it. We're in agreement.

9 THE COURT: Halleluiah, praise the Lord. What do
8:24AM10 you want to do?

11 MR. GELFAND: What we would like to jointly
12 propose is that the Court bring this juror up for a very
13 limited, just kind of follow-up voir dire on this one
14 issue with the Court -- just to add one thing -- with the
8:24AM15 Court doing all of the questioning so there's no
16 questioning by counsel. And then based on those answers,
17 I think we can easily both give our opinion.

18 THE COURT: Okay.

19 MS. MARSHALL: Just for Facebook knowledge
8:25AM20 background, do you want me to explain to you maybe --

21 THE COURT: Yeah.

22 MS. MARSHALL: It could be that he "liked" the
23 page --

24 THE COURT: That's what I don't understand.

8:25AM25 MS. MARSHALL: -- 19 Kids and Counting 10 years

8:25AM 1 ago or something like that.

2 MR. GELFAND: My question would be perhaps on
3 Facebook -- and feel free to chime in -- as a user, if I'm
4 on Facebook, I can interact with content, so I can click
8:25AM 5 "like" or "share" or things like that. So I think -- and
6 he may not know the answer to this off the top of his
7 head. But is it just that you happened to have become
8 Facebook friends, so to speak, 10 years ago?

9 MR. STORY: If he just "liked" the page, that's a
8:26AM 10 common thing to do with those. When you have -- "liking"
11 the Duggar page is different than befriending the page.
12 You're just "liking" the page. And then, you know, that
13 would -- there's millions of people who have done that.
14 That's different than me saying, like, "Judge Brooks,
8:26AM 15 would you be my friend?"

16 MR. ROBERTS: I would like that brought out if
17 he's friends with Josh Duggar or --

18 THE COURT: I'm going to let him say everything
19 that he wanted to let us know about, and then I'll ask
8:26AM 20 some follow-up questions as appropriate.

21 While we're waiting on him to come up, can we
22 agree on the same naming convention for the victims?

23 MS. MARSHALL: Yes, Judge. I just printed more
24 copies this morning in the event that that's what we
8:26AM 25 decided to do.

8:27AM 1 MR. GELFAND: Yes, I think we can, assuming that
2 the testimony is similar. Obviously, she'll say what she
3 says on the stand, but assuming that it doesn't create any
4 issues, at which point, we can address them.

8:27AM 5 THE COURT: I'm going to mark that victim
6 identification key, the same one, as Court's exhibit next
7 in order, which I think is 3.

8 (Court's Exhibit 3 Received)

9 MS. MARSHALL: She will be later today in
8:27AM10 testimony.

11 MR. ROBERTS: Your Honor, I also provided this
12 morning one additional exhibit the government intends to
13 introduce as the very last exhibit. It's familiar, but
14 Mr. Fottrell took that and made it his own. It will
8:27AM15 summarize the --

16 THE COURT: 1006?

17 MR. ROBERTS: Yes, sir. It will summarize the
18 interaction of all three devices.

19 MR. GELFAND: Your Honor, we need to confirm. We
8:27AM20 just got this, so we need to confirm what's on it.

21 MR. ROBERTS: I think we're about an hour away
22 from addressing it, once the testimony starts anyway, so
23 you will have some time to digest it.

24 THE COURT: Is this new or was this in the
8:28AM25 exhibits that you have already provided?

8:28AM 1 MR. ROBERTS: It was not in the exhibit book,
2 Your Honor.

3 MR. GELFAND: Then there's one other question. I
4 don't know if it's through Mr. Fottrell or someone else,
8:28AM 5 but the government has marked two exhibits related to the
6 TOR browsing history on the phone.

7 THE COURT: Yes.

8 MR. GELFAND: We were going to propose, in lieu
9 of objecting to the totality of the exhibits, redacting
8:28AM 10 the names of the files. In other words, as I understand
11 it, the government's proffered purpose for introducing
12 this is familiarity with the software. But the names,
13 which are all adult pornography legal names are --

14 THE COURT: Is this in the Covenant Eyes exhibits
8:29AM 15 that you marked?

16 MR. ROBERTS: No, sir. I believe you actually
17 questioned the government making sure it didn't run afoul
18 of the pretrial ruling. And I clarified it at the
19 pretrial hearing, that the TOR browser that was located on
8:29AM 20 the defendant's phone was looking up what would be adult
21 pornography sites on the day that the warrant was
22 executed. And that's, I believe, the exhibit that they
23 are referring to. They are wanting to get rid of the
24 content.

8:29AM 25 MR. GELFAND: At the time it was referenced, it

8:29AM 1 was just referenced by exhibit number. We didn't yet have
2 the government's exhibits so we didn't know what you were
3 talking about. And so now that we do, I mean, our
4 concern, Your Honor, is that there's no relevance to the
8:29AM 5 fact that in October and November of 2019, someone on
6 Mr. Duggar's phone is looking up --

7 THE COURT: I got that part. But what is it
8 about the exhibit that we need to do?

9 MR. ROBERTS: I think the defense is generally
8:30AM10 objecting to the exhibit detailing the pornography part.
11 The government believes it's relevant. And it's not my
12 witness and I believe Bill Clayman has a prepared argument
13 for this, why it's relevant.

14 THE COURT: Which witness does it come up with?

8:30AM15 MR. ROBERTS: It will come up with Mr. Fottrell.

16 THE COURT: Let's take care of number 18, then we
17 will circle back. Which exhibit number is it?

18 MR. ROBERTS: Off the top, I don't have my
19 exhibit book. It's towards the end. It's towards the
8:30AM20 very end, Judge.

21 MR. STORY: It's right in there somewhere. It
22 came up yesterday.

23 (Juror Number 18 Enters Chambers)

24 THE COURT: Mr. Juror 18. This is a bunch of
8:31AM25 lawyers.

8:31AM 1 JUROR NUMBER 18: Recognize you all from the past
2 few days, yes.

3 THE COURT: So I understand -- let me say just a
4 little bit. My understanding is that you asked to speak
8:31AM 5 to the Court Clerk this morning?

6 JUROR NUMBER 18: Yes, sir.

7 THE COURT: Is that correct?

8 JUROR NUMBER 18: Yes, Your Honor.

9 THE COURT: Could you just tell us from the time
8:31AM10 you got here --

11 JUROR NUMBER 18: Yeah.

12 THE COURT: -- how all that happened --

13 JUROR NUMBER 18: Sure.

14 THE COURT: -- up to the point, what you told her
8:31AM15 and up to the point of coming in here?

16 JUROR NUMBER 18: Sure, yes. So I got here this
17 morning, went and checked into the jury room. Went to the
18 bathroom, came back and asked one of the officers outside
19 the door if Ms. Sheri was available. And he said, yes,

8:31AM20 she's here today. And I said, I'd just like to speak with
21 her for a moment. So he called her up, and she came up a
22 few minutes later. And I shared with her that, so last
23 night, I just -- I had a feeling yesterday that I needed

24 to check my Facebook friends list. It was just something
8:32AM25 yesterday, I had never -- it hadn't come to my remembrance

8:32AM 1 until yesterday that there was a possibility that I may
2 have been Facebook friends with Joshua Duggar. So I
3 didn't search him at all. I went straight to my Facebook
4 list after yesterday evening, scrolled through my list,
8:32AM 5 hoping not to see the name. And it was there. And I knew
6 then, it was like, I've got to say something. I was
7 like -- and it wasn't -- I've never had any interaction
8 with Joshua Duggar at all, not through Facebook, not
9 through anything. From just laying in bed, not being able
8:32AM10 to sleep last night thinking about it, it was probably
11 from, my wife and I, when they were in the high of their
12 celebrity, we watched the show and probably just local
13 celebrity, followed him on Facebook and never thought
14 another thing about it. And then it hit me yesterday. So
8:32AM15 I went to look to verify because I knew if I didn't, it
16 was going to eat at me. When I saw it was, I thought,
17 I've got to tell you guys. So I met with her this
18 morning.

19 THE COURT: Thank you so much for doing that. I
8:33AM20 just want to be sure I understand. One of the questions
21 that I had for you in voir dire, had for everyone, was
22 whether ya'll had watched any reality show programming.

23 JUROR NUMBER 18: Yes, uh-huh.

24 THE COURT: And then how you would characterize
8:33AM25 the frequency.

8:33AM 1 JUROR NUMBER 18: Yes.

2 THE COURT: And you had a positive response to
3 that and you characterized, according to my notes, that
4 you watched some episodes "occasionally."

8:33AM 5 JUROR NUMBER 18: Occasionally, yes. My wife was
6 a lot more into it than I was, but I would catch some
7 episodes with her.

8 THE COURT: So as best you can recall as it
9 relates to being -- whatever button you clicked on, were
8:33AM 10 you indicating that you "liked" some content or did you
11 actually send out a "friend" request?

12 JUROR NUMBER 18: So he's on my Facebook friends,
13 so I assume it was an "add friend." I don't know if it
14 popped up on like suggested friends or something and I was
8:34AM 15 like, oh, that's Joshua Duggar, you know. And so it
16 wasn't on like a subscription like a "like" where you
17 follow. It was an actual friend on my friends list.

18 THE COURT: Okay.

19 JUROR NUMBER 18: I can't remember ever seeing
8:34AM 20 anything posted by him, ever interacting with him. I just
21 wanted to verify that yesterday so I could either forget
22 about it and be like, okay, it wasn't, or to notify you
23 guys if there was something there.

24 THE COURT: Now, just to be clear, this wasn't
8:34AM 25 being friends with him in an account for one of the

8:34AM 1 reality shows, but actually friends with Josh Duggar, the
2 person?

3 JUROR NUMBER 18: So the account just says his
4 name, so I assume that's the case.

8:34AM 5 THE COURT: All right. Any idea of what year
6 this would have been or how long ago it would have been?

7 JUROR NUMBER 18: No. I was trying to think
8 about that. Like I said, I didn't even remember. I mean,
9 just trying to think. I haven't watched that show or
8:35AM10 really anything about the Duggars in years. I couldn't
11 even tell you when their show started. Eight, nine years
12 ago, maybe, 10 years ago. I'm not 100 percent sure.

13 THE COURT: So I don't really understand what the
14 significance of being "friends" in terms of what the
8:35AM15 interaction is after that happens. Can you explain that
16 to me?

17 JUROR NUMBER 18: Yeah. So, I mean, people in my
18 personal life that I'm friends with tag each other, we see
19 each others' posts, things like that, "like" things,
8:35AM20 "share" things with people that I'm friends with. None of
21 that ever occurred in this instance. Like I said, I
22 completely -- I've got almost 1,000 friends on Facebook.
23 I completely forgot that this friendship, Facebook
24 friendship, even existed until I went and scrolled through
8:35AM25 all the way down through the Js, and, unfortunately, saw

8:35AM 1 it.

2 THE COURT: If you're Facebook friends with
3 somebody, does that mean that when one is browsing or when
4 you are browsing your own Facebook page or updating it or
8:36AM 5 what have you, that -- I guess what I'm asking is, do the
6 things that your friends post on Facebook, does that pop
7 up on your Facebook page?

8 JUROR NUMBER 18: Yeah, the ones that I interact
9 with the most. I think -- I don't know the logistics.
8:36AM 10 Facebook has algorithms, if you don't talk with somebody
11 or you don't view their stuff, the people that you view
12 posts most often are what you see. I probably see the
13 same 10 or 20 people that I'm closest to every day.

14 THE COURT: Since you hit the "friends" button,
8:36AM 15 do you recall reading content that Josh Duggar would have
16 posted to his Facebook page or that was disseminated to
17 friends?

18 JUROR NUMBER 18: Nothing that I -- nothing that
19 I recall, no, sir.

8:37AM 20 THE COURT: Okay. All right. Any other things
21 that are bothering you about contacts with Josh Duggar?

22 JUROR NUMBER 18: No, not at all. Not at all.

23 MS. MARSHALL: No questions.

24 THE COURT: All right. Thank you so much. Why
8:37AM 25 don't you have a seat right outside the door. I'll be

8:37AM 1 back with you.

2 JUROR NUMBER 18: Thank you all so much.

3 (Juror Number 18 exits)

4 MR. ROBERTS: We're fine with it. I think we're
8:37AM 5 in agreement again. We're fine with it, Your Honor.

6 MR. GELFAND: Your Honor, we agree.

7 THE COURT: Very good. So do we need to take
8 care of this other issue out there?

9 MR. ROBERTS: Judge, I think it's just going to
8:38AM 10 be a relevance, or not quite a relevance. Well, that
11 section of it. I'll tell you what.

12 THE COURT: What takes it outside the scope of
13 our motion in limine ruling?

14 MR. ROBERTS: Your Honor, the motion in limine
8:38AM 15 was with regard to statements Duggar made regarding
16 pornography. This is not a statement. This is actually
17 things he was doing when they executed the search warrant.
18 And the overall basis of why we think it's relevant, we
19 introduced clips of that statement. He said, I'm familiar
8:38AM 20 with peer-to-peer. I've heard of TOR. These are not
21 exact quotes, but that was the general nature of it.

22 It was more than "I've heard of TOR." It was
23 more than, "I've heard of peer-to-peer." They were on his
24 device and it was actively being used that day. There are
8:39AM 25 probably more arguments that I believe Mr. Clayman could

8:39AM 1 make.

2 THE COURT: That day being what day?

3 MR. ROBERTS: November 8th, 2019, the day the
4 warrant was executed and the day of the interview.

8:39AM 5 THE COURT: There's forensic evidence that he was
6 watching so-called adult pornography?

7 MR. ROBERTS: Via the TOR browser.

8 THE COURT: On which device?

9 MR. ROBERTS: His phone.

8:39AM 10 THE COURT: On the TOR application?

11 MR. ROBERTS: Yes, sir.

12 MR. GELFAND: Your Honor, the main issue is the
13 significant prejudicial value of the names of the files,
14 which I don't think are necessary to include for the
8:39AM 15 government to basically get its point across. And I

16 apologize for the graphic nature of this that's in this
17 trial, but some of these files will be names like "anal
18 fisting," just things that might evoke the same concerns
19 about just visceral objections on conduct that's not even

8:40AM 20 alleged to be illegal. And it's not necessary if they
21 want to establish the fact that someone was using the TOR
22 browser on the iPhone, even to look at adult pornography.

23 THE COURT: So one solution that you might be
24 amenable to would be to redact the file name from the
8:40AM 25 exhibit?

8:40AM 1 MR. GELFAND: Yes, Your Honor. And I'm sorry.
2 Even if it keeps -- because there's two columns. I'm
3 going off memory, but there's two columns. One is the
4 file names, in essence, the descriptive terms. The other
8:40AM 5 is the websites, which clearly establish that these are
6 commercial U.S.-based adult porn websites; Pornhub, things
7 like that. And so I think just basically redacting or
8 eliminating that column, the name column, would accomplish
9 what the government's argument is without inflaming the
8:41AM 10 Jury as to the names.

11 MR. ROBERTS: Specifically why that's relevant --
12 it came back to me -- in Duggar's statement that we
13 introduced, he said that he uses TOR browser and it's
14 50/50 work/personal. I don't believe that list shows
8:41AM 15 anything work. The fact that he's using that, we've
16 already had testimony, he's saying that it was work
17 purposes. You cross-examined Jerry Faulkner over car
18 lots, other uses of the TOR browser. Jerry Faulkner
19 testified, I don't know of any other use. But the
8:41AM 20 question of his use of that TOR browser, he stated to law
21 enforcement that day, 50/50. But he was using it that day
22 only for one thing. It goes to whether he's being
23 upfront, truthful, honest with law enforcement.

24 THE COURT: I haven't heard any relevance to the
8:42AM 25 file name itself.

8:42AM 1 MR. ROBERTS: Well, Your Honor, he's saying he
2 uses it for work. We introduced testimony saying that
3 there is --

4 THE COURT: Why can't you elicit testimony that,
8:42AM 5 although the file name is redacted, was this business?
6 No. In fact, what was it? It was pornography.

7 MR. ROBERTS: Pornography. So it's the content,
8 the descriptive column that you are --

9 MR. GELFAND: Yes, as opposed to adult
8:42AM10 pornography.

11 MR. ROBERTS: I think we could probably work with
12 that. That was a clarification I didn't catch the first
13 time. We might need a minute to correct that exhibit, if
14 we can do it, but I don't think it will take more than --
8:42AM15 actually, I'll bet I can get my assistant to do it.

16 MR. GELFAND: Just make sure we're on the same
17 page and clarify. To the extent you are going to elicit
18 that testimony, whatever it may be, it's so-called adult
19 pornography. I don't want the Jury to be under the wrong
8:42AM20 impression.

21 MR. ROBERTS: Oh, we're not going to give the
22 wrong impression.

23 MS. MARSHALL: No.

24 THE COURT: Was Covenant Eyes on the phone?

8:43AM25 MR. GELFAND: Yes.

8:43AM 1 THE COURT: Well, there wasn't a Linux partition
2 on the phone.

3 MR. GELFAND: Precisely.

4 THE COURT: Would that have generated a -- or was
8:43AM 5 that one of your exhibits?

6 MR. ROBERTS: The Linux partition on the phone?

7 THE COURT: If he had been looking at adult
8 pornography that day, would that not have generated --

9 MR. ROBERTS: A Covenant Eyes report?

8:43AM 10 THE COURT: Yeah. I don't want to create issues
11 where there aren't any.

12 MR. ROBERTS: Yes, sir.

13 THE COURT: I'm just kind of being -- never mind.
14 Not an issue that I need to get involved in.

8:43AM 15 MR. GELFAND: I think both parties have their
16 perspective on identifying that issue.

17 THE COURT: So you're going to look at this?

18 MR. GELFAND: Is this being proposed under 1006,
19 the summary?

8:43AM 20 MR. ROBERTS: Yes.

21 MR. GELFAND: Or as a demonstrative?

22 MR. ROBERTS: An actual substantive exhibit under
23 1006.

24 MR. GELFAND: We need to verify the information,
8:43AM 25 then.

8:43AM 1 MR. ROBERTS: Director Fottrell put the exhibit
2 and the exact lines that they corroborate, or that his
3 entries corroborate.

4 THE COURT: And this is a summary of what,
8:44AM 5 exactly? I'm talking about Government's proposed Exhibit
6 85.

7 MR. ROBERTS: The various exhibits, kind of
8 voluminous exhibits of his examination of the HP computer
9 and all the system files, what they indicate. The various
8:44AM 10 exhibits that we're going to introduce of the MacBook,
11 what all of those indicate. And then finally the various
12 exhibits of the iPhone itself, what they indicate.

13 THE COURT: Okay.

14 MR. GELFAND: And all we're saying, Your Honor,
8:44AM 15 is, we just got this this morning. I recognize that it's
16 identified by exhibits and in some cases, even page
17 number. We need to verify that before we can -- under
18 1006, before we can take a position on it.

19 THE COURT: All right. Thank you.

8:44AM 20 (In-Chambers Hearing Concluded)

21 THE COURT: The Jury is on their way up, so I
22 will have you stand when they get a little closer. Can we
23 go ahead and get our witness back on the stand?

24 (Jury in at 8:57 a.m.)

9:00AM 25 THE COURT: Good morning, Members of our Jury.

9:00AM 1 I'd like to apologize for getting a half hour, as it turns
2 out, late start this morning. In every trial, it's
3 inevitable that some things that you don't plan for pop up
4 and it's just part of the trial process, and we had one of
9:00AM 5 those things come up this morning. And it's not that big
6 of a deal. It just happens. But I do realize that we're
7 running a little bit behind this morning and I very much
8 appreciate your patience and understanding.

9 Yesterday, when we left, James Fottrell was on
9:00AM 10 direct examination and he is on the witness stand again
11 this morning on direct examination.

12 Mr. Fortrell, I'll remind you that you remain
13 under oath that you took yesterday.

14 THE WITNESS: Yes, Your Honor.

9:01AM 15 THE COURT: And, Mr. Clayman, you may proceed.

16 MR. CLAYMAN: Thank you, Your Honor.

17 JAMES FOTTRELL, having been previously duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION (Cont'd)

9:01AM 20 BY MR. CLAYMAN:

21 Q. Mr. Fottrell, yesterday you were testifying about the
22 Linux partition on the HP computer from the defendant's
23 office. Was the Covenant Eyes software installed on that
24 partition?

9:01AM 25 A. No, it was not.

9:01AM 1 Q. Based on your review of all of the evidence that you
2 found on the partition, what was the user of the Linux
3 partition doing on TOR on May 14th of 2019?

4 A. Downloading the webcam-collections-prevs zip archive
9:01AM 5 file.

6 Q. What did they do with that file, based on your
7 review?

8 A. The file was downloaded through the TOR browser
9 bundle. It was extracted to the desktop. Thumbnail
9:01AM 10 images were created of the images contained in that
11 archive file.

12 Q. Based on your review of the thumbnail images, what
13 did those images depict?

14 A. Those images depicted minors engaged in sexually
9:02AM 15 explicit conduct.

16 Q. And what was the user of the Linux partition doing on
17 uTorrent or May 14th, 15th, and 16th of 2019?

18 A. On May 14th, 15th, and 16th, the uTorrent program was
19 used to access and download Torrent files. Contents of
9:02AM 20 those Torrent files was fetched through the BitTorrent
21 protocol. There was evidence that the videos existed on
22 those -- on the computer. Thumbnails were created and
23 stored indicating that the files existed on that computer.
24 Furthermore, there's evidence in the VLC program that the
9:02AM 25 videos were played and displayed by the computer user.

9:02AM 1 Q. And where did you find the actual child sexual abuse
2 images on the Linux partition?

3 A. Very -- in a minimal place. They were only in the
4 thumbnails files. We didn't recover the full-size images
9:02AM 5 in the file system. They were deleted from the file
6 system at the time the computer was seized by law
7 enforcement a few months later. I was able to recover
8 some full-size images from unallocated space on the device
9 on that partition, but the full-size images and the videos
9:03AM 10 were not in the file system at the time it was seized.

11 Q. Based on your experience, is this common to see in
12 child exploitation investigations?

13 A. Well, yeah, this is one common scenario. One common
14 scenario is typically where people would download and
9:03AM 15 amass a large collection of illegal material and that
16 would be their collection or that library of material.

17 A phenomenon that probably happened maybe five or
18 seven years ago, we generally call it the Netflix effect.
19 Generally, if I go back 20 years, when my kids were
9:03AM 20 little, we had a bunch of VHS tapes for Barney the
21 Dinosaur, Thomas the Tank Engine, and we would have a
22 bunch of videos that my kids would watch for movies.
23 Maybe if you fast forward a decade, then I was collecting
24 DVDs of certain movies, so I would have a stack of DVDs in
9:04AM 25 my house and I could watch those movies through those

9:04AM 1 DVDs.

2 With the advent of Netflix and streaming services,
3 most people don't need to keep a library of videos in
4 their house. It's just available online for free. And
9:04AM 5 the same thing is happening with the child exploitation
6 arena. The offenders understand, some offenders
7 understand that it's dangerous to possess a lot of this
8 material, so there's a phenomenon where they are going to
9 download it, view the material, and then delete it so it's
9:04AM 10 not on their computer.

11 So I'm certainly involved in a number of cases where
12 the offenders are downloading it, viewing the material,
13 and then deleting it. Those cases are a little bit more
14 forensically challenging to look for the artifacts that we
9:04AM 15 have here. We have thumbnail images. We have evidence
16 that they were viewed. We have evidence in unallocated
17 space, but you don't have that large library of images
18 that you would have in other cases.

19 Q. Mr. Fottrell, did you look into whether someone not
9:04AM 20 present at the car lot could have been using this computer
21 to download this material?

22 A. Yes.

23 Q. And what did you find based on your review?

24 A. So based on my review of a number of things, there's
9:05AM 25 a Windows partition, there's a Linux partition. And the

9:05AM 1 tools that allowed for remote control and for remote
2 desktop, it's just not fitting the pattern of somebody
3 remotely connecting to the computer and doing that. The
4 computer, the person using the computer, using the TOR
9:05AM 5 browser bundle, using the uTorrent program, that's not
6 happening behind the screens. The uTorrent program, when
7 it's being run, would be visible on the desktop. It's
8 just actually being used. Once the images are downloaded,
9 they are viewed through the VLC program, so that's very
9:05AM10 indicative of a person at the computer, using the
11 computer, viewing that kind of stuff. It's not very
12 consistent with a remote exploit or a remote access to the
13 computer. Somebody needs to be physically there.

14 I talked about yesterday, the act of installing the
9:05AM15 Ubuntu Linux operating system, you need to install a thumb
16 drive, you need to boot the computer off of the media to
17 install that. The same thing when the computer first
18 turns on, you have to choose one operating system. By
19 default, it's either going to boot up into the Windows
9:06AM20 environment or it's going to boot up into the Linux
21 environment. You can't boot both. You have to choose
22 one. And the default setting was for the Windows
23 environment. So in order for the Linux partition to boot
24 up when you turn on the computer, you would have to hit a
9:06AM25 function key to select the other operating system to boot

9:06AM 1 it. To me, you can't do that remotely. The computer is
2 turned off. There needs to be a physical presence, a
3 person physically there in order to make that selection
4 when the computer is turned on.

9:06AM 5 Q. Do you typically look for evidence of remote access
6 in these sort of forensic examinations?

7 A. Yes. Generally speaking, it's hard to be exhaustive
8 in every single case, I do that. But there are remote
9 desktop tools and remote access tools that are common

9:06AM10 nowadays. And so just to look at evidence associated with
11 them, I would typically do that, yes.

12 Q. Based on your experience training other law
13 enforcement officers, would someone with less experience
14 than you necessarily look for this sort of evidence?

9:07AM15 A. Probably not. I think I'm -- I don't mean to brag,
16 but I'm --

17 MR. GELFAND: Your Honor --

18 THE COURT: There's an objection.

19 MR. GELFAND: Objection, Your Honor. Calls for
9:07AM20 speculation about whether someone else would do something.

21 THE COURT: I will sustain the objection to the
22 extent of requiring a little bit more foundation to
23 establish a 701 lay opinion, combined with the expert 702
24 that you have already laid. You could just go back and
9:07AM25 establish either how he has this knowledge under 701

9:07AM 1 within his profession, or establish a 702 opinion and what
2 he's relying on, then you may proceed.

3 Q. (BY MR. CLAYMAN.) Mr. Fottrell, how do you know to
4 look for remote access in these sort of investigations?

9:08AM 5 A. Just through experience. Through experience in a
6 number of cases, experience about the way that offenders
7 are using that, the way that they communicate using that.
8 I'm just familiar with certain users who do remote access
9 and how they have done it. And then I look from a

9:08AM 10 forensics point of view, what are the forensic artifacts
11 that are associated with that that I would typically
12 expect to see when somebody was using a remote desktop or
13 remote control program.

14 Q. If you were training a newer analyst, as you do
9:08AM 15 sometimes, would you advise them to do this?

16 A. Yes, I would advise them to do that.

17 Q. Switching gears, Mr. Fottrell, did you examine any
18 other devices in connection with this case?

19 A. Yes, I did.

9:08AM 20 Q. Which devices?

21 A. The MacBook and an iPhone.

22 Q. Did you use virtualization software with one of those
23 devices?

24 A. Yes, I did.

9:08AM 25 Q. Which one?

9:08AM 1 A. The MacBook.
2 Q. If you could please look in the black binder at
3 what's been previously marked as Government's Exhibit 61.
4 A. Okay.
9:09AM 5 Q. Do you recognize that exhibit?
6 A. Yes, I do.
7 Q. What is it?
8 A. These are a series of print screens that I created
9 using the virtualization software that I talked about
9:09AM 10 yesterday, Oracle VirtualBox, with respect to the MacBook
11 that was seized from the defendant.
12 Q. And are these true and accurate copies of those print
13 screens?
14 A. Yes, they are.
9:09AM 15 MR. CLAYMAN: Your Honor, at this time, I would
16 move to admit Government's Exhibit 61.
17 MR. GELFAND: No objection.
18 THE COURT: Government's Exhibit 61 is received.
19 (Government's Exhibit 61 received)
9:09AM 20 MR. CLAYMAN: Permission to publish, Your Honor.
21 THE COURT: You may.
22 Q. (BY MR. CLAYMAN.) Mr. Fottrell, can you explain for
23 the Jury what's shown on the first page here?
24 A. This is the page that you would see when you first
9:10AM 25 boot up the virtual machine. It's a Macintosh environment

9:10AM 1 by some of the icons that are on the bottom of the page.
2 There is two user accounts associated with it. There's a
3 user account named "Joshua Duggar." There's another user
4 account named "internet." So those are the two user
9:10AM 5 accounts that are set up for this Macintosh MacBook
6 operating system.

7 Q. Turning to page two, what's shown here?

8 A. So this is the page that you would see if I clicked
9 on the "Joshua Duggar" user name. It has the icon
9:10AM 10 associated with it. And it's prompting for a password
11 that this is a password protected account. And it's just
12 showing me the password, showing me where I need to enter
13 the password for this account.

14 If you look at the background of the page, the whole
9:10AM 15 page, it looks -- appears to be that there's a Vizio T.V.
16 and it looks like somebody set the wallpaper or the
17 backdrop for this MacBook with a picture from a video --
18 you know, from a Vizio T.V.

19 Q. Do you recall what the password was for this account?

9:11AM 20 A. Yes, I do.

21 Q. What was it?

22 A. JoshuaJJD.

23 Q. If we could turn to page three, please.

24 A. This is what you would see after you type in the
9:11AM 25 password correctly. There's a little spinning icon and

9:11AM 1 it's basically booting up the operating system, logging in
2 to the user account.

3 Q. How about page four?

4 A. This is just another print screen a moment later
9:11AM 5 where it's logging in.

6 Q. And page five?

7 A. Page five is just -- the computer remembers where it
8 was, you know, certain programs that were run when it was
9 shut down most recently. So these are some of the icons
9:11AM 10 that show up. So you will see the file manager is up and
11 running. And this is just showing that the person was at
12 the documents folder the last time it was powered down and
13 they were navigated to this folder where the logos folder
14 were, so that window automatically reopened when the
9:11AM 15 machine booted up. There was some alarm setting or some
16 notebook setting and so that little window is showing up,
17 Lowe's credit card period ends on November 12th, 2019, so
18 that little window popped up as well.

19 So there's another window behind there and it's just
9:12AM 20 the normal window, the normal opening up of programs that
21 have been previously saved on this computer.

22 Q. What date and time are reflected there at the top?

23 A. So the date and time is Tuesday, November 2nd at
24 12:40 p.m. That's the date and time that I booted up this
9:12AM 25 virtual machine and created these print screens.

9:12AM 1 Q. What name is right next to that date and time?

2 A. Joshua Duggar.

3 Q. Turning to page six, can you describe what you see
4 here?

9:12AM 5 A. So in the lower left-hand corner of the screen,
6 there's the "finder" icon, which is kind of like the file
7 manager equivalent in the Windows computer. And I just
8 wanted to get a sense as to which applications are
9 installed on this computer, so I clicked on the file
9:12AM 10 manager logo. And then I basically chose applications on
11 the upper left-hand corner and it's showing me a listing
12 of all of the applications that are installed.

13 Q. If we could turn to page seven. What is this?

14 A. I changed the view to be thumbnails view just to make
9:13AM 15 it a little bit easier view to see what was going on. And
16 just in my mind, I'm getting a sense as to what are some
17 of the programs that are installed on this computer. So
18 clearly in the first row and maybe the second row, these
19 are a bunch of Adobe programs, Adobe Creative Cloud,
9:13AM 20 Illustrator, certainly file-editing documents that are
21 very popular that are out there. Most of these are by
22 default installed by the operating system.

23 For example, the App Store is the Macintosh
24 application that you use when you want to install a new
9:13AM 25 application. If you want to go out and install some

9:13AM 1 program, you would basically do that through the App
2 Store. A lot of these are books, calculator, calendar. A
3 lot of these would come preinstalled on the operating
4 system. Here's the instance where Covenant Eyes is
9:13AM 5 installed on the computer. That did not come with the
6 operating system by default. Some of these, the user
7 installed these programs. I believe CSR Racing doesn't
8 come with the operating system by default and so there's
9 just different programs that have been installed by the
9:14AM 10 user of the computer over time.

11 Q. Before moving on, Mr. Fottrell, you said you changed
12 these to thumbnail view, is that right?

13 A. Yes.

14 Q. And is that what you were describing yesterday with
9:14AM 15 the user of the Linux partition changing to thumbnail
16 view?

17 A. Yes.

18 Q. Are you able to walk the Jury through the next couple
19 of pages of this exhibit?

9:14AM 20 A. Sure. If you look on the right-hand side, that's
21 called a scroll bar. I'm just scrolling down a little bit
22 further documenting some of the different programs that
23 are installed. I see that Google Chrome is involved.
24 That's a very popular web browser, so I'm certainly going
9:14AM 25 to look into that a little bit further. Most of these

9:14AM 1 other ones are kind of generic default ones that come with
2 the computer.

3 If you go the next page, a little bit further down,
4 some of the things that are -- these are pretty common
9:14AM 5 applications. Keynote, Kodi, these are all pretty -- Open
6 Office is another word processing program that's
7 available. Nothing too exciting stood out here.

8 We can go to the next page. On this page, Safari
9 TextEdit. Nothing too significant here. These are the
9:15AM 10 normal things that I would expect to see on a Macintosh
11 environment. And then finally, on the bottom of the page,
12 we see the VLC program that we talked about yesterday.
13 That's certainly something that does not come on the
14 Macintosh machine. It needs to be installed.

9:15AM 15 Q. Sorry to interrupt for a second. You said we talked
16 about it yesterday. Where did we see the VLC program
17 yesterday?

18 A. On the Linux partition on the HP desktop computer.
19 One of the things that I would just look for here, and I
9:15AM 20 didn't see, so I didn't see the TOR browser bundle
21 installed. Like if TOR was installed at the moment in
22 time it was seized by law enforcement, there would be a
23 TOR browser icon. There's no uTorrent here, so I don't
24 see the uTorrent icon. So I'm just getting a sense as to
9:15AM 25 what programs are installed and what programs are not

9:15AM 1 installed at the point in time it was seized by law
2 enforcement.

3 Q. If we could turn to the next page. What is shown
4 here?

9:16AM 5 A. So I saw VLC on the last page, so I brought up VLC
6 and I'm just curious to see, what are the recent videos
7 that were displayed or viewed by the computer user. And
8 it lists like two movies, the movies Planes and Planes,
9 Fire & Rescue. I did a little bit of research. Those are
9:16AM 10 just children's movies and children's videos that are
11 available, so clearly, the VLC program was used to display
12 these children videos.

13 Q. How about on page 13?

14 A. So next, I go on -- if you look at the very bottom of
9:16AM 15 the page, there's the Chrome, Google Chrome icon. Google
16 Chrome is a popular web browser. And I'm just trying to
17 get a sense as to who's using the computer and what they
18 are using it for, so I bring up the Google Chrome program,
19 and then I go under the settings. And then there's --
9:16AM 20 Google Chrome has the ability to be a password manager, so
21 it manages and remembers the passwords that you use on a
22 number of different sites that you go to. So I wanted to
23 look at the saved passwords on Chrome to see if they
24 related to the passwords on some of the other devices that
9:17AM 25 were seized.

9:17AM 1 Q. Can you walk the Jury through the next couple pages
2 of this exhibit and explain what stood out about the
3 passwords that you saw?

4 A. So these are the password manager saved passwords for
9:17AM 5 Google Chrome. And it just shows you, for example,
6 there's the Amazon. There is the user name associated
7 with the Amazon account and then there's the password
8 associated with it. So I was certainly looking for
9 passwords that have Intel 1988, the same password that was
9:17AM 10 used on the Linux partition. So here's a password for
11 IntelJJD1988. It's not exactly the same, but it contains
12 parts of it. It contains Intel and it contains 1988. So
13 just scrolling through this to get a sense of ownership
14 and identity and who is the person responsible. So,
9:17AM 15 clearly, these are passwords that Joshua Duggar is using,
16 it's saved on his computer, and I'm just looking for those
17 examples.

18 So, again, just looking down at other ones, some of
19 them are very related. Some of them are very different.
9:18AM 20 Some of them are just completely random, but other ones
21 are very similar. Intel 1988 exclamation mark. And so
22 just kind of trying to document the saved passwords in the
23 Google Chrome password manager.

24 Q. Did you find any personal accounts where Intel 1988
9:18AM 25 was the password here?

9:18AM 1 A. Yes. So here's this Arvest Bank, Arvest.com, and it
2 has the password as Intel 1988 exclamation mark.

3 Q. Just to be clear, did you see 1988 appear frequently
4 in these passwords?

9:18AM 5 A. Yes.

6 Q. Did you see the word Intel appear frequently in these
7 passwords?

8 A. Yes.

9 Q. If we could go to page 22 now. What is shown here?

9:18AM 10 A. So this, if you go to the upper left-hand corner on
11 the screen, there's a little Apple logo. And I just
12 clicked on that and it just tells me the version of the
13 operating system that this Mac laptop is running. And
14 it's running macOS Mojave. It's 10.14.3. And so this is
9:19AM 15 the Macintosh operating system. Underneath -- the
16 Macintosh operating system is very similar to the Linux
17 operating system.

18 The history of the Macintosh operating system over
19 the last 20 years is very similar to the history of the
9:19AM 20 Linux operating system over the last 20 years. They are
21 children related of the same parent. They have the same
22 code base, the same environment. They are very similar
23 operating systems. They just have a shared history, if
24 you will.

9:19AM 25 Q. What's on the next page?

9:19AM 1 A. I clicked on -- on the bottom of the page, there is
2 the settings. There's a little settings icon on the
3 bottom of the page for the different settings that are
4 there. So I'm bringing up the system preferences and I'm
9:19AM 5 going to click on "users and groups" to kind of give me
6 information about who is using this computer, what is the
7 account associated with it.

8 Q. And what did you find?

9 A. So I clicked on that "user settings" and it shows the
9:20AM10 user name, "Joshua Duggar," which is the name that shows
11 up on the top of the page for the user. That is
12 associated with an e-mail account "josh@championNWA.com."
13 That's the e-mail account that the user of the computer
14 used to associate with their name.

9:20AM15 Q. Turn to the next page. Could you describe for the
16 Jury where we are here?

17 A. So one of the things -- I'm just using the "finder"
18 application again on the top of the page. And I am just
19 navigating to the user's folder, the main folder, the
9:20AM20 library folder. One of the things that was significant to
21 my investigation of the Macintosh computer is this -- on
22 the right-hand column, under application support, there is
23 this thing called Mobile Sync. One of the features of the
24 Macintosh operating system, it allows you to make a backup
9:20AM25 copy of your iPhone. So this is what happened in this

9:21AM 1 case. On the Macintosh laptop computer, there was a
2 backup copy of an iPhone 8 that had been previously backed
3 up onto that computer. So now I'm just illustrating on
4 the MacBook where the location of those backup files are
9:21AM 5 located, because I'm going to export those files. I'm
6 going to be now able to do an analysis on that iPhone 8
7 that had been backed up to the MacBook computer. So the
8 law enforcement officers didn't seize an iPhone 8, but I
9 have a backup copy of an iPhone 8 that was saved to the
9:21AM 10 MacBook. I'm certainly going to do an analysis on that
11 iPhone 8 that I found.

12 Q. Before moving on, in the column where Mobile Sync is
13 highlighted, do you see a qBittorrent folder a little
14 beneath that?

9:21AM 15 A. Yes. So the other thing that was valuable here is,
16 if you look under application support, the next folder
17 that we have, here was Mobile Sync where the backups were,
18 but there's a couple of things that are valuable. There's
19 something here called qBittorrent and TOR browser data.
9:22AM 20 There's a folder named TOR browser data. So that is
21 evidence to me that at some point previously, the TOR
22 browser bundle had been installed on the Macintosh, but at
23 the time it was seized by law enforcement, the application
24 was deleted, but there may be remnants or evidence
9:22AM 25 associated with the TOR browser in that folder.

9:22AM 1 Same thing with the qBittorrent. QBittorrent is
2 another one of those Torrent programs, just like uTorrent
3 and Transmission, so I'm certainly going to look for
4 evidence of this Torrent program on this MacBook as well.

9:22AM 5 Q. So just to be clear, based on these folders here, it
6 appears that TOR and a BitTorrent application program had
7 at one point been installed on the defendant's MacBook?

8 A. Yes.

9 Q. If we could go to the next page.

9:22AM 10 A. And so this is just where the backup data is for the
11 iPhone 8, so I'm going to certainly extract all of that
12 information and conduct an examination of the iPhone 8
13 data. And I'm just illustrating where I found that.

14 Q. What is shown here on page 32 of this exhibit?

9:23AM 15 A. If you look down at the very bottom of the center
16 page on the task bar for the Macintosh, there's the
17 contact list or the address book. So I fire up the
18 address book, and the first contact in there is Anna
19 Duggar. And it just basically has her contact
9:23AM 20 information, has her phone number, it has spouse of Joshua
21 Duggar, blah, blah, blah, password, just all of the other
22 information. So it's just an illustration of who is using
23 this computer. Yes, Joshua Duggar. If I look at the
24 contacts, the contacts are similar to the contacts that he
9:23AM 25 would have. He would certainly have his wife's contact

9:23AM 1 information in there, and so that's just being reflected
2 here.

3 Q. If we could skip ahead to page 35. Can you describe
4 for the Jury where we are here?

9:23AM 5 A. Sure. So if you look at the very bottom of the page,
6 there is -- we're under Apple Notes. Apple Notes comes
7 with the Macintosh operating system. It allows for the
8 user to create notes and save like little sticky notes, if
9 you will. And so I basically brought up the Notes

9:24AM 10 program. There was lots and lots of notes, and so I
11 wanted to filter that. So if you look on the upper
12 right-hand corner, I typed in "Intel 1988." So I wanted
13 to search through all of the hundreds of notes that were
14 out there, just display the notes that contained the text

9:24AM 15 "Intel 1988," and you can see that it saved one, two,
16 three, four, five of them. So there was five notes that
17 contained the word "Intel 98" and I'm just going to
18 display that. So the first one is being displayed for,
19 here's a website, shop.LKQcorp.com. It lists the log-in

9:24AM 20 name of wholesaleNWA@gmail.com, and then the password is
21 Intel 1988.

22 If I scroll down to the second one, this one lists
23 Carroll Electric account. It lists a log-in, an account
24 number and a log-in, it lists a number for it, and it
9:24AM 25 lists the password as 1988.

9:25AM 1 Going back to the next one, in 2015, with the website
2 GovDeals.com, it has a log-in name and it has the password
3 of Intel 1988. The fourth one, this is back on
4 October 8th of 2014. It's the Chase QuickPay and it lists
9:25AM 5 the name of Josh Duggar 1 and it lists the same password,
6 Intel 1988. And then finally, another one on October 6th,
7 2014, for AT&T Premier, lists the log-in name of
8 ChampionNWA and lists the same password of Intel 1988.

9 So I was just trying to match up those instances
9:25AM10 where I found evidence of that password on the Macintosh
11 computer, which was the same password associated with the
12 Linux partition on the HP desktop.

13 Q. Based on your review of this evidence, Mr. Fottrell,
14 approximately how long has the defendant been using the
9:25AM15 password Intel 1988?

16 A. So from -- approximately five years, from 2014 to
17 2019, there's instances where the defendant is using the
18 password Intel 1988.

19 Q. Turning to the next page. Where are you here?

9:26AM20 A. So, again, I'm just drilling back to library
21 application support. I'm in the folder, qBittorrent.
22 There's a folder called BT_backup, GeoIP, and logs, and so
23 I'm going to drill down into that folder and see what's in
24 there. So I drill down into the logs folder. There's a
9:26AM25 file called "qBittorrent.log" and it's being displayed on

9:26AM 1 the right-hand side. Now I'm going to open that up.

2 So, here, I am displaying the contents of that
3 qBittorrent log. And it's a little bit hard to read, but
4 the date is 2017, January 17th. It lists a time. And
9:26AM 5 it's basically just saying that the qBittorrent program
6 has started. There's some log messages. And you can see
7 a little bit further down here with respect to
8 qBittorrent, the file Planes, Fire & Rescue 2014 was added
9 to the download list. So this is evidence that the person
9:27AM 10 using the computer was using the qBittorrent program to
11 download a Torrent file associated with this movie,
12 Planes, Fire & Rescue.

13 Q. You saw a similar file name in the VLC "recently
14 played" information, is that correct?

9:27AM 15 A. Yes. So with respect to the VLC recently played,
16 there is clearly evidence that the qBittorrent was used to
17 download that associated movie and to view it on the
18 MacBook with the VLC program.

19 Q. So I'd like to focus on some of the information you
9:27AM 20 just discussed in these print screens. Mr. Fottrell, did
21 you extract the Apple Notes from the MacBook?

22 A. Yes, I did.

23 Q. Can you please turn to what's been previously marked
24 as Government's Exhibit 63?

9:28AM 25 A. Yes.

9:28AM 1 Q. Do you recognize this exhibit?

2 A. Yes, I do.

3 Q. What is it?

4 A. This a two-page printout that I created extracting
9:28AM 5 the information from the Apple Notes associated with the
6 password Intel 1988.

7 Q. Is this a true and accurate copy of the data from the
8 Apple Notes application?

9 A. Yes.

9:28AM 10 MR. CLAYMAN: Your Honor, at this time, we would
11 move to admit Government's Exhibit 63.

12 MR. GELFAND: No objection.

13 THE COURT: Government's Exhibit 63 is received.

14 (Government's Exhibit 63 received)

9:28AM 15 MR. CLAYMAN: Permission to publish, Your Honor?

16 THE COURT: You may.

17 Q. (BY MR. CLAYMAN.) Was this first page similar to
18 what we saw on the print screens, Mr. Fottrell?

19 A. Yes. This is just kind of how I would like at it
9:28AM 20 after I've extracted it forensically. It's pretty much
21 the same information that we were just looking. There's a
22 note title. There's a folder listing for it. These are
23 all just under the Notes folder. Then there's a date when
24 this note was created and last changed. And then there's
9:28AM 25 the body of the message. So it contains pretty much the

9:28AM 1 same information that we were just seeing, but it's
2 extracted in a forensics format.

3 Q. Turning to page two, is this first entry different
4 than the one we saw in your print screens?

9:29AM 5 A. Yes, because this is showing the entire entry. So
6 there was a note that's labeled "passwords." And this
7 just has more information. So there's just clearly --
8 this is the Arvest, Walmart, just showing multiple
9 different accounts that are being used.

9:29AM 10 Q. Just to be clear, what was the password for the
11 Arvest Josh account based on this exhibit?

12 A. So the password is Intel 1988 exclamation mark.

13 Q. You can take this down. Mr. Fottrell, did you find
14 any other artifacts or forensic evidence on the

9:29AM 15 defendant's MacBook showing that he used the password
16 Intel 1988?

17 A. Yes, I did.

18 Q. If I could direct you to what's been marked
19 Government's Exhibit 64. Do you recognize that exhibit?

9:29AM 20 A. Yes, I do.

21 Q. What is it?

22 A. These are a series of e-mail messages that I found on
23 the MacBook computer that contain the text that includes
24 Intel 1988.

9:30AM 25 Q. Are these true and accurate copies of the e-mails

9:30AM 1 that you recovered from the MacBook?

2 A. Yes.

3 MR. CLAYMAN: Your Honor, we would move to admit
4 Government's Exhibit 64 into evidence.

9:30AM 5 MR. GELFAND: No objection.

6 THE COURT: Government's Exhibit 64 is received.
7 (Government's Exhibit 64 received)

8 MR. CLAYMAN: Permission to publish, Your Honor.

9 THE COURT: You may.

9:30AM 10 Q. (BY MR. CLAYMAN.) So just looking at the first page
11 here, Mr. Fottrell, when is this e-mail from?

12 A. This e-mail is to Jim Bob Duggar,
13 duggardad@gmail.com. Oh, I'm sorry.

14 Q. What date was it from?

9:30AM 15 A. Oh, what date was it from. It was from
16 February 13th, 2014.

17 Q. And what does it say the e-mail that was linked to
18 this account is at the bottom there, or halfway through?

19 A. The e-mail link to this account is
9:30AM 20 joshuaduggar@me.com.

21 Q. And what's the password identified there on the first
22 page?

23 A. It lists the password as Intel 1988.

24 Q. Go to page six of this exhibit. What do you see
9:31AM 25 here?

9:31AM 1 A. So here's a message from Josh Duggar,
2 josh@Ez14Us.com. It's to josh@championNWA.com with a
3 carbon copy to josh@Ez14Us.com. It lists the information,
4 log-in info, motor546, and it lists the password as Intel
9:31AM 5 1988.

6 Q. What's the subject of the e-mail?

7 A. USAePay app.

8 Q. We can take this exhibit down. You discussed
9 earlier, Mr. Fottrell, finding the qBittorrent application
9:31AM 10 on this computer. Did you find any Torrent files on the
11 MacBook?

12 A. Yes, I did.

13 Q. If I could direct you to what's been previously
14 marked as Government's Exhibit 66. Do you see that?

9:32AM 15 A. Yes, I do.

16 Q. What is that exhibit?

17 A. It's a list of four Torrent files that I found on the
18 Macintosh computer.

19 Q. Is this a true and accurate copy of the Torrent files
9:32AM 20 you found on the computer?

21 A. Yes, it is.

22 MR. CLAYMAN: Your Honor, at this time, we would
23 move to admit Government's Exhibit 66 into evidence.

24 MR. GELFAND: No objection.

9:32AM 25 THE COURT: Government Exhibit 66 is received.

9:32AM 1 (Government Exhibit 66 Received)
2 MR. CLAYMAN: Permission to publish, Your Honor?
3 THE COURT: You may.
4 Q. (BY MR. CLAYMAN.) Can you describe for the Jury what
9:32AM 5 this exhibit shows, Mr. Fottrell?
6 A. So there's two events that are occurring. So the
7 first column is name. There's a creation date, file
8 created, and then the pass. You can see that there's two
9 entries. So the first one happens on January 17th, 2017.
9:32AM 10 The next two happen pretty much the same time on
11 April 14th, 2017.
12 So in the first entry, that Planes, Fire & Rescue
13 Torrent file was stored in the downloads folder on the
14 computer, so under user main downloads. That's where you
9:33AM 15 would expect a downloaded Torrent file to go. It's
16 clearly in that folder. The exact same file moments later
17 is in the user's main library, application, support,
18 qBittorrent, BT_backup. Then it renames the file based on
19 its hash value, because that's what qBittorrent looks at.
9:33AM 20 It doesn't care about the file name. It just references
21 it by its hash value.
22 We see the exact same thing associated with the entry
23 on 4-17. There's a Torrent file that's in the downloads
24 that has a hash value. And if we look into the user's
9:33AM 25 main library Transmission -- this is using not

9:33AM 1 qBittorrent, this is using Transmission -- there's a
2 folder called Torrents. And in there there's a Torrent
3 file associated with the movie Three Amigos.

4 Q. You said Transmission. Is that another type of
9:33AM 5 peer-to-peer software?

6 A. Yes.

7 Q. Did you find Transmission installed in the
8 applications folder?

9 A. No, I did not. So this is clearly evidence that it
9:33AM 10 existed back in 2017, but by the time the laptop was
11 seized by law enforcement in November of 2019, the
12 Transmission program was no longer installed.

13 Q. So based on this exhibit, is it fair to say that the
14 defendant's MacBook was used to download content over two
9:34AM 15 different types of peer-to-peer software?

16 A. Yes. It's clear that the person was using
17 qBittorrent and the person was using Transmission.

18 Q. Finally, you discussed the Covenant Eyes application
19 on this MacBook. Did you find any evidence related to the
9:34AM 20 Joshua Duggar Covenant Eyes account on the MacBook?

21 A. Yes, I did.

22 Q. Could you describe what you found?

23 A. I found e-mail messages associated with reports
24 associated with Joshua Duggar's use of Covenant Eyes.

9:34AM 25 Q. If you could take a look at what's been marked as

9:34AM 1 Government's Exhibit 69 and 70 in the black binder.

2 A. Okay.

3 Q. What are those exhibits?

4 A. Those are two e-mail messages that I recovered from
9:34AM 5 the MacBook associated with the Covenant Eyes software.

6 Q. Are these true and accurate copies of the e-mails
7 that you recovered?

8 A. Yes, they are.

9 MR. CLAYMAN: Your Honor, we would move to admit
9:35AM 10 Government's Exhibits 69 and 70 into evidence.

11 MR. GELFAND: No objection.

12 THE COURT: Government's Exhibit 69 and
13 Government's Exhibit 70 are received.

14 (Government's Exhibit 69-70 Received)

9:35AM 15 MR. CLAYMAN: Permission to publish Exhibit 69,
16 Your Honor?

17 THE COURT: You may.

18 Q. (BY MR. CLAYMAN.) Looking at the first page here,
19 Mr. Fottrell, when was this e-mail sent?

9:35AM 20 A. There's an e-mail that's dated Saturday the 22nd of
21 April, 2017.

22 Q. And what e-mail account was it sent to?

23 A. It was sent to -- it lists the name Anna Duggar, but
24 the associated account is joshuaduggar@iCloud.com.

9:35AM 25 Q. Who is the mail from?

9:35AM 1 A. It's from Covenant Eyes reports. It lists the
2 address report@covenanteyes.com.

3 Q. So in the body of the e-mail, what does it say this
4 is exactly?

9:35AM 5 A. It says "accountability report."

6 Q. Who is the user identified?

7 A. Joshua Duggar.

8 Q. And what does it say that the sensitivity level is
9 set at?

9:36AM 10 A. The sensitivity level is set for "mature teen."

11 Q. Go back one second. What time frame does it say that
12 this accountability report covers?

13 A. It covers a time period of April 15th through
14 April 22nd of 2017. And it lists the filter as "mature
9:36AM 15 teen."

16 Q. Now, turning to page two. What does it say at the
17 bottom of the page, right underneath this red bar?

18 A. So it says -- under the red bar, there's a -- it says
19 "web searches." And then it says, "web searches from

9:36AM 20 Joshua showing searches rated MT, mature teen." And so it
21 lists a Google search, if you look at the very bottom, it

22 says that the user went to Google and typed in the phrase
23 "download Torrent Mac," and the software said, "That's

24 rated M," and it would not allow him -- it would not allow
9:37AM 25 that to occur, so it's just blocking that activity. So

9:37AM 1 this is just a report showing that Covenant Eyes detected
2 that activity and prevented it from happening.

3 Q. And when does it say that search occurred?

4 A. Saturday, April 15th, at 12:13 a.m.

9:37AM 5 Q. Turning to page three. What are the additional
6 searches there at the top?

7 A. "Download Torrent Mac." The next one is, "How to
8 keep iTunes rented movies on a Mac, how to keep iTunes
9 rented movies on a Mac."

9:37AM 10 Q. And a little further down on this page, what does it
11 say below the red bar there?

12 A. There is another instance for mature teen, so it's
13 referencing the website called "Fmovies.SE" and it says,
14 "Watch Three Amigo 1986 online." And it says, "Viewed
9:37AM 15 page on Safari, Saturday, April 15th, at 12:16 a.m."

16 Q. This is marked as activity for review, is that
17 correct?

18 A. Yes.

19 Q. Turning to the next page. What activity was flagged
9:38AM 20 on Google.com for review?

21 A. On Google.com the person typed in the Google search
22 term "download Torrent Mac." It lists the website. And
23 that happened April 15th at 12:13 a.m. Right below that,
24 the same thing, Googled "Torrent Mac," and then that's the
9:38AM 25 entries.

9:38AM 1 Q. Finally, on page five, what web activity was flagged
2 and blocked there at the top?

3 A. Utorrent.com. Basically, it's showing
4 "utorrent.com/download/Mac." And it's saying that page is
9:38AM 5 blocked. Then basically going to

6 "download-new.utorrent.com," that page is blocked. Same
7 thing with the third page, "download-new.utorrent.com,"
8 web content blocked because it's rated "M" for "mature."

9 Q. Do you know what you would be able to do if you go to
9:38AM 10 utorrent.com/downloads?

11 A. You would be able to download the uTorrent program
12 for whatever operating system you are running, the
13 Macintosh or whatever version. Yeah, so that's one way of
14 getting the uTorrent software is getting it from the
9:39AM 15 vendor's website.

16 Q. So the user of the MacBook was trying to download
17 uTorrent, is that fair to say?

18 A. Yes.

19 Q. That's on top of having qBittorrent and Transmission
9:39AM 20 already on the MacBook at some point?

21 A. Yes.

22 Q. If we could take this down and please publish
23 Government's Exhibit 70. What is this exhibit?

24 A. This is the same type of an e-mail message. It's a
9:39AM 25 different date and time. Now we're looking at the time

9:39AM 1 period between May 6th and May 13th, 2017, and we are
2 going to see similar entries.

3 Q. If we could go to the next page, page three. What
4 does it say below the red bar there? What's subject of
9:39AM 5 the e-mail is this, or portion?

6 A. So it's showing "activity for review." And it's
7 listing "Instagram." So clearly, there was some things
8 associated with Instagram and it was rating that as
9 "mature teen."

9:40AM 10 Q. If we could turn to page four. What activity was
11 marked for review and actually blocked right in the middle
12 of the page there?

13 A. So in the middle of the page, again, May 9th of 2017,
14 the person goes to "uTorrent.com/download/Mac," and,
9:40AM 15 again, that page was being blocked.

16 Q. So someone was trying to download uTorrent again on
17 the MacBook?

18 A. Yes.

19 Q. Mr. Fottrell, what BitTorrent peer-to-peer software
9:40AM 20 did you find on the Linux partition on the defendant's
21 work computer?

22 A. The uTorrent program.

23 Q. You were also discussing during the virtualization
24 print screens we showed earlier finding a backup of an
9:40AM 25 iPhone, is that right?

9:40AM 1 A. Yes.

2 Q. Did you review the data in that backup?

3 A. Yes, I did.

4 Q. What kind of information did you look at?

9:40AM 5 A. So I was -- with that iPhone backup that I found on
6 the MacBook, I was primarily interested in two things. I
7 was interested in photos that were taken on that iPhone,
8 and I was interested on messages, text messages that were
9 sent and received on that iPhone.

9:41AM 10 Q. So based on your review of that information, whose
11 iPhone was this that was backed up to the MacBook
12 computer?

13 A. Joshua Duggar's iPhone.

14 Q. When you were reviewing the texts and the photos,
9:41AM 15 what kind of information were you looking for?

16 A. So I was looking for, like, identity information,
17 like who is the person talking, who is the person
18 communicating. And then with respect to the photos, most
19 modern iPhones, in this case it was an iPhone 8, it has
9:41AM 20 the ability to take photos. And the format of these
21 photos is an HEIC format, which is an Apple proprietary
22 format. And the reason I was interested in that format is
23 it contains a lot of EXIF information. We heard EXIF
24 information yesterday.

9:41AM 25 What was valuable to me about the EXIF information,

9:42AM 1 when somebody is taking a picture is it has the GPS
2 coordinates of where you were when that picture was taken.
3 So I can look at the photos that were taken on that
4 iPhone, and I don't really care about the photos per se,
9:42AM 5 but it just shows where the person who had the camera was
6 at particular moments in time. And that's what I was
7 focused on.

8 Q. So if you could find in the black binder what's been
9 marked as Government's Exhibit 71.

9:42AM 10 A. Yes.

11 Q. Do you recognize that exhibit?

12 A. Yes, I do.

13 Q. What is it?

14 A. These are a number of print screens -- I'm sorry --
9:42AM 15 of photos that I printed out associated with the iPhone 8
16 with respect to the date May 11th, 2019.

17 Q. Do these exhibits include any metadata associated
18 with these images?

19 A. Yes, they do.

9:42AM 20 Q. Is this a true and accurate copy of these images and
21 the associated metadata from the iPhone backup you found?

22 A. Yes, they are.

23 MR. CLAYMAN: Your Honor, at this time, we would
24 move to admit Government's Exhibit 71 into evidence.

9:42AM 25 MR. GELFAND: Your Honor, may we approach

9:43AM 1 briefly?

2 THE COURT: You may.

3 (Bench Conference)

4 MR. GELFAND: Thank you, Your Honor. We would
9:43AM 5 object to any expert testimony in the admission of these
6 exhibits as it relates to geolocation for a couple of
7 reasons. Number one, this expert is not qualified to
8 offer testimony as to geolocation and there's been no
9 notice that he would offer testimony related to

9:43AM 10 geolocation. There's an abundance of case law citing that
11 this kind of EXIF data related to geolocation in
12 particular is unreliable. In fact, in the *Crawford* case
13 in the Western District of New York just this year, the
14 government itself asserted that the EXIF data was
9:44AM 15 unreliable. And in the *B-O-Y-A-J-I-A-N* case in the
16 Central District of California in 2012 -- I'm sorry, I
17 just misquoted the case -- it was the *Gutierrez* case, a
18 2015 case, government expert witnesses, they examined the
19 metadata or EXIF data related to pictures embedded

9:44AM 20 regarding geolocation. And the whole idea is that this
21 kind of testimony has been deemed unreliable by the
22 government and by courts. And so to the extent that the
23 photos speak for themselves, so be it, but for them to
24 rely on the EXIF data is improper expert testimony.

9:44AM 25 THE COURT: Mr. Clayman?

9:44AM 1 MR. CLAYMAN: Your Honor, as an initial matter, I
2 don't believe this is expert testimony. He's essentially
3 going to say that there are GPS coordinates associated
4 with the image that you can plug into a map, like Google
9:44AM 5 maps, and Your Honor is permitted to take judicial notice
6 of the accuracy of something like that.

7 With respect to the unreliability, Mr. Gelfand
8 can certainly cross-examine the witness, but right now,
9 there's no evidence that these are unreliable. I think
9:45AM 10 the witness will be able to testify to what he did with
11 the EXIF information that he found.

12 THE COURT: All right. The Court will overrule
13 the objection. At the end of the day, I think that this
14 is an issue that goes to weight and credibility, not
9:45AM 15 admissibility. And certainly the defense will be able to
16 cross-examine him on the reliability, how close the
17 geolocation algorithm principles can be, how reliable they
18 are, et cetera.

19 As to the issue of whether it's an expert
9:45AM 20 opinion, the government says that it's not, and the Court
21 tends to agree. This witness has testimony, both as a
22 fact witness in his role as a computer forensic examiner.
23 He has been qualified as a 702 expert as well and can
24 offer expert opinions when asked to do so under 702. But
9:46AM 25 this type of question comes in under 701. The fact that

9:46AM 1 he has special expertise in his profession does not
2 transcend 701 testimony into 702. To come in under 701,
3 it merely has to be, there has to be a foundation that the
4 testimony is based on an opinion that is rationally based
9:47AM 5 on the witness's perception.

6 Here, the witness has testified that he does this
7 type of forensic investigation all the time. I would like
8 there to be some additional foundation laid that, as part
9 of his work in the field that he has described, that this
9:47AM 10 is a common technique that he uses in his profession. But
11 assuming he testifies to that, the Court would otherwise
12 find that there's a basis that this lay opinion is based
13 on what he rationally perceived during the course of his
14 investigation and analysis of the phone. So that's the
9:47AM 15 Court's ruling. Please lay that additional foundation.

16 (Bench Conference Concluded)

17 THE COURT: You may proceed.

18 Q. (BY MR. CLAYMAN.) Mr. Fottrell, do you commonly use
19 EXIF information that you find in images during the course
9:48AM 20 of your investigations?

21 A. Yes, I do.

22 Q. What do you use it for?

23 A. Just to establish an identity and establish location.

24 So if the images are taken, I'm looking at a number of
9:48AM 25 EXIF information. What is the make and model of the

9:48AM 1 camera that was used to take that picture. Then,
2 number two, the GPS coordinates, where was the camera at
3 the point in time that this photo was taken.

4 Q. Have you had the opportunity at times to look at the
9:48AM 5 photo, look at the EXIF information about location, and
6 confirm that they are generally accurate?

7 A. Yes. So there's certainly checks and balances. I
8 can look at the raw data that has the GPS coordinate in
9 latitude and longitude. I can copy and paste that into a
9:49AM 10 Google maps program and display it in Google maps and just
11 verify that it's basically accurate. I have been doing
12 that for a long time. I do that consistently in many
13 cases.

14 MR. CLAYMAN: Your Honor, at this time, we would
9:49AM 15 move to admit Government's Exhibit 71.

16 THE COURT: The objection is noted, but it's
17 otherwise received.

18 (Government's Exhibit 71 Received)

19 MR. CLAYMAN: Permission to publish, Your Honor.

9:49AM 20 THE COURT: You may.

21 Q. (BY MR. CLAYMAN.) Mr. Fottrell, just to be clear,
22 this came from the iPhone 8 backup you were describing, is
23 that correct?

24 A. Yes.

9:49AM 25 Q. What date and time was this image on the first page

9:49AM 1 taken?

2 A. So it shows the date and time of May 11th, 2019, at
3 5:58 p.m.

4 Q. What device was this picture taken with?

9:49AM 5 A. The device is an iPhone 8 Plus.

6 Q. Do you know where this picture was taken?

7 A. Yes. So if you look at the map that's in the lower
8 left-hand corner, I displayed -- the program that I'm
9 using on my forensics machine automatically is associated
9:50AM 10 with Bing maps, so it's bringing up the Bing maps. It's a
11 map of the Arkansas area. It shows Route 412. And if I
12 zoom in a little bit further, that geolocates to the car
13 lot.

14 Q. Did you independently confirm, based on the GPS
9:50AM 15 information and the EXIF information on this photo, that
16 that is generally in the area of the car lot we are
17 discussing?

18 A. Yes, I did. For a number of images, I would
19 basically just take the coordinates, load them into Google
9:50AM 20 maps, verify that that's where the images were located.
21 This is just a simple way to kind of show that
22 information, but I did verify the GPS coordinates
23 generally matched what this map shows.

24 Q. What's this a picture of?

9:50AM 25 A. It's a picture of, looks like a Chevy Blazer.

9:50AM 1 Q. Based on all the evidence you see in this exhibit on
2 page one, what can you say about where the defendant's
3 iPhone 8 was at the time this picture was taken?

4 A. At the car lot. So at May 11th, 5:58 p.m., the
9:51AM 5 defendant's iPhone was at the car lot.

6 Q. How about on page two of Government's Exhibit 71?

7 A. This is just a moment later at 5:59 p.m. It's the
8 same iPhone 8. It's the same location at the car lot.

9 Q. Page three?

9:51AM 10 A. Same time, 5:59, in the same minute, same iPhone 8 at
11 the same location.

12 Q. If we could return to page one of this exhibit, and
13 pull up alongside it what's already been admitted as
14 Government's Exhibit 28 on page 12. Mr. Fottrell, what is
9:51AM 15 Government's Exhibit 28 again?

16 A. This is the print screens that I created with the
17 Windows partition. And it shows that the Ubuntu software
18 was installed -- I'm sorry -- was downloaded into the
19 downloads folder on May 11th, 2019, at 5:47 p.m.

9:52AM 20 Q. And this is the HP computer from the car lot, is that
21 right?

22 A. That is correct.

23 Q. So approximately how long before this picture in
24 Government's Exhibit 71 was taken with the defendant's
9:52AM 25 iPhone at the car lot was that Linux installation software

9:52AM 1 downloaded onto the defendant's computer at the car lot?

2 A. So this was at 5:47 p.m. is when the download
3 occurred. Roughly 10 minutes later is when the picture
4 was taken.

9:52AM 5 Q. We can take these exhibits down. Now, you also
6 mentioned looking at texts that you found on the iPhone 8,
7 is that right?

8 A. That's correct, text messages or multimedia messages.

9 Q. Please turn to what's been marked as Government's
9:52AM 10 Exhibit 72. Do you recognize that exhibit?

11 A. Yes, I do.

12 Q. What is it?

13 A. These are text messages that were sent and received
14 on May 11th.

9:52AM 15 Q. Are these all of the messages or just a portion of
16 them?

17 A. Just a sample of them.

18 Q. But is it a true and accurate copy of these messages
19 that you found on the defendant's iPhone?

9:53AM 20 A. Yes.

21 MR. CLAYMAN: Your Honor, at this time, we would
22 move to admit Government's Exhibit 72 into evidence.

23 MR. GELFAND: No objection.

24 THE COURT: Government's Exhibit 72 is received.

9:53AM 25 (Government Exhibit 72 Received)

9:53AM 1 MR. CLAYMAN: Permission to publish 72, Your
2 Honor?

3 THE COURT: You may.

4 Q. (BY MR. CLAYMAN.) Looking at page two of this
9:53AM 5 exhibit, who are the participants on page two of
6 Government's Exhibit 72?

7 A. On here?

8 Q. If we could move to page two.

9 A. So on page two, there's a list with a person that
9:53AM 10 says "Josh Williams," and then the "local user."

11 Q. And when are these messages from?

12 A. May 11th, 2019, at 5:58 p.m., 5:59 p.m., 5:59 p.m.

13 Q. Just to clarify for the Jury, what does "local user"
14 mean?

9:53AM 15 A. That would be the local user of the iPhone, the local
16 user of the device.

17 Q. Can you read the first two messages sent there?

18 A. Sure. It lists the name "Josh Williams." The text
19 says, "This is Joshua's mom. I have two people asking
9:54AM 20 about a green Tahoe. Do you still have that?" And the
21 response is, "No, but I have the black one." And then
22 there's a "year," question mark. And then the response
23 is, "It's a 1999" -- I'm sorry -- "Is it a 1999?" Then
24 the response is some attached images of the Tahoe.

9:54AM 25 Q. On the next page, what does he send?

9:54AM 1 A. At the very bottom of the page, it has the dollar
2 amount, \$2250.

3 Q. Are these the images we just reviewed in the last
4 exhibit?

9:54AM 5 A. Some of them are the same images, yes.

6 Q. We can take this down. And, Mr. Fottrell, if you
7 could take a minute and review what's been marked as
8 Government's Exhibit 73 through 81 in the black binder you
9 have in front of you.

9:55AM 10 A. Through 80 --

11 Q. Through 81, Mr. Fottrell.

12 A. Okay.

13 Q. Do you recognize those exhibits?

14 A. Yes, I do.

9:55AM 15 Q. What are they?

16 A. These are a series of photos and the associated
17 messages with different dates. Specifically May 13th,
18 May 14th, May 15th, and then June 22nd. They are just a
19 series of dates where I have a number of images and a
9:55AM 20 number of messages corresponding to those days.

21 Q. These were recovered from the backup of the iPhone 8?

22 A. Yes.

23 Q. Are these true and accurate copies of these images
24 and messages from that iPhone?

9:56AM 25 A. Yes, they are.

9:56AM 1 MR. CLAYMAN: Your Honor, at this time, we would
2 move to admit Government's Exhibit 73 to Government's
3 Exhibit 81.

4 MR. GELFAND: Your Honor, could I incorporate the
9:56AM 5 same objections we raised at side bar with no additional
6 objections, just, among other things, improper expert
7 testimony on this subject matter.

8 THE COURT: The Court's ruling will be the same
9 as it was. Let me see counsel at the bench, please.

9:56AM10 (Bench Conference)

11 THE COURT: Mr. Clayman, what is the government's
12 position in response to the objection as to these exhibits
13 to the extent that it would differ from your earlier
14 position, if any?

9:57AM15 MR. CLAYMAN: Your Honor, that was the first I
16 heard of their objection regarding the metadata so I
17 haven't had an opportunity to look into any of the case
18 law, but we would maintain our previous position that this
19 is not expert testimony that would require any sort of
9:57AM20 expert certification. He's simply looking at GPS

21 coordinates and plugging them into a map, confirming that
22 that is where he saw -- that is the location he found.

23 THE COURT: Well, the Court's ruling that this
24 comes in under 701 with regard to these exhibits on the
9:57AM25 table will be the same. And the Court's analogy here

9:57AM 1 would be, if instead of computer forensics, we were
2 talking about a trauma surgeon in an operating room when a
3 patient is just brought in and you are trying to figure
4 out clues from what is going on in their body and their
9:58AM 5 vital statistics in order to form an opinion in the course
6 of your factual connection to the case, that's a 701
7 opinion, not necessarily a 702 opinion. And my
8 understanding of this witness's connection to the case is
9 that, in the chain of custody of the evidence in the case
9:58AM10 after the CFA locally looked at the materials, they were
11 then transmitted to this person who works in law
12 enforcement for a secondary, more specialized review. And
13 so he is testifying about how he went about searching the
14 device's -- in this case, a phone -- for clues, and the
9:59AM15 Court finds that all of the requirements under 701 are
16 met.

17 Separate and apart from that, and to the extent
18 that one could argue that his opinions here are of such a
19 technical nature that it really requires a 702 opinion,
9:59AM20 and therefore taking it out of the realm of 701, to that
21 extent, the Court finds that this witness has already been
22 qualified as an area in computer forensics analysis and
23 that this opinion is adequately supported by all of the
24 criteria under 702. And this information was added in the
10:00AM25 supplemental foundation that Mr. Clayman laid with regard

10:00AM 1 to the prior exhibit. So I would expand the Court's
2 analysis as a supplementary basis for allowing the prior
3 exhibit regarding the black Tahoe picture and its location
4 when and where it was taken.

10:00AM 5 As to the notice objection, certainly this
6 witness has been disclosed as an expert in this area.
7 He's been disclosed that he was going to be offering
8 opinions in this area. The question of whether notice was
9 given that he would be specifically opining about

10:01AM 10 geolocation pictures, the Court finds the objection to
11 lack of notice to be a little bit off inasmuch as the
12 government has identified for several days, if not --
13 well, I think at the time of the pretrial conference, all
14 of these exhibits had been disclosed. They had been
10:01AM 15 disclosed to the Court, I think, on the day of the
16 pretrial conference. When were they disclosed to the
17 defense?

18 MR. ROBERTS: They were uploaded the week of
19 Thanksgiving, Your Honor, to USA index.

10:02AM 20 THE COURT: Well, first of all, the Court finds
21 that surely they were given notice that this witness would
22 be called as an expert witness based on his review of the
23 cell phone, is that correct?

24 MR. ROBERTS: Yes, Your Honor.

10:02AM 25 THE COURT: Is that correct, Mr. Gelfand?

10:02AM 1 MR. GELFAND: Yes, Your Honor. This issue is
2 limited to geolocation testimony, Your Honor.

3 THE COURT: When did you receive the exhibit
4 that's already been received and the exhibits that are on
10:02AM 5 the table now?

6 MR. GELFAND: Essentially over the Thanksgiving
7 holiday, approximately before -- essentially over the
8 Thanksgiving holiday, perhaps the day before. The
9 government can correct me on this. I think it was the
10:03AM 10 Wednesday before Thanksgiving.

11 MR. ROBERTS: My recollection it was Tuesday
12 before. Tuesday or Wednesday before Thanksgiving, Your
13 Honor.

14 THE COURT: Is it your position that you could
10:03AM 15 not -- that one cannot tell from the face of this exhibit
16 that the point of it is geolocation?

17 MR. GELFAND: Your Honor, I wouldn't go that far,
18 because that's not fair. However, our understanding,
19 based on the expert notice, was that these were being
10:03AM 20 admitted for purposes of time-stamping it as opposed to
21 geolocation, which is a difference. And in prior pretrial
22 hearings, obviously for different purposes, the
23 government's emphasis has always been on time-stamping as
24 opposed to any sort of geolocation testimony.

10:03AM 25 MR. ROBERTS: Can I address that, Your Honor?

10:03AM 1

THE COURT: Yes.

2

MR. ROBERTS: We entered -- during the

3

suppression hearing that we had on September 29th, we

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specifically, with Special Agent Jerry Faulkner, went over

10:03AM 5

an outline, a bullet point outline, that included pictures

6

that geolocate to Northwest Arkansas, geolocate to the car

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lot. That is not correct. This has been part of the

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case. As a matter of fact, we introduced that in the

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detention hearing in May.

10:04AM 10

THE COURT: Well, the Court finds that there's

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both general notice, and in the proceedings occurring

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prior to today, both in the form of prior testimony and in

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the form of the actual trial exhibits, that it would be

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apparent that this would be a component part of the

10:04AM 15

witness's testimony based on the map and that sort of

16

thing that is reflected on the exhibit. Certainly the

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Court didn't have anywhere near the context that the

18

parties had, and when I reviewed the exhibits, that was

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fairly obvious to me being the point that was to be

10:05AM 20

established here. So the Court will overrule the notice

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aspect and permit this testimony on the proposed exhibits,

22

as well as the exhibit just received, both under 701 and

23

under 702.

24

MR. GELFAND: Can I, for the record?

10:05AM 25

THE COURT: You may.

10:05AM 1 MR. GELFAND: I understand the Court's ruling,
2 but just so that we have a comprehensive record. Our
3 position which is very precise is that this is
4 inadmissible under 901 as well and under expert opinion.

10:05AM 5 There's case law. We would refer the Court to the
6 *Crawford* case in the Western District of --

7 THE COURT: Let's take up 901. 901 is
8 authentication, is the exhibit what it purports to be.
9 What is your objection under 901?

10:05AM 10 MR. GELFAND: That there's case law that says
11 that the government will need to provide an expert witness
12 to explain and support the methods used by Google, or in
13 this case I guess Bing maps, to obtain the geolocation
14 data if it intends to use it as evidence at trial. And
10:06AM 15 the Court went on to say, "It will be insufficient to call
16 a Google representative to authenticate the records based
17 only on accuracy under Federal Rule of Evidence 901." So
18 it's a combination, the way the Court analyzed it, as
19 expert opinion and 901. And so this witness has

10:06AM 20 authenticated the documents in front of him are what they
21 purport to be, but embedded within the document is
22 geolocation data that has to be actually supported by
23 expert testimony concerning where that data came from.
24 And the Court in the Western District of New York even
10:06AM 25 went so far as saying, even a Google representative would

10:07AM 1 be insufficient to say, "We, Google, produced this
2 record." And I don't think this witness has laid any
3 foundation or could lay any foundation that he knows how
4 Bing maps or Google maps -- I didn't catch the exact
10:07AM 5 detail of which service he was using -- but how
6 essentially the internet map service actually computes the
7 geolocation data, because that's what he's testifying.

8 MR. CLAYMAN: Your Honor, if I could respond.
9 Just reviewing it, it's dealing with cell tower analysis.
10:07AM 10 This is not cell tower analysis. This is the metadata in
11 the images. And Your Honor is permitted to take judicial
12 notice of things like Google maps, Bing maps, and the
13 accuracy of those sort of online services.

14 THE COURT: Well, not only is the Court entitled
10:07AM 15 to do that, and I'm not saying that the Court is taking
16 judicial notice because I don't know that I need to take
17 judicial notice. What the Court in the case that the
18 defense cites may not have had available in evaluating the
19 reliability of this testimony is the additional text
10:08AM 20 messaging data that shows a vehicle for sale. The
21 defendant, by evidence in this case as the defense
22 explained in opening statement, is a used car salesman,
23 and there's evidence that his used car lot is at the
24 location where the geolocating data purports to show it.
10:08AM 25 And the Court believes that the opinion being offered

10:08AM 1 here, lay expert or otherwise, is reliable. And in its
2 gatekeeping function, the Court does not believe that it
3 would be inappropriate to admit this testimony, nor would
4 it lead to any sort of confusion of the issue. So I
10:09AM 5 understand the objection. It will be overruled for the
6 dual bases that the Court has articulated.

7 MR. GELFAND: Thank you.

8 MR. ROBERTS: Thank you, Your Honor.

9 (Bench Conference Concluded)

10:09AM 10 MR. CLAYMAN: At this time, Your Honor, we would
11 again move to admit Government's Exhibit 73 through 81.

12 THE COURT: Those exhibits are received.

13 (Government's Exhibit 73-81 Received)

14 MR. CLAYMAN: Permission to publish 73, Your
10:09AM 15 Honor.

16 Q. (BY MR. CLAYMAN.) Mr. Fottrell, when was this image
17 taken?

18 A. May 13th, 2019, at 3:06 p.m.

19 Q. Based on your review of the metadata and the GPS
10:10AM 20 coordinates associated with the image that you found,
21 approximately where is the defendant's iPhone when this
22 was taken?

23 A. I kind of zoomed the map a little bit to show the
24 location of the car lot, and you can see where it says,
10:10AM 25 "Wildcat Creek Road." And then Route 412 is right next to

10:10AM 1 that, so it's geographically located at the car lot.

2 Q. What's it a picture of?

3 A. It's a picture of what appears to be a scale that
4 displays the weight, 1 pound, 5.7 ounces.

10:10AM 5 Q. Can we please pull up alongside this exhibit what's
6 already been admitted as Government's Exhibit 30 and go to
7 page 16. Mr. Fottrell, what is Government's Exhibit 30
8 again?

9 A. It's the print screens that I created associated with
10 restoring the Linux partition on the computer. We are at
11 the desktop folder. And I'm, again, just highlighting the
12 downloads folder, music folder, pictures folder. And just
13 as a ballpark figure to illustrate when the operating
14 system, the Linux operating system was installed. It was
10:11AM 15 installed at approximately 1:52 p.m.

16 Q. And you testified yesterday, is it correct, that
17 someone had to be physically present on the HP computer to
18 install the Linux operating system?

19 A. Yes.

10:11AM 20 Q. So approximately how long after this operating system
21 was installed was the defendant's phone used to take a
22 picture at the car lot where that computer is located?

23 A. From 1:52 to 3:06 p.m., which is approximately about
24 an hour and 15 minutes later.

10:11AM 25 Q. If we could take down Government's Exhibit 30 and

10:11AM 1 pull up what's already been admitted as Government's
2 Exhibit 37. What's Government Exhibit 37 again,
3 Mr. Fottrell?

4 A. These are the TOR Firefox bookmarks that were
10:11AM 5 automatically created. And you can see some of them were
6 created automatically when the TOR program was installed.
7 So the first few of them are at 2:03 p.m. in the
8 afternoon, which is approximately like an hour later --
9 I'm sorry -- an hour before when the picture of the scale
10:12AM 10 was taken.

11 Q. We can take these exhibits down. If we could please
12 pull up what's been admitted as Government's Exhibit 74.
13 Mr. Fottrell, when was this picture taken on the iPhone?

14 A. This picture was taken on the 14th at 11:30 in the
10:12AM 15 morning, 11:31.

16 Q. And where does the phone appear to be based on the
17 metadata?

18 A. It says the location of Tontitown, if I'm pronouncing
19 that correctly. It's not at the car lot.

10:12AM 20 Q. What is it a picture of?

21 A. It appears to be the picture of cement ground with an
22 oil stain on the ground and it's a gray Croc, a foot with
23 a gray Croc in the lower center of this image.

24 Q. Turning to page two, when was this picture taken?

10:13AM 25 A. Same time, 11:31 a.m. And it shows a foot inside, a

10:13AM 1 left foot inside a Croc.

2 Q. Does it appear to be in the same location?

3 A. Yes.

4 Q. How about on page three, when was this picture taken?

10:13AM 5 A. This picture was taken a little bit later on in the
6 afternoon at 4:14 p.m. But if you look at the GPS
7 coordinates, this picture does appear to be taken at the
8 car lot.

9 Q. And what's it a picture of?

10:13AM 10 A. A Volkswagen four-door sedan.

11 Q. How about on page four of this exhibit?

12 A. On page four, the picture was taken on the 14th at
13 4:20 p.m. And it appears to be a picture of somebody
14 taking a picture of the computer screen of the HP computer
10:13AM 15 in the car lot. They are certainly bringing up YouTube.
16 They are looking at a YouTube video for a cam position
17 sensor on a Chevrolet.

18 If you look at the very bottom of the page, it is the
19 same background that we saw on the background for the HP
10:13AM 20 desktop computer. It has the family photo on it. If you
21 look at the bottom of that family photo, that image --
22 that part of it on the bottom of the image matches the
23 desktop computer of the HP computer.

24 Q. That's the Windows side of the computer in the car
10:14AM 25 lot's office?

10:14AM 1 A. Yes, the Windows side.

2 Q. Mr. Fottrell, do you see a reflection on the screen
3 in this image?

4 A. Yes, I do. It's kind of hard to see.

10:14AM 5 Q. Zoom in on that.

6 A. If you zoom in on this a little bit, you can see a
7 reflection in the picture is somebody wearing a hat. And
8 it's kind of red, but it's the logo for the car lot,
9 Champion, Champion -- we'll see this logo in a second. It

10:14AM 10 appears to be the reflection of a person wearing a hat
11 associated with the car lot.

12 Q. It appears to be someone taking the picture, their
13 reflection there in the screen?

14 A. Yes.

10:14AM 15 Q. Go to the next page, page five. When was this
16 picture taken?

17 A. A few minutes later at 4:25 p.m.

18 Q. And where was the phone when this picture was taken?

19 A. At the car lot.

10:14AM 20 Q. How about on page six?

21 A. A little bit later, at 6:01 p.m. It's a picture of a
22 Ford pickup truck and it's at the same location.

23 Q. Focusing on this picture for a second. First of all,
24 what is it a picture of?

10:15AM 25 A. A Ford pickup truck.

10:15AM 1 Q. Can we please pull up what has already has been
2 admitted as Government's Exhibit 39. When was this
3 picture taken again, Mr. Fottrell?

4 A. This picture was taken on May 14th at 6:01 p.m.

10:15AM 5 Q. And what, again, is Government's Exhibit 39?

6 A. 39 is the Torrent file location, so it lists a number
7 of Torrent files on the Linux partition. And it shows two
8 entries associated with -- right around the same time
9 frame on May 14th. One of -- the movie_0214 was

10:15AM 10 downloaded at 5:28 p.m. And roughly 10 minutes later, at
11 5:38 p.m., the Torrent file for movie_0216.

12 Q. Do you recall what content was associated with these
13 two Torrent files?

14 A. Those were videos of minor girls, two minor girls,
10:16AM 15 approximately eight to 10 years old.

16 Q. And which portion of the HP computer did you say
17 these Torrent files were found on?

18 A. On the Linux partition. So it's under home dell_one,
19 indicates that it was on the Linux partition.

10:16AM 20 Q. And that's the partition that someone has to be
21 physically present to boot up, is that correct?

22 A. Yes.

23 Q. Based on Government's Exhibit 74, when was the
24 defendant's iPhone -- or, excuse me, let me rephrase.

10:16AM 25 How long after these Torrent files were downloaded to the

10:16AM 1 Linux partition was the defendant's iPhone used to take a
2 photo at the car lot?

3 A. Approximately half an hour later. From 5:30 to
4 6:01 p.m., approximately half an hour later a photo was
10:16AM 5 taken with the defendant's phone at the car lot.

6 Q. We can take down 39. What about on page seven of
7 Exhibit 74?

8 A. Here's another photo on May 14th, just a few minutes
9 later, at 6:04 p.m., and we are still at the car lot.

10:17AM 10 Q. Page eight?

11 A. 6:07 p.m., still at the car lot.

12 Q. And looking at page nine.

13 A. This is a little bit later on in the evening at
14 8:14 p.m. We are not at the car lot. I think we are at
10:17AM 15 the Lowe's store, which is a little bit farther away.

16 Q. What's it a picture of?

17 A. It appears to be Anna Duggar at the Lowe's looking at
18 some doors.

19 Q. How about on page 10?

10:17AM 20 A. More pictures.

21 Q. Finally, on page 11?

22 A. It's kind of a selfie of Justin (sic) and Anna at the
23 Lowe's. This is where you could clearly see the hat that
24 we saw the reflection of in the previous image of the
10:17AM 25 Wholesale Motorcars logo, so a very similar hat was taken

10:17AM 1 in that picture a few hours ago.

2 Q. We can take down Government's Exhibit 74 and publish
3 what's already been admitted as Exhibit 75. When are
4 these messages from, Mr. Fottrell?

10:18AM 5 A. These are from the 14th, May 14th, at approximately
6 4:49 p.m.

7 Q. And what is the local user saying there?

8 A. "Got stuck here and still not free yet. I'm gonna
9 aim for tomorrow just after lunch."

10:18AM 10 Q. Just to clarify again for the Jury, the local user
11 means what exactly?

12 A. The person using the iPhone. And the other would be
13 the other person that they are messaging with.

14 Q. Based on your review of the images from the
10:18AM 15 defendant's iPhone on this date, where did you understand
16 the "got stuck here" to be referring to?

17 A. To the car lot.

18 Q. Can we please pull up alongside this exhibit what's
19 already been admitted as Government's Exhibit 34.

10:18AM 20 Mr. Fottrell, what is Government's Exhibit 34 again?

21 A. Government's Exhibit 34 is the EXIF information
22 associated with the thumbnail images that were located in
23 the large folder.

24 Q. When were these thumbnail images created based on
10:19AM 25 Exhibit 34?

10:19AM 1 A. At 5:11 p.m. on the 14th.

2 Q. Just to be clear, what were these thumbnail images
3 depicting?

4 A. These were the thumbnail images associated with the
10:19AM 5 storyboards in the web-collections-prevs that had been
6 extracted to the desktop computer on the Linux partition.

7 Q. Would someone need to view those images or open a
8 folder containing those images in order for these
9 thumbnail images to be created?

10:19AM 10 A. Yes.

11 Q. Approximately how long after the defendant said, "got
12 stuck here and still not free yet" were these thumbnail
13 files created on the Linux partition in the car lot?

14 A. So this happened at 4:49 p.m., and the things were
10:19AM 15 created at 5:11 p.m., so I would estimate around 20
16 minutes later.

17 Q. If we could take down 34. Direct you to page two of
18 75. What's the local user saying here?

19 A. At 5:48 p.m., the user is saying, "I have your Versa
10:20AM 20 down here for Carlin by the way". And then a moment
21 later, "At my car lot."

22 Q. If we could please pull up what's already been
23 admitted as Government's Exhibit 1. Do you recognize that
24 exhibit, Mr. Fottrell?

10:20AM 25 A. Yes, I do.

10:20AM 1 Q. What is it?

2 A. This is a Torrential Downpour log associated with the
3 downloading of the movie_0216.

4 Q. And when did this undercover download start?

10:20AM 5 A. It started on May 14th at 5:41 p.m. and it finished
6 at 5:42 p.m.

7 Q. Approximately how long after this undercover download
8 finished did the defendant say, "I have your Versa down
9 here at my car lot"?

10:21AM 10 A. Approximately eight minutes later.

11 Q. Just to be clear, Mr. Fottrell, in order for this
12 undercover download to happen, what would need to be on
13 the Linux partition at the car lot?

14 A. The Linux partition would have to be the partition
10:21AM 15 that's active. The uTorrent program would have to be
16 running and active at that point in time. That's the way
17 that the undercover is going to be able to access this
18 computer through its use of the uTorrent program.

19 Q. And if this movie_0216 was not completely downloaded
10:21AM 20 to the defendant's Linux partition, would the undercover
21 officer have been able to complete a download of that
22 file?

23 A. No. The undercover downloaded the complete movie
24 from this connection.

10:21AM 25 Q. If we could take these down and please pull up what's

10:21AM 1 already been admitted as Government's Exhibit 76.

2 When was this picture taken, Mr. Fottrell?

3 A. This picture was taken on May 15th at 3:20 p.m. If
4 we look at the GPS coordinates, it's not exactly at the
10:22AM 5 car lot. The car lot would probably be more over here to
6 the left a little bit, so it's a little bit to the right
7 or a little bit east of the car lot.

8 Q. How about on page two?

9 A. On page two, the image is taken at 3:39 p.m. Again,
10:22AM 10 we are not at the car lot. We are a little bit away from
11 the car lot. We're in, if I'm pronouncing that correctly,
12 Siloam Springs.

13 Q. And what's this a picture of?

14 A. It's a picture of a pavement with, like, an "only"
10:22AM 15 sign, and we see a gray Croc in the lower right-hand
16 corner of the screen.

17 Q. How about on page four?

18 A. On page four, the picture is taken at 5:47 p.m. If
19 we look at the GPS coordinates, it does correspond to
10:22AM 20 being at the car lot. Somebody is taking a picture of a
21 bottle of herbicide.

22 Q. Stop here for a second. If we could pull up what's
23 already been admitted as Government's Exhibit 39. What,
24 again, is Government's Exhibit 39, Mr. Fottrell?

10:23AM 25 A. These are the Torrent file locations, so there's a

10:23AM 1 number of Torrent files and it lists the dates and times
2 that they were downloaded. So on the right-hand side, the
3 picture was taken of this herbicide at 5:47 p.m. And we
4 see at 5:22 p.m. is this "playtoysweetie.7zip.torrent"
10:23AM 5 file downloaded. 5:25, the "DD." At 5:30,
6 "DD.1.torrent." 5:32 is "asi se mama linda." And 5:41 is
7 "marissa.zip.torrent," all within a close period of time
8 to this data.

9 Q. To be exact, approximately how long after the
10:23AM 10 "marissa.zip.torrent" file was downloaded was this picture
11 taken at the defendant's car lot?

12 A. Approximately six minutes later, from 5:41 to 5:47.

13 Q. If we could take down Government's Exhibit 39. Turn
14 to page five of this exhibit, Exhibit 76. When was this
10:24AM 15 picture taken?

16 A. The picture was taken on May 15th, 2019,
17 approximately 6:51 p.m. And the location does correspond
18 to being the car lot. What we see is somebody is taking a
19 picture of two Post-it notes. And you can see a foot with
10:24AM 20 what appears to be a gray Croc.

21 Q. If we can take down Government's Exhibit 76 and pull
22 up what's been admitted as Exhibit 77. When are these
23 messages from, Mr. Fottrell?

24 A. These messages are dated May 15th, 2019. The first
10:24AM 25 one is at 11:15 a.m.

10:24AM 1 Q. Just to be clear, these were from the defendant's
2 iPhone 8 backup on his MacBook?

3 A. Yes, they are.

4 Q. What does the defendant say in the first two
10:24AM 5 messages?

6 A. At 11:15 a.m., "I'm at my car lot now. I can come by
7 later or you can drop back in here. I should be around
8 until 1:00 p.m., then gone for an hour or so."

9 Q. So these messages predate, by a little bit, the
10:25AM 10 images we just saw from the same date?

11 A. Yes, they do.

12 Q. If we could pull up alongside this exhibit what's
13 been admitted as Government's Exhibit 39 again.

14 Mr. Fottrell, what Torrent file is identified in the third
10:25AM 15 row of Exhibit 39?

16 A. The third row, on May 15th, 2019, at 11:35 p.m. is a
17 Torrent file named "1lyogirlsuckandfuck."

18 Q. Is it 11yo or 14yo?

19 A. I'm sorry. 14yo.

10:25AM 20 Q. How many Torrent files were downloaded between
21 11:00 a.m. and noon on May 15th on the Linux partition
22 side of the computer?

23 A. One, two, three. Three.

24 Q. Have you reviewed the content associated with these
10:26AM 25 Torrent files?

10:26AM 1 A. Yes, I have.

2 Q. How would you describe it?

3 A. Those are images of minors engaged in sexually
4 explicit conduct.

10:26AM 5 Q. Approximately how long after the defendant said, "I'm
6 here at my car lot now" was the Linux partition on his HP
7 computer used to download the "14yogirlsuckandfuck"
8 Torrent file?

9 A. The message is at 11:16 a.m. and the 14yogirl is at
10 11:35 a.m., which is approximately 20 minutes later.

11 Q. If we could take down Exhibit 39. What is the local
12 user saying at the bottom on this page?

13 A. At the bottom of the page at 11:43, he says, "Okay,
14 thanks, man. Holler at me in a little bit."

10:26AM 15 Q. If we could pull up alongside this exhibit what's
16 already been admitted as Government's Exhibit 34, page
17 two. What is Government's Exhibit 34 again, Mr. Fottrell?

18 A. This is the EXIF information associated with the
19 thumbnail images that were in the large folder on the
20 Linux partition.

21 Q. And what are the files in the bottom three rows
22 identified as?

23 A. So the bottom three rows of this exhibit show the
24 movies 14yogirlsuckandfuck, movie_0214, and movie_0216 at
10:27AM 25 approximately 11:50 a.m. on the 15th.

10:27AM 1 Q. So what does that mean the user of the Linux
2 partition was doing with respect to these downloads at
3 this time?

4 A. Navigating to that folder and displaying the contents
10:27AM 5 of that folder in thumbnails view.

6 Q. Approximately how long after the defendant said,
7 "Okay, thanks, man, holler at me in a little bit" did the
8 user of the Linux partition navigate to that folder?

9 A. So it's from 11:43 a.m. to 11:50 a.m., so it's
10:28AM 10 approximately seven minutes later.

11 Q. You can take down Exhibit 34. Turn to page three of
12 Exhibit 77. Mr. Fottrell, can you read the first message
13 there?

14 A. The first message is dated at approximately 3:55 p.m.
10:28AM 15 "Be praying for Mark, (older guy that was riding a
16 motorcycle on 412). I helped stabilize and pray for him
17 for a little while before the ambulance arrived."

18 Q. Did you find any images on the iPhone backup
19 associated with these messages?

10:28AM 20 A. Yes, I did.

21 Q. Which ones were those?

22 A. Those were images of the Croc on the concrete end
23 there was a photo of the motorcycle accident on the road.
24 There was pictures associated with that.

10:28AM 25 Q. Those were the ones that were taken just outside the

10:28AM 1 car lot?

2 A. Yes.

3 Q. Turning to page four of this exhibit, what are the
4 first two messages there?

10:29AM 5 A. At 5:08 p.m., the message is, "I'm here at the car
6 lot," smiley face. Then at 5:08 p.m., little bit further
7 along, "Will be here until around 6:00 or so."

8 Q. And who is sending those messages?

9 A. Excuse me?

10:29AM 10 Q. Who is sending those messages?

11 A. The user of the iPhone.

12 Q. Can we please pull up alongside this exhibit what's
13 already been admitted as Government's Exhibit 39.

14 Mr. Fottrell, what Torrent files were downloaded between
10:29AM 15 5:00 and 6:00 p.m. on the Linux partition based on
16 Government's Exhibit 39?

17 A. On the 15th, between 5:00 and 6:00 p.m., it's used
18 one, two, three, four, five -- playtoysweetie, DD, DD.1,
19 asi se mama and marissa.zip were downloaded between 5:00
10:29AM 20 and 6:00 on the 15th.

21 Q. So how long after the defendant said, "Will be here
22 until around 6:00 or so," referring to his car lot, did he
23 download, for example, the DD.torrent file?

24 MR. GELFAND: Objection to the way that's framed,
10:30AM 25 Your Honor.

10:30AM 1 MR. CLAYMAN: I can rephrase the question, Your
2 Honor.

3 THE COURT: Please rephrase.

4 Q. (BY MR. CLAYMAN.) How long after the local user of
10:30AM 5 the iPhone backup sent, "Will be here until around 6:00 or
6 so, I'm here at the car lot" were the Torrent file
7 "DD.torrent" downloaded to the Linux partition?

8 A. So from 5:08 p.m. The DD was at 5:15 and at 5:30, so
9 approximately 15 to 20 minutes later.

10:30AM 10 Q. We can take down Government's Exhibit 39. Please
11 turn to page five of Government's Exhibit 77. When were
12 these messages sent, Mr. Fottrell?

13 A. On the 15th, approximately 5:58 p.m., 5:59 p.m.

14 Q. Can you read the messages that were sent?

10:30AM 15 A. At 5:58 p.m., "Still have customers here." And then
16 at 5:59, "No problem, probably be here for a while." A
17 little bit further down at 6:00 it says, "Okay, cool, see
18 you soon."

19 Q. If we could pull up alongside this exhibit what's
10:31AM 20 already been admitted as Government's Exhibit 2. Do you
21 recognize this exhibit, Mr. Fottrell?

22 A. Yes, I do.

23 Q. What is it?

24 A. This is the Torrential Downpour log from the
10:31AM 25 undercover agent on May 15th, 2019, at 6:00 p.m.

10:31AM 1 associated with the files in the marissa.zip file.

2 Q. When did this undercover download begin?

3 A. May 15th, 2019, at 6:00 p.m.

4 Q. Exactly the same time that the local user of the
10:31AM 5 defendant's iPhone backup said, "Okay, cool, see you
6 soon"?

7 A. Yes.

8 Q. We can take down these two exhibits. If we can pull
9 up what's been admitted as Government's Exhibit 78. When
10:32AM 10 was this picture taken?

11 A. This picture was taken on May 16th at 11:35 a.m. And
12 the location for this is at the car lot.

13 Q. If you could pull up alongside this exhibit what's
14 already been admitted as Government's Exhibit 34,
10:32AM 15 page three. What is Exhibit 34 again, Mr. Fottrell?

16 A. It's the EXIF information for the thumbnail images
17 that were created in the large folder on the Linux
18 partition.

19 Q. What are the top three lines there? What do those
10:32AM 20 indicate in this exhibit?

21 A. The first two are dated on the 15th at 11:50. The
22 first one references "pussy pounded." The second one
23 references "test.avi." But the third line corresponds
24 with the 16th at 11:33 a.m. associated with the video
10:32AM 25 "pedomom.wmv."

10:32AM 1 Q. So approximately how long after this picture in
2 Exhibit 78 was taken at the car lot did the thumbnail
3 files for pussy pounded.mpg and test.avi get created on
4 the Linux partition?

10:33AM 5 A. So I think that's incorrect. So pussy pounded was on
6 the 15th, and the first two were on the 15th. So the one
7 that I care about is the 16th. So this picture is the
8 16th at 11:35 a.m., which corresponds to the 16th at 11:33
9 a.m., pedomom, within a two-minute window.

10:33AM10 Q. Yes, that's correct. So pedomom, the thumbnail file
11 was created two minutes before this picture was taken at
12 the car lot?

13 A. Yes.

14 Q. Again, just to be clear, how would a thumbnail file
10:33AM15 get created on the Linux partition?

16 A. The user of the computer would have to use the
17 program to navigate to that folder and display the
18 contents of the folder in large thumbnails view.

19 Q. So two minutes before this picture was taken with the
10:33AM20 defendant's iPhone at the car lot, what was the computer
21 at the car lot doing?

22 A. Displaying the contents of the folder where
23 pedomom.wmv was located.

24 Q. If we can take these exhibits down and publish what's
10:34AM25 been admitted as Government's 79. When are these chats

10:34AM 1 from, Mr. Fottrell?

2 A. These are also on the 16th. I'm sorry. May 16th,
3 2019. The first entry is at 12:56 p.m.

4 Q. So that's a couple hours after that image that we
10:34AM 5 just saw with the Post-it note?

6 A. Yes.

7 Q. And what's the message say?

8 A. "Well, I guess I'm not going to Lowe's right away. I
9 have a customer at the lot to buy a car hopefully."

10:34AM 10 Q. Who sent that message?

11 A. The local user, the user of the iPhone.

12 Q. If we could take this down and publish what's been
13 admitted as Government's Exhibit 80. Mr. Fottrell, when
14 was this picture taken?

10:34AM 15 A. This picture was taken on June 22nd, 2019, at
16 approximately 4:47 p.m. in the afternoon.

17 Q. Where was it taken?

18 A. At the car lot.

19 Q. What's it a picture of?

10:35AM 20 A. It appears to be a selfie of Joshua Duggar taking a
21 picture of himself at the car lot.

22 Q. Is there anyone in the background of the image?

23 A. Nobody else visible.

24 Q. How about on page two of this exhibit?

10:35AM 25 A. It's just another picture just a few moments later.

10:35AM 1 It's another selfie, if you will, at the car lot at
2 4:47 p.m.

3 Q. Do you see anyone in the background?

4 A. Just Joshua Duggar.

10:35AM 5 Q. If we could take this down and publish what's been
6 admitted as Government's Exhibit 81. When are these
7 messages from, Mr. Fottrell?

8 A. These are text messages dated on the same date,
9 June 22nd, 2019.

10:35AM 10 Q. Just a few hours before those selfies were taken that
11 we just saw?

12 A. Yes.

13 Q. Can you read the messages from the local user?

14 A. At 1:23, "I will connect you with my friend." Then a
10:35AM 15 few moments later, there's a phone number that's listed.
16 At 1:24, "His name is Kelly Williams, (yes, he)". At
17 1:25, "He knows where to buy them in Germany, too. Just
18 text him". And then at 1:25 p.m., "He is at my car lot
19 now and we are talking about you."

10:36AM 20 Q. Will you please pull up alongside this exhibit what's
21 been admitted as Government's Exhibit 30 and go to
22 page 25. Mr. Fottrell, what is Government's Exhibit 30
23 again?

24 A. Government Exhibit 30 is some of the print screens
10:37AM 25 that I created of the Linux partition. I'm navigating to

10:37AM 1 the documents folder where this Aguilar 4runner document
2 is. I'm displaying the document properties, which tells
3 me that this document was created on the 22nd at
4 12:18 p.m. and it was last edited at 12:28 p.m., so for
10:37AM 5 approximately a 10-minute window of time is when that
6 document was edited on the Linux partition.

7 Q. You can see there just at the bottom, who is
8 identified as the sales agent on this document?

9 A. Josh.

10:37AM 10 Q. So approximately how long after this document was
11 last edited did the local user of the defendant's phone
12 send the message, "He is here at my car lot now and we
13 were talking about you"?

14 A. This one is at 1:25 p.m. versus 1:28 p.m., so it's
10:37AM 15 within a three-minute window.

16 Q. Is that 1:28 or 12:28, Mr. Fottrell?

17 A. I'm sorry. 12:28.

18 Q. So approximately an hour?

19 A. Approximately an hour. I'm sorry.

10:38AM 20 Q. We can take these down now. Did you review any other
21 devices in connection with your work on this case?

22 A. Yes, I did.

23 THE COURT: Mr. Clayman, we need to take a
24 morning recess. Would now be a good time?

10:38AM 25 MR. CLAYMAN: That would be perfect, Your Honor.

10:38AM 1 THE COURT: We will take our morning recess and
2 go back on the record at 11:00.

3 Let me remind you of the recess instruction. Do
4 not discuss the facts of the case with your fellow jurors
10:38AM 5 or anyone else on this recess. Don't do any research of
6 any kind. Don't let anyone approach you and speak to you
7 about the case.

8 We'll go back on the record and call for you at
9 11:00 a.m. Everyone please stand while the Jury is in
10:38AM 10 recess.

11 (Jury out at 10:38 a.m.)

12 THE COURT: Everyone please remain in the gallery
13 until the jurors have cleared the elevator lobby. I will
14 let you know when that is. You may be seated.

10:39AM 15 Mr. Gelfand, if the defense is going to have any
16 problems with the 1006 summary that we discussed earlier,
17 would you try to let me know before we go back on the
18 record?

19 MR. GELFAND: Yes, Your Honor. We've been -- our
10:40AM 20 team has been working on it.

21 THE COURT: Great. Thank you. We're in recess
22 until 11:00.

23 (Recess from 10:40 a.m. to 10:59 a.m.)

24 (Outside the presence of the Jury)

10:59AM 25 THE COURT: You all want to be take up the 1006

10:59AM 1 summary? This is proposed Government's Exhibit 85.

2 MR. GELFAND: Yes, Your Honor. Mr. Story is
3 going to address the Court if he could.

4 THE COURT: All right. That's fine.

10:59AM 5 MR. STORY: Your Honor, I've been attempting to
6 review all of these during our last session. I found four
7 what I would consider inaccuracies or things that are
8 misleading about the proposed Exhibit 85, and so we would
9 object based on the fact that, both in the representation
10 actually listed on the proposed Government Exhibit 85 is
11 inaccurate as to the words on the page, and also as to the
12 testimony that has been previously given this morning.

13 THE COURT: Can you identify the four
14 inaccuracies by date and time-marker?

11:00AM 15 MR. STORY: I can, Your Honor. The May 13th,
16 2019, dell_one on Linux, it's confusing in the sense that
17 Exhibit 30, page 16, doesn't ever say "dell_one." It's
18 simply a screenshot of what looks to be a computer -- it's
19 effectively the computer directory.

11:00AM 20 THE COURT: Looks to me like it's saying that the
21 "dell_one" user set up the Linux partition at 1:52 on
22 May 13, and the backup document is Exhibit 30, page 16.
23 Is that what you're saying is inaccurate?

24 MR. STORY: I'm saying it doesn't seem that
11:00AM 25 page 16 of Exhibit 30 -- he's got the quotes "dell_one" in

11:01AM 1 there. It doesn't appear that there's anything that says
2 "dell_one" on that particular page of that particular
3 exhibit. And that seems to be misleading and inaccurate.

4 THE COURT: What's the next one?

11:01AM 5 MR. STORY: The next one is also on May 13th,
6 which is the 3:06 p.m. It's Exhibit 73. Exhibit 73 is
7 listed on the proposed Government Exhibit 85 as, "iPhone
8 utilized to take picture of vehicle at car lot." If you
9 look at photo, or Government's Exhibit 73, which was
11:01AM 10 admitted and testified to, it's actually a picture of a
11 scale, not a picture of a car on the car lot.

12 THE COURT: Gotcha.

13 MR. STORY: The May 14th time-stamps, the one
14 that is 5:42 p.m., Little Rock detective downloads, quote,
11:02AM 15 "mov_0216.mp4," quote, which is their Exhibit 1, using
16 this convention would -- that they have been using would
17 actually happen at 5:41 p.m. also, not 5:42.

18 And then on May 15th on page two, Your Honor, of
19 proposed Government Exhibit 85 at the 5:58 p.m., it says,
11:03AM 20 quote, "marissa.zip unzipped and viewed, Exhibit 32." I
21 believe what I heard this morning was that they were
22 unzipped at that time, but not viewed. And I don't know
23 if the EXIF data would tell us that they were actually
24 viewed, just that they were indeed all unzipped.

11:03AM 25 Specifically because they were all done at the exact same

11:03AM 1 time, I don't know that they could have all been unzipped
2 and viewed at the same time. And so our specific
3 objection would be to the word, "and viewed."

4 THE COURT: Mr. Clayman, are you in a position to
11:04AM 5 respond?

6 MR. CLAYMAN: I believe so, Your Honor.

7 THE COURT: One more question. Is this exhibit
8 going to come up in this next session?

9 MR. CLAYMAN: Yes, Your Honor. With respect to
11:04AM 10 the first objection, I believe that was the May 13th,
11 1:52 p.m. time-stamp, the totality of Exhibit 30 makes
12 clear the dell_one user is being set up. It's, I believe,
13 mentioned on page one or two. I think, to the extent
14 page 16 does not also make it clear, that that's
11:04AM 15 approximately when the account was set up. We can
16 certainly remove page 16 and then instruct the Jury that
17 throughout Exhibit 30, that's what's indicated there.

18 With respect to the second one, the May 13th
19 3:06 p.m. time-stamp, that does appear to be an error. We
11:04AM 20 can either correct it on the record or we can simply
21 remove it from the exhibit.

22 With respect to the third one, the 5-14
23 5:42 p.m. download, I believe Exhibit 1 indicates that the
24 download was initiated by the undercover at 5:41, which I
11:05AM 25 believe is what Mr. Story was referencing. The bottom of

11:05AM 1 that page says that the download has completed at 5:42.
2 That's what that's referring to.

3 And then at 5-15 at 5:58 p.m., that was the final
4 objection they raised. I believe their issue was that the
11:05AM 5 EXIF thumbnail information, in their estimation, does not
6 indicate that the files were viewed. I would disagree
7 with that, because I think, as Mr. Fottrell testified, a
8 thumbnail is created when an individual navigates to the
9 folder and views it. So the individual necessarily had to
11:05AM 10 see what was in that folder, he viewed these files, and
11 that's what's indicated in the summary exhibit we have
12 provided.

13 THE COURT: And what does Exhibit 32 say about
14 viewing?

11:06AM 15 MR. CLAYMAN: Exhibit 32 lists the thumbnail EXIF
16 information. And in order for those thumbnails to be
17 created, that means someone had to view the folder
18 containing those thumbnails. They had to see what those
19 images were.

11:06AM 20 THE COURT: All right. So the Court would
21 require, based on these objections, that the government
22 amend the May 13 at 1:52 p.m. entry to delete the page
23 reference so it just references Exhibit 30.

24 On the 3:06 p.m., that you change "vehicle" to
11:06AM 25 "scale."

11:06AM 1 On May 14 at -- well, you're telling me that
2 Exhibit 1 shows download activity at 5:42?

3 MR. CLAYMAN: Download is completed at 5:42.

4 THE COURT: I think that that is a fair enough
11:07AM 5 summary. I don't think there is anything misleading about
6 starting at 5:41 and associating the word "download" with
7 5:42 when it's completed. So that part of the objection
8 is overruled.

9 On May 15, the entry at 5:58 p.m., "unzipped and
11:07AM 10 viewed," based on Mr. Clayman's explanation, which the
11 Court recalls was explained, about what it means when
12 there's a thumbnail there, the Court will not require any
13 modification there. Obviously, there can be cross
14 examination about that, but the Court believes that that
11:07AM 15 is a fair summary.

16 Can you make those changes before you tender?

17 MR. CLAYMAN: We can, Your Honor.

18 THE COURT: All right. So it's really just the
19 two entries on May 13th, small changes?

11:08AM 20 MR. CLAYMAN: Yes, Your Honor.

21 THE COURT: Please call the Jury up.

22 (Jury in at 11:12 a.m.)

23 THE COURT: I find myself apologizing once again
24 for the delay in getting started. I do want to assure you
11:13AM 25 that we weren't just lollygagging while you were waiting.

11:13AM 1 We were actually resolving an issue with a potential
2 exhibit. And had we not done it over the last 20 minutes,
3 we would have had a long side bar and we felt like it
4 would be better to resolve it before we brought you up.

11:13AM 5 So, again, I appreciate your ongoing patience and
6 understanding.

7 You may continue, Mr. Clayman.

8 MR. CLAYMAN: Thank you, Your Honor.

9 Q. (BY MR. CLAYMAN.) Mr. Fottrell, did you review any
11:13AM 10 other devices as part of your investigation in this case?

11 A. Yes, I did. I examined an iPhone 11 that was seized
12 from the defendant, an imaged copy of the iPhone 11.

13 Q. And what did you learn based on your review of that
14 device?

11:13AM 15 A. That there was -- it was just -- the different
16 applications that were used on the device.

17 Q. Did you find any applications of particular interest
18 during your examination of that device?

19 A. Yes, I did.

11:14AM 20 Q. What application was that?

21 A. The TOR, the TORsec application. So on the iPhone
22 11, there was an Apple version of the TOR program on the
23 iPhone 11 seized from the defendant.

24 Q. Can you explain for the Jury TORsec? Is it the same
11:14AM 25 as TOR?

11:14AM 1 A. Right. So we talked about TOR and the TOR browser
2 bundle that was installed on the Linux partition. TORsec
3 is just the brand or the name of the TOR program that is
4 available on the App Store for Apple devices and that
11:14AM 5 application -- there's evidence that that application was
6 installed and used on the iPhone 11.

7 Q. Can you please find what's been previously marked as
8 Government's Exhibit 83 in the black binder you have in
9 front of you?

11:14AM 10 A. Okay.

11 Q. Do you recognize this exhibit?

12 A. Yes, I do.

13 Q. What is it?

14 A. It's a four-page exhibit of TORsec media history. So
11:14AM 15 there's web-browsing activity associated with the use of
16 the TORsec program. And I extracted that information and
17 printed it out.

18 Q. Is this exhibit redacted that you have in front you?

19 A. Yes, it is. The title of the URL that is being
11:15AM 20 referenced in column three is redacted.

21 Q. Is it otherwise a true and accurate copy of the
22 TORsec media history that you recovered from the iPhone
23 11?

24 A. Yes, it is.

11:15AM 25 MR. CLAYMAN: Your Honor, at this time, we would

11:15AM 1 move to admit Government's Exhibit 83.

2 MR. GELFAND: No objection, Judge.

3 THE COURT: Government Exhibit 83 is received.

4 (Government Exhibit 83 Received)

11:15AM 5 MR. CLAYMAN: Permission to publish, Your Honor.

6 THE COURT: You may.

7 Q. (BY MR. CLAYMAN.) Can you explain for the Jury what
8 is shown here, Mr. Fottrell?

9 A. This is on the iPhone, the TORsec media history, so
11:15AM 10 there's a database file. There's information that
11 contains websites visited by the computer, by the mobile
12 phone user. It lists date and time of when it starts and
13 when it ended. So in the October 16th, 2019, time frame,
14 the user was basically browsing websites using the TOR
11:16AM 15 browser.

16 Q. If I could stop you there for a second. Is this the
17 full TORsec media history as far as you know?

18 A. Yeah. I don't have a lot of information, so there's
19 only four pages. There's -- we don't have cumulative all
11:16AM 20 of the web-browsing activity through the extraction that
21 was generated. I only have this fragment of evidence.

22 Q. So is it possible that the TOR application was used
23 prior to October 16th on the phone?

24 A. Yes.

11:16AM 25 Q. Now, did you review the information that's redacted

11:16AM 1 before it was redacted?

2 A. Yes, I did.

3 Q. Did you find any automobile-related URLs or
4 work-related URLs?

11:16AM 5 A. No, I did not.

6 Q. Was the TOR browser used exclusively to view adult
7 pornography?

8 A. Yes.

9 Q. Can you walk through for the Jury what these time
11:16AM 10 entries here are on the first page?

11 A. So the software keeps track. For example, on the
12 first entry, it shows the time frame of 2:15 a.m. And
13 another -- another -- a few seconds later, a second later,
14 but it lists a duration of this session being used for 13
11:17AM 15 minutes and 19 seconds. So there's just starting and
16 start times that are kind of just reflected in this
17 information. But the significant column for me is the
18 duration for how long the person was using the TORsec
19 program on the iPhone 11.

11:17AM 20 Q. Turning to page two, what dates are reflected there?

21 A. October 16th, October 17th, October 19th,
22 October 19th.

23 Q. How about on page three?

24 A. On page three, it's the 19th, 21st, 22nd,
11:17AM 25 October 30th, November 2nd, November 7th.

11:17AM 1 Q. On page four?

2 A. Continuing on November 7th. And then on
3 November 8th, 2019.

4 Q. Mr. Fottrell, do you know what happened in connection
11:18AM 5 with this case on November 8th of 2019?

6 A. Yes. On November 8th of 2019, approximately a few
7 hours later in the afternoon is when the HSI agents
8 executed the search warrant at the car lot.

9 Q. Thank you. We can take this down. Now,
11:18AM 10 Mr. Fottrell, you've discussed a lot of forensic evidence
11 over the course of the past two days. How many devices,
12 again, did you examine?

13 A. The HP desktop computer, the MacBook, and the images
14 of the iPhone 8 that were also stored on the MacBook, and
11:18AM 15 the iPhone 11.

16 Q. How many exhibits, if you had to guess, have
17 you prepared?

18 A. Probably 50 or 60 exhibits.

19 Q. Did you prepare a summary in connection with those
11:18AM 20 exhibits?

21 A. Yes, I did.

22 MR. CLAYMAN: Your Honor, may I approach the
23 witness?

24 THE COURT: You may.

11:18AM 25 Q. (BY MR. CLAYMAN.) Mr. Fottrell, I just handed you an

11:19AM 1 exhibit that's been marked as Government's Exhibit 85.

2 Do you recognize that?

3 A. Yes, I do.

4 Q. What is it?

11:19AM 5 A. It's a timeline that I created kind of summarizing
6 all of the exhibits that we went to. My intention and my
7 goal was to organize the relevant exhibits and the
8 relevant evidence on particular days that are significant
9 in this case.

11:19AM 10 Q. Does this timeline fairly and accurately summarize
11 the forensic evidence that you recovered from these three
12 devices you just mentioned?

13 A. Yes, it does.

14 MR. CLAYMAN: Your Honor, at this time, we would
11:19AM 15 move to admit Government's Exhibit 85 into evidence.

16 MR. GELFAND: One second, Your Honor.

17 THE COURT: That's fine.

18 MR. GELFAND: No objection, Judge.

19 THE COURT: Government Exhibit 85 is received.

11:20AM 20 (Government Exhibit 85 Received)

21 MR. CLAYMAN: Permission to publish, Your Honor?

22 THE COURT: You may.

23 Q. (BY MR. CLAYMAN.) Mr. Fottrell, can you just explain
24 for the Jury what you created here in this timeline?

11:20AM 25 A. My intention was to create a timeline of exhibits and

11:20AM 1 significant events on particular days. So I have on
2 May 11th, May 13th, May 14th, May 15th. And on page two,
3 we have the 16th and June 22nd. So it's just listing days
4 that are significant to the case, and then events that are
11:20AM 5 occurring during those periods of time.

6 Q. So why is May 11th significant for the case?

7 A. Excuse me?

8 Q. Why is May 11th significant for the case?

9 A. May 11th was when, on the HP computer, the Ubuntu
11:20AM 10 software was downloaded at 5:47 p.m. Then at 5:58 p.m. is
11 the user of the iPhone 8 took a picture at the car lot.

12 Q. How about May 13th?

13 A. May 13th is when the Ubuntu partition and the Ubuntu
14 operating system was installed, so at approximately
11:21AM 15 roughly 1:52 p.m. is when the user dell_one was set up on
16 the Linux partition, so that's kind of the born-on date
17 for the Linux partition. That's when it was up and
18 running.

19 A little bit later at 2:03 p.m. is when the TOR
11:21AM 20 browser system was installed and created the bookmarks
21 associated with the installation of the TOR browser.
22 Approximately half an hour later at 3:06 p.m. is when the
23 iPhone was used to take a picture of a scale at the car
24 lot.

11:21AM 25 Q. The Linux partition, you testified earlier, someone

11:21AM 1 had to be physically present at the car lot to install
2 that, is that right?

3 A. Yes.

4 Q. How about May 14th?

11:21AM 5 A. So May 14th, there is a lot of activity. It's
6 starting off at 4:14 p.m. The iPhone is used to take a
7 picture of a vehicle at the car lot. At 4:20, there's
8 another picture of the HP computer screen. At 4:49 p.m.,
9 there's an iMessage that says, "Got stuck here and still
11:22AM 10 not free yet." A little bit later, at 4:58 p.m., the
11 Candle bookmark associated with the TOR browser was
12 created on the Linux partition. A few minutes later, at
13 5:05 p.m., the webcam-collections-prevs.7zip archive file
14 was downloaded through the TOR browser on the Linux
11:22AM 15 partition.

16 A few minutes later, at 5:11 p.m., the
17 webcam-collections-prevs images were viewed in thumbnail
18 view on the Linux partition. 5:28 p.m., the movie_0214
19 Torrent file was downloaded. Approximately 10 minutes
11:22AM 20 later, at 5:38 p.m., movie_0216 was downloaded on the
21 Linux partition.

22 A little bit later at 5:41 p.m., the TOR bookmarks
23 for the Hidden Wiki was created. A minute later, at 5:42,
24 is when the Little Rock detective downloaded the
11:23AM 25 movie_0216 from the defendant's computer. A few minutes

11:23AM 1 later, at 5:48 p.m., messages were sent, "I have your
2 Versa down here at the car lot for Carlin, by the way."
3 At 5:49 p.m., there's another iMessage that says, "At my
4 car lot." At 6:04 p.m., a photo was taken, the phone was
11:23AM 5 used to take a photo of a vehicle at the car lot. A few
6 minutes later, at 6:07, another photo was taken. At
7 8:14 p.m., there's a picture of Anna Duggar at the Lowe's
8 store.

9 Further down, the next day, on the 15th, we have
11:23AM 10 activity in the morning at 11:15 a.m. There's an iMessage
11 that says, "I'm at my car lot now." A few minutes later,
12 at 11:35 a.m., the Torrent file associated with
13 14yogirlsuckandfuck was downloaded on the Linux partition.
14 Two minutes later, at 11:37 a.m., the test.avi Torrent
11:24AM 15 file was downloaded on the Linux partition. At
16 11:41 a.m., the Pussy Pounded Torrent file was downloaded.
17 At 11:50 a.m., thumbnails were created for
18 14yogirlsuckandfuck and movie_0214, movie_0216, Pussy
19 Pounded, and test.avi on the Linux partition.

11:24AM 20 A little bit later in the afternoon, at 3:20 p.m.,
21 the user of the iPhone takes a picture of a firetruck near
22 the car lot. At 3:39 p.m., the iPhone was used to take a
23 picture of a vehicle accident near the car lot. At
24 3:55 p.m., there's a message that says, "Be praying for
11:24AM 25 Mark (older guy that was riding a motorcycle on 412)."

11:24AM 1 And at 5:08 p.m., there's a message that was sent, "I'm
2 here at the car lot, will be here until around 6:00 or
3 so."

4 Continuing on page two, at 5:22 p.m., the Torrent
11:25AM 5 file playtoysweetie.7zip archive file was downloaded on
6 the Linux partition. At 5:25 p.m., the DD Torrent was
7 downloaded. Five minutes later at 5:30, it was downloaded
8 again with the DD.1. At 5:32 p.m., asi se mama linda, the
9 Torrent file was downloaded. At 5:41 p.m., the
11:25AM 10 marissa.zip Torrent was downloaded. At 5:58 p.m., a
11 message was sent, "Still have customers here." At 5:58,
12 the same time, the marissa.zip file was unzipped and the
13 thumbnails were created indicating that it was viewed at
14 5:58 p.m.

11:25AM 15 Finally, on the 15th at 6:51 p.m., the iPhone was
16 used to take a picture in the car lot office.

17 Q. If you would walk us through the 16th.

18 A. On the 16th, at 11:21 a.m., the pedomom Torrent file
19 was downloaded. Approximately a few minutes later, at
11:26AM 20 11:33 a.m., the thumbnail of pedomom.wmv was created. At
21 11:35 a.m., the iPhone was used to take a picture in the
22 car lot office.

23 And then finally on June 22nd, at 12:18 p.m., is when
24 the Aguilar 4runner document was created. At 1:25 p.m.,
11:26AM 25 there's a message that's sent, "He's at my car lot now and

11:26AM 1 we are talking about you." And then finally, at
2 4:47 p.m., the iPhone is used to take a picture of Joshua
3 Duggar at the car lot.

4 Q. So, Mr. Fottrell, based on your review of all the
11:26AM 5 evidence in this case, who was present at the car lot
6 every single time child pornography was downloaded to the
7 Linux partition?

8 A. Joshua Duggar.

9 MR. CLAYMAN: I'll pass the witness, Your Honor.

11:26AM 10 THE COURT: Thank you, Mr. Clayman.

11 MR. GELFAND: Your Honor, can I take a minute to
12 get organized?

13 THE COURT: That's perfectly fine.

14 MR. GELFAND: Can I proceed, Judge?

11:27AM 15 THE COURT: You may.

16 CROSS EXAMINATION

17 BY MR. GELFAND:

18 Q. Good morning, Mr. Fottrell.

19 A. Good morning.

11:27AM 20 Q. Mr. Fottrell, you are a full-time employee for the
21 U.S. Department of Justice, correct?

22 A. Yes, I am. Have been for approximately 20 years.

23 Q. And so as a full-time employee for the Department of
24 Justice, is it fair to say that 100 percent of your job is
11:28AM 25 assisting prosecutors with their cases?

11:28AM 1 A. Yes. Assisting prosecutors with performing training,
2 performing training for law enforcement officers, so I
3 certainly work with prosecutors and my law enforcement
4 partners around the country and around the world.

11:28AM 5 Q. You do not perform any sort of computer forensic
6 evaluation outside of government, correct?

7 A. Correct.

8 Q. And you never have, correct?

9 A. No.

11:28AM 10 Q. Now, you also have a full-time team of computer
11 forensic analysts that work under you, correct?

12 A. That is correct.

13 Q. Your section handles approximately 30 to 40 cases per
14 year?

11:28AM 15 A. I'm guessing my HTIU has been averaging about 100
16 cases per year.

17 Q. What this means is that you have essentially
18 unlimited resources to get this right, correct?

19 A. I don't think that's true. That's your assessment.

11:28AM 20 We are a government agency. We are struggling for
21 funding. I wish I had more people. We are doing the best
22 with the limited resources we have. I think that's a more
23 fair conception of what I do on a daily basis.

24 Q. Did you feel constrained with resources in this case
11:29AM 25 such that you couldn't get it right?

11:29AM 1 A. There's -- in every case, there is always more
2 analysis you could do. I would always love to do more
3 analysis. I think we did the right amount of analysis in
4 this case. It's certainly not perfect. It's certainly
11:29AM 5 not exhaustive. I did a -- what I consider a
6 comprehensive analysis in this case.

7 Q. Let's talk about that. You were not personally
8 involved in May 2019 when this investigation began,
9 correct?

11:29AM 10 A. Correct.

11 Q. So you testified briefly about some Torrential
12 Downpour logs that you referenced yesterday when the
13 prosecutor was asking questions, correct?

14 A. Yes.

11:29AM 15 Q. You were not personally involved, though, in any
16 Torrential Downpour activity, correct?

17 A. Certainly not.

18 Q. You used the term this morning, "The undercover
19 officer". Are you referring to the officer, quote,
11:29AM 20 unquote, using the Torrential Downpour application?

21 A. Her name is Amber. I forget her last name. I knew
22 her name was Amber. That was impolite to say, so I just
23 said undercover officer, because I couldn't remember her
24 last name.

11:30AM 25 Q. That's okay. Amber Kalmer, correct?

11:30AM 1 A. Yes.

2 Q. You also had no personal involvement with this case
3 between May of 2019 and November 8th of 2019 when HSI
4 executed a search warrant at Wholesale Motorcars?

11:30AM 5 A. Correct. Correct.

6 Q. And to be clear, your section, so to speak, at the
7 Department of Justice was not involved in this case at
8 that time, correct?

9 A. I wouldn't know the answer to that. I know what my
11:30AM 10 HTIU people are involved in. There are trial attorneys in
11 my office, and there may have been trial attorneys that
12 have been reaching out to the U.S. Attorney's office in
13 the Western District of Arkansas. I would not be aware of
14 that.

11:30AM 15 Q. You are not aware of any involvement, correct?

16 A. Correct.

17 Q. You were not present when the search warrant was
18 executed and devices were seized and imaged, correct?

19 A. Absolutely correct.

11:30AM 20 Q. You did not personally forensically image any of the
21 devices that you have had access to in this case, correct?

22 A. Absolutely correct.

23 Q. And to this day, you have never conducted an
24 examination of the devices themselves, only the forensic
11:31AM 25 images that you addressed yesterday, correct?

11:31AM 1 A. That is correct.

2 Q. And the reason why is because the forensic images are
3 supposed to essentially take a snapshot frozen in time of
4 when the image is created, correct?

11:31AM 5 A. Correct. During the imaging process, it creates a
6 forensic snapshot of the evidence that is being imaged and
7 there is checks and balances. There's a hash value check
8 that verifies that it completed successfully. So once
9 that check has happened correctly, we can put the original
11:31AM 10 evidence away. I can do my analysis on the image that's
11 created. I can look at those hash values and that gives
12 me the comfort that I know that the image that I'm looking
13 at is exactly the same as when the person made the
14 original image.

11:31AM 15 Q. By having access to an image, you can go back to that
16 image and look for additional potential evidence or do
17 additional tests, as it may be, over the course of your
18 entire analysis, correct?

19 A. Correct. Once I have that image, I can look at it as
11:32AM 20 much as I need to and examine as much as I need to and
21 extract whatever I feel is relevant.

22 Q. Without that image, you can't do any of that,
23 correct?

24 A. Correct. Absolutely.

11:32AM 25 Q. Without the device in law enforcement's hands, you

11:32AM 1 can't image it, correct?

2 A. Yeah. Yeah, so law enforcement has to have the
3 device in order for them to create the forensic image,
4 that's correct.

11:32AM 5 Q. So would you agree with me, based on all of your
6 training and experience that you went through yesterday,
7 that the best practice in cases like this is to
8 forensically image each and every device that law
9 enforcement has the legal right to image?

11:32AM 10 A. I don't think that's true anymore. I mean, that
11 might have been true like 20 years ago, but certainly not
12 today in what I would call modern times.

13 Q. Why would you not want to preserve the evidence for
14 later?

11:32AM 15 A. No. So law enforcement -- and I'm involved in this
16 all the time -- we are executing search warrants at
17 peoples' residences. We are -- law enforcement officers
18 are trying to be sensitive. We don't want to come in
19 there and seize the paint off of the wall. There might be

11:33AM 20 five or six people at the house, a husband, a wife,
21 children. These people are using their devices, their
22 laptops, their devices and we don't want to -- we might
23 have the legal authority to seize everything, but law
24 enforcement officers are trying to be responsible. They

11:33AM 25 are trying to find where the critical evidence is,

11:33AM 1 certainly seize that critical evidence.

2 Part of my job on scene is to clear evidence that
3 doesn't have evidentiary value. So in a typical case, for
4 example, if there was a minor child who was doing their
11:33AM 5 homework and they had a laptop computer, if I was on
6 scene, my responsibility would be to preview that device,
7 make a determination that it's not relevant to the
8 criminal case that we're here for, and to let that device
9 not be seized to minimize the impact of harm to the other
11:33AM 10 residents at that location.

11 Q. You were not personally involved in this case in the
12 decision of making those kinds of triage-type decisions?

13 A. Correct, I was not involved in this particular case.
14 I'm just talking more generally in the cases that I have
11:34AM 15 been involved in.

16 Q. Data and information on electronic devices can be
17 hidden, correct?

18 A. Yes.

19 Q. In fact, virtually your entire testimony about the HP
11:34AM 20 computer focused on data that was not readily apparent
21 without doing forensic analysis of the device, correct?

22 A. It's certainly readily apparent to me. It might not
23 be readily apparent to the computer user. Might not be
24 readily apparent to an average person using it. But, to
11:34AM 25 me, my training and experience, there's lots of relevant

11:34AM 1 data that I can find in plain view.

2 Q. That's true with phones, correct?

3 A. Yes.

4 Q. That's true with tablets, correct?

11:34AM 5 A. Yeah. So mobile devices are a little bit different
6 from PCs and thumb drives and some other devices, but,
7 yeah, so those devices have the ability to store
8 information as well.

9 Q. And information can be hidden, correct?

11:34AM 10 A. Yes.

11 Q. In other words -- I'm not trying to trick you or
12 anything. Tell me if I'm wrong.

13 A. Yes, the possibility exists, absolutely.

14 Q. If you look at my iPhone right now, Mr. Fottrell, and
11:35AM 15 you look at, you know, the photo app.

16 A. Yeah.

17 Q. You'd agree with me, would you not, that you are not
18 confident you're seeing every photo that's on the iPhone?

19 A. Correct. Like if I had unlimited time and unlimited
11:35AM 20 money and unlimited resources to examine every single
21 item, I could exhaustively answer those questions. But
22 the realities are, hard-working law enforcement officers
23 have limited time, limited resources to conduct their
24 examination, so they are using their best judgment, their
11:35AM 25 best-trained judgment to make determinations on what

11:35AM 1 devices are seized and what devices don't get seized.

2 Q. You testified yesterday at the beginning of your
3 examination about the steps of an investigation, correct?

4 A. Yes.

11:35AM 5 Q. You testified that the first step, at least as you
6 described it, was evidence collection, correct?

7 A. Correct.

8 Q. You were not involved in evidence collection in this
9 case, correct?

11:35AM 10 A. Correct. There are certainly thousands of
11 well-trained law enforcement officers around the country
12 who can do that. I don't need to get involved in that.

13 Q. I'd appreciate it if you could just answer my
14 questions. If you want to elaborate on something, I will
11:36AM 15 let you, but --

16 A. Okay.

17 Q. You testified that the second step was image copying,
18 correct?

19 A. Correct.

11:36AM 20 Q. You were not involved in image copying in this case,
21 correct?

22 A. That's correct.

23 Q. You have used the phrase "forensic tools," correct?

24 A. Yes.

11:36AM 25 Q. Some of those forensic tools -- well, let's back up.

11:36AM 1 Forensic tools are computer forensic tools that are
2 available to people like you and other computer forensic
3 experts to perform analysis on devices, correct?

4 A. Yeah. So these are tools that are generally
11:36AM 5 available to the public. Anybody can buy EnCase who has
6 the money to pay for it. Anybody can buy the devices. So
7 most of the tools that we use, the tools that I use, are
8 publicly available tools that we buy.

9 Q. And forensic tools enable you to look into certain
11:36AM 10 data and essentially peek behind this curtain, so to
11 speak, of devices, correct?

12 A. Yes.

13 Q. You testified about EnCase, correct?

14 A. Yes.

11:37AM 15 Q. Are you certified in EnCase?

16 A. I went through the certification process probably in
17 the year 2000, but I probably have not been involved in it
18 in the last 20 years.

19 Q. So the answer is, no, you are not certified?

11:37AM 20 A. I am not certified. I've been using it for 30 years.

21 Q. If you can just answer my question. You are not
22 certified?

23 A. That's not true. I think I did get the certification
24 in 2000 when EnCase Version 3 was released. I can testify
11:37AM 25 that I attended the EnCase training in roughly 2000 or

11:37AM 1 2001 with respect to the training. Did I pay attention to
2 my certification? It was not important to me.

3 Q. FTK, are you familiar with that?

4 A. AccessData's Forensics Toolkit, yes, I am.

11:37AM 5 Q. Are you certified in FTK?

6 A. No.

7 Q. Cellebrite, are you familiar with that?

8 A. Yes.

9 Q. Are you certified in Cellebrite?

11:37AM 10 A. I don't really do Cellebrite anymore. I have my
11 employees do that.

12 Q. Did you use EnCase, FTK, or Cellebrite in this case?

13 A. I used EnCase and I used AXIOM.

14 Q. Is Windows Photo Viewer a forensic tool?

11:38AM 15 A. No, but it comes built with the Windows operating
16 system.

17 Q. You testified about EXIF data this morning when you
18 talked about geolocation and time-stamps, correct?

19 A. Yes.

11:38AM 20 Q. We're going to get to that a little bit later, but
21 tell the Jury what tool were you using that's reflected on
22 those devices for geolocation data and time-stamps?

23 A. I was using just the Windows 10 operating system, is
24 what my forensic's workstation uses. I have all my

11:38AM 25 forensic tools and I was just using the Windows Photo

11:38AM 1 Viewer that is associated with the Windows 10 operating
2 system.

3 Q. And that's exactly the software that I just asked you
4 about that you said was not a forensic tool, correct?

11:38AM 5 A. Yes.

6 Q. Now, you testified yesterday that your goal is to
7 give prosecutors enough to indict. Do you recall that
8 testimony?

9 A. Yes, I do.

11:38AM 10 Q. Your audience, you testified, is prosecutors,
11 correct?

12 A. Prosecutors, defense attorneys, and judges, correct.

13 Q. Now, to accomplish -- let's back up for a second.
14 Why is the goal to get enough to indict as opposed to
11:39AM 15 actually understand everything you can about these
16 devices?

17 A. Good. That's a great question. The answer is, like,
18 when we're conducting our forensic examinations, we have
19 limited time and limited resources. I would love to say I
11:39AM 20 have five years to work on this case so that I can do a
21 comprehensive forensic examination to look at every
22 possible defense that could be raised, but I just don't
23 have the time and resources to do that.

24 The way that I structure my team to do reports is, we
11:39AM 25 have reports that provide a specific function. And our

11:39AM 1 generic computer forensic report, our general purpose
2 report, is designed to give the prosecutor enough
3 information they need to get the case indicted.

4 If something comes up like a virus defense or some
11:39AM 5 other person did it, we would do a supplemental report.
6 Okay, now, the defense is raising a particular issue, I
7 may need to go back and do additional forensic examination
8 to target a particular defense that is being raised. Am I
9 going to waste my time doing that in every single case?

11:40AM 10 No, it's not an efficient use of my time to do that. I
11 make a business decision that our forensic reports are
12 targeting the information that prosecutors need to make
13 their case. If we need to go back and do a supplemental
14 report for some issue, we will gladly do that.

11:40AM 15 Q. A business decision?

16 A. A business decision based on time; time and money.
17 We have people that are doing cases. I am trying to
18 effectively work on as many cases as I can.

19 Q. Mr. Fottrell, you're also limited by what is seized
11:40AM 20 before you even get involved in a case, correct?

21 A. That is correct.

22 Q. So it's not just time and resources, even though you
23 have the federal government at your disposal, it's also
24 what happened before you get involved, correct?

11:40AM 25 A. Correct.

11:40AM 1 Q. You can't do anything about that, correct?

2 A. Right. I can't be everywhere at the same time. I'm
3 only limited in what I can do.

4 Q. You said a typical case yesterday could have 30 to 40
11:41AM 5 devices, correct?

6 A. Yeah.

7 Q. How many devices were involved in this case?

8 A. A smaller number. There was the HP desktop computer,
9 there was a MacBook, there was number of thumb drives that
11:41AM 10 were seized, and there was an iPhone that was seized, to
11 my recollection.

12 Q. Did you analyze the thumb drives?

13 A. I received the imaged copies of the thumb drives,
14 yes, I did.

11:41AM 15 Q. Did you look at them?

16 A. Yes, I did.

17 Q. How about the SD cards, did you look at those?

18 A. Yes, I believe I did.

19 Q. You concluded, based on your review of the thumb
11:41AM 20 drives and the SD cards, that they have no relevance to
21 this case, correct?

22 A. Yeah, minimal investigative value. They are family
23 photos. There's pictures of hunting, hunting-related,
24 things associated with a trail camera. Things that were
11:41AM 25 completely not relevant to my child exploitation

11:41AM 1 investigation.

2 Q. The devices that were seized in this case, you
3 testified yesterday, were initially imaged by Marshall
4 Kennedy, correct?

11:42AM 5 A. Yes.

6 Q. And you testified that essentially you have a lot
7 more experience than Mr. Kennedy, correct?

8 A. That would be a fair assessment.

9 Q. You don't supervise Mr. Kennedy, correct?

11:42AM 10 A. Not at all, no.

11 Q. You didn't supervise Mr. Kennedy or participate as a
12 member of his team or him as a member of your team on the
13 date that the search warrant was executed, correct?

14 A. No, I'm not. No, I did not.

11:42AM 15 Q. You're aware that his job is to be on an ICAC task
16 force, correct?

17 A. I thought he was an HSI agent. He's associated with
18 HSI, and that HSI office is affiliated with an ICAC task
19 force.

11:42AM 20 Q. Those computer forensic analysts on an ICAC task
21 force specialize in this kind of investigation, correct?

22 A. Correct.

23 Q. In other words, they are trained to understand what
24 it is forensic analysts are supposed to look for in these
11:42AM 25 investigations, correct?

11:42AM 1 A. I don't know the specific training that he took. I
2 don't know what his specific training is.

3 Q. The devices that were seized in this case included
4 two Apple products, correct?

11:43AM 5 A. An Apple phone and an Apple MacBook, correct.

6 Q. And you testified about both of those this morning,
7 correct?

8 A. Yes.

9 Q. Based on your computer forensic analysis, the two
11:43AM 10 Apple products, the phone and the MacBook, were Josh's
11 personal devices, correct?

12 A. That would be a fair -- yes, that would be fair to
13 say that.

14 Q. And you know that because you did a very deep dive
11:43AM 15 into these devices, correct?

16 A. Yes.

17 Q. On those devices, was there even a forensic trace of
18 child pornography?

19 A. No.

11:43AM 20 Q. And the truth is, you looked long and hard to find it
21 if it was there, did you not?

22 A. Correct.

23 Q. And you're confident in your skills that if it was
24 there, you would find it, correct?

11:43AM 25 A. If it was there, I would find it.

11:43AM 1 Q. You would look for things like hash values and the
2 forensic artifacts that you testified about, correct?

3 A. Correct.

4 Q. And to be clear, you would find evidence that child
11:44AM 5 pornography ever existed on either of these personal
6 devices, even if it was deleted, correct?

7 A. Well, to an extent. The answer is, yes, if it's
8 deleted and recoverable, I would certainly do that.

9 Again, I don't have perfect information. The computer --
11:44AM 10 the MacBook could have been wiped and reinstalled the
11 operating system. So, again, I don't have access to
12 perfect information. I only have access to the image that
13 was created at the time law enforcement created the image.

14 Q. Let's back up. When a computer is wiped and an
11:44AM 15 operating system is installed, there's a computer forensic
16 artifact of that, correct?

17 A. Well, depends how it's wiped. If you follow the DOD
18 specifications for wiping a hard drive, there is nothing
19 to recover. So when I say, "wiping a hard drive", that is
11:44AM 20 to initialize it like a blank piece of paper. There is
21 nothing there. So I could run a computer, do bad things,
22 wipe the computer, and there would be no evidence for
23 anybody to recover. That capability exists and you just
24 can't ignore that.

11:45AM 25 Q. Did that happen here?

11:45AM 1 A. I have no evidence that it happened here.

2 Q. And you would have evidence that it happened here?

3 A. No, there's no way I could have evidence that it
4 happened. There's no way that I would be able to

11:45AM 5 determine if that happened.

6 Q. Do you have consistent data from November 2014 to
7 November of 2019?

8 A. That tells me that the computer was certainly used
9 between 2014 and 2019, but it doesn't tell me what
11:45AM 10 happened before 2014.

11 Q. So let's back up, then. Let's limit it to between
12 December -- I'm sorry -- November of 2014 and November of
13 2019. You'd agree with me right here, right now, that
14 this computer wasn't wiped, correct?

11:45AM 15 A. I didn't find any evidence of that between those two
16 dates.

17 Q. And you would, correct?

18 A. And I would?

19 Q. You would find evidence of that if it happened,
11:45AM 20 correct?

21 A. Yes, there would be evidence. There would be gaps in
22 the timeline, correct.

23 Q. Computer forensics is a science, correct?

24 A. There's lots of discussion about that. Sometimes
11:45AM 25 it's an art. Sometimes it's a science. I would prefer

11:45AM 1 not to debate that with you. I would say somewhere it's a
2 combination of an art and a science.

3 Q. It's based on facts, correct?

4 A. Based on facts.

11:46AM 5 Q. It's based on following trails of evidence, correct?

6 A. Absolutely correct.

7 Q. It's based on actually identifying what the evidence
8 is on a computer or on an electronic device and seeing
9 what it says and --

11:46AM 10 A. Understanding what it says. Being able to apply your
11 knowledge and experience, what does this artifact mean.
12 Having the -- having to be able to apply knowledge to the
13 facts you're observing.

14 Q. It's not about guesswork, correct?

11:46AM 15 A. Absolutely not about guesswork.

16 Q. It's not about just making up anything. It's about
17 actually following the evidence, correct?

18 A. Absolutely correct.

19 Q. Now, as a practical matter, you also testified that
11:46AM 20 you spent some time reviewing the HP computer -- let's
21 back up for a second.

22 Your real time, as I understand your testimony, that
23 you spent on this case was reviewing the HP computer, the
24 iPhone, and the MacBook Pro, is that correct?

11:47AM 25 A. Yes.

11:47AM 1 Q. And so your real focus in the time that you spent was
2 on those three devices, and to be more precise, the
3 forensic images of those devices, correct?

4 A. Yeah.

11:47AM 5 Q. You used virtualization software that you
6 described -- let me rephrase that -- that you at least
7 implicitly described yesterday, correct?

8 A. Yes.

9 Q. Specifically, you used Oracle, correct?

11:47AM 10 A. Oracle VirtualBox, correct.

11 Q. And Oracle is virtualization software that isn't
12 obviously displayed that you used it on the --
13 essentially, the images that you walked through of the
14 devices, correct?

11:47AM 15 A. Correct.

16 Q. But you readily acknowledge here that that's what you
17 used even though it's not clear on those documents,
18 correct?

19 A. Yes, I used Oracle VirtualBox to create those print
11:47AM 20 screen exhibits.

21 Q. In using Oracle, is it fair to say that you can --
22 well, let's back up. You're not connected to the
23 internet, correct?

24 A. Correct.

11:48AM 25 Q. And one of the big reasons you're not connected to

11:48AM 1 the internet, Mr. Fottrell, is because the virtualized
2 device, so to speak -- maybe there's a better way of
3 phrasing it -- that you're looking at has what you believe
4 is alleged child pornography, correct?

11:48AM 5 A. Correct.

6 Q. You don't want child pornography on the internet as
7 an employee of the U.S. Department of Justice, correct?

8 A. Correct.

9 Q. You're also not installing software on the
10 virtualized mirror image, if you will?

11 A. Well, you need to -- when you're installing
12 VirtualBox, you need to install the VirtualBox drivers so
13 that the virtual machine will recognize that it's a
14 virtual machine. So the first step in installing the
15 virtualization software is installing the Oracle
16 VirtualBox drivers that allow me to control the virtual
17 machine.

18 Q. Can you break this down, because this is very
19 important. You walked through a number of software
20 applications on each of these devices that were introduced
21 into evidence yesterday and this morning, correct?

22 A. Correct.

23 Q. You're not messing with that software, correct?

24 A. Correct. I'm trying -- I'm just basically not --
11:49AM 25 trying to be very passive, not doing anything, just

11:49AM 1 documenting what's there. So the purpose in me in
2 creating these Oracle VirtualBox exhibits is not so much
3 for my forensic analysis. It's more of a way to help me
4 illustrate and demonstrate that to jurors.

11:49AM 5 Q. You're not adding new software to these devices, so
6 to speak, correct?

7 A. Correct. That's my intention, correct.

8 Q. Well, did you do that here?

9 A. Again, you have to install -- when I install the
11:49AM 10 VirtualBox drivers, I have to install the guest additions
11 in order for the virtual machine to work, so I have to
12 take that step to make my virtual machine work.

13 Q. So let's back up for a second. Other than Oracle,
14 are you installing any software?

11:49AM 15 A. Nothing else, correct.

16 Q. So we have got a very clear, delineated line, because
17 I appreciate your clarification. Oracle is tied to
18 actually just being able to look at this through a
19 virtualized mirror, correct?

11:50AM 20 A. Absolutely correct.

21 Q. Other than Oracle, you are not installing uTorrent
22 applications or anything like that?

23 A. Certainly correct.

24 Q. You are not updating applications, you are not
11:50AM 25 modifying applications, correct?

11:50AM 1 A. Correct.

2 Q. Because that would compromise the entirety of your
3 forensic work in a case like this, correct?

4 A. Well, so, it's compromising the virtual machine that
11:50AM 5 I make. It's certainly not going to compromise the
6 forensic image that was created earlier. I could always
7 go back to that forensic image. The process of me booting
8 up the virtual machine is going to change date and
9 time-stamps like I testified about. It is going to make

11:50AM 10 some changes to the Windows event viewer logs and the
11 normal housekeeping functions associated with an operating
12 system. I'm just aware of that. The fact that I'm
13 running the program is going to have an impact. It's
14 going to make changes to log files, et cetera, et cetera.

11:50AM 15 Q. But it's not updating software?

16 A. I'm not changing programs, that's correct.

17 Q. Period?

18 A. Period.

19 Q. Now, when you're installing Oracle, are you doing
11:51AM 20 that by connecting the virtualized device, so to speak, to
21 the internet, or are you plugging in a driver?

22 A. I'm not connecting it to the internet. I'm not sure
23 if I understand the question. Can you repeat it?

24 Q. Let me ask it better. Let me ask you, how are you
11:51AM 25 installing the driver for Oracle? In other words, this

11:51AM 1 very limited subset of software you are actually adding
2 that you testified about.

3 A. Yeah.

4 Q. How are you adding it?

11:51AM 5 A. So can I take a moment just to walk through that, a
6 little bit of a verbiage?

7 Q. Sure.

8 A. You start off with the forensic image that was
9 created by the law enforcement officer. My next step is I
11:51AM 10 use AccessData FTK imager. I convert that EnCase E01
11 format into what's called DD format or raw format, which
12 is an intermediary step. Then I use the VirtualBox
13 software, VBox. I convert that raw image into what's
14 called a VDI, virtual disk image, that the Oracle
11:52AM 15 VirtualBox software uses.

16 I'm almost ready to go, right. Once I have that disk
17 image that Oracle can read, I go into the Oracle box
18 software and I try to mimic the exact configuration of the
19 machine. It has such-and-such number of CPUs. It has
11:52AM 20 eight gigabytes of RAM. It has a CD-ROM attachment. So I
21 try to guess correctly what the configuration of the
22 machine is. I say, network connection, no. Pretend that
23 there's no network connection. And then I boot that up.
24 And so the computer boots up off of the virtual machine.
11:52AM 25 Now, my virtual machine is not exactly the same as what

11:52AM 1 the real machine is.

2 So once the virtual machine boots up, you go to the
3 menu and you say -- there's a choice that says, "Install
4 VirtualBox additions." That installs the device drivers,
11:52AM 5 the Windows device drivers, on the Windows machine so that
6 my virtual machine can look at the Windows resolution. It
7 understands my mouse and keyboard. It understands the
8 peripherals. So it just loads the device drivers that the
9 operating system needs to talk to my computer through the
11:53AM 10 virtual machine. That's the best way I can explain that.

11 Q. Does anything that you just described in detail
12 update software applications?

13 A. No.

14 Q. Does anything that you just described in detail add
11:53AM 15 or remove software applications?

16 A. It adds the VirtualBox additions. Besides that, no.

17 Q. I'm going to use the phrase, to make things a little
18 more understandable right now, "the device," quote,
19 unquote, when I ask you questions about these devices.

11:53AM 20 A. Okay.

21 Q. Can we understand that we're on the same page that
22 I'm referring to the virtualized image of the device that
23 you testified about?

24 A. Sure.

11:53AM 25 Q. To be clear, just so the Jury understands, you have

11:53AM 1 never actually analyzed the physical devices themselves?

2 A. Correct.

3 Q. Meaning you have never literally turned on the HP
4 computer, sat behind it, and typed anything in, correct?

11:54AM 5 A. That is correct.

6 Q. The same is true with the MacBook, the phone, et
7 cetera?

8 A. That is correct.

9 Q. So are we fine if I just call it "the device" with
11:54AM 10 that caveat?

11 A. Yes.

12 Q. The first device that you went through yesterday in
13 terms of your analysis was the HP desktop computer,
14 correct?

11:54AM 15 A. Correct.

16 Q. Your understanding is that this was seized from an
17 office at Wholesale Motorcars, correct?

18 A. Yes.

19 Q. Your understanding is that this was an actual
11:54AM 20 desktop, meaning it's literally plugged in the wall, it's
21 not portable?

22 A. Correct.

23 Q. In contrast to a laptop or a phone or an iPad, things
24 like that, correct?

11:54AM 25 A. Correct.

11:54AM 1 Q. Now, you testified that there is essentially the
2 Windows side and what I'm going to call the Linux side, is
3 that fair?

4 A. Yes.

11:54AM 5 Q. And to be clear, the Windows side has a number of
6 partitions on it, correct?

7 A. Yes.

8 Q. Five, to be precise?

9 A. That is correct.

11:55AM 10 Q. And there's an additional partition with the Linux
11 side, correct?

12 A. Yes.

13 Q. Each of those partitions has a specified amount of
14 space on the hard drive, correct?

15 A. Yes.

16 Q. Tell the Jury, if you would, what the significance of
17 hard drive space is. In other words, what are the
18 delimiting factors?

19 A. It's the size of the hard drive. So the hard drive

11:55AM 20 is rated for a certain size. If I recall correctly, this
21 was a one terabyte hard drive, 1,000 gigabyte hard drive.

22 If I remember correctly, the Windows partition was about

23 900 gigabytes. So the majority, 9/10ths of the disk space

24 on that one terabyte hard drive was for the Windows

11:55AM 25 partition. There were a few other smaller partitions that

11:55AM 1 you mentioned as well.

2 The Linux partition was relatively small. I can't
3 remember the exact number, like 10 gigabytes in size, or
4 relatively small size compared to the overall size of the
11:56AM 5 disk.

6 Q. When somebody creates a partition like the Linux
7 partition, the person or people who do that, in other
8 words, just hypothetically, someone who is doing that,
9 decides how big the partition is going to be based on
11:56AM 10 obviously how much space is available?

11 A. Correct.

12 Q. And, in fact, when Linux is installed as a partition,
13 the system essentially makes it very easy to choose how
14 much space on the HP will be allocated to the Linux
11:56AM 15 partition, correct?

16 A. Correct.

17 Q. So you would agree with me then, would you not,
18 Mr. Fottrell, that whoever installed the Linux partition
19 on this device chose for the partition to be very small
11:56AM 20 compared to the rest of the computer?

21 A. Correct.

22 Q. And we know that because that's a fact. That's based
23 on actual evidence, correct?

24 A. Absolutely correct.

11:56AM 25 Q. Now, based on your forensic analysis of the Windows

11:57AM 1 side of the HP computer, would you agree with me that this
2 was clearly a business computer?

3 A. Yes.

4 Q. It had Frazer software on it, correct?

11:57AM 5 A. Yes.

6 Q. That's F-R-A-Z-E-R, correct?

7 A. Yes.

8 Q. You're familiar, at least based on this
9 investigation, with what Frazer is, correct?

11:57AM 10 A. Correct.

11 Q. Frazer software is essentially the fuel that runs a
12 car lot, correct?

13 A. Correct. It's an application that allows a car lot
14 to have an inventory of cars and to have all of the
11:57AM 15 different databases associated with the acquisition,
16 buying, selling, paperwork associated with buying and
17 selling cars. So it is the car lot software, if you will.
18 It's the go-to tool that I'm guessing car dealers use when
19 they are buying and selling cars. It seems to be a very
11:57AM 20 popular program.

21 Q. You ever buy a car?

22 A. Yes, I did.

23 Q. Lot of paperwork involved?

24 A. Yes.

11:57AM 25 Q. Frazer essentially auto-generates that paperwork,

11:58AM 1 correct?

2 A. Yes.

3 Q. In other words, you, as a car buyer, may be signing

4 20 pages, getting a bill of sale. It's not like someone

11:58AM 5 is typing that up every time, correct?

6 A. Correct. There's automated programs that generate

7 those forms.

8 Q. And Frazer is that program on this device, correct?

9 A. Yes, that's correct.

11:58AM 10 Q. For a car to be sold, Frazer is used, correct?

11 A. Yes.

12 Q. And you saw forensic evidence of that based on your

13 investigation, correct?

14 A. Yes.

11:58AM 15 Q. On the Windows side of the HP computer, just like I

16 asked you with respect to Josh's personal devices, the two

17 Apple products, was there even a forensic trace of child

18 pornography or alleged child pornography?

19 A. No.

11:58AM 20 Q. So to be clear, 100 percent of the alleged child

21 pornography that you have identified in your computer

22 forensic examination in this case was on the Linux

23 partition side of the HP desktop computer at Wholesale

24 Motorcars, correct?

11:59AM 25 A. Yes.

11:59AM 1 Q. Is that fair?

2 A. Yes.

3 Q. The Linux partition -- let's back up for a second.

4 Was this computer, the HP, on any sort of a network in

11:59AM 5 2019, in particular in May of 2019?

6 A. When you say "network", do you mean like internet
7 network or local network? I'm not really sure what you
8 mean by that.

9 Q. Let's talk about both. Was it on any sort of a local
11:59AM 10 network? If you know.

11 A. I'd have to look at those search warrant photos.
12 There was a router there. I know it was hardwired into a
13 router. I don't know what other devices were plugged into
14 that. I know it was plugged into a router.

11:59AM 15 Q. The router would tell you that, correct?

16 A. Correct.

17 Q. I want to show you what's been marked as Defendant's
18 Exhibit 25.

19 MR. GELFAND: It's already in evidence, Your
11:59AM 20 Honor, if I may publish it?

21 THE COURT: That's fine.

22 Q. (BY MR. GELFAND.) Can you see that okay, sir?

23 A. Yes.

24 Q. Do you see Defendant's Exhibit 25?

12:00PM 25 A. Yes, I do.

12:00PM 1 Q. Just so we can get our bearings, I want to make sure
2 we're talking about the same thing, you testified that
3 this HP computer that I just circled in the bottom
4 right-hand corner of the screen was connected to a router
12:00PM 5 against the wall, is that correct?

6 A. Yes, that's correct.

7 Q. And because it was connected to a router against the
8 wall, the router itself interacted with this HP computer,
9 correct?

12:00PM 10 A. Yes.

11 Q. Explain to the Jury, if you would, what function,
12 from a computer forensic standpoint, a router serves.

13 A. So the router is the connectivity to the internet.

14 So basically the service is coming in through the

12:01PM 15 provider. In this case, it's OzarksGo. So the internet
16 service comes into the location and basically it goes into
17 the router. And then basically all of the devices plugged
18 into the router, typically they are wired connections, and
19 it also supports wireless connections. So I may have some

12:01PM 20 number of devices that are in my office. All of those
21 devices connect through that router and then are sharing
22 that internet connectivity to the router. So I could have
23 one, five, 10, 100 devices in this location. All of those
24 devices are connecting to the router, getting an IP

12:01PM 25 address, and using that router to fetch pages and fetch

12:01PM 1 information from the internet.

2 Q. Let's back up for a second. I want to break down
3 those terms, because they are very important. You
4 referenced IP address. That's also the shorthand for an
12:01PM 5 internet protocol address, correct?

6 A. Correct.

7 Q. An IP address itself is just a set of numbers that
8 alone you can't really do a whole lot with, correct?

9 A. Correct. An IP address is just a number. And I use
12:01PM 10 analogy, just like a telephone number. So an IP address
11 is an address that identifies a particular computer, just
12 like a telephone or a mobile phone will have a phone
13 number associated with it. So a phone number is
14 associated with a phone. An IP address is associated with
12:02PM 15 a computer.

16 Q. But multiple computers or devices or phones or
17 tablets connected to Wi-Fi or physically connected to the
18 same router would share an IP address, correct?

19 A. Would share the external forward-facing IP address,
12:02PM 20 yes.

21 Q. The IP address captured by software like Torrential
22 Downpour?

23 A. Correct.

24 Q. So in other words, an IP address, we agree, does not
12:02PM 25 identify a particular device, correct?

12:02PM 1 A. An IP address does identify a particular device. In
2 this case, the external IP address is the address of the
3 router. Is that what you're talking about?

4 Q. Fair enough. Let me break that down, because what
12:02PM 5 you just said is very important. The IP address is
6 associated to the router itself as opposed to the computer
7 or phone or iPad using the router, correct?

8 A. Correct.

9 Q. And so in a classic Wi-Fi context, if we were all
12:03PM 10 logged on to the Wi-Fi in this courtroom, right now.

11 A. Yeah.

12 Q. The IP address that we are all logging on to will be
13 the same related to whatever router is being used?

14 A. Correct.

12:03PM 15 Q. And that's pretty basic computer forensics, correct?

16 A. Well, it's network forensics, but, yes.

17 Q. Pretty elementary, right?

18 A. Yes.

19 Q. The router itself contains logs revealing what, if
12:03PM 20 any, devices were connected to it at any given time,
21 correct?

22 A. Correct.

23 Q. And the router keeps those auto-generated logs,
24 correct?

12:03PM 25 A. For a period of time, yes.

12:03PM 1 Q. You have never, to this day, as you sit here on the
2 witness stand in this courtroom, done any computer
3 forensic analysis on the router that is reflected in
4 Defendant's Exhibit 25, correct?

12:03PM 5 A. Correct.

6 Q. And the reason why is because it was never seized by
7 law enforcement, correct?

8 A. Correct. Law enforcement doesn't typically seize
9 routers.

12:04PM 10 Q. The reason why you have not evaluated it is because
11 when you got involved in this case, even if you wanted to,
12 you couldn't, correct?

13 A. Correct.

14 Q. A router would tell us, would it not, what devices,
12:04PM 15 if any, were connected to the router physically on any
16 given date for which it has logs, correct?

17 A. You've got -- I think you're starting to become a
18 little misleading. The router does not contain voluminous
19 information. The router's job is to -- if a computer
12:04PM 20 connects says, hey, give me IP address, I want to

21 basically connect to the internet, the router is going to
22 say, this iPhone, for example, connected to me, it wants
23 to connect to the internet. It knew the Wi-Fi password.

24 I'm going to let it connect to the internet, so I'm going
12:05PM 25 to give it one of my internal IP addresses to do that.

12:05PM 1 The router is only storing the Mac address, media access
2 control. It's this gobbledegook 32-character number that
3 uniquely identifies the network card that the phone had.

4 The reason that the router does that is because, a
12:05PM 5 day goes by, two days goes by. If that same phone comes
6 by the next day, the router knows, hey, that guy came by
7 yesterday and wanted an IP address. I gave it to him.

8 I'm going to give him the same IP address. So the router
9 contains the router table of devices that were connected
12:05PM 10 to it. Never forever, generally, in my experience. It's
11 for like a 30-day window of time.

12 Q. Let's back up for a second, because I'm not trying to
13 mislead anyone and I don't want you to, either.

14 How long did the router logs on the router displayed
12:05PM 15 on Defendant's Exhibit 25 hold in terms of --

16 A. I don't know the answer to that.

17 Q. So we just established a few minutes ago that this is
18 not a guessing game.

19 A. Right.

12:05PM 20 Q. So let's not guess.

21 A. Okay.

22 Q. You reason you don't know how long the logs go back
23 is because law enforcement in this case never seized the
24 router, correct?

12:06PM 25 A. Correct.

12:06PM 1 Q. You have never looked at the router, correct?

2 A. I did not look at the router in this case.

3 Q. Because you've never even had the opportunity to look
4 at it if you wanted to, correct?

12:06PM 5 A. Correct.

6 Q. You used Mac address. You described it as
7 gobbledegook.

8 A. It's not a random. It's a sequence of unique
9 identifiers for a network card.

12:06PM 10 Q. A Mac address, for all intents and purposes, actually
11 identifies a device, correct?

12 A. A network device, correct.

13 Q. As opposed to an IP address, which just identifies
14 essentially either one or multiple devices, correct?

12:06PM 15 A. Correct.

16 Q. So a Mac address is actually pretty important,
17 correct?

18 A. Correct. It uniquely identifies a network device.

19 Q. And a network device, to be clear, could be a phone,
12:06PM 20 it could be a computer, it could be an iPad, it could be
21 any of those things, correct?

22 A. Correct. So even with a computer, a desktop computer
23 might have two network connections. You could have a
24 wired connection and a Wi-Fi connection. So it's

12:07PM 25 certainly popular for many devices to include two Mac

12:07PM 1 addresses, because there's two network cards in it; one
2 wired and one wireless.

3 Q. The router keeps a record of the Mac address, as you
4 just described, correct?

12:07PM 5 A. Yes.

6 Q. And the Mac address can be directly associated to a
7 physical device?

8 A. Yes.

9 Q. That device is available, correct?

12:07PM 10 A. Correct.

11 Q. So when it comes to computer forensics and tracing
12 activity back to a device, a Mac address can actually be
13 very significant in investigations, correct?

14 A. It depends on the case. Sometimes it can be
15 significant; sometimes not.

16 Q. But the bottom line is, you have no clue what Mac
17 addresses connected to this router in 2019, correct?

18 A. Correct.

19 Q. You used the phrase, "internet network" and I believe
12:07PM 20 you used, "land network". I might have just interpreted
21 it that way.

22 A. Local area network. Wide area network.

23 Q. We talked generally about wide area network, very
24 generally, correct?

12:08PM 25 A. Yes.

12:08PM 1 Q. Tell the Jury what a local area network is.

2 A. In a typical router in your home or at the car lot,
3 the local area network are all of the devices that are
4 connected. So if you're in a house, it might be the T.V.

12:08PM 5 is connected, your computer, and a number of laptops are
6 connected. All of those devices are the local area
7 network. And so, for example, in my house, I have a
8 printer, and so like my computer can access that printer
9 and my kids' computer can access that printer. That's the

12:08PM 10 local area network, are the devices that are in my house.
11 That's how I differentiate the local area network. And
12 the wide area network is the internet connection.

13 Q. On the dates in May that you testified about, in
14 2019, with respect to this HP computer that you have
12:08PM 15 offered testimony about, can you tell us with certainty
16 what other devices, if any, were connected to the local
17 area network at Wholesale Motorcars or to the wide area
18 network at Wholesale Motorcars?

19 A. I just have information with the HP desktop computer.
12:09PM 20 That's what I was focusing on.

21 Q. In other words, no, you can't tell us that, correct?

22 A. I can't tell about other devices, correct.

23 Q. Let's talk about the Linux partition. I'm sorry,
24 before we do, you showed -- I'm not going to go through
12:09PM 25 every one of these documents.

12:09PM 1 MR. GELFAND: Your Honor, may I publish
2 Government Exhibit 28?

3 THE COURT: You may.

4 MR. GELFAND: Portions of it, I should say. Your
12:09PM 5 Honor, I will note for the record, I don't have enumerated
6 pages, so I'll just do my best to identify them.

7 THE COURT: That's fine.

8 Q. (BY MR. GELFAND.) Do you see the top page of
9 Exhibit 28 in front of you?

12:09PM 10 A. Yes, I do.

11 Q. Do you recognize what this is?

12 A. These are the print screens that I created associated
13 with the HP partition of -- I'm sorry -- the Windows
14 partition of the HP computer.

12:10PM 15 Q. When did you create these?

16 A. April 1st, 2021, at 2:34 p.m.

17 Q. And so the entirety of what's in here was created in
18 kind of one sitting?

19 A. No, probably multiple times.

12:10PM 20 Q. So the truth is, you kept going back to this,
21 correct?

22 A. Yes.

23 Q. So let's talk about the first page. This is
24 April 1st -- you might have just this and I missed it --
12:10PM 25 of what year?

12:10 PM 1 A. 2:34.

2 Q. But what year?

3 A. This year, 2021.

4 Q. So just about, whatever it is, seven months ago?

12:10 PM 5 A. Yes.

6 Q. Now, you walked through -- this is the Windows side,

7 correct?

8 A. Correct.

9 Q. And, in fact, I direct your attention to a screen

12:10 PM 10 with the time 11:45 a.m., June 2nd of 2021 at the bottom.

11 A. Yes.

12 Q. With the Duggar family in the background, correct?

13 A. Yes.

14 Q. Can you identify what I've circled, the icon on the

12:11 PM 15 left with the "F" and then I guess the "Z?"

16 A. That's the Frazer. That's an icon for the Frazer

17 software that you were talking about.

18 Q. Now, you testified -- so we keep going through it --

19 that when you booted on, essentially Covenant Eyes loads

12:11 PM 20 on, correct?

21 A. Yes. When it boots up, the Covenant Eyes software

22 was configured to automatically load and it displayed that

23 logo during the boot process.

24 Q. And, in particular, there's a screen that you

12:11 PM 25 captured and testified about that just for identification

12:11PM 1 purposes includes a sign-in box, correct?

2 A. Right. Yes.

3 Q. And the sign-in box is for Covenant Eyes, correct?

4 A. Yes.

12:11PM 5 Q. The prosecutor asked you yesterday what the user name
6 is, correct?

7 A. Yes.

8 Q. So as you're using this device to enable Covenant
9 Eyes, the user has to input a password, correct?

12:12PM 10 A. Say that again.

11 Q. To enable Covenant Eyes as you're using this device,
12 the user has to type in a password, correct?

13 A. I think that's incorrect.

14 Q. Well, what are we looking at on the screen?

12:12PM 15 A. If you look at the logo for Covenant Eyes that is
16 displayed right here, what I was doing is that same logo
17 is in the task bar on the lower right-hand corner of the
18 screen. I was not familiar with that. I was not familiar
19 with that icon. I wasn't -- this is the first time I'm

12:12PM 20 working in a case that used Covenant Eyes. So I clicked
21 on that icon in the lower right-hand corner and this is
22 the Covenant Eyes log-in that -- the log-in screen that
23 comes up next.

24 Q. And so, in other words, to log in, you have to log
12:12PM 25 in, correct?

12:12PM 1 A. Yes. That doesn't mean the program is not running.
2 The program is doing whatever it's doing. I don't
3 represent the vendor, I'm not representing what the
4 computer vendor is doing. But in order to log in, yes,
12:12PM 5 you have to log in, but that's deceptive to say that the
6 program is not running. By default, the program is
7 configured to auto start whenever you start up the
8 program.

9 I don't know exactly what happens when you log in
12:13PM 10 here. I am not that familiar with the program. I just am
11 documenting the fact that this program, Covenant Eyes
12 software, was installed and this is what happened if I
13 clicked on that little box on the bottom of the page.

14 Q. When you click on the box on the bottom of the page,
12:13PM 15 it asks you for a password, correct?

16 A. Correct.

17 Q. And what you are doing, as you described yesterday,
18 is accessing this the way you described it the way a user
19 would see it, correct?

12:13PM 20 A. Yes. Yes. Different type of user. I'm not sure
21 which type of user you are referring to, but a certain
22 type of user, yes.

23 Q. There's two options. Sign in and cancel, correct?

24 A. Correct.

12:13PM 25 Q. This is the most obvious question on Earth, I think,

12:13PM 1 but you tell me if I'm wrong. If I don't want Covenant
2 Eyes to be running on this computer, can I turn it off?

3 A. No, I don't think you can turn it off.

4 Q. If I don't want Covenant Eyes to be running on this
12:13PM 5 computer, can I cancel Covenant Eyes?

6 A. I don't believe you could. It's going to always be
7 running.

8 Q. Always running forever?

9 A. On this partition.

12:13PM 10 Q. That's your understanding?

11 A. That's my understanding of how it works.

12 Q. It's not a subscription-based model?

13 A. Well, yeah. Well, I'm sure -- yes -- well, I don't
14 know. I'm not -- I'm certainly familiar with the vendor.
12:14PM 15 I'm sure the vendor charges a subscription to use that
16 service.

17 Q. What are you basing this on, this notion that
18 Covenant Eyes is running regardless of whether I sign in,
19 regardless of whether I turn it off, regardless of whether
12:14PM 20 I cancel it?

21 A. Probably more so on my analysis of the Macintosh
22 computer, because the Macintosh computer had two different
23 log-ins. Remember it said, like, "internet" and "Joshua
24 Duggar." And I didn't have administrative access on the
12:14PM 25 Macintosh computer and I was frustrated by that because I

12:14 PM 1 didn't know what the internet user's password was. So
2 there is a supervisor versus user. The supervisor, if you
3 will, has permission to install programs that a regular
4 user does not have access to.

12:14 PM 5 Q. I don't know that you just answered my question.
6 Do you know one way or the other whether what you said a
7 minute ago is true, that Covenant Eyes runs no matter
8 what?

9 A. I know that Covenant Eyes loads automatically when
12:15 PM 10 the Windows partition boots up.

11 Q. And then it asks for a password, correct?

12 A. Say that again.

13 Q. I'm just going by what we're looking at. It asks for
14 a password, correct?

12:15 PM 15 A. If you click on the icon, it brings up that window.
16 That prompts for a password, that's correct.

17 Q. Then what happens if I type "cancel?"

18 A. It just goes back to the task tray.

19 Q. What happens if I type in the wrong password?

12:15 PM 20 A. I don't know.

21 THE COURT: Mr. Gelfand, I need to find a spot to
22 take a lunch break. I don't mean to interrupt you if you
23 are not finished with this line of inquiry.

24 MR. GELFAND: We can take a lunch break.

12:15 PM 25 THE COURT: Would this be good?

12:15PM 1 MR. GELFAND: Sure.

2 THE COURT: All right. So we will take our lunch
3 recess at this time. If you will please remember the
4 recess instruction. Do not speak to anyone about the
12:15PM 5 facts of the case, including your fellow jurors. Don't do
6 any research. Don't talk to anyone else about the case.
7 Don't consume any news sources or any other type of
8 research about the case.

9 Let's start back up at 1:30 this afternoon.
12:16PM 10 That's just about an hour and 15 minutes now. So if
11 everyone would please stand, the Jury is in recess.
12 Everyone in the gallery, please remain in the gallery
13 until I give you the all clear.

14 (Jury out at 12:17 p.m.)

12:16PM 15 THE COURT: You may be seated. Anything else the
16 parties would like to get on the record?

17 MR. GELFAND: Not for the defense.

18 MR. ROBERTS: Not from the government.

19 THE COURT: I really would like to start promptly
12:17PM 20 at 1:30, so if there are any issues that come up over our
21 lunch recess, please notify me about that so we can go on
22 the record at 1:00 or 1:15. We're in recess until 1:30.

23 (Lunch recess taken from 12:17 p.m. to 1:39 p.m.)

24 (Jury in at 1:39 p.m.)

12:17PM 25 THE COURT: I would ask that the witness and

1:39PM 1 counsel, on both sides, assist the Court in making a good
2 record by being self conscious not to talk over each
3 other. You may inquire.

4 MR. GELFAND: Thank you, Your Honor.

1:39PM 5 CROSS EXAMINATION (cont'd)

6 BY MR. GELFAND:

7 Q. Good afternoon, Mr. Fottrell.

8 A. Good afternoon.

9 Q. Mr. Fottrell, as you may recall, before the lunch
1:39PM 10 break, we were discussing your virtualized screenshots of
11 the Windows side of the HP computer. Do you recall that?

12 A. Yes.

13 Q. And specifically, we were walking through portions of
14 Government's Exhibit 28, correct?

1:40PM 15 A. Yes.

16 Q. So if we continue going through a couple of these
17 pages.

18 MR. GELFAND: Your Honor, if I may publish,
19 continue publishing portions of 28?

1:40PM 20 THE COURT: Yes, sir.

21 Q. (BY MR. GELFAND.) Do you see that in front of you?

22 A. Yes.

23 Q. Do you need context to see that this is part of 28,
24 or do you recognize it?

1:40PM 25 A. No, I recognize that.

1:40 PM 1 Q. What we see on this screen is a list of programs,
2 correct?

3 A. A list of installed programs, correct.

4 Q. And you testified that essentially the reason you
1:40 PM 5 printed this screen is to establish Covenant Eyes, or at
6 least to reflect that Covenant Eyes was loaded onto the
7 Windows side of the partition, correct?

8 A. Yes.

9 Q. And you testified that there's an installed date of
1:40 PM 10 10-31-2019, correct?

11 A. Correct.

12 Q. You testified that that doesn't necessarily mean that
13 that's the date that it was installed, correct?

14 A. Yes.

1:40 PM 15 Q. When was it installed on this device?

16 A. I don't know that specific date.

17 Q. Didn't look?

18 A. I didn't look.

19 Q. When software -- broadly speaking -- when software is
1:41 PM 20 updated, software can have different versions, so to
21 speak, correct?

22 A. Yes.

23 Q. And you're familiar with that in your line of work,
24 correct?

1:41 PM 25 A. Yes.

1:41PM 1 Q. And software can also, even within versions, have
2 different build numbers, correct?

3 A. Yes.

4 Q. And you're familiar with the concept of a build
1:41PM 5 number, correct?

6 A. Yes.

7 Q. Software companies, for example in this case like
8 Covenant Eyes, may release a version or a build number at
9 a particular date, correct?

1:41PM 10 A. Yes.

11 Q. And those dates are available usually on the software
12 manufacturer's website or some other resource, correct?

13 A. Yes.

14 Q. In other words, you agree with me, in your expert
1:41PM 15 opinion, the version of software and the build number are
16 available to experts such as you, correct?

17 A. Yes.

18 Q. Now, I take it from your testimony that you don't
19 know when it was installed. Do you know what version or
1:42PM 20 build number of Covenant Eyes was installed on the date
21 that this was seized?

22 A. On the date -- no, not the date. Excuse me. On the
23 date that it was seized, no.

24 Q. How about on the dates of May, say, 13th or 11th
1:42PM 25 through 17th or 16th of 2019?

1:42PM 1 A. No. I mean, the only thing I know is, at the point
2 that it was seized, the version number showing is the
3 date 10-31-19, and the version number is listed as 8.1.7.

4 Q. And so one could, you would agree with me in your
1:42PM 5 line of work, even just a layperson, could back into a
6 version number from the manufacturer's information,
7 correct?

8 A. Yes.

9 Q. And that's a fairly common thing to do in computer
1:42PM 10 forensics, correct?

11 A. It's available. Yes, it is.

12 Q. I'm sorry?

13 A. It's available. Yes, it is.

14 Q. You have done that before in your work, correct?

1:42PM 15 A. Occasionally, yes.

16 Q. In other words, not to overcomplicate this, but you
17 might look on a website of a company to see what version
18 and build number was released at a given time, correct?

19 A. Usually a developer's forum would have release date
1:43PM 20 information on when particular updates were happening, and
21 I'm just trying to figure out which version I have. I
22 would be able to refer to that reference material to get
23 accurate information.

24 Q. And so for big companies, that's often available
1:43PM 25 online, correct?

1:43PM 1 A. Yes.

2 Q. In other words, you literally just Google it,
3 correct?

4 A. I guess so, yes.

1:43PM 5 Q. Now, if we go to the next page of this exhibit, this
6 references that you were accessing this on 4-1 of 2021, or
7 am I misreading that?

8 A. That's correct.

9 Q. So you were looking at this on April 1st of 2021 at
1:43PM 10 approximately 2:36 p.m., correct?

11 A. Yes.

12 Q. Where?

13 A. Where was I physically located?

14 Q. Yes.

1:44PM 15 A. In my office in Washington, D.C.

16 Q. So you're in your lab or your office, whatever you
17 would call it, correct?

18 A. Yeah.

19 Q. Do you refer to where you do this kind of work as a
1:44PM 20 laboratory environment or office?

21 A. My office.

22 Q. Now, this lists a whole number of documents that you
23 identified as recent files on the Windows side of the HP,
24 correct?

1:44PM 25 A. Yes.

1:44PM 1 Q. You went through a couple of these, but would you
2 agree with me that these, at least by what they are
3 titled, appear to be work-related documents?

4 A. Yes.

1:44PM 5 Q. And to be clear, you opened them as well -- not on
6 the witness stand -- but you were able to access that
7 these were in fact work-related documents, correct?

8 A. Yes. I opened them, not through the virtualization
9 software; through my forensic software. But, yes, I would
1:44PM 10 have reviewed these documents.

11 Q. And in particular, you have pathways that say, for
12 example, "important dealer files" and things like that,
13 correct?

14 A. Correct. So on the desktop, there's a sub-folder
1:45PM 15 called "important dealer files," and those files were in
16 there. I was just going to the quick access menu on the
17 top of the page in the upper left and displaying what was
18 in the quick access menu.

19 Q. And so this includes documents related to Champion
1:45PM 20 Motorcars, correct?

21 A. Yes.

22 Q. And related to Wholesale Motorcars, correct?

23 A. Yes.

24 Q. Are you aware that those are two different locations?

1:45PM 25 A. Yes.

1:45 PM 1 Q. If we look at the next page, you testified that you
2 essentially looked at the inbox as it existed on
3 November 8th of 2019, correct?

4 A. Yes.

1:45 PM 5 Q. And let's be very clear to get our bearings for a
6 second. And just to be clear, for the record, does this
7 appear to be the inbox list beginning with "Lisa Reeves,
8 Life's Journey" at the top?

9 A. Yes.

1:46 PM 10 Q. Can you tell us what e-mail account this references?

11 A. So if you look at the very bottom of the page --
12 you've kind of cut it off -- at the bottom of the task
13 bar, right here is the mail icon, the e-mail icon that's
14 on the task tray on the bottom of the screen. So that's
1:46 PM 15 the e-mail -- that's what the Microsoft Windows makes
16 available. I clicked on that to look at what is the mail
17 program associated with Windows 10, and it listed the
18 account, wholesaleNWA@gmail.com.

19 Q. So just to be clear -- and I appreciate the
1:46 PM 20 explanation -- but what we're looking at is the inbox of
21 wholesaleNWA --

22 A. Correct.

23 Q. -- @gmail.com?

24 A. Yes.

1:46 PM 25 Q. Just to make the court reporter's job easier, if you

1:46PM 1 could just let me finish my question and then answer it,
2 that way, it's easier for her to take things down.

3 You testified that the reason you did this, when you
4 testified yesterday, is because you wanted to see who was
1:47PM 5 using this e-mail account, correct?

6 A. Yes.

7 Q. You wanted to figure out whether there was computer
8 forensic evidence of who used this particular e-mail
9 account that's on this particular device at various dates
1:47PM 10 and times, correct?

11 A. I would say that it's not the particular e-mail
12 account. I'm looking to see who is using the computer.
13 And the user of the computer was using this e-mail
14 account. I'm looking for, who was using the computer.

1:47PM 15 Q. But just to be clear, you picked an e-mail on the
16 next page that begins with the phrase, "Thanks, Josh,"
17 correct?

18 A. Yes.

19 Q. And this responds to a "Sincerely," essentially a
1:47PM 20 signature block that says Josh Duggar with a cell phone
21 number, correct?

22 A. Yes.

23 Q. And the reason you were highlighting this is to say,
24 look, it appears, at least just based on the e-mail, that
1:47PM 25 Josh is using this, right?

1:47PM 1 A. Yes.

2 Q. Is that fair?

3 A. Yes.

4 Q. So I presume during your computer forensic

1:48PM 5 investigation, you also reviewed e-mails prior to May of
6 2019 that were on this device?

7 A. Yes.

8 Q. And in particular, you reviewed e-mails, did you not,
9 that included shipping labels from Caleb Williams,

1:48PM 10 correct?

11 A. I'm sure I did review all e-mail messages, yes.

12 Q. If I could direct your attention -- do you have the
13 defense exhibit binder right next to you?

14 A. Yes, I do.

1:48PM 15 Q. To Defendant's Exhibit 48.

16 A. Okay.

17 Q. Please take a look at that and tell me if those are
18 e-mails that were found on this same device in the same
19 wholesaleNWA@gmail.com?

1:48PM 20 A. Yes, they appear to be.

21 Q. I'm sorry. Did you say yes?

22 A. Yes.

23 MR. GELFAND: Your Honor, at this point, I move
24 Defendant's 48 into evidence.

1:49PM 25 MR. CLAYMAN: Your Honor, we're going to object

1:49PM 1 on hearsay grounds. These are not, according to the
2 defense attorney, e-mails from Mr. Duggar.

3 MR. GELFAND: Your Honor, this goes directly to
4 what the witness testified about, identifying the identity
1:49PM 5 and tying it to Mr. Duggar. I think it's fair for
6 impeachment purposes, at the very least right now.

7 THE COURT: Well, Mr. Gelfand, you're not trying
8 to prove the truthfulness of any of the statements,
9 declarations, inside these documents?

1:49PM 10 MR. GELFAND: Correct. It's identity.

11 THE COURT: Mr. Clayman?

12 MR. CLAYMAN: I'm going to object on, really,
13 relevance.

14 THE COURT: Well, if it's relevance, it's
1:49PM 15 overruled. You may inquire.

16 MR. GELFAND: Thank you. May I publish portions
17 of Defendant's 48, please?

18 THE COURT: You may. Defendant's Exhibit 48 is
19 received.

1:49PM 20 (Defendant's Exhibit 48 Received)

21 MR. GELFAND: Thank you.

22 Q. (BY MR. GELFAND.) Mr. Fottrell, you can either look
23 on the screen or at the exhibit in front of you. It's the
24 same. Whatever is easiest for you, okay?

1:50PM 25 A. Okay.

1:50 PM 1 Q. Just to be clear, do you have Defendant's Exhibit 48
2 in front of you?
3 A. Yes, I do.
4 Q. Does this appear on the top page to be an e-mail from
1:50 PM 5 Caleb Williams to wholesaleNWA@gmail.com?
6 A. It does.
7 Q. Referencing an eBay shipping label?
8 A. It does.
9 Q. And I'm going to quickly just go through these. Just
1:50 PM 10 tell me, and just so we can make it clear for dates, was
11 that March 24th, 2019, at 4:42 p.m.?
12 A. Yes.
13 Q. Is the next page March 24th, 2019, at 4:38 p.m.?
14 A. Yes.
1:50 PM 15 Q. Is the next page March 24th, 2019, at 4:36 p.m.?
16 A. Yes.
17 Q. Is the next page March 24th, 2019, at 4:30 p.m.?
18 A. Yes.
19 Q. Is the next page March 27th, 2019, at 2:22 p.m.?
1:50 PM 20 A. Yes.
21 Q. All referencing shipping labels, correct?
22 A. Yes.
23 Q. And then the following pages, do they include
24 essentially the attachments, the shipping labels?
1:51 PM 25 A. Yes, the shipping labels.

1:51PM 1 Q. Does that appear to read "Caleb?"
2 A. Yes, it does.
3 Q. Just so the Jury sees it, can you just identify the
4 shipping labels by date. Does this appear to be
1:51PM 5 March 25th of 2019?
6 A. I'm sorry. Could you say that a little bit louder?
7 Q. Yeah. Does this appear to be dated March 25th, 2019?
8 A. Yes, it does.
9 Q. Same date on the next page?
1:51PM 10 A. Yes.
11 Q. Same date on the next page?
12 A. Yes.
13 Q. Same date on the following page?
14 A. Yes.
1:51PM 15 Q. Same date on the next page?
16 A. Yes.
17 Q. March 26th, 2019, on the following page?
18 A. Yes.
19 Q. And April 11th, 2019, on that last page?
1:51PM 20 A. Yes.
21 Q. I'm sorry, on the second to last page. And
22 March 25th, 2019, on the last page, correct?
23 A. Yes.
24 Q. And we don't need to read them into the record, but
1:51PM 25 all to different recipients, correct?

1:52 PM 1 A. Correct.

2 Q. Now, you testified to the downloads folder, going
3 back to Exhibit 28 for record purposes. Do you recognize
4 what's on the screen as a portion of Exhibit 28?

1:52 PM 5 A. I do.

6 Q. Again, this is that same Windows partition that we've
7 been talking about for the last few minutes?

8 A. Yes.

9 Q. And here what you testified or are identifying is
1:52 PM 10 that on May 11th, 2019, the Ubuntu desktop file, if you
11 will, is downloaded onto the Windows side of the HP,
12 correct?

13 A. That is correct.

14 Q. And so just to be crystal clear, this is not the date
1:52 PM 15 that Linux -- also known as Ubuntu -- was installed,
16 correct?

17 A. Correct. It was installed two days later on the
18 13th.

19 Q. So let's be crystal clear for a second so that
1:52 PM 20 there's no confusion. You agree that Linux is downloaded
21 on the Windows side on May 11th of 2019?

22 A. Yes.

23 Q. As reflected on the exhibit in front of you, correct?

24 A. Yes.

1:53 PM 25 Q. And then as you later testified -- and we'll get to

1:53PM 1 it in a minute -- on May 13th, it was actually installed,
2 correct?

3 A. Yes.

4 Q. And you went through yesterday, when you were talking
1:53PM 5 about this exhibit, software that you identified as Rufus,
6 R-U-F-U-S, correct?

7 A. Yes.

8 Q. And Rufus, as I understood your testimony, is
9 basically a way to use a thumb drive to install Linux,
1:53PM 10 perhaps among other things?

11 A. Yes.

12 Q. And as I understood your testimony, this basically
13 modernizes kind of a CD-ROM approach, correct?

14 A. Correct.

1:53PM 15 Q. And so what Rufus tells you, does it not, is that
16 Linux was installed using a thumb drive based on the
17 computer forensic trail of evidence that you have
18 detailed?

19 A. Yeah. There's certainly evidence to suggest that the
1:54PM 20 Rufus software was used to create a thumb drive to install
21 the Ubuntu Linux partition.

22 Q. And so let's talk about the installation of the Linux
23 partition. That was installed May 13th of 2019, correct?

24 A. Yes.

1:54PM 25 Q. And if I heard your testimony correctly yesterday,

1:54PM 1 the approximate time of that was 1:00-ish?

2 A. Yes.

3 Q. Now, you were able to learn, through your computer
4 forensic examination, that somebody physically plugged in

1:54PM 5 a thumb drive into this HP computer between 12:53 and
6 12:56 p.m., correct?

7 A. I'm not sure if I had those dates. I don't
8 understand specifically those times.

9 Q. Could you look at Defendant's Exhibit 52? Does
1:55PM 10 Defendant's Exhibit 52 appear to be data extracted from
11 the computer forensics you reviewed in this case? If it
12 helps, I can direct your attention to LI, or whatever it
13 is, 004?

14 A. Say that again one more time. Sorry.

1:55PM 15 Q. To the item paths.

16 A. I'm sorry. One more time.

17 Q. To the file paths, the item paths?

18 A. Oh, item path, yes. So the evidence items listed is
19 line item 4, which appears to be the HP computer, the
1:56PM 20 image file of the HP computer, correct.

21 Q. Does this appear to be a true and accurate set of
22 data extracted from the 004 evidence path that you had in
23 your lab?

24 A. This is certainly something that I --

1:56PM 25 MR. CLAYMAN: Your Honor, he's not extracted this

1:56PM 1 data himself. I don't know where this is coming from, and
2 neither does witness.

3 MR. GELFAND: First of all, he doesn't have to
4 have extracted it himself. He just testified that it
1:56PM 5 comes from the item path that is the HP.

6 MR. CLAYMAN: That's not what he testified.

7 THE COURT: Well, let him finish laying a 602
8 foundation and if the witness knows what it is, that's one
9 thing. If the witness doesn't, that's another. Let him
1:56PM 10 finish laying the foundation. Can you rephrase,
11 Mr. Gelfand, to get us back on track?

12 MR. GELFAND: Sure.

13 Q. (BY MR. GELFAND.) The exhibit that you have in front
14 of you, Defendant's Exhibit 52?

1:56PM 15 A. Yes.

16 Q. Do you recognize this exhibit?

17 A. I recognize information in the exhibit. I don't know
18 if I recognize all of the information in this exhibit.

19 Q. Can you tell us whether each of the items of
1:56PM 20 information comes from the forensic image that you
21 analyzed in your laboratory?

22 A. Can I -- say that again.

23 Q. Can you tell us whether each of the items in this
24 exhibit comes from the image of the HP computer that you
1:57PM 25 examined in your laboratory?

1:57PM 1 A. I can't be certain on every single one. I can be
2 certain on, some of these information looks consistent,
3 but I don't know if I would be able to memorize, that I'm
4 familiar with every single one of them.

1:57PM 5 Q. Have you ever reviewed this data that's on here?

6 A. Have I ever reviewed what?

7 Q. The data that's reflected on Defendant's Exhibit 52?

8 A. I reviewed the HP laptop computer. I'm not sure what
9 specifically you're asking me.

1:57PM10 THE COURT: Stop. You need to establish 602
11 foundation as to what the document is, where it came from,
12 on the computer or otherwise. And once you establish
13 that, then we can go further. But I think the confusion
14 at this point is, you have not established what this page
1:58PM15 is.

16 Q. (BY MR. GELFAND.) Do you recognize, Mr. Fottrell,
17 what this document is? What it's extracted from?

18 A. I don't recognize the entirety of this exhibit. Like
19 it looks like rows and columns of information, certainly
1:58PM20 information that's reflective of some of the ones. I'm
21 not familiar with all of the information, every line and
22 every column and every row in this report.

23 MR. GELFAND: Your Honor, I will move on right
24 now.

1:58PM25 Q. (BY MR. GELFAND.) Let me ask you based on your

1:58PM 1 forensic examination. Was a thumb drive plugged into the
2 HP computer on May 13th of 2019 based on the actual
3 computer forensic evidence trail?

4 A. Yes.

1:59PM 5 Q. Was it specifically assigned letter "F?"

6 A. Yes.

7 Q. Can you explain to the Jury what that designation
8 means? In other words, when computer forensics tells us
9 that a thumb drive was assigned letter "F," what does that
10 indicate to you as a computer forensic analyst?

11 A. When a thumb drive is plugged into the computer, it's
12 basically going to be mounted as a file system.

13 Typically, the Windows partition is drive letter "C." As
14 additional peripherals are installed, for example, a CD
15 might be drive letter "D." A thumb drive might be drive
16 letter "F" or drive letter "G." So there's a thumb drive
17 that's being installed. The operating system detected the
18 thumb drive correctly, detected there was a file system on
19 it, and it mounted that file system as a particular drive
20 letter. And in this case, it was drive letter "F."

21 Q. And to take this one step further, when a thumb drive
22 is physically plugged into a device such as the HP
23 computer, there is actually an artifact within the
24 computer forensic data that you have at your disposal to
2:00PM 25 find out what was plugged in, what drive it was assigned,

2:00PM 1 and when, correct?

2 A. Yes.

3 Q. So in other words, this is hard data, correct?

4 A. Yes.

2:00PM 5 Q. On May 13th of 2019, were you able to determine from
6 your computer forensic analysis whether any files were
7 open from that mounted thumb drive assigned letter "F?"

8 A. Yes.

9 Q. Am I right that those files were opened between 12:53
2:00PM 10 and 12:56 p.m.?

11 A. I'm sorry. Which day are you referring to?

12 Q. May 13th of 2019.

13 A. 13th. Yes. Okay, I'm with you.

14 Q. And that those files were entitled -- and I'm going
2:01PM 15 to say this slowly for the court reporter --

16 jeremy_model-mesh pics.docx; UK Cardiff-final-background
17 lighter.pptx; and Quiz 1.docx, is that correct?

18 A. Yes.

19 Q. And we know from the computer forensic evidence trail
2:01PM 20 that somebody, at 12:53 to 12:56 p.m. on May 13th of 2019,
21 had to physically plug in a thumb drive to the "F" drive,
22 so to speak --

23 A. Yes.

24 Q. -- on the HP computer, correct?

2:01PM 25 A. Yes.

2:01PM 1 Q. So I'm going to start simple. If I can show you --
2 I'm happy to show you them if the actual drives themselves
3 help -- but are you familiar with Defendant's Exhibits 3
4 through 7, which were the thumb drives and SD cards for
2:02PM 5 which I believe you received images in this case?

6 A. Yes. So I'm not looking at your exhibits, but, yes,
7 I did receive image copies of all of the thumb drives in
8 this case.

9 Q. Just so that we're clear for the record, those are
2:02PM 10 the five, and only five, thumb drives and SD cards that
11 were seized in this case, correct?

12 A. That is correct.

13 Q. And you testified a few minutes ago that you had an
14 opportunity to review those thumb drives, correct?

2:02PM 15 A. I did.

16 Q. Let's start simple. Can we agree that there's no
17 computer forensic evidence that any of those thumb drives
18 were the thumb drive that was plugged in on May 13th,
19 2019, between 12:53 and 12:56 p.m.?

2:02PM 20 A. Yes, we can agree. A review of those thumb drives, I
21 did not find any document named jeremy_model or UK Cardiff
22 or Quiz 1.

23 Q. And you looked for those, correct?

24 A. I'm sorry?

2:03PM 25 Q. I'm sorry. You looked for that, correct?

2:03PM 1 A. Yes, I did.

2 Q. And you looked for that because part of tracing the
3 kind of "who" in the equation -- let me rephrase that.

4 You looked for that because there's evidentiary

2:03PM 5 significance to those files, correct?

6 A. Yes.

7 Q. Now, part of what you do in your professional life is
8 trace thumb drives, correct?

9 A. Examine and analyze thumb drives, correct.

2:03PM 10 Q. Each thumb drive has a unique serial number, correct?

11 A. Yes.

12 Q. And, in fact, you can identify a thumb drive by its
13 serial number, correct?

14 A. Yes, that's one way.

2:03PM 15 Q. And you can identify a thumb drive by every computer
16 it's ever plugged into, correct?

17 A. The computers that are plugged into support the
18 ability to record the serial number, yes.

19 Q. So in other words -- I might have asked that in a

2:04PM 20 poor way, and I apologize. Let me rephrase that if I
21 understand your answer.

22 If you have a computer, you can determine whether a
23 particular thumb drive was ever plugged into that

24 computer, correct?

2:04PM 25 A. Certainly from modern operating systems such as

2:04PM 1 Windows 10 and macOS and Linux, the answer to that is yes.
2 Q. So the operating systems that we're talking about in
3 this case, correct?
4 A. Yes.

2:04PM 5 Q. In other words, I understand if you are talking about
6 the 1980s or something, that may not be the case.
7 A. Yeah, other technologies may not have that, correct.

8 Q. But for our purposes for this trial and everything
9 we've talked about and you've testified about, on those
2:04PM 10 operating systems, you can extract that information from a
11 computer forensic standpoint, correct?
12 A. Yes.

13 Q. Now, we've established, if I understand your
14 testimony correctly, that the thumb drives that you have
2:04PM 15 in evidence were not the thumb drive that was plugged in
16 to the device on May 13th, correct?
17 A. That is correct.

18 Q. And, in fact, the three files that you have
19 identified were opened on that thumb drive?
2:05PM 20 A. Yes.

21 Q. You can tell from computer forensics that those files
22 were physically opened --
23 A. Yes.

24 Q. -- between 12:53 and 12:56 p.m. on May 13th of 2019,
2:05PM 25 correct?

2:05PM 1 A. Yes.

2 Q. Essentially when the Linux partition is being
3 installed, correct?

4 A. Yes.

2:05PM 5 Q. Where is the thumb drive?

6 A. It was not seized by law enforcement.

7 Q. To this day, is it fair to say you have no clue what
8 thumb drive was plugged in there, correct?

9 A. Yeah, I have no clue. I don't see the thumb drive.

2:05PM 10 I have never seen a thumb drive that corresponds to those
11 three files listed.

12 Q. But even without the thumb drive, you can follow the
13 trail of evidence with respect to the files themselves,
14 correct?

2:05PM 15 A. Yes.

16 Q. Those files, based on your computer forensic
17 analysis, were never opened on the MacBook, correct?

18 A. Yes.

19 Q. Those files were never opened on the iPhone, correct?

2:06PM 20 A. Yes.

21 Q. Those files were never opened on the Windows side of
22 the HP as opposed to off of the mounted thumb drive,
23 correct?

24 A. Say that -- they were opened. This is the evidence

2:06PM 25 that they were opened. You're saying outside of this

2:06PM 1 evidence?

2 Q. They were opened from the thumb drive, correct?

3 A. Correct.

4 Q. They were opened from drive "F," like you previously

2:06PM 5 testified, correct?

6 A. That's correct.

7 Q. They were not opened from anywhere else on that

8 document, correct?

9 A. Not that I could identify, correct.

2:06PM 10 Q. So is it fair to say those files, the two Microsoft

11 Office documents and the one PowerPoint document, based on

12 your computer forensic analysis, have no connection at all

13 to any of Josh's devices that you examined in this case?

14 A. I didn't find the thumb drive that contains those

2:07PM 15 documents, so I don't have any other information about

16 those documents.

17 Q. And you didn't find any artifact that those documents

18 were ever opened on any of Josh's --

19 A. On any of the other devices, that would be true.

2:07PM 20 Q. There's no evidence that those documents have ever

21 been viewed on any of Josh's devices, correct?

22 A. Correct.

23 Q. So sitting here today, can you tell us where those

24 files originated?

2:07PM 25 A. No.

2:07PM 1 Q. Would you agree with me that those kinds of files --
2 let's back up. You're familiar with those kinds of files,
3 pretty traditional Microsoft Office documents and
4 PowerPoints?

2:07PM 5 A. Yes.

6 Q. I might have just misspoken, but Microsoft Word
7 documents, .docx, correct?

8 A. Yes, correct.

9 Q. And PowerPoint is .pptx. Those are the file
2:08PM 10 extensions, correct?

11 A. That is correct.

12 Q. And you are intimately familiar with those kinds of
13 documents, correct?

14 A. Yes.

2:08PM 15 Q. Those are fairly common documents, correct?

16 A. Yes.

17 Q. Those files cannot possibly be created on a thumb
18 drive, correct?

19 A. Certainly they can. If I start a blank thumb drive,

2:08PM 20 I start typing a document, I say, "Save to the thumb

21 drive," it's going to be saved onto the thumb drive.

22 I'm not -- you're asking me, it can be saved to a thumb
23 drive.

24 Q. I think you just said, "Saved to a thumb drive." I

2:08PM 25 want to differentiate that from, "Created on a thumb

2:08PM 1 drive." Do those kinds of documents have to be created on
2 some other device, like a computer?

3 A. Oh, well, yeah. I'm not sure if I understand your
4 question correctly, but, like, can the thumb drive just
2:08PM 5 miraculously create a file? No, it has to be plugged into
6 a computer. The computer processes it and you can save
7 it, and save it to a thumb drive, but the thumb drive does
8 not have an operating system or the word processor program
9 to create a file.

2:08PM 10 Q. Precisely. So a thumb drive can save files of this
11 nature, but it cannot create files of this nature?

12 A. Yes.

13 Q. So sitting here today, you have no clue what device
14 those files were created on, correct?

2:09PM 15 A. Correct.

16 Q. You have no clue where the thumb drive is?

17 A. Yep.

18 Q. But we know for sure that the thumb drive is not one
19 of the ones you seized and the files were not opened on
2:09PM 20 Josh's devices?

21 A. Correct.

22 Q. You testified about the Linux operating system.
23 Well, let's back up for one second.

24 You spent a lot of your testimony, when Mr. Clayman
2:09PM 25 was asking you questions, giving opinions -- and we're

2:09PM 1 going to get to this in a second -- but about whether
2 someone had to physically be present at the HP at any
3 given time, correct?

4 A. Yes.

2:09PM 5 Q. Would you agree with me that somebody had to
6 physically be present to plug in this thumb drive on which
7 these three files were opened --

8 A. Yes.

9 Q. -- on May 13th of 2019?

2:10PM 10 A. Yes.

11 Q. And that was approximately the same time that you
12 testified somebody had to physically be present to install
13 the Linux partition using a thumb drive, correct?

14 A. Yes.

2:10PM 15 Q. Now, the Linux operating system, as you testified,
16 had a single user account, correct?

17 A. Yes, it did.

18 Q. I'm going to show you portions --

19 MR. GELFAND: If I may, Your Honor, of what's
2:10PM 20 already been admitted as Government's Exhibit 30. May I
21 publish this, Your Honor?

22 THE COURT: You may.

23 Q. (BY MR. GELFAND.) Just so we get our bearings, do
24 you see the top page of Exhibit 30?

2:10PM 25 A. Yes, I do.

2:10PM 1 Q. And can you remind us, just because it's been about a
2 day since you went through this on direct, as to what
3 Exhibit 30 is, just generally?

4 A. So Government Exhibit 30 are the print screens that I
2:10PM 5 created associated with booting up the HP computer with
6 the Linux partition.

7 Q. Exhibit 30, if we go to the second page, references
8 the single user account that you identified on the Linux
9 partition side that was installed on May 13th of 2019,
2:11PM 10 correct?

11 A. Yes.

12 Q. And that is, just so we're on the same page, it's
13 Dell, D-E-L-L, underscore one, O-N-E, correct?

14 A. Yes.

2:11PM 15 Q. That is the sole user account, correct?

16 A. Yes.

17 Q. And so we know, the date on the top -- I know there's
18 a hole punch in mine, so I apologize -- but does that
19 appear to say Monday at 7:37?

2:11PM 20 A. Yes, it does.

21 Q. What does that reference?

22 A. That's the date that I booted up the virtual machine
23 and hit the print screen button to create this page.

24 Q. Monday when?

2:11PM 25 A. I don't recall specifically.

2:11PM 1 Q. What year?

2 A. This year, 2021.

3 Q. What month?

4 A. In preparing for this trial, I don't know whether
2:12PM 5 it's sometime between July and September.

6 Q. In your office, did you have unfettered access to the
7 HP forensic image that you reviewed in this case?

8 A. Yes.

9 Q. And the reason you had access to it is because you
2:12PM 10 work for the government, right?

11 A. Yes.

12 Q. You're aware that people who do not work for the
13 government, but have a need to access it, like forensic
14 examiners that don't work for the government, have to go
2:12PM 15 to a government facility to access that?

16 A. Right. There's a law that says that child
17 pornography, child sexual abuse material, has to be in the
18 care, custody, and the control of the government at all
19 times. That's the law.

2:12PM 20 Q. Sure. And so I understand the rationale. It makes
21 sense. But just to be blunt, you have unfettered access
22 to it. Those who don't work for the government don't,
23 correct?

24 A. They have access to it as well.

2:13PM 25 Q. But they have to go to a government facility,

2:13PM 1 correct?

2 A. Yes.

3 Q. Now, dell_one, did you run any forensic tests on
4 setting up this version of Linux Ubuntu?

2:13PM 5 A. Yes.

6 Q. And based on your forensic tests, did you attempt to
7 create a user account with an underscore character in it?

8 A. Yes.

9 Q. Is it your testimony under oath that you were able to
2:13PM 10 create a user account with an underscore in it?

11 A. Yes, it is.

12 Q. So your understanding -- let me rephrase that -- your
13 opinion, is that somebody picked dell_one as the name of
14 the user account?

2:13PM 15 A. Yes.

16 Q. As opposed to it being essentially imported or
17 default imported, correct?

18 A. Correct. During my analysis of installing this
19 version of the Ubuntu, when you get to the point where it
2:14PM 20 asks you to enter your name, it's a blank field. It

21 doesn't auto-populate with any information. The user has
22 to type in whatever they want their user name to be.

23 Q. And someone chose dell_one?

24 A. Somebody chose dell_one.

2:14PM 25 Q. If you look at this page, can you tell us -- the

2:14PM 1 other one said Monday. This refers to Wednesday, correct?

2 A. Yes.

3 Q. Just like you testified earlier, this exhibit,

4 Government Exhibit 30, is actually a consolidation of

2:14PM 5 screen prints from the virtualized HP from a whole bunch

6 of different days, correct?

7 A. That's correct.

8 Q. So it's not like, on any of these exhibits that you

9 introduced related to the virtualized machines or devices

2:15PM 10 that you analyzed, it's not like you just got in there,

11 spent 20 minutes, screen-shotted some stuff. You kept

12 going back to them, correct?

13 A. Correct. So the first time I went through there, I

14 hit "print screen" like a mad fool every couple of

2:15PM 15 minutes. And then after I reviewed them, I'm going, geez,

16 I should have done this, I should have done that. And so

17 I would go back periodically to create additional print

18 screens for things that I forgot to do the first time

19 around, or even forgot to do the second time around. So I

2:15PM 20 certainly rebooted the virtual machine multiple times to

21 get to the point to illustrate the things that I thought

22 were effective to illustrate.

23 Q. I'm going to show you the next page. You testified

24 that this essentially reflects some -- I know there's

2:16PM 25 multiple pages of this, but some of the software

2:16PM 1 applications that were on the Linux Ubuntu side, correct?

2 A. Yeah. Yes. Excuse me.

3 Q. What's Remmina? R-E-M-M-I-N-A.

4 A. I'm not familiar with that. I don't remember.

2:16PM 5 Q. Would you be surprised to learn that it deals with
6 remote access?

7 A. No.

8 Q. If you look at the next page. You testified that
9 some of the files on here -- I'm sorry -- some of the

2:16PM 10 software applications on here came essentially preloaded
11 or preinstalled, and some were installed by a user doing
12 something to install them, correct?

13 A. Yes.

14 Q. And so let's break that down for a second. On this
2:16PM 15 document, the TOR browser was installed as opposed to
16 preinstalled, correct?

17 A. Yes.

18 Q. We'll talk about that in a second. The uTorrent
19 application was installed as opposed to preinstalled,
2:17PM 20 correct?

21 A. Yes.

22 Q. And the VLC Media Player was installed as opposed to
23 preinstalled, correct?

24 A. Yes.

2:17PM 25 Q. Transmission, that came preinstalled on the system,

2:17PM 1 correct?

2 A. Yes.

3 Q. Transmission provides access to the BitTorrent

4 network, correct?

2:17PM 5 A. Yes.

6 Q. And just so you and I are speaking the same language,

7 when software like Transmission comes preinstalled on an

8 operating system -- like Linux, for example -- what that

9 means functionally is that the user, from the moment they

2:17PM 10 first log into the system, can use that software, correct?

11 A. Yes.

12 Q. They don't have to do anything to go out onto the

13 internet or plug in a thumb drive or whatever it may be to

14 get new software, correct?

2:17PM 15 A. Yes.

16 Q. They literally just double-click on it, correct?

17 A. Yes.

18 Q. Transmission you testified you're familiar with,

19 correct?

2:18PM 20 A. Yes.

21 Q. Transmission is one of the software applications that

22 somebody can use to access the BitTorrent network,

23 correct?

24 A. Yes.

2:18PM 25 Q. UTorrent, which we will get to in a minute, is

2:18PM 1 another application that somebody can use to access the
2 BitTorrent network, correct?

3 A. Yes.

4 Q. And qBittorrent, which you identified this morning, I
2:18PM 5 believe, is another application somebody can use to access
6 the BitTorrent network, correct?

7 A. Yes.

8 Q. Each of these are different software applications
9 that basically get you to the same place, correct?

2:18PM 10 A. Yes.

11 Q. So I'm not great with analogies, but is it kind of
12 fair to say that they are essentially three doors into the
13 same house?

14 A. Yeah, three doors into the same -- I kind of use the
2:18PM 15 same analogy. It's like Coke versus Pepsi versus RC Cola.

16 They're three different soft drinks that are basically
17 soft drinks. They're three different versions of soda.
18 And some people prefer Coke, some people prefer Pepsi.

19 Some people prefer Transmission, some people prefer
2:19PM 20 uTorrent. So it's just a preference to what flavor of a
21 program a particular person might like.

22 Q. I'm going to butcher the analogy, but unlike Coke or
23 Pepsi, you actually get to the same product here. You get
24 to the same place, correct?

2:19PM 25 A. Correct.

2:19PM 1 Q. So hence my -- and if I'm wrong, I'm wrong -- but
2 three doors to the same house, you get to the same place
3 just by going there through a different path, correct?

4 A. Yes.

2:19PM 5 Q. Is that fair?

6 A. Yes.

7 Q. So I want to be crystal clear for a second. If I
8 want to get to the BitTorrent network and access the
9 universe, the gazillions of files that exist on the
2:19PM 10 BitTorrent network, I get to the same set of possible file
11 folders through any of these software applications,
12 correct?

13 A. Well, can I offer a little bit of clarification?

14 Q. Sure.

2:19PM 15 A. So the clarification is, all of the tools that you're
16 mentioning -- Transmission, uTorrent, and qBittorrent --
17 those are the engines, if you will. They go out -- if you
18 have a Torrent file, these are the tools that will go
19 fetch the contents of the things that are referenced in
2:20PM 20 those Torrent files. You were a little bit unclear.

21 Accessing all of those Torrent files, that generally is
22 not done through these programs. That would be generally
23 happening through a web browser. So I would go to Firefox
24 or Safari. I would go to a website that has those Torrent

2:20PM 25 files, download those Torrent files. Once those Torrent

2:20PM 1 files are downloaded, then these tools go to work going
2 out and fetching the contents of it. So I just wanted to
3 clarify the actual fetching part of it, and then getting
4 the Torrent files from wherever your Torrent files are
2:20PM 5 being downloaded from.

6 Q. Let me it ask this a different way. Can someone
7 using Transmission get files through the BitTorrent
8 network from someone using uTorrent?

9 A. Yeah, so there are certain versions of it, so I don't
2:20PM 10 remember what the evolution is. Some of these Torrent
11 programs are more robust than others and they provide a
12 searching capability to go search for different Torrent
13 files. So depending on the client program that you're
14 using, some of them are robust and provide the features
2:21PM 15 that you're talking about. Others are less robust and
16 don't provide those features.

17 Q. I want to show you the next page. Let's back up, I'm
18 sorry, before I do. The document we're looking at is from
19 the HP Linux partition, correct?

2:21PM 20 A. Yes.

21 Q. But you also mentioned Transmission this morning when
22 you testified about the MacBook personal laptop, correct?

23 A. Yes.

24 Q. And would you agree with me that based on your
2:21PM 25 computer forensic analysis, Transmission was used on the

2:21PM 1 MacBook Pro in 2017 to download a Hollywood movie?

2 A. Yes.

3 Q. Not to download any sort of child pornography or
4 anything like that?

2:21PM 5 A. Yes.

6 Q. And you would also agree with me that whoever was
7 using the HP computer on the Linux side chose not to use
8 Transmission at all for anything, based on your forensic
9 analysis, correct?

2:22PM 10 A. That would be correct.

11 Q. Now, instead, that person used uTorrent, based on
12 your analysis, correct?

13 A. Yes.

14 Q. In particular, if we go to the next page of your

2:22PM 15 exhibit, you specifically captured a screenshot reflecting
16 the uTorrent version 3.5.5 that you testified about
17 yesterday, correct?

18 A. Yes.

19 Q. And the prosecutor asked you to match that with the

2:22PM 20 same uTorrent version that's on the Torrential Downpour
21 logs that you compared to yesterday, correct?

22 A. That is correct.

23 Q. And this screen that's in front of you, part of

24 Exhibit 30, expressly states the build number that is on

2:23PM 25 your virtualized HP, correct?

2:23PM 1 A. Yes.

2 Q. Can you please read for the benefit of the Jury and
3 for the record what the build number is?

4 A. Build 45828.

2:23PM 5 Q. Go to the next page. Can you tell us what we're
6 looking at here?

7 A. I clicked on one of the "about." I clicked on the
8 "about" button and it's showing me the same information,
9 uTorrent version 3.55, build 45828.

2:23PM 10 Q. So just to be clear, they are both in the same
11 exhibit, but this references build 45828, uTorrent version
12 3.5.5 on the top page that I just showed you. And on the
13 next page that you clicked on the "about," it references
14 the exact same version and build number that I previously
2:24PM 15 showed you, correct?

16 A. Yes.

17 Q. This version and build number is copyrighted the year
18 2020, correct?

19 A. Yes.

2:24PM 20 Q. This version and build number was not available by
21 uTorrent until after the date that this device was seized,
22 Mr. Fottrell, isn't that true?

23 A. I don't think I agree with that. Could you --

24 Q. Did you look in the uTorrent website to figure out
2:25PM 25 when this build number was made available?

2:25PM 1 A. No.

2 Q. Not for admission, but would it help if you looked at
3 it?

4 A. No, I don't think so. Why would it help? What would
2:25PM 5 help about it?

6 Q. To determine, like you previously testified, when
7 this version and build number were even released?

8 A. I'm looking at the forensic artifacts that I have in
9 front of me that shows the software reflected with a date
2:25PM 10 and a build number. I'm going with the evidence that I
11 have in front of me. Why do I -- I don't need to go to
12 another third-party site to get additional information.
13 I'm looking at the forensic artifact that I have, seized
14 from the defendant's residence.

2:25PM 15 Q. The residence?

16 A. Lot. Excuse me.

17 Q. Let me get this straight for a second. Can you
18 explain, as a general matter, how it would be possible for
19 a software version and build number of uTorrent to appear
2:26PM 20 on a virtualized screenshot if it wasn't yet released?

21 A. That does not make sense to me. That would not make
22 sense to me.

23 Q. In other words, to even appear on this virtualized
24 machine, a software update would have to come from the
2:26PM 25 internet, correct?

2:26PM 1 A. Correct.

2 Q. And you have sworn to this Jury that this was not
3 plugged into the internet?

4 A. Correct.

2:26PM 5 Q. Or it would have to otherwise be manually loaded with
6 additional software, correct?

7 A. Correct.

8 Q. And with the exception of the Oracle explanation that
9 you gave earlier this morning, you have testified that you
2:27PM 10 did not add any software or modify uTorrent?

11 A. I did not add any software.

12 Q. Would it surprise you to learn that this version and
13 build number wasn't released until after this device was
14 seized?

2:27PM 15 A. That would be -- interest me, yes.

16 Q. It would be very significant, would it not?

17 A. I'm not sure it would be very significant. It would
18 be significant.

19 Q. It would mean that something happened to this
2:27PM 20 evidence that you can't explain, correct?

21 A. Yeah, it could be -- I'm not sure if the -- yeah, it
22 could be a host of information that I would have to do
23 more research to analyze.

24 Q. You testified about a number of bookmarks related to
2:28PM 25 the TOR browser, correct?

2:28PM 1 A. Yes.

2 Q. You testified that Hidden Wiki involves mostly
3 criminal activity, and then you listed guns, drugs, murder
4 for hire. I think you said something about credit card
2:28PM 5 fraud. Do you remember that testimony yesterday?

6 A. Yes, I do.

7 Q. You would agree with me that nothing in this case has
8 to do with guns, drugs, murder for hire, credit card
9 fraud, anything along those lines, correct?

2:28PM 10 A. That's correct.

11 Q. Now, you're familiar with the TOR browser, correct?

12 A. Yes, I am.

13 Q. The TOR browser can be downloaded, for free, by
14 typing in "TOR browser" into Google, correct?

2:29PM 15 A. That's one way, correct, yes.

16 Q. In other words, one does not have to do something
17 particularly complex to get the TOR browser, correct?

18 A. Yes, that is correct. It's very easy to get and
19 download.

2:29PM 20 Q. TOR's purpose and function is that it provides more
21 privacy and security than other internet browsers,
22 correct?

23 A. Yes.

24 Q. And you actually used an example yesterday that your
2:29PM 25 local newspaper, for example, I believe the Washington

2:29PM 1 Post, I assume?

2 A. Yes.

3 Q. That that generates -- you go on the Washington Post
4 website, that essentially generates advertisements of

2:29PM 5 every restaurant that you didn't want to go to, but now
6 you all of a sudden do, correct?

7 A. Yes.

8 Q. Because other web browsers literally collect, and,
9 candidly, sell information, correct?

2:30PM 10 A. No. I think that the Washington -- in the example of
11 the Washington Post, when I go to the Washington Post
12 website, they get my IP address where I'm connecting from.
13 They can geolocate that IP address to Arlington, Virginia,
14 where I live, and they can use that information to target
2:30PM 15 me with advertisements in my local area.

16 Q. And that's how companies make a lot of money?

17 A. That's how companies make money.

18 Q. They are smarter than we are, correct?

19 A. Yes.

2:30PM 20 Q. Some people don't want that kind of targeted
21 advertisement, correct?

22 A. Yes.

23 Q. A lot of people don't want that kind of targeted
24 advertisement, correct?

2:30PM 25 A. Yes.

2:30PM 1 Q. Some people want to take extra steps to protect
2 privacy, correct?

3 A. Yes.

4 Q. Can you think of a reason, Mr. Fottrell, why a public
2:30PM 5 figure, regularly chased by the paparazzi, would want to
6 take steps to protect privacy?

7 A. I can see why somebody would want to take steps to
8 protect their privacy.

9 Q. Not totally crazy, right?

2:31PM 10 A. No.

11 Q. Who developed TOR routing?

12 A. Say that again. Sorry.

13 Q. Who developed TOR routing?

14 A. Say that again. Sorry.

2:31PM 15 Q. Who developed TOR routing?

16 A. The TOR Project, an organization called the TOR
17 Project.

18 Q. It's a Massachusetts nonprofit, correct?

19 A. Yes, it is.

2:31PM 20 Q. The point here is, you made the TOR browser sound
21 super sinister. It's used by millions of people, correct?

22 A. If it's used by millions, I don't know specifically.
23 I don't have specific knowledge of millions of people
24 using it. I know it's widely used by lots of people.

2:31PM 25 Q. Not everyone who uses the TOR browser uses it to get

2:31PM 1 onto these murder-for-hire, buying children stuff that you
2 testified about yesterday, correct?

3 A. That is correct.

4 Q. Is it fair to say that, like many things, it's a
2:31PM 5 mechanism one can use for bad, but it's also a mechanism
6 that one can use for totally normal, legal, benign things,
7 correct?

8 A. That is a correct statement.

9 Q. Kind of like a knife?

2:32PM 10 A. Like a knife.

11 Q. Josh's personal MacBook had the TOR browser installed
12 on it, based on your forensic examination, since December
13 of 2017, correct?

14 A. At some point in 2017, correct.

2:32PM 15 Q. And when you say at some point, is it that you don't
16 remember or that you couldn't identify the date?

17 A. No, I know that there was evidence that it was
18 installed and being used in January of 2017. There was a
19 time period later on when it was removed, and I don't know
2:32PM 20 the time period of when the TOR browser was removed from
21 the MacBook.

22 Q. I don't think you meant this, but I just want to make
23 sure that we're clear. You said January of 2017. Did you
24 intend to say December of 2017?

2:32PM 25 A. Yes. I know it was in 2017.

2:32PM 1 Q. So based on your investigation, the TOR browser was
2 on the MacBook in 2017, correct?

3 A. Yes.

4 Q. And as you previously testified, in 2017, there was
2:33PM 5 not a single trace of child pornography in any way, shape,
6 or form ever being opened on that MacBook, correct?

7 A. Yes.

8 Q. You also testified this morning that the TOR browser,
9 or an application essentially of the TOR browser, was on
2:33PM 10 Josh's phone that was seized, correct?

11 A. Yes.

12 Q. And you identified in your investigation that in
13 October and November of 2019, it was used to access adult
14 pornography, correct?

2:33PM 15 A. Yes.

16 Q. And just to be clear, without getting into any of the
17 details, this was adult pornography on, for lack of a
18 better way of putting it, normal adult pornography
19 websites, correct?

2:33PM 20 A. Yes.

21 Q. The same websites that you could access on Safari or
22 Firefox or whatever, correct?

23 A. Yes.

24 Q. Now, we know, do we not, from the computer forensics
2:34PM 25 that the TOR browser was installed on the Linux partition

2:34PM 1 on May 13 of 2019 at 2:03 p.m.?

2 A. Yes.

3 Q. So let's get very specific for a second. You
4 testified earlier that somebody plugs in that thumb drive

2:34PM 5 and opens those three files between 12:53 and 12:56 p.m.,
6 correct?

7 A. Yes.

8 Q. Essentially immediately thereafter, the Linux
9 partition is installed, correct?

2:34PM 10 A. Yes.

11 Q. And essentially immediately thereafter the Linux
12 partition is installed, the TOR browser is installed,
13 correct?

14 A. Yes.

2:34PM 15 Q. Is that a fair chronology if we just kind of sum this
16 up?

17 A. Yes.

18 Q. And we know that from your computer forensics,
19 correct?

2:35PM 20 A. Yes.

21 Q. Because that's actually detailed analysis, facts,
22 based on what's in the computer forensic trail that you
23 looked at in this case, correct?

24 A. Yes.

2:35PM 25 Q. Now, when the TOR browser was installed -- let's back

2:35PM 1 up for a second. When the TOR browser that you testified
2 about this morning -- I forgot the app you described on
3 the phone -- was that called TORsec?

4 A. TORsec.

2:35PM 5 Q. How do you get TORsec?

6 A. Go to the App Store.

7 Q. Let me get this straight for a second. To get TORsec
8 on your phone, you literally just go to the Apple App
9 Store, correct?

2:35PM 10 A. Yes.

11 Q. The same place I would go to access virtually any app
12 that I could get, literally, any app that I could get on
13 my iPhone?

14 A. Yeah.

2:35PM 15 Q. And Apple, as you know, operates the App Store,
16 correct?

17 A. Correct.

18 Q. And you download TORsec the exact same way you
19 download any other app, correct?

2:36PM 20 A. Yes.

21 Q. Here's what gets interesting, though. On the HP,
22 were you able to forensically locate an installer related
23 to the installation of the TOR browser on the Linux
24 partition?

2:36PM 25 A. I don't know what you mean by that. Was I able to

2:36PM 1 locate an installer? Can you be -- I'm not sure what you
2 mean by that.

3 Q. Let's back up for a second. If I download software
4 online, in other words, I go to a website and I want to
2:36PM 5 download here iOS 5 or iOS 10, whatever it is, I can
6 download an installer which basically pre-inputs command
7 codes, correct?

8 A. Yes.

9 Q. Let's break this down, because this is pretty
2:36PM 10 important. What's a command code?

11 A. The command line, or the command shell, if you will,
12 it's the feature of the operating system that allows the
13 user to go out to a command prompt and type textual
14 commands into a window as opposed to using the graphical
2:37PM 15 user interface to point and click on things. So the
16 command prompt that he's referencing is just the ability
17 to access the computer at a much more fundamental level.

18 Q. Command lines, is that the word? I use code. Maybe
19 I was imprecise. Is it command lines?

2:37PM 20 A. Yeah. I'm sorry. I would use the term command line.

21 Q. That's fine. Command lines are essentially the
22 equivalent of a foreign language, correct?

23 A. I'm very familiar with that foreign language, so it's
24 not very foreign to me, but it's probably foreign to other
2:37PM 25 people.

2:37PM 1 Q. How about to non-computer forensic analysts, is it
2 pretty foreign?

3 A. Yeah, to a non-forensics person, it would be pretty
4 foreign.

2:37PM 5 Q. In other words, it's not intuitive. You don't just
6 write in "car" or "install." You have to know, like, --

7 A. You have to know the commands.

8 Q. -- colons and slashes and dashes and acronyms, things
9 like that, correct?

2:38PM 10 A. Correct.

11 Q. The point is, it has to be learned somewhere,
12 correct?

13 A. That's correct.

14 Q. It requires a level of sophistication with system
2:38PM 15 technology, correct?

16 A. Yes.

17 Q. Before we went into that tangent, we were talking
18 about installers.

19 A. Correct.

2:38PM 20 Q. Installers that many of us may be familiar with just
21 from downloading any software essentially provide a
22 shortcut so that we don't have to type in complicated
23 command codes, right?

24 A. That's correct.

2:38PM 25 Q. So what an installer effectively does, even though --

2:38PM 1 from a user standpoint, you just essentially double-click
2 install, adopt the user agreement, whatever it may be,
3 correct?

4 A. That is correct.

2:38PM 5 Q. What's really happening on the back end, even though
6 the user may not realize this is, it's essentially
7 inputting command lines for you?

8 A. Correct.

9 Q. Is that correct?

2:38PM 10 A. Yes.

11 Q. So here's my question. From a computer forensic
12 standpoint, where is the installer for the TOR browser on
13 the HP Linux partition side?

14 A. It doesn't exist, because there's other ways to
2:39PM 15 install software besides the two ways that you mentioned.
16 The Ubuntu software has the equivalent of an App Store,
17 just like the iPhone does. The Ubuntu software installer
18 icon is the equivalent of the App Store. I can go to the
19 App Store on the Ubuntu software, type in TOR, it will
2:39PM 20 bring up the TOR program. I click install and it

21 installs. I can go to the installer and type in VLC.
22 It's going to show me the application for VLC. I click on
23 the install button and it would install. Go to the App
24 Store on the Ubuntu machine, type in uTorrent, and it will
2:39PM 25 download and install the uTorrent program for me, just

2:39PM 1 like it does on the Macintosh.

2 Q. Did you find computer forensic evidence that that is
3 actually what happened here with the TOR browser?

4 A. I looked. I didn't see those installer files that
2:40PM 5 you referenced, so I don't see that as an option. I
6 looked for the bash command history. There is no command
7 history to say that somebody typed in the commands to do
8 that. I am left with the third alternative that the
9 person used the App Store to install the applications.

2:40PM 10 Q. So let me get this straight, because we talked before
11 about how we want to focus on evidence, not guessing,
12 correct?

13 A. Okay.

14 Q. My question, and I'll ask it again is, did you find
2:40PM 15 evidence, computer forensic evidence, that the TOR browser
16 was installed by going to the App Store on the Linux
17 partition; yes or no?

18 A. The overall evidence that I see is consistent with
19 that. I didn't see an installer file. I didn't see bash
2:40PM 20 command line histories. I did not see evidence of those
21 techniques, which leads me to believe the only other
22 alternative is they went through the App Store to install
23 it.

24 Q. You keep saying "bash files." Let's talk about that
2:41PM 25 for a second. There was no bash history on this device,

2:41PM 1 correct?

2 A. Correct.

3 Q. What is bash history? Let's put this into English
4 for a second.

2:41PM 5 A. Sure. What was your question? I'm sorry.

6 Q. What is bash history? Let's put this in English.

7 A. This goes back to 1980. The Unix operating system
8 comes with a command prompt called the shell prompt. In
9 AT&T Bell Labs, it was developed by a man named Stephen

2:41PM 10 Bourne and so it was known as the Bourne Shell. So in the
11 80s and 90s, I was certainly using the Bourne Shell. That
12 was the command line program that you would use to access
13 Unix machines. Later on, during the open-source movement,
14 the GNU software foundation wrote a public domain version

2:41PM 15 of the Bourne Shell, and they named it bash, which stands
16 for Bourne Again Shell. It's a cute little name to show
17 the open-source name. And that command line tool is still
18 being used today. It's been used for about 20, 25 years
19 now. It's a very popular, very full-featured programming
2:42PM 20 shell, and that's the Bourne Again Shell, the bash shell.

21 One of the features of that shell is that it keeps
22 track of all the commands that you type. So if I type a
23 command, I type some other commands, and I want to go back
24 to a command and redo it, you can redo previous commands.

2:42PM 25 And the only way that it allows you to do that is if it

2:42PM 1 remembers that. And that's what the bash history is, it's
2 the operating system's way of recording the previous
3 commands you typed into the bash prompt.

4 Q. So I tried to make that simpler, and I think I
2:42PM 5 failed.

6 MR. CLAYMAN: Your Honor, can I ask for a side
7 bar?

8 THE COURT: Yes.

9 (Bench Conference)

2:43PM 10 MR. CLAYMAN: Your Honor, it was brought to my
11 attention that the defendant's expert is sitting behind
12 Mr. Gelfand and passing him notes during his cross
13 examination. I did not understand that to be consistent
14 with the Court's ruling or any understanding of what our
2:43PM 15 experts were going to do during our expert testimony.

16 MR. GELFAND: She's here to assist with the
17 defense. That's the whole idea.

18 MR. CLAYMAN: She was here to assist --

19 THE COURT: Excuse me?

2:43PM 20 MR. GELFAND: I don't see anything at all that
21 would be improper from using a defense expert that's
22 permitted in the courtroom to assist with the defense in
23 complicated computer forensics issues. That's the whole
24 idea.

2:43PM 25 MR. CLAYMAN: Our understanding, Your Honor, was

2:43PM 1 that she was here so she could comment when she testifies,
2 if she chooses to, if they choose to call her, about
3 things she heard from Mr. Fottrell's direct examination.
4 I didn't understand that we would be passing notes.

2:44PM 5 THE COURT: Well, the permission that the Court
6 gave was for the parties' experts to sit in the courtroom.
7 It was never suggested to the Court that she would sit at
8 counsel table. It was never suggested to the Court that
9 she would be handing notes. She is certainly a
2:44PM10 consultant, and if you want to speak with her at night and
11 have questions for her, if you want to speak with her on
12 breaks and have questions for her, but I do agree that
13 it's improper to be handing notes back and forth to
14 someone sitting in the gallery, unless it's counsel of
2:44PM15 record.

16 MR. GELFAND: I did not mean anything by that. I
17 hope the Court understands that. She's literally given me
18 one note. My intention was not in any way, shape, or form
19 to violate the Court's permission. She handed me one
2:44PM20 note. Candidly, I'm not sure I even understand what the
21 point is.

22 THE COURT: Well, please ask her not to do that
23 and ya'll can speak on the breaks if you like.

24 MR. GELFAND: Can I just whisper to her?

2:45PM25 THE COURT: Yes.

2:45PM 1 (Bench Conference Concluded)

2 MR. GELFAND: May I continue?

3 THE COURT: You may proceed.

4 Q. (BY MR. GELFAND.) We were talking about the bash
2:45PM 5 history. Let me see if I can simply this, but I don't
6 want to oversimplify this. It's a history that is
7 auto-logged of command lines that are typed into the
8 system, correct?

9 A. Yes.

2:45PM 10 Q. Can bash history be deleted?

11 A. Yes.

12 MR. GELFAND: If I can continue to publish
13 portions of Government Exhibit 30, Your Honor?

14 THE COURT: Yes.

2:46PM 15 Q. (BY MR. GELFAND.) This is the virtualized screenshot
16 that you testified you pulled straight off the Linux
17 partition, correct?

18 A. That is correct.

19 Q. What's the bash history that I see here?

2:46PM 20 A. That is me going out to the command prompt, as I
21 testified earlier, in order to -- one of the first steps I
22 needed to install a virtual machine is I needed to install
23 the guest additions. And I needed to go out to the
24 command prompt to install the Oracle VirtualBox guest
2:46PM 25 additions to get those drivers loaded correctly. So that

2:46PM 1 bash history reflects me installing the Oracle VirtualBox
2 and does not reflect activity associated with what the
3 defendant was using, or the computer user was using.

4 Q. So to cut to the chase, even though this says bash
2:47PM 5 history on here, as I understand your testimony, we can
6 agree that this does not reflect any bash history of
7 command lines actually put in to this HP Linux partition
8 side, correct?

9 A. Say that again.

2:47PM 10 Q. Sure. The bash history here is stuff you did, not
11 stuff anyone --

12 A. Yes.

13 Q. -- who had access to this HP computer in May or June
14 or whatever of 2019 did, correct?

2:47PM 15 A. Yes, because you can see all of these VirtualBox
16 things are associated with me installing my VirtualBox
17 additions in order for my virtual machine to work
18 correctly. So there's lots of artifacts associated with
19 that.

2:47PM 20 Q. Sure. When was the bash history deleted?

21 A. When was which bash history deleted?

22 Q. When was the bash history that was on this device
23 deleted?

24 A. I have no evidence that the bash history was deleted.

2:47PM 25 At the moment in time it was seized by law enforcement,

2:47PM 1 there was no bash history. There is no -- I have no
2 forensic evidence that it existed previously and was
3 deleted. I don't have any information about that.

4 Q. If we look at the next page, you testified that this
2:48PM 5 is essentially a list of file folders from the home
6 screen, correct?

7 A. Yes.

8 Q. And you identified a number of file folders that were
9 modified in May of 2019, correct?

2:48PM 10 A. Yes.

11 Q. And you kind of made the point, if I understood your
12 testimony correctly, that this corresponds, in your expert
13 opinion, with the date and approximate time that this was
14 installed, correct?

2:48PM 15 A. Yes. So at 1352, at 1:52, generally speaking,
16 somewhere in the midpoint of the installation process,
17 that's when these folders are being created. That's a
18 decent ballpark figure for when the operating system was
19 installed.

2:49PM 20 Q. Did you use computer forensic tools to actually
21 determine, instead of ballparking, when it was installed?

22 A. There is a log file associated with that on the
23 computer as well, and I looked at that.

24 Q. Based on that log file, when was that installed?

2:49PM 25 A. On the same day, May 13th.

2:49PM 1 Q. At what time?

2 A. So the log file is kind of long. It's voluminous.
3 And there's a time at the beginning and there's a time at
4 the end. And, generally speaking, the time at the end
2:49PM 5 reflects around that time, 1352. The problem I have with
6 the beginning of the log file is that when the Ubuntu
7 software is booted up, the program is running, the
8 operating system did not go out to a reference clock and
9 basically get an accurate time. So I am less reliable
2:49PM 10 about the dates and times that are reflected at the
11 beginning of that installation log file. But about
12 somewhere in the middle of it, you will see an entry for
13 the network time protocol where it goes out to a reference
14 clock and gets a date and time. I am much more confident
2:50PM 15 after that event occurs that the dates after that event
16 occur. So I am not exactly sure when it began, but the
17 log file reflects exactly when it completed, which is
18 about this time.

19 Q. So just to be clear -- and that's what I wanted to
2:50PM 20 clarify -- when you say that this was installed at
21 approximately this time, you're not saying that that's
22 when the beginning of the installation occurred, correct?

23 A. Correct. Correct. It could be five or 10 minutes
24 before, five or -- there's a window of accuracy that I
2:50PM 25 have, to answer that question.

2:50PM 1 Q. The folders at the bottom, the column that we were
2 just looking at is the modified date, correct?

3 A. Correct.

4 Q. Do you see the modified date of the folders at the
2:50PM 5 bottom, including the cache folder, being October 2020?

6 A. Yes.

7 Q. January of, I presume, 2021?

8 A. Yes.

9 Q. These were -- what we're looking at on the screen
2:51PM 10 were modified --

11 A. Yes.

12 Q. -- after the device was seized?

13 A. This is the virtual machine. If we go back to the
14 EnCase original evidence, it's going to have the date and
2:51PM 15 times reflected of when it was seized. Things are

16 changing. Remember I testified, as I boot it up, I'm
17 looking around. I'm going under Thunderbird and looking
18 at it. The act of me looking at something changes it. It
19 changes the dates and times when I do that. Those dates
2:51PM 20 and times are reflected in those dates that you see in
21 this exhibit.

22 Q. But to be clear, and I understand you keep saying we
23 could go back to EnCase, et cetera. Is it fair to say
24 that you did not testify about a single piece of evidence
2:51PM 25 generated from EnCase?

2:51PM 1 A. These spreadsheets, all of the -- so I use the
2 demonstrative exhibits, the print screens that I created,
3 as an illustrative tool to show what is in there in an
4 easy-to-understand format. I go back to my forensic
2:52PM 5 tools, I extract the raw data, and those exhibits we'll
6 see in those spreadsheets and those printouts that I
7 created, those are the exhibits that are coming from my
8 EnCase forensic software. So I'm combining two different
9 things. I'm combining an easy-to-present format in using
2:52PM 10 Oracle VirtualBox, and then the underlying forensic
11 evidence.

12 Q. But can you answer my question? Is there any
13 evidence that you testified about that came from EnCase?

14 A. Is there any evidence that -- say that again.

2:52PM 15 Q. Any evidence that we have seen that came from EnCase?

16 A. Yes. The spreadsheet exhibits came from EnCase.

17 Q. Just the spreadsheet exhibits?

18 A. Yes. Well, the thumbnails. The same thing with the
19 thumbnails. I export the thumbnails. When I created the
2:52PM 20 thumbnails with all of the CSAM images, that came from
21 EnCase. When I recovered the images from unallocated
22 space, I exported them. That was using the forensic tools
23 that I had. That was not using the virtual machine.

24 Q. Now, you testified to various files that were
2:53PM 25 streamed on VLC, correct?

2:53PM 1 A. Yes.

2 Q. Before we get there for a second, we have talked
3 about the TOR browser, correct?

4 A. Yes.

2:53PM 5 Q. Let's talk about BitTorrent, okay?

6 A. Okay.

7 Q. Is it your testimony, to cut to the chase, that the
8 only BitTorrent software used in connection with alleged
9 child pornography activity in this case was uTorrent?

2:53PM 10 A. I'd have to go back and look at that exhibit. There
11 might have been -- let me look at that exhibit. There
12 might have been a folder where another program was used.

13 Q. Take as much time as you need.

14 A. Got it. Government Exhibit 39. Can you repeat the
2:54PM 15 question?

16 Q. Yes. It was just a simple question. I don't know
17 exactly how I phrased it. But was uTorrent the only
18 BitTorrent software used in connection with any alleged
19 child pornography activity in this case?

2:54PM 20 A. Yes. Yes.

21 Q. So just to be clear, you have testified in total
22 about three BitTorrent applications. We talked a minute
23 ago about Transmission, correct?

24 A. Yes.

2:54PM 25 Q. So whoever used the Linux partition chose not to use

2:54PM 1 Transmission and used uTorrent, correct?

2 A. UTorrent. That is correct.

3 Q. And Transmission was on the MacBook Pro related to
4 the commercial video, correct?

2:55PM 5 A. Yes.

6 Q. And we know for sure that was used by the user of the
7 MacBook Pro in 2017 for that commercial video purposes,
8 correct?

9 A. Yes.

2:55PM 10 Q. Kid's movie, whatever it was, correct?

11 A. Yes.

12 Q. I'm sorry. And Three Amigos, correct?

13 A. Yes.

14 Q. And we know that qBittorrent was used on the personal
2:55PM 15 laptop, the MacBook Pro, also in 2017, to access the
16 Planes, Trains, whatever it was, correct?

17 A. Correct.

18 Q. So uTorrent, let's talk about that. This is a Linux
19 operating system that uTorrent is installed on, correct?

2:55PM 20 A. Yes.

21 Q. UTorrent, however, is Windows-based, correct?

22 A. UTorrent is -- what was that?

23 Q. UTorrent is Windows-based?

24 A. It's Windows-based. It's a Windows 32 application,
2:56PM 25 correct. It's a Windows 32-bit application.

2:56PM 1 Q. Linux is different from Windows, correct?

2 A. That is correct.

3 Q. And in fact, one of the things that you have made
4 very clear is that there's the Windows side and the Linux
2:56PM 5 side, correct?

6 A. That's correct.

7 Q. So to install Windows-based software, in particular
8 uTorrent on the Linux side, somebody had to first install
9 virtualization software, correct?

2:56PM 10 A. Yes.

11 Q. And then after installing virtualization software,
12 can you tell from your -- let's back up. Just so everyone
13 understands, what's virtualization software?

14 A. Can I clarify that? I don't think virtualization
2:56PM 15 would be the term that I would use. I think the term I
16 would use is emulation software. So there's -- Ubuntu has
17 this -- Linux has this thing called "Wine." It's a
18 Windows emulation software. So to clarify, you would have
19 to install this Windows emulator software on the Ubuntu
2:57PM 20 side in order for Windows applications to run correctly on
21 the Ubuntu partition.

22 Q. And, in fact, essentially there's two steps. Once
23 you're on the Linux side, if you want to -- instead of
24 using Transmission by double-clicking it, if you want to
2:57PM 25 use uTorrent, you've got to install Wine, correct?

2:57PM 1 A. Correct.

2 Q. So that's step one, correct?

3 A. Yes.

4 Q. And then once you have installed Wine, this, I think

2:57PM 5 you said emulation software?

6 A. Yes.

7 Q. Then you have to actually install uTorrent, correct?

8 A. Yes.

9 Q. How was uTorrent actually installed on the Linux

2:57PM 10 partition?

11 A. So, again, I don't have perfect information. It

12 appears that it would be -- there is no installer file for

13 Wine. There's no installer file for uTorrent. So it

14 appears to me somebody went to the App Store and did a

2:57PM 15 search for uTorrent. They see the application and they

16 clicked on it to install the uTorrent through the App

17 Store.

18 Q. Do you have evidence that that's actually --

19 A. Yes, I do. I have an exhibit that demonstrates me

2:58PM 20 doing exactly that, with this exact version of the

21 operating system.

22 Q. That wasn't my question. I'm asking what --

23 THE COURT: Can I call a timeout? It would be

24 very helpful if you, sir, let him finish his question

2:58PM 25 before you answer so that we can make a good record,

2:58PM 1 because our court reporter can't report when both people
2 are talking at the same time. You may proceed.

3 MR. GELFAND: Thank you.

4 Q. (BY MR. GELFAND.) I'm not asking what you did. I'm
2:58PM 5 asking whether there's computer forensic evidence in this
6 case that you can point us to with specificity that tells
7 us how uTorrent and Wine were installed on this device.
8 And if the answer is no, the answer is no. That's all I'm
9 asking.

2:58PM 10 A. The answer is, I don't have perfect information.
11 There's no installer that you speak of, so I don't have
12 perfect information as to how it was installed. I know
13 what is likely, but I don't know what's certainly
14 installed, how it was certainly done.

2:59PM 15 Q. In other words, you're making kind of an educated
16 guess?

17 A. An experienced, educated guess.

18 Q. I don't want you to guess. I want you to tell us
19 what the facts show from your forensic analysis, correct?

2:59PM 20 Fair?

21 A. Yes.

22 Q. Now, we know that whoever installed uTorrent, based
23 on your testimony, installed it on May 14th at
24 approximately 5:25 p.m., correct?

2:59PM 25 A. That sounds correct.

2:59PM 1 Q. I believe you testified yesterday that uTorrent also
2 has kind of a Mac-based application, correct?

3 A. Yes.

4 Q. And so whoever installed uTorrent here chose the
2:59PM 5 Windows-based application, correct?

6 A. Yes.

7 Q. Could have chosen the Mac-based application?

8 A. The Mac-based application on the Ubuntu? I'm not
9 sure if that would work. I don't know if that would work.

3:00PM 10 Q. By examining the uTorrent application on the Linux
11 partition, were you able to determine how it was connected
12 to the network?

13 A. No. It was connected to the network through the
14 network connection. I didn't know specifically how it was
3:00PM 15 done.

16 Q. Meaning through the business's Wi-Fi?

17 A. Yeah. Well, the HP desktop was hard-coded into the
18 router, so it was a hard-coded connection. I wouldn't
19 characterize that as Wi-Fi. I would characterize that as
3:00PM 20 a wired connection.

21 Q. Was it connected through a Universal Plug and Play
22 host?

23 A. I don't know what you mean by that.

24 Q. Do you know what Universal Plug and Play is?

3:00PM 25 A. Yes, I do.

3:00PM 1 Q. Universal Plug and Play is a setting on a router,
2 correct?

3 A. So Universal Plug and Play, there's a whole host of
4 things associated with computers for Universal Plug and
3:00PM 5 Play. And there's also things associated with Universal
6 Plug and Play for a router, yes. So both of those things
7 are true.

8 Q. Universal Plug and Play leaves a computer network
9 more vulnerable than if it's not enabled, correct, from a
3:01PM 10 security standpoint?

11 A. I think what you're -- Universal Plug and Play
12 port-mapping protocol. So the port-mapping protocol
13 leaves the router more vulnerable than if you were not
14 using Universal Plug and Play port-mapping, correct.

3:01PM 15 Q. To be clear, when we say port-mapping Universal Plug
16 and Play, we're talking about more vulnerable to outside
17 intrusions, to security risks?

18 A. Yes.

19 Q. Were you able to determine, in your computer forensic
3:01PM 20 examination, whether or not Universal Plug and Play was
21 enabled in May of 2019 with respect to this network and
22 this device?

23 A. No, I was not able to look at the router so I didn't
24 have any information to analyze that.

3:01PM 25 Q. Would you agree with me that if Universal Plug and

3:01PM 1 Play was enabled, then the network on which the device was
2 accessing the internet was more vulnerable?

3 A. Was more vulnerable? Yes, more vulnerable than if it
4 was not. That's a correct statement.

3:02PM 5 Q. Now, you have identified, in Government's Exhibit 30,
6 that the videos that were played were played on a VLC
7 application, correct?

8 A. Yes.

9 Q. VLC is a very common video player, correct?

3:02PM 10 A. Yes.

11 Q. Ubiquitously used, correct?

12 A. It's very popular.

13 Q. Perhaps one of the most popular video players
14 available, correct?

3:02PM 15 A. Probably is the most popular one, yes.

16 Q. Literally the most popular, correct?

17 A. I don't have information about that, but I would
18 agree with you.

19 Q. Now, I want to show you Government's Exhibit 30. Can
3:03PM 20 you see that clearly in front of you?

21 A. Yes, I can.

22 Q. This is an exhibit you testified about yesterday,
23 correct?

24 A. Yes.

3:03PM 25 Q. And what this shows us -- and there were a couple

3:03PM 1 different exhibits that basically show us the same
2 thing -- is that the videos that were played were played
3 through streaming, correct?

4 A. It was a streaming protocol, that is correct.

3:03PM 5 Q. And what that functionally means is that somebody
6 decided to stream these videos instead of playing them
7 locally without streaming them, correct?

8 A. Correct. Somebody chose to play them via the
9 streaming protocol as opposed to clicking on the file and
3:03PM 10 opening it through the open file dialogue, correct.

11 Q. Now, the streaming protocol functionally means that
12 it is played essentially through a connection that leaves
13 the HP device itself, correct?

14 A. Say that again. Say that.

3:04PM 15 Q. The streaming protocol means that the videos, or the
16 data that is streamed, leaves the connection of the HP
17 computer itself?

18 A. No, I don't agree with that statement.

19 Q. So your statement is that the data that is streamed
3:04PM 20 on the HP computer, even though it's streamed as opposed
21 to just double-clicked, stays in the HP computer and
22 doesn't in any way travel through any sort of local access
23 network or internet connection?

24 A. Yes, that is correct.

3:04PM 25 Q. That's your testimony?

3:04PM 1 A. Yes, it is.

2 Q. So why stream?

3 A. I don't know. That's an option. I don't know why

4 the person chose the streaming protocol. There's many

3:04PM 5 ways that can do it, but it's just one that was chosen.

6 It's certainly -- I don't have perfect information.

7 uTorrent supports streaming. VLC supports streaming. So

8 it's just as simple as copy and paste from uTorrent. You

9 copy in uTorrent and you paste into VLC. It's as simple

3:05PM 10 as a copy and paste. It could be as simple as that.

11 Q. Streaming requires configuration, correct?

12 A. What do you mean by that? It's configured by

13 default. I don't understand what you mean by it requires

14 configuration.

3:05PM 15 Q. Your testimony is that streaming does not require

16 configuration using the VLC platform?

17 A. My testimony is that I can use VLC. I download a

18 video. I can choose right mouse click, stream. Go into

19 VLC, choose paste, and the movie starts playing.

3:05PM 20 Q. You testified yesterday that that would basically lag

21 because of buffering compared to just opening it locally,

22 correct?

23 A. I don't know the answer to that. The answer is both

24 of these are efficient streaming protocols. I don't know

3:06PM 25 which one is more efficient than the other. Both of these

3:06PM 1 ways are certainly ways of viewing the same content.

2 Q. What's the default if you just double-click on the
3 file?

4 A. Just to open the file.

3:06PM 5 Q. As opposed to streaming?

6 A. Correct.

7 Q. Now, streaming means that data at one physical
8 location can be accessed by a user at a different
9 location, correct?

3:06PM 10 A. Generally speaking, that is a true statement. But it
11 also means that the two destinations are the same. The
12 place that I'm streaming it from and the place that I'm
13 viewing it is the same computer. That possibility exists
14 as well.

3:06PM 15 Q. Hold on for a second. I appreciate that. You have
16 testified about one possibility. I'm asking you about
17 another.

18 Streaming means that data at one physical location
19 can be accessed by a user at a different location,
3:07PM 20 correct?

21 A. Yes, that is correct.

22 Q. In fact, let me ask you point-blank. From a computer
23 forensic standpoint, can you rule out the possibility that
24 these files were streamed from this HP computer to another
3:07PM 25 device?

3:07PM 1 A. There's forensic evidence that the videos were played
2 locally through the streaming protocol. I'm not sure if I
3 understand your question comprehensively.

4 Q. Can you rule out, from a computer forensic standpoint
3:07PM 5 from the evidence, that these videos were not
6 accessible -- meaning streamed -- to another device?

7 A. The answer to that question is, by default, the
8 Ubuntu operating system doesn't come with the streaming
9 service to stream videos. So I would -- without having
3:08PM 10 perfect information, I would say that's false. In order
11 for that to happen, there would need to be streaming
12 software installed on the Ubuntu Linux partition in order
13 for it to stream movies. So that doesn't happen for free.
14 It may happen built in, but there needs to be software
3:08PM 15 that provides that streaming service. It's not just
16 magical. There has to be a service that's running to
17 stream videos.

18 Q. UTorrent streaming?

19 A. Say that again.

3:08PM 20 Q. UTorrent streaming?

21 A. UTorrent streaming.

22 Q. That streams the videos, according to your testimony?

23 A. Yes.

24 Q. Can you rule out the possibility that those streamed
3:08PM 25 videos were accessible by another device?

3:08PM 1 A. Yeah, I have no evidence to show that. I have no
2 evidence about that.

3 Q. Do you have evidence that rules out that possibility?

4 A. I have no evidence that those videos were streamed to
3:09PM 5 another device. I think that's what I'm trying to say.
6 No evidence that I was able to see that those videos were
7 streamed outside of this device.

8 Q. I'm not trying to be difficult, but you're answering
9 kind of the opposite of the question I'm asking you.

3:09PM 10 You're saying, I have no evidence that it was streamed to
11 another device. I'm asking you whether you have evidence
12 that it wasn't?

13 A. No, I don't have perfect information. I don't have
14 evidence associated with that.

3:09PM 15 Q. Now, is it possible to restart a computer remotely?

16 A. Yes, it is.

17 Q. Is it possible to restart a computer remotely and get
18 back into the operating system that was last running?

19 A. Yes.

3:09PM 20 Q. The point here is, one does not need a physical
21 button to restart a dual-booted computer, correct?

22 A. When you restart a dual-booted computer, you hit the
23 restart command, the computer reboots. Now the operating
24 system is no longer running. You're relying on the BIOS.

3:10PM 25 The BIOS on the computer tells the computer what operating

3:10PM 1 system to boot. That is either the Windows partition or
2 the Linux partition. Whatever the machine was configured
3 to boot, that's the one that it's going to boot by
4 default. I'm not familiar with the ability to remotely
3:10PM 5 reboot a computer and tell it to boot off of another
6 partition. I'm just probably not familiar with that.

7 Q. You said BIOS. That's the Basic Input/Output System,
8 correct?

9 A. Yes.

3:10PM 10 Q. The BIOS would tell us whether it would default to
11 Windows or Linux on a reboot, correct?

12 A. Yes.

13 Q. Did you check the BIOS here?

14 A. No.

3:11PM 15 Q. What that means is, you don't know what the boot
16 order is for the BIOS, correct?

17 A. The evidence that I have, the multiple times the
18 computer was rebooted, it's booting up under the Windows
19 environment.

3:11PM 20 Q. That wasn't my question. You don't know what the
21 boot order is if you don't check the BIOS, correct?

22 A. Correct.

23 Q. As a computer forensic analyst, you have access to
24 the BIOS?

3:11PM 25 A. Well, BIOS is on the physical computer itself. I did

3:11PM 1 not have access to the physical computer. I only had
2 access to the forensic image that was created.

3 Q. Now, we have used this term "reboot," kind of a fancy
4 way of saying turning an operating system off and
3:11PM 5 restarting it again?

6 A. Yes.

7 Q. Sometimes users are essentially prompted to reboot to
8 install an update or something like that, correct?

9 A. Yes.

3:12PM 10 Q. Operating systems, including Linux, can be rebooted
11 remotely, correct?

12 A. Yes.

13 Q. Now, you testified this morning about various
14 thumbnail images, correct?

3:12PM 15 A. Yes.

16 Q. The thumbnails in this case you testified you went to
17 because the files themselves, the alleged child
18 pornography files, were deleted, correct?

19 A. Yes.

3:12PM 20 Q. When were they deleted?

21 A. I don't have the forensic artifacts to reflect that.

22 Q. You don't know when the files were deleted?

23 A. Yes.

24 Q. When was the trash emptied?

3:12PM 25 A. I don't recall.

3:13PM 1 Q. You don't know?

2 A. Don't know.

3 Q. Would you agree with me that that's important
4 information, evidence, to find in a computer forensic
3:13PM 5 analysis?

6 A. No, not particularly. I don't agree with you.

7 Q. So you're investigating a case where everything
8 happens, based on your testimony, over about two and a
9 half, three days, correct?

3:13PM 10 A. Yes.

11 Q. Your testimony is that files are downloaded, for lack
12 of a better way of saying it, on the TOR network and
13 BitTorrent, correct?

14 A. Correct.

3:13PM 15 Q. And then they are totally gone when the device is
16 seized, correct?

17 A. Yes.

18 Q. But you don't want to know, from a computer forensic
19 analysis standpoint, when they are deleted?

3:13PM 20 A. No. So they're deleted. And so the answer is, like,
21 the recycle bin is a constraint. It's not really a
22 recycle bin. When files are deleted, they are just moved
23 into the recycle bin, so they are still in a file, in a
24 file system that exists completely, and I would have found
3:14PM 25 them if they were in the recycle bin. So they are not in

3:14PM 1 the recycle bin. And the fact that the recycle bin has
2 been emptied doesn't give me any more forensically useful
3 artifact. The file either exists at the time it was
4 seized or it doesn't exist at the time that it was seized.

3:14PM 5 And it was not in the recycle bin at the time it was
6 seized.

7 Q. Wouldn't the records of when a file is deleted
8 provide information that we don't have?

9 A. So the reason I don't really focus on that is because
3:14PM 10 it's going to keep track of other things that are deleted
11 and other things that are not really significant to me.
12 So I just don't really spend much time worrying about
13 dates and times in the recycle bin.

14 Q. Now, you testified about remote access. And you were
3:15PM 15 asked whether it fits the pattern in this case, correct?

16 A. Yes.

17 Q. Let's start simple for a second. You didn't
18 personally author any expert reports in this case,
19 correct?

3:15PM 20 A. No.

21 Q. You essentially adopted or supervised a couple of
22 expert reports written by someone, Bradley Gordon, who
23 worked under you, correct?

24 A. Yes.

3:15PM 25 Q. You have reviewed those expert reports, correct?

3:15PM 1 A. Yes, I did.

2 Q. You would agree with me that there's not a single
3 reference in any of your expert reports to remote access,
4 correct?

3:15PM 5 A. Correct.

6 Q. You testified that in your expert opinion this
7 morning, that what we see here in this case doesn't fit
8 the pattern of remote access, correct?

9 A. Yes.

3:15PM 10 Q. Would you agree with me that having a desktop tool on
11 the Ubuntu Linux side of the partition called Remmina is
12 consistent with a pattern of remote access?

13 A. It possibly could be. Possibly could be, but there
14 would be forensic log records associated with that.

3:16PM 15 Q. You testified a few minutes ago you didn't know what
16 this is?

17 A. Correct, but there would be -- I certainly look in
18 the log folder and all of the log files that were created.
19 That's where the operating system stores log files. I
3:16PM 20 certainly reviewed them. I didn't see Remmina, whatever
21 the name, Remmina logs in there. That's why it was not
22 familiar with me.

23 Q. So let's back up for a second. I just asked you
24 whether -- and I think you said yes -- whether having a
3:16PM 25 remote access app would be consistent with remote access?

3:16PM 1 A. Say that again.

2 Q. I asked you whether having a remote access app would
3 be consistent with remote access. And I believe you said
4 yes.

3:16PM 5 A. Yes.

6 Q. Would having UPnP enabled be consistent -- meaning
7 Universal Plug and Play -- be consistent with remote
8 access?

9 A. I don't know the answer to that.

3:17PM 10 Q. Would evaluating the router and determining, like you
11 testified this morning, whether any other devices were on
12 the network that this device was on help you answer
13 questions about remote access?

14 A. It might provide more information, but -- it might
3:17PM 15 provide more information, yes.

16 Q. Would choosing to have an extremely small partition,
17 meaning you can't save a lot of files, meaning video, big
18 data, heavy files, be consistent with a remote access
19 user?

3:17PM 20 A. I don't know the answer to that.

21 Q. Would streaming as opposed to just double-clicking
22 and opening it be consistent with remote access?

23 A. I don't think so, because what's the point of
24 streaming it if I'm not really there? The point of
3:17PM 25 viewing the video is if I'm sitting in front of the

3:18PM 1 computer screen. What would be the point of remotely
2 streaming the video? That's a very inefficient way to
3 watch a movie. That would be slow. When you're using
4 VLC, you are sitting at the computer viewing a video.

3:18PM 5 Q. Would deleting all of these files less than a minute
6 after the last one is streamed be consistent with remote
7 access?

8 A. I don't think so, no. I'm not sure what the
9 correlation is.

3:18PM 10 Q. Do you recall this morning testifying about some
11 passwords that you were able to identify off of your
12 computer forensics?

13 A. Yes.

14 THE COURT: Mr. Gelfand, I've been looking for an
3:18PM 15 opportunity to take the afternoon recess. I don't want to
16 interrupt your flow. Is this a good point?

17 MR. GELFAND: It is, Your Honor.

18 THE COURT: We will take our afternoon recess at
19 this time for 20 minutes. So if you would be ready to
3:19PM 20 come back out at 3:40, that's when we will call for you.

21 Would everyone please stand as the Jury is in
22 recess. As the Jury is filing out, I will remind you of
23 the recess instruction. Do not talk about the case with
24 your fellow jurors or with anyone else.

3:19PM 25 (Jury out at 3:19 p.m.)

3:19PM 1 THE COURT: We're in recess until 3:40.
2 (Recess taken from 3:21 p.m to 3:42 p.m.)
3 (Jury in at 3:42 p.m.)
4 THE COURT: You may be seated. Mr. Gelfand, you
3:42PM 5 may continue your inquiry.
6 MR. GELFAND: Thank you.
7 Q. (BY MR. GELFAND.) Mr. Fottrell, just before the
8 break, you were referencing something called Wine files,
9 correct, or Wine?
3:42PM 10 A. Yes.
11 Q. I'm going to show you Government's Exhibit 34. Do
12 you recognize Exhibit 34?
13 A. Yes, I do.
14 Q. If we look at the uTorrent data at the bottom. You
3:43PM 15 created this exhibit, correct?
16 A. Yes.
17 Q. Does the .wine reference the -- you had a different
18 word for it -- but virtualization or emulation?
19 A. Windows emulation.
3:43PM 20 Q. Is that what that's referenced in that exhibit?
21 A. Yes.
22 Q. And, in fact, all of the uTorrent evidence in this
23 case involved that Wine process, correct?
24 A. Yes.
3:43PM 25 Q. Because it had to because it involved uTorrent as the

3:43PM 1 software application, correct?

2 A. Yes.

3 Q. Now, you testified about the MacBook, and I'm going
4 to show you --

3:44PM 5 MR. GELFAND: If I may publish portions of
6 Government Exhibit 61, Your Honor.

7 THE COURT: That's fine.

8 Q. (BY MR. GELFAND.) Just to show the top page. Does
9 61 reference essentially your view, if you will, of the
3:44PM 10 MacBook?

11 A. Yes.

12 Q. Like the other virtualization exhibits that you
13 testified about involving the HP, the MacBook also, as a
14 practical matter, involved you going back to it at
3:44PM 15 different days, correct?

16 A. Yes.

17 Q. I want to show you in particular, cutting to the
18 chase, one of the pages that you reference where it says,
19 "open recent" in the VLC Media Player here?

3:44PM 20 A. Yes.

21 Q. When we looked at the similar screen in the VLC Media
22 Player on the HP that you just testified about, the file
23 names indicated that it was streamed, correct?

24 A. Yes.

3:45PM 25 Q. This file references the Planes, Fire & Rescue, the

3:45PM 1 kid's movie, correct?

2 A. Say that again.

3 Q. This references Planes, Fire & Rescue, the kid's
4 movie, correct?

3:45PM 5 A. Yes, it does.

6 Q. We can tell from your exhibit here that that was not
7 streamed on the MacBook personal laptop, correct?

8 A. That's correct.

9 Q. Instead of being streamed on the personal laptop, the
3:45PM 10 user just double-clicked on Planes, Fire & Rescue and
11 that's what was played, correct?

12 A. Correct.

13 Q. Even though there was a streaming exporting wizard as
14 an option, correct?

3:45PM 15 A. Correct.

16 Q. Now, you testified about a number of passwords that
17 you identified from various sources of your forensic
18 evaluation, correct?

19 A. Correct. From the Google Chrome saved password
3:46PM 20 manager, correct.

21 Q. Among other places. E-mails too, correct?

22 A. Yes. From Apple Notes and other locations, that is
23 correct.

24 Q. And let's call it what it is. You were looking for
3:46PM 25 the Intel 1988 password or any variation of it, correct?

3:46PM 1 A. Correct.

2 Q. And you found that that password was ubiquitously
3 used in a number of different accounts, correct?

4 A. Yes.

3:46PM 5 Q. So, for example, continuing to show you portions of
6 the laptop, it's tied to Arvest, correct?

7 A. Yes.

8 Q. It's tied to eBay, correct?

9 A. Correct. Intel 1988, exclamation mark.

3:47PM 10 Q. Tied to Strategic Group 1?

11 A. That would be the user name, the log-in to the eBay
12 site. That would be correct.

13 Q. Yes. And the eBay site password is Intel 1988, in
14 this case with an exclamation point, correct?

3:47PM 15 A. Yes.

16 Q. And just to be clear, give us some time context. Is
17 this what is saved as of the date that the device is
18 seized?

19 A. Yes. So I don't know when the Google Chrome
3:47PM 20 initially saved that password, but what's stored on the
21 device is the password database and that is what was in
22 the password database at the point it was seized.

23 Q. So as of November 8th, 2019, approximately when it
24 was imaged, these were the passwords that were on the
3:47PM 25 device, but you can't tell us what passwords were or were

3:47PM 1 not on the device or otherwise in use at any other time,
2 correct?

3 A. Yes.

4 Q. We go to the next page of this, you called it the
3:47PM 5 password manager?

6 A. Yes.

7 Q. Naturalstateeco, correct?

8 A. Yes.

9 Q. Referencing business and contracts, also Intel 1988
3:48PM 10 with an exclamation point, correct?

11 A. Yes.

12 Q. Go to the next page. The bottom of the page,
13 there's, if you remember, motion hosting?

14 A. Yeah.

3:48PM 15 Q. Tied to wholesaleNWA.com, correct?

16 A. Yes.

17 Q. And then you also pulled a number of e-mails by
18 essentially searching the search term of -- I'm sorry, not
19 e-mails -- of Note files by using that same search term,
3:49PM 20 "Intel 1988," correct?

21 A. Yes.

22 Q. So in that same exhibit, that's what we're looking at
23 here, correct?

24 A. Yes.

3:49PM 25 Q. And this references wholesaleNWA@gmail.com, correct?

3:49PM 1 A. Yes.

2 Q. And the password Intel 1988, correct?

3 A. Yes, it does.

4 Q. And the date on this is April 24th of 2018, correct?

3:49PM 5 A. Correct, at 3:27 p.m.

6 Q. In fact, this references a GovDeals note, correct?

7 A. Yes.

8 Q. With the same password, going all the way back,

9 April 10th, 2015, I'll give you the time-stamp, at

3:50PM 10 10:02 p.m., correct?

11 A. Yes.

12 Q. GovDeals is a government website, correct?

13 A. Say that again.

14 Q. GovDeals is a government website, correct?

3:50PM 15 A. I don't know the answer to that. I don't know.

16 Q. You don't know what it is?

17 A. I'm not familiar with it.

18 Q. Then you identified, going back to October 6th of

19 2014, a championNWA account with password Intel 1988,

3:50PM 20 correct?

21 A. Yes.

22 Q. Now, we looked a few minutes ago when I was showing

23 you the passwords at Arvest, do you recall that? I can

24 show you again if you don't.

3:50PM 25 A. Yes, I recall that.

3:50 PM 1 Q. I am going to show you Defendant's Exhibit 25. You
2 identified this exhibit earlier when we were talking in
3 the context about the router that you never searched,
4 correct?

3:51 PM 5 A. Yes.

6 Q. Right next to the router, do you see Arvest Banking
7 information for the business?

8 A. Yes, I see an account number. I see Wholesale Motors
9 account, correct.

3:51 PM 10 Q. Literally on a sticky note on the wall?

11 A. Correct.

12 Q. You also introduced some e-mails with the password,
13 Government Exhibit 64, correct?

14 A. Yes.

3:51 PM 15 Q. Show you some of those. Do you see Exhibit 64 in
16 front of you, sir?

17 A. I do.

18 Q. You were asked about a couple of these. Can you tell
19 us the date on this top e-mail?

3:51 PM 20 A. The date of this message is February 13th, 2014.

21 Q. And does this appear to say that's the password for
22 the Duggar family Instagram account?

23 A. Yes, it does.

24 Q. And we know that because it's literally forwarding an
3:52 PM 25 Instagram password change, correct?

3:52PM 1 A. Yes.

2 Q. If we go to the next page, that may be duplicative.

3 February 13th of 2014, correct?

4 A. Yes.

3:52PM 5 Q. And this is the password for the Duggar family

6 Twitter account, correct?

7 A. Yes.

8 Q. And we know that because there's a Twitter forwarded

9 e-mail reflecting a change of password, correct?

3:52PM 10 A. Yes.

11 Q. April 17th of 2014, there's a password for a USAePay

12 app, correct?

13 A. Yes.

14 Q. Are you aware that that's a credit card processor

3:53PM 15 that Wholesale used?

16 A. I'm not familiar with that website, or that

17 organization.

18 Q. Did you investigate that at all in connection with

19 your investigation?

3:53PM 20 A. No, I did not.

21 Q. Then towards the end of this, can you tell me the

22 date of this e-mail?

23 A. On November 11th, 2014, at 11:16 a.m.

24 Q. From Josh Duggar at a work, at the time, e-mail

3:53PM 25 account, correct?

3:53PM 1 A. Yes.

2 Q. Referencing a Paul Ryan account with that same
3 password, correct?

4 A. Yes.

3:53PM 5 Q. Who is Paul Ryan?

6 A. He's a Representative of Congress.

7 Q. Former Vice Presidential candidate?

8 A. Yes.

9 Q. Then February 20th of 2015, different account, same
3:54PM 10 password, correct?

11 A. Yes.

12 Q. Fair to say that, based on your computer forensic
13 investigation, this password was ubiquitously used and
14 sent to a ton of different people going all the way back
3:54PM 15 to 2014?

16 A. Yes, it was. It was definitely a password that he
17 was familiar with using going back for many number of
18 years.

19 Q. And your research reflected dates of 2014, 2015,
3:54PM 20 2017, and 2018, correct?

21 A. Yes.

22 Q. Perhaps among others, correct?

23 A. Correct.

24 Q. Now, you also testified about some images located on
3:55PM 25 the MacBook in the backup file, correct?

3:55PM 1 A. Yes, I did.

2 Q. So let's be very precise for a second. There was a
3 phone that you actually did a forensic, or had a forensic
4 image of that was an iPhone 11, correct?

3:55PM 5 A. Correct.

6 Q. And as you understand it, that was the phone
7 physically seized by Homeland Security agents on
8 November 8th of 2019, correct?

9 A. That is correct.

3:55PM 10 Q. Then there were also images and text messages, in
11 essence, that you're associating with a phone, but it's
12 actually of an earlier version of an iPhone, correct?

13 A. Correct, an iPhone 8.

14 Q. And the iPhone 8 itself is not something that you
3:56PM 15 have ever analyzed, because it was an old phone, correct?

16 A. Correct. Law enforcement never seized an iPhone 8.
17 We just have the forensic evidence that an iPhone 8
18 previously existed by the presence of the backup files on
19 the Macintosh.

3:56PM 20 Q. So to be clear, just to cut to the chase, you're
21 looking in the MacBook backup file for backup files
22 related to the earlier iPhone 8, correct?

23 A. That is correct.

24 Q. Which provides you more limited information about the
3:56PM 25 data on that phone than the phone itself would, correct?

3:56PM 1 A. Yes.

2 Q. So, for example, to determine whether at any given
3 time the phone, date, and time were accurate, you would
4 actually have to have the phone, correct?

3:56PM 5 A. No. I mean, most modern phones automatically
6 synchronize with a clock and they are accurate. I mean,
7 when I travel here from the Eastern Time Zone to the
8 Central Time Zone, my iPhone automatically corrects to the
9 correct time zone. I have not seen any instances where an
3:57PM 10 iPhone that has connectivity to the internet and has
11 connectivity to the cellular network is off by any
12 significant amount of time. Clocks and phones are
13 generally very reliable.

14 Q. Are devices synchronized in time to each other?

3:57PM 15 A. Devices are synchronized to a reference clock.

16 Q. In other words, a MacBook or an HP may have a time or
17 a date that's different from a phone, correct?

18 A. I don't understand the question.

19 Q. Sure. My iPhone can say that it's 3:58 p.m. My HP
3:57PM 20 can say that it's 3:56 p.m.

21 A. Correct. Two computers, two watches, can have
22 different times on them. If that's the statement that
23 you're making, yes, it's possible for two devices to have
24 different dates and times.

3:57PM 25 Q. And what you're doing is basically relying on date

3:58PM 1 and time data that's extracted from the device that the
2 data came from, correct?

3 A. Correct.

4 Q. So if an image came from an iPhone 8, you are relying
3:58PM 5 on the date and time info that comes off that image,
6 correct?

7 A. Correct. I'm relying on the EXIF information
8 associated with that image. It records the date and time
9 that the image was taken. That depends on the accuracy of
3:58PM 10 that iPhone 8.

11 Q. And if you are taking a BitTorrent record, for
12 example, and the EXIF data that you testified about,
13 that's not being populated from the same clock as the
14 phone, that's being populated from, for example, the HP
3:58PM 15 computer that it came from, correct?

16 A. Correct.

17 Q. Now, as a practical matter, an image in the iPhone 8
18 backup can come as an SMS attachment, correct?

19 A. It is possible to attach an image to an SMS message.

3:58PM 20 Q. It can be something saved online, like a selfie on
21 social media or something?

22 A. Yes, you can take a picture and then upload that
23 picture to social media. That's certainly possible.

24 Q. And what you can do from the backup is basically, and
3:59PM 25 what you testified to this morning, is identify an image

3:59PM 1 and pull what, in your opinion at least, is the EXIF data,
2 correct?

3 A. Yes.

4 Q. And that's what you walked through this morning with
3:59PM 5 respect to certain images, correct?

6 A. Yes.

7 Q. Let me show you, just by way of example, Government's
8 Exhibit 76. Do you recognize this as one of the images --

9 A. Yes, I do.

3:59PM 10 Q. -- that you testified about?

11 A. Yes, I do.

12 Q. Start simple for a second. Have you ever been to the
13 location where Wholesale Motorcars was in 2019?

14 A. No.

3:59PM 15 Q. Have you ever been to Champion Motorcars?

16 A. No.

17 Q. Have you ever been to that area of Arkansas?

18 A. No.

19 Q. The geolocation on this, just so we're clear, this is
4:00PM 20 the top page of 76. It's a fire truck picture, right?

21 A. Yes.

22 Q. Fair description?

23 A. Yes.

24 Q. And we know this came from the iPhone 8 backup
4:00PM 25 because it actually came from your computer as designated

4:00PM 1 by the H:Duggar-iPhone-backup, correct?

2 A. Yes.

3 Q. In other words, that folder path is actually just how
4 this was saved on your computer, correct?

4:00PM 5 A. That is correct.

6 Q. At work, correct?

7 A. Yes.

8 Q. What does "Source, this PC" mean?

9 A. The file is physically located on my forensics
4:00PM 10 computer in that folder when I viewed it and displayed the
11 GPS coordinates.

12 Q. Can you tell me where that geolocates to?

13 A. So it's in Arkansas. I'm very familiar with -- I've
14 been looking at this map now for a few months. This over
4:00PM 15 here on this is pretty much close to where the car lot is.
16 And this is where there's a repair shop, S&S Auto around
17 the corner. So it's -- I don't know exactly the distance,
18 but it's a little bit east of the car lot.

19 Q. Approximately how many miles?

4:01PM 20 A. I don't know the answer to that, but it's got to be a
21 few miles. I can't imagine it being more than two or
22 three miles. I just don't know specifically, but it's not
23 going to be 50 miles away. It's going to be a mile or
24 two, or a few miles away.

4:01PM 25 Q. How precise is the geolocation data on the records

4:01PM 1 that you introduced into evidence?

2 A. So it has the ability to zoom in. So the answer is,
3 I could move my mouse there and zoom in and it would give
4 me more detail. I was playing around with that to zoom
4:01PM 5 in, to zoom out, to make it an effective exhibit to show
6 where it's located. The tool has the ability to zoom in
7 and zoom out to a higher degree of accuracy. I was just
8 trying to convey the location that was significant in this
9 case.

4:02PM 10 Q. So I don't know the answer to my question, but how
11 precise is geolocation data?

12 A. So generally speaking, when it's an outside photo,
13 it's probably 10 meters. It could be -- it's pretty --
14 you know, 20 feet in diameter. They can be pretty
4:02PM 15 accurate. Depending on the cell phone coverage and
16 nearest cell phone towers and a couple of other factors,
17 these could be pretty accurate locations.

18 Q. Was this taken at Champion Motorcars?

19 A. I don't know.

4:02PM 20 Q. You testified earlier about the tool that you're
21 using here in all of these exhibits. And I can show you
22 more, but I think you will agree it's the same tool,
23 correct?

24 A. It's a?

4:02PM 25 Q. The same tool, correct?

4:02 PM 1 A. Same tool, correct.
2 Q. And that's Windows image viewer, correct?
3 A. It's Windows Photo Viewer. It says "Photos" is the
4 name of the application.
4:03 PM 5 Q. Windows Photo Viewer?
6 A. Yes.
7 Q. You testified this is not a computer forensic tool,
8 correct?
9 A. This is a general purpose tool that anybody can use
4:03 PM 10 on a Windows operating system.
11 Q. When it comes to EXIF data, that's a term of art,
12 E-X-I-F, correct?
13 A. It's a term that describes what that information is,
14 yes.
4:03 PM 15 Q. There are forensic tools that one can get certified
16 in to actually extract specific EXIF data, correct?
17 A. Correct.
18 Q. Those forensic tools that one can use to extract EXIF
19 data will identify specific dates and times as it relates
4:03 PM 20 to UTC, correct?
21 A. Correct. Yeah, depending on the device, it would
22 store it in the local time zone or it would store it in
23 the UTC. But, correct, it's going to store date and
24 time-stamp information according to some standard.
4:04 PM 25 Q. UTC is the common standard when it comes to

4:04PM 1 time-stamps in computer forensics, correct?

2 A. Generally speaking, yes.

3 Q. Because it's universal. In other words, it's adapted
4 based on where you are with time zones, daylight saving's
4:04PM 5 times, correct?

6 A. Yes.

7 Q. And when you're dealing with time-stamping based on
8 metadata, it's important that everyone is on the same page
9 from a consistency standpoint, talking about the date and
4:04PM 10 time as it existed at any particular time and location

11 based on time zone, daylight savings, et cetera, correct?

12 A. Yes.

13 Q. The photographs that are date and time-stamped that
14 were introduced into evidence does not have any of the
4:04PM 15 forensic UTC data that a forensic tool would actually
16 provide, correct?

17 A. No. This just has the -- from the Windows Photo
18 program how Windows Photo displayed it in the current time
19 zone that it was taken in.

4:05PM 20 Q. Now, to be clear, Cellebrite is one tool that could
21 be used to extract EXIF data?

22 A. Yes.

23 Q. EnCase can be used to extract EXIF data?

24 A. Yes.

4:05PM 25 Q. There are a number of other forensic tools that can

4:05PM 1 be used to extract EXIF data, correct?

2 A. Yes.

3 Q. You testified -- and I can show you if you want --

4 but to some text messages where there was someone on the

4:05PM 5 other end entitled, "To be salesman." Do you recall that?

6 A. Yes, I do.

7 Q. Yes, you do?

8 A. Yes, I recall.

9 Q. Who was that?

4:05PM 10 A. I don't know.

11 Q. Now, two more topics. One is super quick.

12 Defendant's Exhibit 29. Do you see that in front of you?

13 A. Yes, I do.

14 Q. Did you ever forensically analyze this phone?

4:06PM 15 A. No, I did not.

16 Q. Do you have any clue what was on this phone?

17 A. No.

18 Q. Any clue whose phone it is?

19 A. No.

4:06PM 20 Q. Did you ever forensically analyze a phone belonging

21 to Randall Berry?

22 A. No, I did not.

23 Q. Did you ever analyze a phone belonging to William

24 Mize?

4:06PM 25 A. William, what was the last name?

4:06PM 1 Q. Mize.

2 A. No.

3 Q. Did you ever analyze any devices belonging to Caleb
4 Williams or anyone -- well, Caleb Williams first.

4:06PM 5 A. No.

6 Q. Did you ever analyze any devices belonging to anyone
7 on earth in this case other than Josh Duggar and Wholesale
8 Motorcars?

9 A. No. Those are the devices that I -- the devices I
4:07PM 10 analyzed were the HP desktop, the MacBook, and the iPhone.

11 Q. So sitting here today, can you tell us one way or the
12 other whether the UK Cardiff PowerPoint is on a device
13 belonging to any of those people?

14 A. I can't tell you that.

4:07PM 15 Q. Because you didn't look, correct?

16 A. I didn't have access to that, correct.

17 Q. Now, let me ask you this. This phone, Defendant's
18 Exhibit 29, does this appear to be in a drawer?

19 A. Yes, it does.

4:07PM 20 Q. Are you aware that this was a drawer literally next
21 to the HP?

22 A. Next to the HP? No, I'm not aware of that.

23 Q. If you were on site on November 8th of 2019, would
24 you have imaged this?

4:07PM 25 A. I would have certainly previewed it. I would have

4:07PM 1 looked at it. I would have tried to make -- just as the
2 agents would have done, I would have made a determination,
3 is this something I need to seize or something that I can
4 clear and leave behind. I don't have -- I would do that
4:08PM 5 in any on-scene experience.

6 Q. But nobody asked you in this case, correct?

7 A. I was not on the on-scene in this case.

8 Q. Now, finally, you testified about a number of Torrent
9 files. Do you recall that?

4:08PM 10 A. Yes.

11 Q. Now, you used an analogy, I believe it was of a cake?

12 A. Yes.

13 Q. A Torrent file, to use your analogy, is basically a
14 recipe, but not the ingredients for the cake, correct?

4:08PM 15 A. Correct. So the Torrent file is just like a recipe.

16 If I follow the instructions in the recipe and gather the
17 ingredients, the end product, I will have a cake. With a

18 Torrent file, if I -- if the uTorrent program -- not a
19 baker -- if the uTorrent program looks at the information

4:08PM 20 in that Torrent file, it has the information it needs to

21 go out onto the BitTorrent network and fetch the files

22 consisted of that video. And so that's why I use that

23 analogy. It's just a way of getting the content specified

24 in a Torrent file. The Torrent file is not the cake. You

4:09PM 25 can't eat a Torrent file. You can't eat a recipe. You

4:09PM 1 have to eat the cake. That's what the recipe allows you
2 to make, is the cake.

3 Q. A device can have a Torrent file without having the
4 cake, correct?

4:09PM 5 A. Say that again.

6 Q. A device can have a Torrent file without having the
7 cake, correct?

8 A. Vice? A device? Say that again.

9 Q. A device can have evidence of a Torrent without
4:09PM 10 having the cake?

11 A. Ah, bingo, yes. Oh, yes. Yes, the device can have
12 the Torrent file, but it doesn't have the contents of that
13 Torrent file.

14 Q. In other words, having a Torrent file is not the same
4:09PM 15 as having the contents of that file, correct?

16 A. That is correct.

17 Q. If a Torrent file is connected to pornography, child
18 pornography, whatever it may be, having the Torrent file
19 is not the same as having pornography or child
4:09PM 20 pornography, correct?

21 A. That is correct.

22 Q. On this particular device, the HP, you found
23 artifacts of Torrent files, correct?

24 A. Yes.

4:10PM 25 Q. But in some cases, the files themselves were not able

4:10 PM 1 to be located on the device, correct?

2 A. Yes.

3 Q. And, in fact, you were in court yesterday when the
4 Jury saw a number of those files, correct?

4:10 PM 5 A. Yes.

6 Q. What you called storyboards that you created,
7 correct?

8 A. Yes.

9 Q. And to be clear, you went into videos and you picked
4:10 PM 10 images to basically go onto those storyboards, X number
11 per page, and you created essentially a synopsis of what
12 was on the videos, correct?

13 A. Yes. There's tools that automate that process, but,
14 yes.

4:10 PM 15 Q. But let's be clear about something. The files that
16 we're talking about, the category of Torrent files where
17 you basically took hash values, but didn't actually find
18 the videos on the HP, you went to your database to get
19 those images, correct?

4:11 PM 20 A. Yes.

21 Q. For lack of a better way of putting it, you brought
22 that alleged child pornography from Washington, D.C., to
23 this courtroom, correct?

24 A. Yes.

4:11 PM 25 Q. It didn't come from any device that was seized in

4:11PM 1 evidence, correct?

2 A. I used those images, those videos, to match
3 thumbnails that existed on the defendant's HP computer.
4 Those thumbnails, the existence of those thumbnails could
4:11PM 5 only happen if the underlying file existed. There is
6 evidence that those videos existed on the defendant's
7 computer at an earlier time at the time when those
8 thumbnails were created. At a later time, they were
9 deleted and they were not on the defendant's computer.

4:12PM 10 But the existence of the thumbnails is evidence that the
11 videos existed at the point in time that the thumbnails
12 were created.

13 Q. I understand your process, but my question is very
14 simple. The actual images and videos that were played
4:12PM 15 yesterday related to these Torrent files came from
16 somewhere other than the devices in evidence?

17 A. So with respect to the video, you are correct. But
18 with respect to the marissa.zip Torrent file that we were
19 talking about, we do have the full-size versions of those
4:12PM 20 images, of some of those other images that I was able to
21 recover from unallocated space. So if you look at the
22 unallocated space exhibit that matched the normal folder,
23 and then the other images on unallocated space, those are
24 images consistent with ones that are in the marissa.zip
4:12PM 25 file.

4:12 PM 1 Q. You testified yesterday, Mr. Fottrell, that you took
2 the Torrents, you reached out to law enforcement contacts,
3 and you got the videos, correct?

4 A. Yes. The videos and the zip file.

4:13 PM 5 Q. In other words, those images that did not come off
6 the devices, or the device, to be specific, the HP in
7 evidence in this trial, came from other cases?

8 A. Yes.

9 MR. GELFAND: Your Honor, may I have one minute,
4:13 PM 10 please?

11 THE COURT: Certainly.

12 MR. GELFAND: I have no further questions,
13 Mr. Fottrell. Thank you.

14 THE COURT: Thank you, Mr. Gelfand. Mr. Clayman,
4:14 PM 15 when you're ready.

16 REDIRECT EXAMINATION

17 BY MR. CLAYMAN:

18 Q. Mr. Fottrell, you were asked on your cross
19 examination about the virtual machine software that you
4:14 PM 20 used. Do you recall that?

21 A. Yes, I do.

22 Q. Can you explain for the Jury again in a little more
23 detail the process of creating a virtual machine?

24 A. It's to work with the original EnCase image that was
4:15 PM 25 created. I make a copy of that. I convert it to a

4:15PM 1 virtual machine, and I boot up that virtual machine. That
2 still leaves the original evidence files intact and it's
3 just the image copy that I'm creating and booting up and
4 trying to create demonstrative exhibits based on what it
4:15PM 5 looks like.

6 Q. So what is your intention with respect to the Jury
7 when you create virtual machine print screens to use as
8 exhibits?

9 A. So, generally speaking, if it's going to be Windows
4:15PM 10 or a Macintosh environment, those virtual print screens
11 are probably similar to what jurors would be familiar with
12 if they were using a computer and they were using some of
13 the programs that are associated with that.

14 Q. And you created three virtual print screen exhibits
4:15PM 15 in this case, is that correct?

16 A. Yes.

17 Q. I believe you introduced Government's Exhibits 28
18 through 85 in your direct testimony, is that right?

19 A. Yes, it is.

4:16PM 20 Q. So only three out of that range of exhibits came from
21 the virtual machine?

22 A. Yes.

23 Q. Where did all the other exhibits come from?

24 A. From the forensic analysis. From the EnCase, the
4:16PM 25 extractions, and from the other forensics tools that I was

4:16PM 1 using.

2 Q. So those came, at least in part, from the actual
3 forensic image copies of the devices that you were
4 examining?

4:16PM 5 A. Yes.

6 Q. Is there any reason to doubt the accuracy of the
7 forensic images you examined?

8 A. No.

9 Q. Were the forensic images that you examined hash-value
4:16PM 10 compared to confirm that they were exact copies of the
11 items that were seized from the defendant's business?

12 A. Yes. When I received the images, I loaded them up,
13 and there's this verification process that ran and
14 completely showed, and completed successfully, that showed
4:16PM 15 me that the images that I had were true and accurate and
16 complete copies of the devices that were imaged.

17 Q. And just to be clear then, the vast majority of the
18 evidence you admitted came from the forensic images that
19 you described as accurately copied, is that right?

4:17PM 20 A. That is correct.

21 Q. So the cache thumbnail files that depicted child
22 pornography, those came from the forensic exact copies of
23 the defendant's device, is that right?

24 A. That is right.

4:17PM 25 MR. GELFAND: I'm sorry. I would object as

4:17 PM 1 phrased.

2 THE COURT: Leading, or what is the objection?

3 MR. GELFAND: Leading, and it assumes a
4 conclusion.

4:17 PM 5 THE COURT: Rephrase.

6 Q. (BY MR. CLAYMAN.) Mr. Fottrell, Government's Exhibit
7 31, the thumbnail images from the cache/thumbnail/normal
8 folder, where did that exhibit come from?

9 A. That came from the forensic image that I received of
4:17 PM 10 the HP computer.

11 Q. Government's Exhibit 33, the thumbnail images from
12 cache/thumbnail/large, where did that exhibit come from?

13 A. That came from the forensic image of the HP desktop
14 computer.

4:17 PM 15 Q. What did you find in those thumbnail files?

16 A. Sexually explicit images of children. CSAM, child
17 sexual abuse material images.

18 Q. The EXIF information for both of those thumbnails
19 files identifying the names associated with those

4:18 PM 20 thumbnail files of the full-sized images or videos, where
21 did that information come from?

22 A. Came from the EnCase image that I examined.

23 Q. The TOR bookmarks that we looked at, where did that
24 information come from?

4:18 PM 25 A. From the forensic image that I examined.

4:18PM 1 Q. So is it fair to say that your analysis was based on
2 the forensic image?

3 A. Yes.

4 Q. On cross, Mr. Gelfand asked you about the uTorrent
4:18PM 5 program on the print screens of the virtual machine of the
6 Linux partition on the HP computer. Do you remember that?

7 A. Yes, I do.

8 Q. He pointed out that there was a copyright from 2020
9 or 2021. Do you recall?

4:18PM 10 A. Yes, I do.

11 Q. How would something like that happen?

12 A. So I've been thinking about that a little bit. What
13 I recall is, normally, I would not connect the computer to
14 the internet when I'm running my virtual machine exhibits.
4:19PM 15 But in this case, the first step that I would need to do

16 is install the Oracle VirtualBox guest additions. And in
17 this case, I had problems doing that, getting that to
18 install correctly because I was missing some predefined
19 programs. So in that case, I needed to connect it to the

4:19PM 20 internet in order to load the software that would allow me
21 to load the Oracle VirtualBox guest additions. So that's
22 the explanation that I could think of that makes the most
23 sense as to why I would have connected it to the internet,
24 just to get those extensions installed correctly.

4:19PM 25 Q. So by connecting it briefly to the internet, what

4:19PM 1 would happen to the uTorrent program on the virtual
2 machine, to be clear?

3 A. So I had to do the commands to update all of the
4 programs, just do an update to update the operating
4:19PM 5 system. So any programs that needed -- that were updated
6 during that lapse of time would have been updated.

7 Q. Outside of that one update to the uTorrent program on
8 your virtual machine, did you notice any significant
9 changes to the virtual machine based on that connection to
4:20PM 10 the internet?

11 A. No. It didn't change any of the Torrent files or
12 locations of the Torrent files. It didn't change the TOR
13 bookmarks. It didn't change the other significant
14 exhibits in any meaningful way.

4:20PM 15 Q. Would connecting the virtual machine just briefly to
16 the internet somehow put child exploitation material on
17 the defendant's devices?

18 A. No.

19 Q. Would it put that material on the forensic images of
4:20PM 20 those devices?

21 A. No, it would not.

22 Q. Based on your opinion, what, if any, impact did that
23 brief connection to the internet on the virtual machine
24 have on the evidence in this case?

4:20PM 25 A. Just a minimum impact in order to get my tools to

4:20PM 1 load correctly in order to create these exhibits with a
2 fair and accurate recollection of what the screen looked
3 like.

4 Q. You were also asked on cross -- just to follow-up on
4:21PM 5 that, Mr. Fottrell. As far as you know, were these
6 forensic images of these devices examined prior to the
7 creation of your virtual machines?

8 A. Yes.

9 Q. Did those forensic examinations of these devices that
4:21PM 10 occurred prior to your creation of the virtual machine
11 find evidence of child sexual abuse material?

12 A. Yes, they did.

13 Q. In fact, did your forensic examination of these
14 devices largely match the forensic examination of these
4:21PM 15 devices that occurred prior to your creation of the
16 virtual machine?

17 A. Yes, they did.

18 Q. So, again, just to be clear, what does that tell you
19 about the impact that this virtual machine connecting to
4:21PM 20 the internet had on the results of your forensic
21 examination, or any other forensic examinations of the
22 devices in this case?

23 A. It's not a significant impact at all.

24 Q. Now, you were also asked on cross quite a bit about
4:22PM 25 the router in the car lot. Do you recall that?

4:22 PM 1 A. Yes, I do.

2 Q. If we could pull up what's been admitted as
3 Government's Exhibit 12. Can you identify on this exhibit
4 where the router is?

4:22 PM 5 A. Right there.

6 Q. Based on your experience, are routers significant in
7 child exploitation investigations?

8 A. No, they are not. They are not significant when we
9 have devices that we seize.

4:22 PM 10 Q. And why is that?

11 A. Because we're looking for the different devices.
12 We're looking for a computer. We're looking for the
13 different devices if we see them. If we go to a location
14 and there's no computers, there's no laptops, then we are
4:22 PM 15 realizing, uh-huh, there's supposed to be a computer here,
16 let's go look at the router that is here, maybe it will
17 tell me which devices were here that I need to go try to
18 look for. But in this case, there's plenty of devices.
19 There's an HP computer sitting there, so I don't need to
4:22 PM 20 go looking for devices that I can't see. There's plenty
21 of devices that are there.

22 Q. Do you recall, what was the nature of the
23 investigation at this point? What was the basis for the
24 search warrant?

4:23 PM 25 A. It was a uTorrent investigation. A law enforcement

4:23PM 1 officer downloaded, through the BitTorrent protocol,
2 movies, and they were looking for evidence of BitTorrent
3 activity.

4 Q. And the files that that undercover officer downloaded
4:23PM 5 were actually recovered from this device, the HP computer,
6 is that right?

7 A. That's correct.

8 Q. So the router then would have no meaningful
9 information, is that right?

4:23PM 10 A. Yes, that is correct. In this case, the router is
11 containing no other useful information that I'm not also
12 able to get off of the HP desktop computer.

13 Q. Mr. Gelfand asked you about the kind of information
14 that might be saved on a router. What kind of information
4:23PM 15 might be saved on a router?

16 A. So the information is the database table of the
17 devices that are connected to the router. It's going to
18 keep track of what kind of a device it is. And it doesn't
19 recognize it by a name, it recognizes it by a MAC address.

4:24PM 20 And so the router just keeps track of the devices that are
21 connected to it in case it connects again a few days
22 later, it will remember the devices that were most
23 recently connected.

24 Q. How long, based on your experience, does a router
4:24PM 25 typically keep these logs or maintain this sort of

4:24PM 1 information for?

2 A. So most modern routers today generally keep those
3 reservations for like a 30-day window of time. If the
4 router is basically saying, hey, I haven't seen this
4:24PM 5 device in 30 days, I'm probably not going to see it again,
6 there's no sense for me remembering that device. If it
7 comes into my range again, I'll just add it later on. So
8 there's no benefit for the router to store that
9 information for any longer period of time.

4:24PM 10 Q. To be clear, if you had the router and you examined
11 it, would that alter in any way your conclusions with
12 respect to how the HP computer was used?

13 A. No.

14 Q. It wouldn't alter your conclusion that a Linux
4:24PM 15 partition was installed on that device?

16 A. No, it would not.

17 Q. And it wouldn't alter your conclusion that someone
18 downloaded child pornography on that Linux partition?

19 A. No, it would not.

4:25PM 20 Q. Speaking of the Linux partition, Mr. Fottrell, you
21 were also asked on your cross examination about a thumb
22 drive, or the absence of a thumb drive. Do you recall
23 that?

24 A. I do.

4:25PM 25 Q. You determined, based on your evaluation of this

4:25PM 1 evidence, that a thumb drive was plugged into the computer
2 during the installation of the Linux software, is that
3 correct?

4 A. Around the same time of the installation, yes.

4:25PM 5 Q. Can you explain again for the Jury that process, how
6 that happened, based on your examination of this device?

7 A. So, yeah. On the Windows partition, there was a
8 thumb drive that was plugged in. And the operating system
9 keeps track of that automatically and it will assign a

4:25PM 10 drive letter to that. There is information on "recently
11 played" and "recently viewed" documents. And he was
12 correct, there was a Word document, or two Word documents
13 and a PowerPoint document that were viewed or accessed
14 from that thumb drive on the Windows partition. Those

4:26PM 15 files don't exist on the Windows partition. They existed
16 on the thumb drive. But there is evidence that they were
17 accessed on the computer from the thumb drive.

18 A search for those files was conducted. I did not
19 find those files on any of the media that was seized.

4:26PM 20 It's not on the HP, it's not on the thumb drive, it's not
21 on the Macintosh. Those files that were referenced on
22 that thumb drive, I couldn't find them in any of the
23 materials that were seized.

24 Q. One of the files had the word "quiz" in it, is that
4:26PM 25 right?

4:26PM 1 A. Yes.

2 Q. Please publish Government's Exhibit 61. It's already
3 been admitted.

4 THE COURT: You may.

4:26PM 5 Q. (BY MR. CLAYMAN.) Page five. Do you see any
6 documents on this MacBook that have the word "quiz" in
7 them?

8 A. Yes, I do. You can see it on the upper right-hand
9 corner. It's titled, "Quiz Mommy Amy King D-U-G," and
4:27PM 10 then it breaks off from there and it ends with "e 2019."
11 Right below that, there's another "Quiz Mommy Amy"
12 document.

13 Q. So could those somehow be related to the "quiz"
14 document on the thumb drive?

4:27PM 15 MR. GELFAND: Objection, Your Honor. First of
16 all, it calls for speculation. Second of all, they're not
17 the same document.

18 THE COURT: Second of all what?

19 MR. GELFAND: They are not the same document.

4:27PM 20 THE COURT: Well, you can follow up on that.
21 Overruled.

22 Q. (BY MR. CLAYMAN.) As far as you know, could those be
23 related?

24 A. They may be related. I don't know, correct.

4:27PM 25 Q. Is that because the files on that thumb drive have no

4:27PM 1 real significance based on your evaluation?

2 A. Yes, they have no real significance.

3 Q. If we could take this down. Did you find other
4 evidence indicating to you who downloaded and installed
4:27PM 5 this Linux partition?

6 A. Yes.

7 Q. What did that evidence tell you?

8 A. The evidence tells me that Joshua Duggar was the
9 person who installed the Linux operating system and

4:28PM 10 installed the TOR browser and was using the uTorrent
11 program during those days in question, May 13th, 14th,
12 15th, and 16th.

13 Q. Is that based at least in part because his unique
14 password was the password to this partition?

4:28PM 15 A. In part by that, and it's the totality of the
16 evidence. It's certainly the password. It's certainly
17 the GPS coordinates of images that were taken around the
18 same time, and it's certainly evidence of just content of
19 what's happening on that device.

4:28PM 20 Q. If you could actually publish Government's Exhibit 85
21 and turn to page two. We were talking about GPS
22 coordinates. Can you describe again what May 16th shows?

23 A. May 16th at 11:21, the pedomom.torrent is downloaded
24 on the Linux partition. The thumbnail of pedomom is

4:29PM 25 created at 11:33. And at 11:35 a.m., the iPhone is used

4:29PM 1 to take a picture of the car lot.

2 Q. And what iPhone was that?

3 A. The iPhone 8.

4 Q. That was backed up to the defendant's MacBook?

4:29PM 5 A. Yes.

6 Q. That had the defendant's text messages in it?

7 A. Yes.

8 Q. And had selfies of the defendant on it?

9 A. Yes, it did.

4:29PM 10 Q. Mr. Fottrell, based on your experience and in your
11 opinion, which would be more valuable for you to determine
12 who was using this Linux partition: This information
13 showing that the defendant was near the Linux partition
14 within two minutes of when it was being accessed, or the
4:29PM 15 thumb drive?

16 A. This information is much more significant and much
17 more valuable.

18 Q. In fact, if the thumb drive had somehow been
19 recovered, does that necessarily provide you any
4:29PM 20 information?

21 A. No.

22 Q. You were also asked a little bit about different
23 BitTorrent applications during your cross examination. Do
24 you recall that?

4:30PM 25 A. Yes, I do.

4:30 PM 1 Q. So in the Linux partition, which application for
2 BitTorrent was installed?

3 A. The uTorrent program.

4 Q. There was also Transmission, is that right?

4:30 PM 5 A. That comes preinstalled by the operating system,
6 correct.

7 Q. So which one did the user of that device seek out
8 specifically?

9 A. Utorrent.

4:30 PM 10 Q. And on the defendant's MacBook, his personal
11 computer, did you find evidence that BitTorrent
12 applications had been installed?

13 A. Yes, the qBittorrent application was installed on the
14 defendant's MacBook.

4:30 PM 15 Q. Had Transmission maybe at some point also been
16 installed?

17 A. Yes.

18 Q. Did you also find e-mails indicating that the
19 defendant, or someone using his computer, repeatedly tried
4:30 PM 20 to install uTorrent?

21 A. Yes. The Covenant Eyes' e-mail messages, there was
22 evidence of the uTorrent program trying to be downloaded
23 on the Macintosh computer.

24 Q. So based on your evaluation of the MacBook, does

4:30 PM 25 whoever uses that device like various types of BitTorrent

4:31PM 1 software?

2 A. Yes.

3 Q. Like to experiment with multiple softwares?

4 A. Yes.

4:31PM 5 Q. They might even like uTorrent, right?

6 A. Yes.

7 Q. You were also asked briefly whether it would make
8 sense for someone who has been perhaps hounded by the
9 paparazzi to use TOR. Does that make any sense to you,

4:31PM 10 Mr. Fottrell?

11 A. No, it does not really make sense to me because the
12 use of uTor -- I'm sorry -- the use of TOR has to do with
13 the websites that I'm visiting. The websites that I'm
14 visiting don't know my true location as to where I'm

4:31PM 15 coming from. It doesn't have to do with my -- if I'm
16 being hounded by the paparazzi in a certain location, I'm
17 not sure how TOR affects that, basically. TOR is used to
18 protect your anonymity when you are online on the websites
19 you're going. It has nothing to do with your physical
4:31PM 20 presence where you are at a point in time.

21 Q. Can paparazzi serve legal process on ISPs to
22 determine where IP addresses locate to?

23 A. Yeah, I'm not familiar with that.

24 Q. Did you find a little bit of evidence about how the
4:32PM 25 defendant was using TOR?

4:32 PM 1 A. Yes.

2 Q. What did you find on the Linux partition side?

3 A. There was the bookmarks associated with --

4 MR. GELFAND: Objection, Your Honor. I'd object
4:32 PM 5 to the way that it's phrased of how the defendant is using
6 TOR.

7 THE COURT: I can't hear you, Mr. Gelfand.

8 MR. GELFAND: I'd object to the way that that
9 question is phrased, Your Honor.

4:32 PM 10 THE COURT: "What did you find on the Linux
11 partition side?"

12 MR. GELFAND: No, that was the follow-up to the
13 question, Your Honor.

14 THE COURT: Well, why don't you rephrase,
4:32 PM 15 Mr. Clayman. I'm not following. Just rephrase.

16 Q. (BY MR. CLAYMAN.) Did you find evidence on the
17 defendant's devices about how those devices were used to
18 access TOR?

19 A. Yes.

4:32 PM 20 Q. So what did you find on the Linux partition side of
21 the HP computer the defendant identified as his own in his
22 business?

23 A. There were the Hidden Wiki, the Candle, and these
24 other websites that are referenced, those were the

4:33 PM 25 bookmarks that were saved on the TOR browser for the Linux

4:33PM 1 partition of the HP computer.

2 Q. And, again, what kind of content -- well, let me
3 rephrase. Have you ever been on Hidden Wiki?

4 A. Yes, I have.

4:33PM 5 Q. Is there anything on Hidden Wiki that would advise
6 you how to avoid the paparazzi?

7 A. Not that I remember seeing, no.

8 Q. What kind of content is on Hidden Wiki?

9 A. It's just a list of different types of criminal
4:33PM 10 activity and websites associated with criminal activity
11 that individuals can go to.

12 Q. Did Hidden Wiki at one point identify child
13 pornography hidden services?

14 A. Yes.

4:33PM 15 Q. If we could pull up what's been admitted as
16 Government's Exhibit 38. What else do we know that the
17 defendant's device was used to do on TOR?

18 A. So we know that on May 14th, 2019, the person went to
19 a website on TOR. I don't know the website that they went
4:34PM 20 to, but they downloaded a file named

21 webcam-collection-prevs.7zip, and it's located in the
22 downloads folder.

23 Q. Is this the only download you found related to TOR?

24 A. Yes, it is.

4:34PM 25 Q. So is it safe to say, or fair to say, that this is

4:34PM 1 the only thing the defendant was using TOR for?

2 A. It's the only thing that I have evidence that the
3 user of the computer was downloading through TOR.

4 Q. Mr. Gelfand also asked you on your cross a little bit
4:34PM 5 about command lines. Do you recall that?

6 A. Yes, I do.

7 Q. It seems to be that he was suggesting that command
8 lines were used to download software. Is that what you
9 understood him to be asking?

4:34PM 10 A. Yes. So he was saying the fact that these were
11 complicated software programs and that the only way that
12 they could be installed was through a series of command
13 line commands.

14 Q. Based on your examination and your experience as an
4:35PM 15 examiner, is that correct?

16 A. No. So as I was trying to explain, there is the
17 version of the App Store on Ubuntu which provides the same
18 functionality without having to use command level prompts.

19 Q. So based on your experience, would a user be more
4:35PM 20 likely to use command level prompts or to access
21 essentially the App Store on Ubuntu?

22 A. The App Store would be more popular and more easy to
23 use.

24 Q. Do you have to be technologically sophisticated to
4:35PM 25 use the App Store on Ubuntu?

4:35PM 1 A. No, it's very simple. You bring up the application,
2 you type something in the search bar, you see the results,
3 you click on the install button, and it's installed.

4 Q. If we could actually pull up what's been admitted as
4:35PM 5 Government's Exhibit 30. Turn to page four. Is the App
6 Store visible here in this screenshot?

7 A. It is.

8 Q. So it's literally on the desktop of the computer?

9 A. Yes, it is.

4:36PM 10 Q. That's how easy it would be to go and install TOR?

11 A. Yes.

12 Q. That's how easy it would be to go and install
13 uTorrent?

14 A. Yes. And VLC.

4:36PM 15 Q. You were also asked a little bit about the uTorrent
16 program on this partition in particular. Do you remember
17 that?

18 A. Yes.

19 Q. There was some discussion of an emulation that was a
4:36PM 20 little complicated. Do you recall that?

21 A. Yes.

22 Q. Did you try to install uTorrent using the Linux
23 software on the App Store?

24 A. Yes, I did.

4:36PM 25 Q. Were you able to install the Windows version in that

4:36PM 1 way?

2 A. Yes, I was.

3 Q. So what does that tell you about the manner in which
4 uTorrent was installed on the defendant's Linux partition?

4:36PM 5 A. It's very easy to go to the App Store, type in
6 uTorrent. The uTorrent application is displayed and it
7 says uTorrent, and it has Wine in parentheses, which is
8 the emulator. I don't have to pay attention to that
9 nonsense. I just click the install button and it
4:37PM 10 installs.

11 Q. There was testimony, if I recall correctly, about an
12 emulation software having to be installed, is that right?

13 A. Yes.

14 Q. But if you do it through the application program,
4:37PM 15 does that have to happen?

16 A. No, it happens automatically behind the scenes. You
17 never see it. It just happens automatically.

18 Q. You were also asked on your cross, Mr. Fottrell,
19 about whether the Linux partition could be accessed
4:37PM 20 remotely. Do you recall that?

21 A. Yes, I do.

22 Q. Based on your examination, could the Linux partition
23 be accessed remotely?

24 A. The possibility exists that it could be accessed
4:37PM 25 remotely, but I just don't see evidence of that.

4:37PM 1 Q. Would the Linux partition need to be running in order
2 to access it remotely?

3 A. Absolutely.

4 Q. Can you explain for the Jury what you mean by that?

4:37PM 5 A. So it's one computer. It can only be running one
6 operating system at a time. When you turn it on, you
7 choose Windows or you choose Ubuntu. It can't be running
8 both operating systems simultaneously. And so that's kind
9 of what I mean. In order for somebody to connect to the

4:38PM 10 Ubuntu machine, it has to be running the Ubuntu machine.
11 It can't connect to it if the other operating system is
12 running.

13 Q. So if I understand your testimony correctly, the HP
14 computer would have to be turned on in the car lot and
4:38PM 15 running on the Linux operating side in order for someone
16 who is not at the car lot to log-in remotely, is that
17 correct?

18 A. Yes, that's correct.

19 Q. Based on your review of the evidence, could that have
4:38PM 20 happened here?

21 A. No, there's no evidence that I can see of that
22 happening.

23 Q. Actually, pull up what's been marked as Government's
24 Exhibit 74 and turn to page four. Do you recall this
4:39PM 25 exhibit?

4:39PM 1 A. I do.

2 Q. When was this image taken?

3 A. May 14th at 4:20 p.m.

4 Q. And what's the image of?

4:39PM 5 A. It's the picture of the HP desktop computer running
6 the Windows operating system, because you can see the
7 wallpaper of the family photo. And the browser is loaded.
8 You can see that the YouTube is loaded and the person is
9 taking picture -- the user is taking picture, and you can
4:39PM 10 see the person is wearing the Wholesale Motorcars cap
11 reflected in the screen.

12 Q. You said this is running the Windows operating system
13 at this point?

14 A. Yes.

4:39PM 15 Q. That's at 4:20 p.m. on May 14th?

16 A. Yes.

17 Q. If we could pull up alongside this exhibit what's
18 been marked as Government's Exhibit 38. What's
19 Government's Exhibit 38 again?

4:40PM 20 A. It's the webcam-collections being downloaded through
21 the TOR browser bundle at 5:05 p.m.

22 Q. On what date?

23 A. May 14th.

24 Q. So the same date that this picture was taken of the
4:40PM 25 computer running in the Windows operating system?

4:40PM 1 A. Correct.

2 Q. In fact, it's approximately 45 minutes later, is that
3 right?

4 A. Yes.

4:40PM 5 Q. So, Mr. Fottrell, how would someone be able to
6 transfer from the Windows operating system, when this
7 picture is taken on the HP computer, to the Linux
8 operating system 45 minutes later where someone is
9 downloading this webcams-collection-prevs file?

4:40PM 10 A. They would have to reboot the computer, and then on
11 the boot process, select the Linux partition to boot
12 instead of the Windows partition.

13 Q. Could someone access this computer remotely while
14 it's running this YouTube video on the Windows partition
4:40PM 15 side and force it to transfer to the Linux side?

16 A. No, they cannot do that. That's not possible to
17 switch the operating system from one to the other.

18 Q. Someone would have to be there?

19 A. Someone would physically have to be there.

4:41PM 20 Q. And based on this image here, whose device do we know
21 was in the office at that time?

22 A. Joshua Duggar's iPhone 8 Plus.

23 Q. Ask a few more questions about the remote access
24 idea. If someone were sitting at the HP computer in the
4:41PM 25 car lot while someone else was remotely accessing it, what

4:41PM 1 would that person sitting there see?

2 A. They would see, depending on how they're connected,
3 they would see the remote connectivity. So it's like just
4 remote control. Like I can remote control into my work
4:41PM 5 computer, and if I was sitting in my work station, you
6 would see the mouse move, you would see Windows open, you
7 would see programs being run. If you were sitting in my
8 chair when I wasn't there, you would see what I was doing
9 remotely.

4:41PM 10 Q. But if I was sitting there in the car lot while
11 someone was apparently remote accessing the Linux
12 partition, I would see them navigating around?

13 A. Yes.

14 Q. We would see them accessing child pornography?

4:42PM 15 A. Yes.

16 Q. If we could pull up again what's been admitted as
17 Government's Exhibit 78. What is this exhibit?

18 A. Here's a photo that was taken on May 16th at
19 11:35 a.m. The coordinates come back to the car lot.

4:42PM 20 It's a picture of a Post-it note.

21 Q. It appears to be inside the car lot, is that right?

22 A. Yes, it does. There's a desk behind the background.

23 Q. If we could pull up again what's been marked as
24 Government's Exhibit 34 and turn to page three. Looking
4:42PM 25 at the third line of this exhibit, what happened two

4:42PM 1 minutes before this picture was taken?

2 A. So two minutes before this picture was taken on the
3 Ubuntu partition, somebody is using the uTorrent program
4 to download pedomom.wmv. I'm sorry. The thumbnail was
4:43PM 5 created. Excuse me about that. The thumbnail was created
6 in the large folder associated with the video file
7 pedomom.wmv.

8 Q. That's on the Linux partition side?

9 A. Yes, it is.

4:43PM 10 Q. So does that mean someone would be navigating to the
11 downloads folder where there would be a file of child
12 pornography called "pedomom" visible?

13 A. Yes, a thumbnail associated with that image would be
14 visible.

4:43PM 15 Q. And they would see that would be happening two
16 minutes before this picture was taken by using the
17 defendant's iPhone inside the car lot?

18 A. Yes.

19 Q. You were also asked a little bit, Mr. Fottrell, about
4:43PM 20 the password that was used for the Linux partition. What
21 was that password again?

22 A. Intel 1988.

23 Q. Did you find examples of the defendant using that
24 password for other things?

4:43PM 25 A. Yes.

4:43 PM 1 Q. What kind of accounts did you see where the defendant
2 was using that password?

3 A. For Twitter accounts, for e-mail, website accounts,
4 banking accounts. Other kinds of accounts that he was
4:44 PM 5 using it for.

6 Q. If we could pull up what's been admitted as
7 Government Exhibit 63, turn to page two. Looking here,
8 what's the password for Arvest Josh?

9 A. The password is Intel 1988 exclamation mark.

4:44 PM 10 Q. What's the password for this other Arvest account?

11 A. JoshuaJJD1998.

12 Q. Is this other account identified as Josh Duggar's
13 account?

14 A. It says Anna Duggar.

4:44 PM 15 Q. So this Intel 1988 password is unique to Josh, is
16 that fair to say?

17 A. That's fair to say.

18 Q. You were also asked about e-mails in which the
19 defendant sent out the Intel 1988 password. Do you
4:44 PM 20 remember that?

21 A. Yes, I do.

22 Q. Did you find any examples of anyone sending the
23 defendant the Intel 1988 password?

24 A. No, I did not.

4:44 PM 25 Q. Who was the one using this password consistently?

4:44 PM 1 A. The defendant was using that password and sending
2 information associated with those passwords to other
3 people.

4 Q. How long had he been using this password?

4:45 PM 5 A. Approximately five years, going back to 2014.

6 Q. If we could actually pull up Government's Exhibit 64.

7 A. It shows February 13th, 2014, for the Instagram
8 account for the duggarfam. It's using the password Intel
9 1988.

4:45 PM 10 Q. If we could turn to page seven. What is this e-mail?

11 A. There's an e-mail to David Christensen at frc.org,
12 and he is basically telling him about -- has the social
13 media account for Representative Paul Ryan's Instagram
14 account. And so he's listing the Instagram accounts, he's
4:45 PM 15 listing a log-in name, and then he's listing the password
16 as Intel 1988. And he signs it, "Hope this helps,
17 sincerely, Josh Duggar."

18 Q. He also tells him to change the password if they want
19 this account, right?

4:46 PM 20 A. Yes.

21 Q. And subsequent to this e-mail being sent, the
22 defendant was using this password for his Arvest bank
23 account, is that right?

24 A. Yes.

4:46 PM 25 Q. Is it safe to say he thought it was secure?

4:46PM 1 A. Yes.

2 Q. You were also asked about Torrent files. Do you
3 recall that?

4 A. Yes.

4:46PM 5 Q. Mr. Fottrell, what is the only use of a Torrent file?

6 A. The Torrent file is the recipe, if you will, that the
7 BitTorrent program uses to go out and fetch the files
8 specified in the Torrent and download them to the
9 computer.

4:46PM 10 Q. They have no other purpose?

11 A. They have no other purpose.

12 Q. Do devices ever come with Torrent files preloaded
13 onto them?

14 A. Not that I'm familiar with, no.

4:46PM 15 Q. In your experience, are Torrent files accurately
16 named?

17 A. Yes.

18 Q. So the Torrent file "14yogirlsuckandfuck," based on
19 your experience, what would you expect that Torrent file
4:47PM 20 to have?

21 A. I would expect it to be a 14-year-old girl engaged in
22 sexually explicit conduct.

23 Q. Did you review the content associated with that
24 Torrent file?

4:47PM 25 A. I did.

4:47PM 1 Q. And what was it?

2 A. It was sexually explicit content of an underage girl.

3 Q. That Torrent file was found on the defendant's HP
4 computer on the Linux partition side, is that right?

4:47PM 5 A. That is correct.

6 Q. In fact, you found evidence that that video had been
7 viewed. Is that fair to say?

8 A. Yes.

9 Q. So what does that tell you about what the user of the
4:47PM 10 Linux partition did with that Torrent file?

11 A. They downloaded the contents of it and viewed the
12 video associated with it.

13 Q. On that point, you were asked about where you
14 retrieved the videos that you used to make storyboards
4:47PM 15 that we showed to the Jury. Do you recall that?

16 A. I do.

17 Q. Mr. Fottrell, were you able to determine if those
18 videos, those exact videos, had existed on the Linux
19 partition at any point in time?

4:47PM 20 A. Yes, I did.

21 Q. How were you able to determine that?

22 A. By the hash value analysis. The file names have a
23 unique hash value. No two files have the same -- no two
24 different files have the same hash value, so those files
4:48PM 25 are exactly the same based on the referenced hash value.

4:48PM 1 Q. So these weren't just random files that you asked
2 for, is that fair to say?

3 A. Right. These were very specific files that I know
4 had at some point existed on the defendant's hard drive.

4:48PM 5 Q. You were also asked about the reliability of EXIF
6 information. Do you recall that?

7 A. I do.

8 Q. If you could pull up for one second what's been
9 marked as Government's Exhibit 74 and turn to page four.

4:48PM 10 Generally speaking, Mr. Fottrell, in your experience, is
11 EXIF information reliable?

12 A. Yes.

13 Q. And what kind of information do you get in EXIF
14 information?

4:48PM 15 A. Certainly dates and times that the photo was taken.
16 Make and model of the camera that was used. It talks
17 about the shot that was taken, some photographic qualities
18 of it. There's going to be EXIF information associated
19 with it. So there's just a wealth of information that
4:48PM 20 exists in EXIF information. Some of it I care about, some
21 of it I don't forensically care about, but a lot of it is
22 just good information.

23 Q. The EXIF information with this photo told you that
24 the photo geolocated to the car lot, is that right?

4:49PM 25 A. Yes.

4:49PM 1 Q. What can you say about the content of the photo, was
2 this taken in the car lot?

3 A. Yes, it appears to be. It appears to be taken
4 standing in front of the HP monitor. There's the
4:49PM 5 background on it. The person is looking at a YouTube
6 video and taking a picture of it. You can see the
7 reflection of somebody wearing a Wholesale Motorcars hat
8 in the background.

9 Q. You were also asked about the reliability of the time
4:49PM 10 in EXIF information. Do you recall that?

11 A. Yes, I do.

12 Q. If we could please pull up what's been marked as
13 Government's Exhibit 80, turn to page on1. What time did
14 the EXIF information say this photo was taken?

4:49PM 15 A. At 4:47 p.m.

16 Q. Do you see anything in the photo indicating what time
17 it is?

18 A. There's a clock in the window that displays the time,
19 4:51.

4:49PM 20 Q. Where does it say that this photo was geolocated to?

21 A. To the car lot.

22 Q. Based on just looking at this photo, where does it
23 appear to be taken?

24 A. At the car lot.

4:50PM 25 Q. Is it fair to say, based on your review of the EXIF

4:50PM 1 information and these images, that you concluded that they
2 were accurate?

3 A. Yes.

4 Q. You were also asked about VLC streaming. Do you
4:50PM 5 recall that, Mr. Fottrell?

6 A. Yes.

7 Q. Once again, it was a little bit of a technical
8 discussion. Can you explain to the Jury what you meant
9 when you said that VLC players can stream videos locally?

4:50PM 10 A. Yeah, so VLC is a player. It's not a server. So VLC
11 has the ability to stream files locally. It can view
12 files that are being streamed. There would be a different
13 VLC program if I wanted to stream videos. And then just
14 looking at convenience, I think it's simpler, if I have

4:50PM 15 the uTorrent program up where the Torrent files download,
16 it's just less -- it's quicker just to select the video,
17 do a right mouse click, choose copy stream, go over to the
18 window into VLC and choose paste. That certainly seems
19 quicker opposed to, I have to bring up the file browser,

4:51PM 20 navigate to where that download folder is, and then click
21 on it. That's going to take numerous key clicks and a
22 little bit more time to do. Certainly just the copy and
23 paste through the streaming mechanism is an efficient
24 shortcut way of viewing the video that exists locally on

4:51PM 25 the computer.

4:51PM 1 Q. Did you confirm that yourself?

2 A. Yes, I did.

3 Q. There was a suggestion that streaming implies that
4 this video is somehow streaming on the internet or

4:51PM 5 streaming over the internet. Based on your examination,
6 is that accurate?

7 A. That's not accurate.

8 Q. If we could pull up what's been marked as
9 Government's Exhibit 44. Mr. Fottrell, what is this
4:51PM 10 exhibit again?

11 A. These are the VLC configuration file listing the
12 streams, the recent streams that were viewed, that the
13 user viewed. And it has them using the streaming
14 protocol. It has the hash value. Those hash values
4:52PM 15 correspond to particular movies that are on the computer.

16 Again, just to be clear, the reference to 127.0.0.1 is the
17 computer's way of using the English equivalent of "me."
18 If I say "me," the computer is referencing itself. So
19 when a computer is referencing an IP address of 127.0.0.1,

4:52PM 20 it doesn't mean the internet, it doesn't mean external
21 location. It's just the computer's way of saying the word
22 "me," the English equivalent of the word "me." So it's
23 streaming this file from itself, from the current
24 computer, if I'm trying to be clear about that.

4:52PM 25 Q. So this information tells you that this was not in

4:52PM 1 fact streaming over the internet, is that what you're
2 trying to say?

3 A. Correct. It's telling -- evidence of these
4 127.0.0.1s tell me that it's streamed from "me," from this
4:53PM 5 computer, and nowhere else.

6 Q. Does it make sense, Mr. Fottrell, from a forensic
7 point of view to remotely access a computer to then stream
8 something?

9 A. No, that doesn't really make any sense. If I'm going
4:53PM 10 to remotely connect to a computer and then stream it from
11 another source, that seems to be an extra step. It would
12 make more sense to just stream it from that other source.

13 Why would I go through an intermediary -- why would I
14 connect to an intermediary computer to stream it? It's
4:53PM 15 much more efficient to stream it from that original
16 source, so it just doesn't really make a lot of common
17 sense.

18 Q. In fact, if you were remotely accessing a computer,
19 you could just double-click a file like you could
4:53PM 20 normally, is that fair to say?

21 A. Yes.

22 Q. Mr. Fottrell, did you find any evidence that this
23 computer had been remotely accessed during the time frame
24 in question?

4:53PM 25 A. No.

4:53 PM 1 Q. Did you look for that evidence?

2 A. I did.

3 Q. I'd like to return for a brief second to the
4 virtualization software exhibits.

4:54 PM 5 A. Okay.

6 Q. You said on your cross that the uTorrent copyright
7 date 2020/2021 was significant. Was that significant to
8 the investigation, or was that significant to you, James
9 Fottrell?

4:54 PM 10 A. Just to me, correct. It certainly doesn't matter to
11 the investigation. It's certainly just significant to me
12 in understanding what's happening with the different
13 programs.

14 Q. Is it significant because you realized that you had
4:54 PM 15 accessed the internet briefly using the virtualization
16 software?

17 A. Yes, I realized that I must have accidentally
18 accessed the internet to update that program when I was
19 updating the program to install the Oracle VirtualBox
4:54 PM 20 extensions.

21 Q. But it wasn't significant to any of your
22 conclusions --

23 A. Certainly not.

24 Q. -- with respect to whether child pornography had been
4:54 PM 25 downloaded using the defendant's computer?

4:54PM 1 A. That's correct.

2 Q. If we could pull up what's been marked as
3 Government's Exhibit 85, and admitted as 85. Was it
4 significant, Mr. Fottrell, to any of your conclusions on
4:54PM 5 this timeline?

6 A. No.

7 Q. Nothing about the virtualization software accessing
8 the internet changed, for example, that the Linux
9 installation program was downloaded on May 11th and that
4:55PM 10 the defendant was at that car lot 10 minutes later?

11 A. No.

12 Q. Does it change anything about what happened on
13 May 13th?

14 A. No.

4:55PM 15 Q. May 14th?

16 A. No.

17 Q. May 15th?

18 A. No.

19 Q. It has no impact on your conclusions with respect to
4:55PM 20 what happened in this case, is that fair to say?

21 A. That's fair to say.

22 MR. CLAYMAN: May I have one moment, Your Honor?

23 THE COURT: Yes.

24 MR. CLAYMAN: I'll pass the witness, Your Honor.

4:55PM 25 THE COURT: Could I see counsel at side bar,

4:55 PM 1 please?

2 (Bench Conference)

3 THE COURT: What's your estimate on re-cross, if
4 any?

4:56 PM 5 MR. GELFAND: 15 minutes.

6 THE COURT: What is this witness's travel
7 situation? Is he here for the duration?

8 MR. ROBERTS: Yes, sir.

9 THE COURT: Do you feel really good about that 15
4:56 PM 10 minutes?

11 MR. GELFAND: Two answers, Your Honor, because
12 I'm an Officer of the Court. I do feel really good about
13 those 15 minutes, but I have never been right about
14 estimates.

4:56 PM 15 THE COURT: Do you all have any problem with me
16 letting the Jury decide? I mean, it's late on Friday. My
17 mind is mush. It's been a full day of super-technical
18 information. On the one hand, I think they may want to
19 get him on and off the stand so they can make progress.
4:57 PM 20 I'm just going to let them give me guidance on that.

21 MR. GELFAND: That sounds good. I don't have any
22 problem with you telling them plus or minus 15 minutes.
23 Could be a little shorter, could be a little longer. I
24 don't mind, I'll give deference to the Court, but I don't
4:57 PM 25 mind the Court telling them my estimate of approximately

4:57PM 1 15 minutes if that helps them make that decision.

2 THE COURT: Next question. I would like to give
3 them a progress report on where we are in terms of
4 duration of the trial. My thought is we're behind. Are
4:57PM 5 we now into Wednesday? Is that what we're thinking?

6 MS. MARSHALL: I think so, Your Honor, yes.

7 THE COURT: Are we beyond Wednesday?

8 MR. GELFAND: Do you still anticipate the same?

9 MR. ROBERTS: Yes. Yes, we do. So our
4:58PM 10 guesstimate would be the government closing their case on
11 Monday, probably early afternoon, my estimate, but I would
12 take the same caveat as Mr. Gelfand.

13 MR. GELFAND: We intend at this point to put on a
14 defense case, obviously without committing to anything.
4:58PM 15 But for planning purposes, we do intend to put on a
16 defense case if it helps.

17 THE COURT: It will take us a full day? Monday
18 afternoon?

19 MR. GELFAND: Probably about a day. And quite
4:58PM 20 candidly, longer if Mr. Duggar chooses to testify.

21 THE COURT: Right.

22 MR. GELFAND: And Michele Bush is going to be
23 testifying. And then there's some fact witnesses, none of
24 whom are particularly lengthy.

4:58PM 25 THE COURT: All right. Thanks.

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(Bench Conference Concluded)

THE COURT: I have some intelligence that I would like to share with the Members of the Jury.

We're very near the end of this witness's testimony, but the lawyers still have some questions. It's likely that Mr. Gelfand's turn to follow up is going to be 15 to 20 minutes. That's probably going to prompt three to five minutes -- maybe not -- but in my experience, another five minutes from the government, and then this witness could be on and off the stand. So to call it safe, 20 on the short end; 30 minutes on the long end. It's been a long day, been a lot of technical testimony. I could understand why, if your ability to keep retaining information is kind of bursting at the seams here.

Regardless of whether you would like to stay longer today and get this witness off the stand, I don't think that's going to affect how long the overall trial is. It is possible that we could get the case to you Tuesday afternoon, but more realistically, Wednesday. That's where we are. And that's not going to change whether we finish up today or not. So I think the real decision that I would like your input on is whether you want to stay here on a Friday afternoon and plow through this witness, or whether you would, all things considered,

5:01PM 1 just like to come back Monday morning and pick up where we
2 left off. And ya'll can talk amongst yourselves.

3 JUROR: Ask a question?

4 THE COURT: Yes.

5:01PM 5 JUROR: Does that mean he gets to go home this
6 weekend?

7 THE COURT: I think that this witness is probably
8 here for the duration. I specifically inquired whether he
9 had any flights that he's going to miss today, and I'm
5:01PM10 told that he does not.

11 (Jurors discussing)

12 JUROR: I think we're good to continue today,
13 Judge.

14 THE COURT: Go ahead and finish up? All right.
5:02PM15 Thank you very much. Mr. Gelfand?

16 MR. GELFAND: Thank you. May I proceed, Your
17 Honor?

18 THE COURT: You may.

19 RE CROSS EXAMINATION

5:02PM20 BY MR. GELFAND:

21 Q. Mr. Fottrell, do you remember how many times I asked
22 you on cross examination whether you connected your
23 virtualized machine to the internet?

24 A. Yeah, many times.

5:02PM25 Q. And do you remember telling this Jury under oath

5:03PM 1 confidently that you did not?

2 A. Correct. I made a mistake. I forgot.

3 Q. And you told them and you told me that the reason you
4 did not is because this device has alleged child

5:03PM 5 pornography on it and you don't want to connect that to
6 the internet?

7 A. Correct.

8 Q. And you said that this device was never updated in
9 terms of software applications, correct?

5:03PM 10 A. Correct.

11 Q. And you said that you were positive -- and I used
12 uTorrent as the example -- that uTorrent was not updated,
13 correct?

14 A. Correct.

5:03PM 15 Q. But the truth is, now you're readily admitting that
16 you connected this device, this virtualized version of the
17 HP computer, Linux partition at issue, to the internet
18 during your forensic evaluation, correct?

19 A. Yes.

5:03PM 20 Q. And your testimony -- and I wrote it down, you tell
21 me if I'm wrong -- is that has, quote, "minimum impact,"
22 end quote, on the evidence, correct?

23 A. On the overall evidence, correct. I needed to update
24 the software to get the Oracle VirtualBox extensions

5:04PM 25 installed and I needed to connect to the internet to get

5:04PM 1 that to work. And I forgot -- I didn't recall that when
2 we spoke earlier.

3 Q. How on earth do you accidentally access the internet
4 when you are looking at a virtualized device with alleged
5:04PM 5 child pornography on it?

6 A. There's a setting in the Oracle box software for all
7 of the different devices. Do you want to turn on
8 networking, do you want to turn off networking. And I
9 always turn it off. I must have turned it on to do that.

5:04PM 10 Q. How long were you connected to the internet?

11 A. Probably for about a five-minute window of time to
12 get the VirtualBox extensions and other updates installed.

13 Q. Long enough to be detected by Torrent Downpour?

14 A. No, not at all, because I'm not sharing any content.
5:04PM 15 I'm not sharing any child pornography.

16 Q. Mr. Fottrell, the bottom line is the exhibit that the
17 Jury has in evidence, Exhibit 30, that's not actually the
18 same as what was seized from Wholesale Motorcars on
19 November 8th of 2019, correct?

5:05PM 20 A. Those print screens that I created are not accurate
21 because it has that updated reference to the uTorrent
22 program being updated, that's correct.

23 Q. It's not the same as what was seized on November 8th
24 of 2019, correct?

5:05PM 25 A. Correct. That's the demonstrative exhibit I created

5:05PM 1 to try to be persuasive as to what the desktop looked like
2 at the moment in time that it was seized.

3 Q. I'm not asking you to be persuasive. I'm asking you
4 facts about this case on your forensic evaluation, okay?

5:05PM 5 A. Okay.

6 Q. Mr. Fottrell, you testified about the router. You
7 said you didn't want to look for other devices when you
8 had enough devices. Did I hear that testimony correctly?

9 A. Correct. We had the right computer. The information
5:05PM 10 that we had on the computer with the marissa.zip and the
11 movies matched the undercover. We're not on wild goose
12 chase looking for the appropriate computer. We have the
13 right computer. It has information that matched what the
14 undercover was looking for. Why do I need to go look for
5:06PM 15 something else when I found what I was looking for?

16 Q. Let's back up for a second. When the devices were
17 seized on November 8th of 2019 -- first of all, you
18 weren't involved, correct?

19 A. I was not there, correct.

5:06PM 20 Q. Second of all, even if you were involved, you would
21 readily acknowledge, you had no clue what was on those
22 devices the day they were seized, correct?

23 A. Correct.

24 Q. So when the decision is made to seize or not to seize
5:06PM 25 certain devices, to preserve or not preserve evidence --

5:06PM 1 A. Correct.

2 Q. -- on that day, no one has a clue whether they have
3 the "right computer," quote, unquote, or not, correct?

4 A. Well, they know they have a computer, and so like the
5:06PM 5 person was using uTorrent 3.5.5 on a Windows version of
6 Torrent. They come to a location that has a Windows
7 computer. They don't know if it has the uTorrent or not,
8 but they have a computer that's consistent with the
9 preliminary information that they had going in. So
5:06PM 10 there's certainly some information that they are in the
11 right place at the right time with the right computer in
12 front of them.

13 Q. Did you find the right device with the UK Cardiff
14 PowerPoint and the Quiz 1.docx and the
5:07PM 15 jeremymodel-meshpics.docx? Did you find that?

16 A. We never found that thumb drive. I never found that
17 thumb drive.

18 Q. Or the device that those files were saved on and
19 created on, correct?

5:07PM 20 A. Correct.

21 Q. But we know for sure, like you testified earlier,
22 that even though you have no clue what device that is, it
23 isn't one of Josh's devices, correct?

24 A. Correct. I have no evidence to say that it was
5:07PM 25 Josh's device, correct.

5:07PM 1 Q. In fact, you have evidence to show that those files
2 were never opened on any of Josh's devices?

3 A. Say that -- are you talking about the Quiz and the
4 uTorrent?

5:07PM 5 Q. Yes.

6 A. They were opened on his device. They were opened on
7 the Windows partition. That's why they show up there. So
8 the HP computer in the car lot, I'm saying that's one of
9 Joshua's devices. There is evidence that those files were

5:07PM 10 opened on that computer showing me the exhibit that you
11 were showing me.

12 Q. They were opened from the thumb drive, correct?

13 A. From the thumb drive, correct.

14 Q. There's no evidence that they were opened from the
5:08PM 15 actual hard drive of the HP, correct?

16 A. Yes. You're using a word that was misleading. There
17 was no evidence that those files were copied to the
18 computer and opened on the computer. Yes, there's no
19 evidence of that.

5:08PM 20 Q. I'm not misleading you at all. There was no evidence
21 that that was on the MacBook, correct?

22 A. Correct.

23 Q. There was no evidence that that was on the iPhone,
24 correct?

5:08PM 25 A. Yes.

5:08PM 1 Q. The thumb drive itself, we know for sure that it was
2 plugged into the HP computer while Linux was being
3 installed, while the partition was being installed,
4 correct?

5:08PM 5 A. Correct.

6 Q. We know that somebody with access to that thumb drive
7 and those files physically plugged in the thumb drive
8 while Linux was being installed, correct?

9 A. Correct. Or before Linux was being installed. Not
5:08PM 10 at the same time. Before.

11 Q. Just before, correct?

12 A. Correct.

13 Q. And we talked about that time-stamp, 12:53 to 12:56
14 p.m., correct?

5:08PM 15 A. Correct. Before the installation, correct.

16 Q. That's hard data, correct?

17 A. Yes.

18 Q. And that was just before the installation was
19 completed, correct?

5:09PM 20 A. Correct.

21 Q. And we clarified the whole middle, beginning,
22 completion of installation time frame of just after 1:00,
23 correct?

24 A. That is correct.

5:09PM 25 Q. Now, we know -- you were asked about other files with

5:09PM 1 the name "quiz" on it, correct?

2 A. Yes.

3 Q. Was that the same file?

4 A. No, they were not the same file, but they were file
5:09PM 5 names that began with the same word, "quiz."

6 Q. Do you agree with me that whoever has that thumb
7 drive, or had that thumb drive, installed Linux?

8 A. What was -- yeah, the person who has that thumb drive
9 was basically at the car lot at the same time, correct.

5:09PM 10 That thumb drive was not recovered, but that thumb
11 drive -- there certainly is evidence that that thumb drive
12 was installed right before that Linux partition was
13 installed.

14 Q. So if you want to solve the mystery of who installed
5:10PM 15 Linux, instead of just guessing, you follow the evidence
16 to those files and to that thumb drive, correct? Yes or
17 no?

18 A. It's too late. Law enforcement executes a search
19 warrant on November 8th. This installation happened in
5:10PM 20 May 11th. A number of months have gone by. How do the
21 law enforcement officers know on November 8th, when they
22 walk in the door, what existed in May? They don't have
23 perfect information. You want to say that we have perfect
24 information, but the law enforcement officers deal with
5:10PM 25 the information that they have. Yes, it would be perfect

5:10PM 1 if we had access to a thumb drive, but the reality is that
2 we don't. It existed sometime in May. We don't know
3 anything about it after that May time frame.

4 Q. But the more devices that you have, the more likely
5:10PM 5 it is that you are going to find those files, correct?

6 A. Correct.

7 Q. You testified that the TOR network would not make
8 sense for someone being hounded by the paparazzi, correct?

9 A. Yeah, I just don't understand that. It's fair to say
5:11PM 10 that I don't understand your analogy of using TOR to stay
11 away from the paparazzi. It doesn't make a lot of sense
12 to me.

13 Q. Let's get a couple things straight. When I asked you
14 that on cross examination, you actually agreed that that
5:11PM 15 made sense. Do you remember that?

16 A. In some sense. If I want to basically not let people
17 know which websites that I'm going to, and I'm trying to
18 hide my location, that might have some value. I don't
19 understand it has any realistic value. But if you think
5:11PM 20 that that's helpful to stay away from paparazzi --

21 Q. Information is sold, correct?

22 A. Information is?

23 Q. Sold?

24 A. Yes.

5:11PM 25 Q. We talked about how people smarter than you and I --

5:11PM 1 A. Make money on selling.

2 Q. -- make a lot of money selling personal information,
3 correct?

4 A. Yes.

5:11PM 5 Q. And you can't think of a single reason why somebody
6 trying to protect their privacy doesn't want their
7 information sold?

8 A. So it has to do with what information we're talking
9 about. The information we're talking about is just my
5:12PM 10 location, the computer's IP address. I'm hiding my
11 location, my physical location. I'm not hiding what web
12 browser I'm using. I'm not hiding other attributes. You
13 are just using TOR to hide your location with respect to
14 the sites you're visiting.

5:12PM 15 Q. Let's talk about this for a second. You readily
16 admitted that on the MacBook laptop, the TOR browser had
17 existed on that at least in 2017 and you don't know when
18 it ceased to exist, correct?

19 A. Yes.

5:12PM 20 Q. But you told me for sure that if there was -- if that
21 browser on the MacBook was ever used to access child
22 pornography, you would find a forensic artifact of that,
23 correct?

24 A. No, that's not true. Say that again. I'm not sure I
5:12PM 25 heard you correctly.

5:12PM 1 Q. If that browser on that device -- in other words, if
2 child pornography was viewed on that device, you would
3 know from your forensic investigation. You said that,
4 correct?

5:13PM 5 A. If there was forensic artifacts of that, I would have
6 found it, but the TOR browser is designed not to store
7 lots of information. So people that use the TOR browser
8 are using it because it doesn't store information. So
9 you're right, the answer to your question is, there is no
5:13PM 10 evidence that the Mac was used to download child
11 pornography material.

12 Q. In other words, there is evidence that the TOR
13 browser was used differently on the Mac than the TOR
14 browser was used on the Linux partition, correct?

5:13PM 15 A. Correct. Yeah, we have very little information as to
16 how it was used on the Mac. We know exactly how it was
17 used in the Linux partition.

18 Q. But we know for sure it was used differently,
19 correct?

5:13PM 20 A. Yes.

21 Q. In a way, that's kind of the ball game, child
22 pornography, for this trial, correct?

23 A. Yes.

24 Q. You talked to us a few minutes ago about command
5:13PM 25 lines. Do you recall that testimony?

5:13 PM 1 A. I do.

2 Q. What evidence -- I don't want you to guess. We're
3 not here to guess. What evidence can you point to that
4 tells me exactly how uTorrent was installed on the Linux
5:14 PM 5 partition?

6 A. There is no exact answer to your question. There is
7 circumstantial answer to your question. The
8 circumstantial evidence, the lack of the existence of a
9 bash.doc history file is indicative that the person used
5:14 PM 10 it through the App Store. The lack of the installation
11 files in the download folder is evidence that the person
12 used the App Store to do that. So there's no specific
13 answer to your question. It's circumstantial evidence.

14 The circumstantial evidence, no bash history, no
5:14 PM 15 downloaded files, that is circumstantial evidence that the
16 person used the App Store to download and install these
17 apps.

18 Q. Can bash be deleted?

19 A. Excuse me?

5:14 PM 20 Q. Can bash history be deleted?

21 A. Yes, it can, if you know how to do it.

22 Q. Did you go contact the folks that run the Linux App
23 Store and find out?

24 A. No.

5:15 PM 25 Q. You testified, when talking about this --

5:15PM 1 MR. GELFAND: This is a portion of Exhibit 30, if
2 I may publish it, Your Honor.

3 THE COURT: You may.

4 Q. (BY MR. GELFAND.) You pointed, you circled,
5 actually, like I just did, the App Store, right?

6 A. Yes.

7 Q. You said you just double-click on it. Why would
8 anyone not just double-click on it and instead do
9 something complicated, right?

5:15PM 10 A. Correct. It seems to be the most logical thing that
11 somebody would do, the simpler thing as opposed to the
12 more complicated thing.

13 Q. Just double-click instead of do something more
14 complicated, right? Is that your testimony?

5:15PM 15 A. Yes. It's certainly easier to use the App Store than
16 to use the command line history.

17 Q. The same logic, then, would apply to just
18 double-clicking on Transmission than downloading uTorrent
19 and the Wine emulator that you testified to. Both can't
5:16PM 20 be right, right?

21 A. No, these programs are different. So the features
22 associated with Transmission are different than the
23 features that are associated with it. I used the analogy
24 of Coke versus Pepsi. Some people are familiar with one
5:16PM 25 program versus another. My personal preference is to use

5:16PM 1 uTorrent. Another person's personal preference and their
2 familiarity is with Transmission. It's just a preference
3 people have. Some people prefer one program over another.
4 I don't have a -- it doesn't matter to me what their

5:16PM 5 preference is. There's certainly evidence in this case
6 that the preference was to use the uTorrent program.

7 Q. Well, in fact, if you look at the MacBook, what was
8 the preference used to download Three Amigos in 2017?

9 A. It was this qBittorrent, a different program.

5:16PM 10 Q. It was Transmission, correct?

11 A. Yes. Transmission and qBittorrent, correct.

12 Q. Transmission was actually used to download the
13 Planes, Trains, whatever it was, correct?

14 A. Yes. Correct.

5:17PM 15 Q. So the preference was actually Transmission in 2017
16 in January for Three Amigos, correct?

17 A. Yes.

18 Q. Now, you testified -- and I just wrote this down,
19 tell me if I'm right and I heard you right -- when you
5:17PM 20 were asked about remote access, you used the phrase, "The
21 possibility exists." Did I hear that right?

22 A. Yes.

23 Q. Now, you said, hold on, let's go back to this BIOS,
24 B-I-O-S, that we talked about for a few minutes on cross
5:17PM 25 examination, correct?

5:17PM 1 A. Yes.

2 Q. And, in fact, you said you have never once looked at
3 the BIOS because it's on the actual device, correct?

4 A. Yes.

5:17PM 5 Q. It's in the courtroom today, correct?

6 A. Yes.

7 Q. That would have answers for us that you don't know,
8 correct?

9 A. Correct.

5:17PM 10 Q. That would tell us the reboot order, correct?

11 A. Yes.

12 Q. And you can't tell us what those answers are because
13 you have never looked at it, correct?

14 A. Well, I didn't -- I don't think I need to look at it.

5:18PM 15 I can look at the Window -- look at the image that I
16 created, look at the Windows event viewer log, the
17 totality of the Windows computer. That's the operating
18 system that's being used most of the time. That's the
19 software for the Frazer software for the business. So the

5:18PM 20 evidence, the totality of the evidence, tells me pretty
21 obviously that the Windows is the default partition for
22 this device.

23 Q. Does it tell you that forensically or are you just
24 guessing again?

5:18PM 25 A. It tells me just on the totality of the evidence.

5:18PM 1 The computer is clearly used for Windows for the majority
2 of his multi-years at the car lot.

3 Q. Can you point me to something that you used from a
4 forensic tool that you extracted that tells me that?

5:18PM 5 A. The Windows operating system and all of the files
6 that are in it and all of the documents show that that
7 computer was being used for multiple years in the Windows
8 environment. That tells me that that's the default
9 environment. When you turn on the computer, it's going to
5:19PM 10 boot up Windows. That certainly was the environment up
11 until May 13th, way before -- for multiple years before
12 May 13th, when you turn on the computer, that was the only
13 operating system that was installed. It was the only one
14 that it could boot to. It was certainly the default prior
5:19PM 15 to May 13th, 2019.

16 Q. Mr. Fottrell, the prosecutor showed you some
17 documents -- and I can show you them again -- related to
18 Arvest. Do you recall that?

19 A. Yes.

5:19PM 20 Q. Those were from 2017, correct?

21 A. I'll take your word for it, yes.

22 Q. You don't have to take my word for anything.

23 A. That's okay. Yes.

24 Q. Because those were from 2017, do you have a clue what
5:19PM 25 the passwords were for the Arvest business account in 2018

5:20PM 1 or 2019?

2 A. No.

3 Q. Did you ask Arvest?

4 A. No, I did not.

5:20PM 5 Q. You testified about streaming a few minutes ago,
6 correct?

7 A. Yes, I did.

8 Q. I'm going to show you Government's Exhibit 43,
9 correct? Do you see that in front of you?

5:20PM 10 A. I do.

11 Q. Do you recognize that?

12 A. I do.

13 Q. I just highlighted just the top artifact of
14 streaming, and there appears to be a series of, I'd like
5:20PM 15 to say virtually identical artifacts, but relating to
16 different files, correct?

17 A. Yes.

18 Q. Is it fair to say that this one is kind of an
19 example, a fair reflection of what the rest of this
5:20PM 20 document shows related to other files?

21 A. Yes.

22 Q. Now, this begins with an <http://pairing> designation,
23 correct?

24 A. Yes.

5:20PM 25 Q. When this file was streamed, was it accessible to

5:21PM 1 anyone other than somebody behind the HP keyboard? Can
2 you say for sure? Can you answer my question; yes or no?
3 A. Could you repeat the question a little slower?
4 Q. Yes. When this file was streaming as opposed to just
5:21PM 5 double-clicked like the Planes, Trains, whatever thing,
6 that you testified earlier, was it accessible to somebody
7 anywhere on earth other than sitting behind the keyboard
8 of the HP computer?
9 A. I mean, what this is telling me, it's being streamed
5:21PM 10 from local host. It's being streamed from the computer
11 itself. You're asking me if now somebody else on the
12 planet in some other location could be accessing this
13 video from this computer, if I understand your question
14 correctly.
5:21PM 15 Q. Yes. Can you rule that out?
16 A. I think the answer to that is that it's extremely
17 unlikely that that would happen, because it would take a
18 number of things for that to happen. This computer, the
19 VLC player, or the uTorrent thing, would have to be
5:22PM 20 streaming. The router would have to be configured to
21 allow that streaming to occur. There's just a number of
22 steps that would need to occur. While it is possible, I
23 don't think it's likely.
24 Q. So the answer is, it is possible, correct?
5:22PM 25 A. It's possible, but not likely.

5:22 PM 1 Q. And you would want to know what the router showed,
2 right?

3 A. If I was interested in answering that question, the
4 router would give me answers to that question.

5:22 PM 5 Q. But you're not interested in answering that question?

6 A. I'm not interested in answering that question. It
7 does not seem relevant to me. Clearly, there's evidence
8 that the file was being viewed by the computer at this
9 location at that point in time.

5:22 PM 10 MR. GELFAND: Your Honor, one minute, please.

11 Your Honor, I have no further questions.

12 THE COURT: Thank you. Mr. Clayman?

13 MR. CLAYMAN: Briefly, Your Honor. Could we
14 switch to the other display?

5:23 PM 15 REDIRECT EXAMINATION

16 BY MR. CLAYMAN:

17 Q. Mr. Fottrell, let's start with that last topic first.
18 The defendant, again, is suggesting that perhaps someone
19 remotely accessed the computer and streamed it. Does that
5:23 PM 20 seem likely to you?

21 A. Does not seem likely to me.

22 Q. Again, I want to clarify. If someone was remotely
23 accessing this Linux partition on the HP computer, what
24 would someone in the car lot office see on the screen of
5:23 PM 25 that computer?

5:23PM 1 A. They would see the VLC video player playing that
2 video.

3 Q. So you are saying if Josh Duggar is in the car lot
4 office and someone is remotely accessing his computer, he
5:24PM 5 would see someone viewing child pornography on it?

6 A. Yes. If you are using the VLC program to stream that
7 video, it is being displayed in that VLC window on the
8 Linux partition at the car lot.

9 Q. Not only that, he wouldn't just see someone streaming
5:24PM 10 child pornography. He would see someone on a Linux
11 partition that he apparently didn't even know about?

12 A. Yes.

13 Q. Does that seem likely to you, Mr. Fottrell?

14 A. No, it does not. That does not seem likely.

5:24PM 15 Q. You were also asked about BIOS and the boot order on
16 this recross. You are qualified as an expert in computer
17 forensic examinations in this case, is that right?

18 A. Yes, it is.

19 Q. So you have decades of experience?

5:24PM 20 A. Yes.

21 Q. How long have you been using the Ubuntu Linux
22 operating system?

23 A. Probably 20 years.

24 Q. So based on your opinion, based on your expert
5:24PM 25 opinion, what was the boot order for the HP computer?

5:24PM 1 A. It would boot up Windows first. That seems -- that's
2 the default boot order. That's my belief as to what the
3 operating system would boot to.

4 Q. And if Linux was the default boot, what would happen
5 every time someone in the car lot turned on the computer?

6 A. It would boot up the Ubuntu partition.

7 Q. It wouldn't go to the Windows partition?

8 A. No.

9 Q. So if anyone in the car lot, other than the
5:25PM 10 defendant, turned on the computer, it would go to this
11 Linux partition?

12 A. Yes.

13 Q. Where child pornography is being downloaded?

14 A. Yes.

5:25PM 15 Q. And where there's no Frazer app for them to conduct
16 their business?

17 A. Yes.

18 Q. Does that seem likely to you, Mr. Fottrell?

19 A. That does not seem likely.

5:25PM 20 Q. You were asked again about command lines. Is it fair
21 to say that if someone downloaded TOR using command lines
22 and then knew to go to the bash history file and delete
23 the bash history, that would leave the same amount of
24 forensic artifacts on the computer as if someone went to
5:25PM 25 the App Store and simply clicked on downloading TOR?

5:25PM 1 A. Yes.

2 Q. Mr. Fottrell, based on your decades of experience,
3 which one is more likely?

4 A. It's more likely that somebody is using the App
5 Store. It's point and click. It's a graphical user
6 interface. It's very easy for novice users to use. The
7 most likely option is to use the App Store graphical user
8 interface.

9 Q. Is there any benefit to using command lines?

5:26PM 10 A. No, not that I can -- no. No.

11 Q. If you were somehow remotely accessing the computer,
12 would you only be able to use command lines?

13 A. No, you should be able to access the graphical user
14 interface.

5:26PM 15 Q. So does the idea that someone was using command lines
16 to download TOR make sense to you based on your expert
17 opinion?

18 A. No.

19 Q. You were also asked whether the user of the MacBook,
5:26PM 20 the defendant's MacBook, had a preference for
21 Transmission. Do you recall that?

22 A. Yes, I do.

23 Q. How many different peer-to-peer softwares did you see
24 on the defendant's MacBook?

5:26PM 25 A. Two. There was Transmission and qBittorrent.

5:26PM 1 Q. And Transmission was used once, is that right?

2 A. Yes.

3 Q. QBittorrent was also used once?

4 A. Yes.

5:26PM 5 Q. But the user of the defendant's MacBook repeatedly
6 searched to download uTorrent, is that right?

7 A. Yes. There was multiple searches for the user trying
8 to download uTorrent for the Mac.

9 Q. In multiple months, actually, April and May of 2017,
5:26PM 10 is that right?

11 A. That is correct.

12 Q. And he was blocked from doing that, is that right?

13 A. Yes.

14 Q. Based on those multiple searches, do you think the
5:27PM 15 MacBook user at that point might have a preference for
16 uTorrent?

17 A. Yes.

18 Q. You were asked again on recross whether there would
19 be any forensic artifacts on the MacBook if someone had
5:27PM 20 used TOR to access child pornography on the TOR network.

21 Do you recall that?

22 A. Yes, I do.

23 Q. Is it possible that someone could have used TOR to
24 access child pornography on a hidden service and you would
5:27PM 25 not find any forensic artifacts of that?

5:27PM 1 A. Yes, it is possible.

2 Q. Why is that?

3 A. Because the TOR browser, when it's installed, it
4 stores all of its temporary files in ram. It's
5:27PM 5 specifically designed not to allow those forensic
6 artifacts to exist. So even today, the use of the TOR
7 browser, the forensic artifacts that we are -- we're not
8 getting browser history. We're not getting all of the
9 normal artifacts that you would expect to see. We only
5:27PM 10 get very little. We get the TOR browser bookmarks, which
11 are stored on the hard drive. Everything else, the
12 activity that's happening, just does not get logged. The
13 person could have been using the TOR browser to go to
14 child pornography websites and view child pornography.

5:28PM 15 You don't need to download it. Go to a TOR hidden service
16 where you can see child pornography. As long as you don't
17 download something, nothing is going to get saved. There
18 would be no forensic artifacts associated with that type
19 of browsing activity.

5:28PM 20 Q. So we know that the user of the Linux partition was
21 using TOR to download child pornography, is that right?

22 A. Yes.

23 Q. Could the user of the MacBook been using TOR to view
24 child pornography?

5:28PM 25 A. That's possible. And it's possible that there's no

5:28PM 1 forensic artifacts recoverable associated with that.

2 Q. We simply don't know what the defendant's MacBook was
3 used to do on TOR, is that fair to say?

4 A. Correct. We just have no information as to what was
5:28PM 5 happening on TOR, the use of TOR on the MacBook.

6 Q. You were also asked about the virtualization software
7 again. Mr. Fottrell, when you briefly connected to the
8 internet, was there any chance child pornography would be
9 shared?

5:28PM 10 A. No, there was no child pornography being shared.

11 Q. How do you know that?

12 A. Because the uTorrent program was not run. I was just
13 basically installing the software. So in order for that
14 to happen, I would have to have the uTorrent program up
5:29PM 15 and running. There would have to be child pornography in
16 a file system that was being shared. And we already
17 talked about it's in unallocated space and in a thumbnail
18 file. It's in no folder that's associated with the
19 uTorrent program. So it's just not a realistic option.

5:29PM 20 Q. Mr. Gelfand referred to this use of the
21 virtualization software as part of your forensic
22 examination. Is it fair to say that the forensic
23 examination had already really occurred before this
24 virtualization software?

5:29PM 25 A. Yeah. So, yeah, the virtualization is not

5:29PM 1 technically part of my forensic examination. It's just
2 part of my illustration of preparing trial exhibits to try
3 to find a way to illustrate to the Jury what was happening
4 on the machine. It's certainly not impacting my forensic
5:29PM 5 analysis. It's like, hey, can I use this virtualization
6 to explain a technical artifact in a more
7 easy-to-understand manner.

8 Q. So by the time you're running virtualization
9 software, you already know what the forensics show, is
5:29PM 10 that right?

11 A. Absolutely correct.

12 Q. You're simply doing that to help the Jury out in
13 understanding the evidence?

14 A. Yes.

5:30PM 15 Q. You were also asked again, Mr. Fottrell, about a
16 thumb drive on recross. Do you recall that?

17 A. Yes, I do.

18 Q. The defense made a big deal about how we need to know
19 who has this thumb drive in order to know who installed
5:30PM 20 the Linux partition. Do you recall that?

21 A. I do recall that.

22 Q. Is that true?

23 A. No, I don't think that's helpful. I mean, that's
24 just one artifact out of hundreds of other artifacts. We
5:30PM 25 have lots of good evidence as to who installed the Ubuntu

5:30PM 1 partition. We have lots of good evidence as to when those
2 things occurred. The existence of this thumb drive and
3 any information contained on that thumb drive is pretty
4 inconsequential.

5:30PM 5 Q. You reviewed other thumb drives that were found at
6 the defendant's car lot, is that right?

7 A. I did.

8 Q. Some of those thumb drives had random pictures on it,
9 is that right?

5:30PM 10 A. Some of them had family photos. Some of them had
11 pictures, what I would classify as like a hunting trail
12 camera, pictures of the woods where there's animals
13 walking by, so I'm not really sure, some kind of a trail
14 camera. And just family photos. One of them was empty,
5:31PM 15 like it doesn't have anything on that. So there was just
16 nothing of investigative value on all of the thumb drives
17 that were seized by law enforcement at the car lot.

18 Q. Is it possible this thumb drive with this Quiz 1
19 document was just found on the car lot?

5:31PM 20 A. Say that again.

21 Q. Is it possible that this thumb drive was just found
22 on the car lot?

23 A. Yes.

24 MR. GELFAND: Objection, Your Honor. It calls
5:31PM 25 for speculation.

5:31PM 1 THE COURT: Well, I think there's actually --
2 MR. GELFAND: I'll withdraw the objection, Judge.
3 Q. (BY MR. CLAYMAN.) Is it possible the thumb drive was
4 taken off the car lot afterwards?
5:31PM 5 A. Yes.
6 Q. Is it possible the thumb drive was destroyed?
7 A. Yes.
8 Q. Does the existence or location of this thumb drive
9 change your conclusion with respect to who downloaded and
5:31PM 10 installed the Linux partition on the HP computer?
11 A. Not at all.
12 MR. CLAYMAN: Nothing further, Your Honor.
13 Actually, Your Honor, one moment.
14 Q. (BY MR. CLAYMAN.) So two clarifications,
5:32PM 15 Mr. Fottrell. Does the TOR application sometimes store
16 browser history?
17 A. Say again.
18 Q. Does the TOR browser sometimes store browser history?
19 A. Yes, in ram, but not in a file. Not in a file in the
5:32PM 20 file system.
21 Q. You found browser history on the defendant's iPhone
22 11 related to TOR, is that right?
23 A. That's from a different application. That's from the
24 TORsec application on a mobile device, which is different
5:32PM 25 from the TOR application on Ubuntu or a PC.

5:32PM 1 Q. So we know that the defendant was using TOR on his
2 iPhone 11 based on what you found?

3 A. Yes.

4 Q. And you know he was viewing adult pornography based
5:32PM 5 on the media, or the browser history, is that right?

6 A. Yes.

7 Q. We just don't know what the defendant was using TOR
8 for on the MacBook?

9 A. Yes.

5:33PM 10 Q. Returning to the thumb drive, is it possible that
11 whoever installed this partition handed the thumb drive
12 off to someone else?

13 A. That's possible. Lots of things are possible. We
14 just don't have perfect information to answer every
5:33PM 15 possibility.

16 MR. CLAYMAN: Nothing further, Your Honor.

17 MR. GELFAND: I have no more questions, Judge.

18 THE COURT: All right. You may stand down.

19 Members of the Jury, it is very important,
5:33PM 20 especially on the weekend, for me to read this recess
21 instruction that by now is very familiar to you.

22 During this recess, and every other recess, you
23 must not discuss this case with anyone, including the
24 other jurors, members of your family, people involved in
5:33PM 25 the trial or anyone else. Do not allow anyone to discuss

5:33PM 1 the case with you or within your hearing. Only you have
2 been chosen as jurors in this case and only you have been
3 sworn to uphold the law. No one else has been chosen and
4 no one else can do this for you.

5:34PM 5 You should not even talk among yourselves about
6 the case before you have heard all the evidence and the
7 case has been submitted to you by me for deliberations
8 because it may or could affect your final decision. If
9 anyone tries to talk to you about the case, please let me
5:34PM10 know that immediately through a court security officer.

11 When I say you must not discuss the case with
12 anyone, I of course mean not orally or verbally as well as
13 not in any written or digital context or in any type of
14 medium. Do not read any newspaper or other written
5:34PM15 account, watch any televised account, or listen to any
16 radio program about this trial. Do not conduct any
17 internet research or consult with any sources of any kind
18 about this case, the people involved in this case, or its
19 general subject matter. You must keep your mind open and
5:34PM20 free of outside information. Only in this way will you be
21 able to decide the case fairly based solely on the
22 testimony, the evidence presented in this courtroom, and
23 my instructions on the law. If you were to decide this
24 case on anything else, you will have done an injustice.
5:35PM25 It would be a violation of your oath for you to base your

5:35PM 1 decision on some reporter's view or opinion, or upon
2 information that you acquire outside the courtroom. It is
3 very important that you follow these instructions.

4 You are recessed for the weekend. We will see
5:35PM 5 you Monday morning at 8:30.

6 MS. CRAIG: Can I remind you all to leave your
7 notebooks and pencils in the jury room.

8 (Jury out at 5:35 p.m.)

9 THE COURT: Everyone please remain in the gallery
5:35PM 10 until the jurors have cleared the elevator lobby and I'll
11 let you know when that is.

12 Anything else counsel would like to get on the
13 record today?

14 MR. ROBERTS: No, Your Honor.

5:36PM 15 MR. GELFAND: Not from the defense.

16 THE COURT: We're in recess until Monday morning
17 at 8:30. I would like to visit with counsel here at side
18 bar off the record before you get on your way.

19 (Proceedings recessed at 5:38 p.m.)

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C E R T I F I C A T E

I, Paula K. Barden, CCR, RPR, RMR, Federal Official Court Reporter, in and for the United States District Court for the Western District of Arkansas, do hereby certify that pursuant to Section 753, Title 28, United States Code that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 8th day of January 2022.

PAULA K. BARDEN, CCR, RPR, RMR #700
Federal Official Court Reporter
Western District of Arkansas

