

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,)
)
) PLAINTIFF,)
)
 VS.) CASE NO. CR2009-114677-001 SE
)
)
 ROBERT DEAN MORAN,)
)
) DEFENDANT.)
)

BEFORE THE HONORABLE ROBERT L. GOTTSFIELD, JUDGE

WEDNESDAY, AUGUST 24, 2011
2:13 P.M.
PHOENIX, ARIZONA

REPORTER'S EXCERPTED TRANSCRIPT OF PROCEEDINGS
TESTIMONY OF ROBERT ERDELY

APPEARANCES:

FOR THE STATE: DANIELLE HARRIS, ESQ.
DEPUTY COUNTY ATTORNEY
-AND-
LISA ANDRUS, ESQ.
DEPUTY COUNTY ATTORNEY
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FOR THE DEFENDANT: CRAIG C. GILLESPIE, ESQ.
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REPORTED BY:
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ARIZONA C.R. 50652
REGISTERED PROFESSIONAL REPORTER

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STATE'S WITNESS

ROBERT ERDELY

DIRECT EXAMINATION BY MS. HARRIS 4

P R O C E E D I N G S

AUGUST 24, 2011
PHOENIX, ARIZONA
2:13 P.M.

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(THE FOLLOWING PROCEEDINGS WERE HAD IN
OPEN COURT:)

THE COURT: ALL RIGHT. WOULD YOU -- SO WE'RE GOING
TO GO TO THE OTHER SIDE NOW AND HAVE YOU CALL YOUR WITNESS.

MR. HARRISON: THE STATE CALLS CORPORAL ERDELY TO
THE STAND.

THE COURT: ALL RIGHT.

(THE CLERK SWORE THE WITNESS.)

THEREUPON--

ROBERT ERDELY,
WAS CALLED AS A WITNESS BY THE STATE, AND AFTER HAVING BEEN
FIRST DULY SWORN BY THE CLERK, WAS EXAMINED, AND TESTIFIED AS
FOLLOWS:

THE WITNESS: I DO.

THE CLERK: OKAY. PLEASE STEP RIGHT OVER THERE.

THE WITNESS: (COMPLYING.)

MR. HARRISON: LET ME KNOW WHEN YOU GET SITUATED.

ALL SET?

THE WITNESS: I'M GOOD.

.
.
.

DIRECT EXAMINATION

1

2 BY MS. HARRIS:

3 Q WOULD YOU PLEASE STATE YOUR NAME FOR THE RECORD.

4 A ROBERT ERDELY.

5 Q AND WHERE DO YOU WORK?

6 A I'M A CORPORAL WITH THE PENNSYLVANIA STATE POLICE.

7 Q OKAY. I DON'T THINK THE MICROPHONE'S CLOSE ENOUGH

8 TO YOU.

9 THE COURT: PENNSYLVANIA STATE POLICE? OKAY.

10 THE WITNESS: YES, SIR.

11 Q BY MS. HARRIS: ALL RIGHT. AND HOW LONG HAVE YOU

12 WORKED FOR THE PENNSYLVANIA STATE POLICE?

13 A OVER 19 YEARS.

14 Q AND I'M SURE YOU HAD TO GO THROUGH CERTAIN TRAINING

15 IN YOUR POSITION WITH THE PENNSYLVANIA STATE POLICE; CORRECT?

16 A YES. INITIALLY, WHEN I BECAME A TROOPER, WE GO

17 THROUGH OUR ACADEMY. SINCE THEN, I'VE BEEN THROUGH NUMEROUS

18 TRAININGS FOR WHEN I WAS WITH THE VICE UNIT, AND SINCE 2008, I

19 JOINED THE COMPUTER CRIME UNIT. I'VE BEEN TO EXTENSIVE

20 TRAINING THROUGHOUT THAT PERIOD, AS WELL UP AND TO THE POINT

21 APPROXIMATELY FOUR YEARS AGO, WHERE I BECAME THE SUPERVISOR

22 FOR THE COMPUTER CRIME UNIT FOR THE STATE OF PENNSYLVANIA.

23 MS. HARRIS: AND IF I COULD APPROACH THE WITNESS,

24 JUDGE --

25 THE COURT: SURE.

1 MS. HARRIS: -- WITH WHAT'S MARKED AS EXHIBIT
2 NUMBER 7.

3 MR. GILLESPIE: (NODS HEAD.)

4 Q BY MS. HARRIS: DO YOU RECOGNIZE THAT?

5 A YES, IT'S MY C.V.

6 Q AND WITHOUT GOING THROUGH EVERYTHING THAT YOU'VE
7 DONE IN YOUR CAREER AS AN OFFICER, DOES THAT ACCURATELY
8 REFLECT SOME OF THE INFORMATION THAT YOU HAVE PROVIDED TO THIS
9 COURT ON YOUR -- BASED ON YOUR TRAINING AND EXPERIENCE?

10 A YES. I HAVE NUMEROUS CISCO CERTIFICATIONS WHICH
11 DEAL WITH ROUTING AND SWITCH AND HOW THE INTERNET WORKS. I
12 HAVE VARIOUS MICROSOFT CERTIFICATIONS THAT DEAL WITH OPERATING
13 SYSTEMS DATABASES AND SYSTEMS OPERATIONS. I'M A SYSTEMS
14 ENGINEER. I HAVE VARIOUS SECURITY CERTIFICATIONS; CISCO'S ONE
15 THAT'S SOUGHT AFTER. I HAVE FOUR DIFFERENT FORENSIC
16 CERTIFICATIONS WHICH ARE CURRENT, AS WELL, WHICH I'VE
17 ACHIEVED -- FIRST ONE WAS IN 2002, THE LAST ONE WAS IN 2009.

18 Q OKAY. AT THIS POINT --

19 THE COURT: AND WHAT'S THIS EXHIBIT NUMBER?

20 MS. HARRIS: NUMBER 7.

21 JUDGE, AT THIS POINT, THE STATE'S GOING TO MOVE TO
22 ADMIT EXHIBIT NUMBER 7.

23 THE COURT: DO THAT BY STIPULATION?

24 MR. GILLESPIE: YES, YOUR HONOR.

25 THE COURT: OKAY. WHAT'S THAT? 7?

1 MR. GILLESPIE: YES.

2 THE COURT: ADMIT 7.

3 Q BY MS. HARRIS: OKAY. NOT ONLY DO YOU HOLD THOSE
4 CERTIFICATIONS, DO YOU TEACH COMPUTER OR COMPUTER TRAINING?

5 A YES. I TEACH FOR THE FOX VALLEY TECHNICAL COLLEGE,
6 I TEACH INTERNET INVESTIGATIONS, PEER-TO-PEER INVESTIGATIONS,
7 BASICALLY, TEACH TECHNOLOGY TO LAW ENFORCEMENT, AND I'M A
8 MEMBER OF INTERNATIONAL -- THE INTERPOL WORKING GROUP DEALING
9 WITH PEER-TO-PEER INVESTIGATIONS AND INVESTIGATIVE TOOLS USED
10 BY LAW ENFORCEMENT, WHICH IS A WORLDWIDE GROUP OF FOLKS THAT
11 DEVELOP SOFTWARE TO GIVE LAW ENFORCEMENT THE TOOLS THEY NEED
12 TO DO THEIR JOB AROUND THE WORLD.

13 Q OKAY. SO NOT ONLY ARE YOU CERTIFIED OR TEACHING IN
14 THE STATE OF PENNSYLVANIA, YOU'VE TAUGHT THROUGHOUT THE UNITED
15 STATES; CORRECT?

16 A CORRECT, I'VE SPOKEN IN OTHER COUNTRIES.

17 Q AND I WAS JUST ABOUT TO SAY, AND THEN, THROUGHOUT
18 THE WORLD?

19 A RIGHT. I WAS IN MOSCOW IN FEBRUARY, PRESENTING TO
20 THEM.

21 Q OKAY. AND YOU SPECIFICALLY TRAIN ON PEER-TO-PEER
22 NETWORKS SOME OF -- SOME OF THE TOPICS THAT YOU COVER?

23 A THE MAJORITY OF THE TOPICS DEAL WITH INTERNET
24 INVESTIGATIONS FOCUSING PRIMARILY ON PEER-TO-PEER FILE SHARING
25 NETWORKS.

1 Q OKAY. ARE YOU FAMILIAR WITH LIMEWIRE?

2 A YES, I AM.

3 Q OKAY. WHAT -- CAN YOU EXPLAIN TO THE COURT WHAT
4 THAT IS. I KNOW WE TALKED ABOUT IT A LOT, BUT I DON'T THINK
5 THERE'S EVER BEEN A FORMAL EXPLANATION ABOUT WHAT LIMEWIRE IS.

6 A LIMEWIRE'S JUST A CLIENT THAT RUNS ON A COMPUTER
7 SYSTEM THAT ENABLES USERS TO PERFORM SEVERAL FUNCTIONS, THE
8 FIRST BEING THAT YOU'RE ABLE TO SEARCH FOR FILES. THE
9 SEARCHING OF THOSE FILES ARE ACTUALLY DONE THROUGH SOMETHING
10 CALLED AN ULTRAPEER. IT'S JUST A CLIENT ON THE NETWORK THAT
11 GETS REPROMOTED TO BEING, BASICALLY, A HELPER TO OTHER USERS
12 ON THIS NETWORK, SO WHEN I EXECUTE A KEYWORD SEARCH, THE
13 SEARCH IS ACTUALLY GOING THROUGH AN ULTRAPEER, AND THE
14 ULTRAPEER DIRECTS ME TO FOLKS THAT MAY HAVE FILES THAT MATCH
15 THE KEYWORDS THAT I USED. THAT'S THE FIRST FUNCTION; AND IF
16 I'M GOING TO JUST BREAK THIS DOWN INTO THREE BASIC FUNCTIONS,
17 THAT WOULD BE THE FIRST.

18 Q OKAY.

19 A THE SECOND WOULD BE THE OPTION TO DOWNLOAD FILES, SO
20 THEN, AT THAT POINT, I HAVE A LIST OF FILES PRESENTED TO ME.
21 I HAVE TO SELECT WHICH ONES I WANT TO DOWNLOAD. I COULD
22 COMPARE THAT TO EVEN GOOGLE.

23 YOU OPEN UP A WEB BROWSER, AND YOU TYPE IN WORDS TO
24 DESCRIBE WHAT YOU'RE LOOKING FOR. YOU'RE GIVEN A SET OF
25 RESULTS. YOU'RE NOT REALLY -- HAVEN'T GONE AND SEEN THOSE

1 RESULTS YET; HOWEVER, YOU GET A PEEK AT WHAT THEY WOULD
2 DESCRIBE IF YOU GO THERE --

3 Q OKAY.

4 A -- SO THAT'D BE A GOOD EXAMPLE BECAUSE GOOGLE IS
5 KIND OF LIKE THAT ULTRAPEER. IT'S THE INDEX SERVER THAT GETS
6 ME TO THE PLACE I WANT TO GO, SO I SELECT SOMETHING FROM THE
7 LIST, AND I CHOOSE TO DOWNLOAD IT.

8 THE NORMAL WAY YOU CAN TELL A DOWNLOAD'S HAPPENED IS
9 THAT IT WILL FIRST TRY TO GET YOU THE FILE FROM THE PERSON
10 THAT YOU FILE SHARED THAT FILE, WHETHER THAT BE A KEYWORD
11 SEARCH OR A SINGLE SOURCE DOWNLOAD -- OR I'M SORRY, A BROWSE
12 HOST, BUT THERE'S SOMETHING ON THIS NETWORK CALLED FILE
13 SWARMING.

14 Q AND CAN YOU SPELL THAT, SWARMING.

15 A SWARMING IS, LIKE, BEES THAT SWARM, JUST LIKE FILE
16 SWARMING --

17 THE COURT: OKAY. OKAY.

18 THE WITNESS: -- AND THAT'S WHERE THE COMPUTER THAT
19 I'VE LOCATED THROUGH THAT KEYWORD SEARCH WILL TELL ME ABOUT
20 OTHER FOLKS THAT MAY HAVE THAT FILE.

21 THE COURT: LIMEWIRE HAS THE FILE SWARMING OR IT'S
22 ALREADY ON YOUR COMPUTER?

23 THE WITNESS: LIMEWIRE HAS IT. SO DOES EVERY OTHER
24 GNUTELLA CLIENT THAT IS FUNCTIONALLY -- FULLY FUNCTIONAL
25 GNUTELLA CLIENT THAT IS PART OF THE PROTOCOL. THIS IS THE

1 TIME WHEN PARTIAL FILE SHARING OCCURS IS DURING FILE SWARMING.

2 Q BY MS. HARRIS: OKAY. AND BASED ON YOUR KNOWLEDGE
3 OF THE SOFTWARE AND TRAINING AND EXPERIENCE, THE ONLY TIME
4 THAT PARTIAL FILE OCCURS IS DURING FILE SWARMING?

5 THE COURT: IS DURING WHAT?

6 MS. HARRIS: DURING FILE SWARMING.

7 THE COURT: OKAY. I GOT IT.

8 THE WITNESS: AND THAT'S JUST WHERE THE NETWORK IS
9 TRYING TO FIND ME ALL THE PEOPLE THAT HAVE PARTS OF THAT FILE
10 BECAUSE, THAT WAY, I CAN JUST DOWNLOAD THE FILE MORE QUICKLY
11 BECAUSE, TYPICALLY, ON THE INTERNET, YOUR DOWNLOAD SPEED IS
12 FASTER THAN YOUR UPLOAD, SO IF YOU HAVE ONE PERSON OFFERING
13 THE FILE, IT MAY BE RESTRICTED BASED ON HOW FAR I CAN SEND
14 INFORMATION OUT TO THE INTERNET.

15 THE COURT: SO DID YOU JUST SAY FILE SWARMING IS
16 WHERE YOU CAN GET A PARTIAL FILE?

17 THE WITNESS: YES. WHEN YOU GET IT FROM MULTIPLE
18 SOURCES, THAT'S WHERE YOU'LL GET PIECES OF FILES FROM LOTS OF
19 PEOPLE, AND THEN, THE PROGRAM WILL KEEP TRACK AND PUT IT BACK
20 TOGETHER FOR YOU --

21 THE COURT: OKAY.

22 THE WITNESS: -- AND THEN, THE FINAL AREA BEYOND THE
23 DOWNLOADING IS THE FILE BROWSE. THIS IS A COMPLETELY
24 DIFFERENT FUNCTION THAN KEYWORD SEARCHES. IT HAS NOTHING TO
25 DO WITH THE KEYWORD SEARCH, EXCEPT A PERSON YOU'RE BROWSING

1 ALMOST -- USUALLY WOULD HAVE COME THROUGH A KEYWORD SEARCH, SO
2 AS TAMI LOEHRS DESCRIBED, I DO A KEYWORD SEARCH, AND I SEE A
3 FILE THAT'S OF INTEREST TO ME, I CAN CHOOSE TO LIST ALL OF THE
4 SHARED FILES IF THAT FEATURE IS ENABLED ON HIS COMPUTER, SO --
5 BUT THAT'S SEPARATE AND APART.

6 THE KEYWORD SEARCH GOT ME THERE BECAUSE IT'S TWO
7 SEPARATE FUNCTIONS. THE KEYWORD SEARCH CAME FROM ULTRAPEER.
8 HERE IS WHERE I'M DIRECTLY CONNECTING MY COMPUTER TO HIS
9 COMPUTER, AND THAT'S WHERE THE NAME PEER-TO-PEER COMES FROM.
10 THERE'S NO INTERMEDIATE AREA; AND THE BROWSE IS FROM PERSON TO
11 PERSON OR COMPUTER TO COMPUTER, AND -- AND THAT'S ONE OF THE
12 MOST IMPORTANT THINGS HERE IS THIS FILE BROWSE BECAUSE IT
13 ENABLES LAW ENFORCEMENT TO SEE FILES THAT ARE COMPLETELY
14 PRESENT ON A PERSON'S SYSTEM AND BEING SHARED.

15 Q BY MS. HARRIS: OKAY. SO IF I'M UNDERSTANDING --
16 THE COURT: SO ARE YOU SAYING FILE -- FILE BROWSE
17 WILL GIVE YOU COMPLETED FILES?

18 THE WITNESS: ABSOLUTELY, SIR.

19 THE COURT: OKAY.

20 Q BY MS. HARRIS: SO I JUST WANT TO MAKE SURE I'M
21 UNDERSTANDING BECAUSE THAT WAS A LOT TO DIGEST.

22 YOU'VE INDICATED THAT A FILE BROWSE -- IS THAT THE
23 SAME AS A BROWSE HOST?

24 THE WITNESS: THERE IS THREE DIFFERENT WAYS I MIGHT
25 REFER TO IT, AS IF I SAID FILE BROWSE, THAT MIGHT HAVE BEEN

1 POORLY WORDED. IT'S A BROWSE HOST OR A DIRECT CONNECT. IN A
2 LOT OF SOFTWARE, IT'S REFERRED TO AS A BROWSE HOST, BUT IN
3 LIMEWIRE, IT'S REFERRED TO AS A DIRECT CONNECT, BUT THEY ARE
4 THE SAME EXACT FUNCTION REGARDLESS OF WHAT YOU CALL IT.

5 Q OKAY. SO IF I'M UNDER -- UNDERSTANDING YOUR
6 TESTIMONY CORRECTLY, BASED ON YOUR TRAINING AND EXPERIENCE AND
7 YOUR WORK WITH THE SOFTWARE, A BROWSE HOST IS DIFFERENT THAN A
8 KEYWORD SEARCH?

9 A ABSOLUTELY DIFFERENT.

10 Q OKAY. AND IF YOU CAN KIND OF GO THROUGH AGAIN
11 EXACTLY HOW IT'S DIFFERENT, NOW THAT WE'RE ON THE SAME PAGE
12 ABOUT A BROWSE HOST AND A KEYWORD SEARCH.

13 A SO ONCE YOU HAVE IDENTIFIED A PERSON SHARING A FILE,
14 WHETHER THAT BE THROUGH A KEYWORD SEARCH OR EVEN IF ANOTHER
15 OFFICER CALLED ME ON THE PHONE AND SAID, YOU MIGHT WANT TO
16 LOOK AT THIS I.P. ADDRESS ON THE INTERNET. I COULD JUST
17 CHOOSE TO USE THIS OPTION, WHICH IS AVAILABLE TO ANYONE USING
18 GNUTELLA CLIENTS.

19 THE COURT: YOU TALKING ABOUT THE FILE BROWSE
20 OPTION?

21 THE WITNESS: YEAH; AND, JUDGE, I MIGHT HAVE POORLY
22 WORDED THAT. IT SHOULD HAVE BEEN BROWSE HOST.

23 THE COURT: OKAY. BROWSE HOST OPTION. OKAY.

24 THE WITNESS: YES, AND EITHER BY ENTERING THE I.P.
25 ADDRESS OR JUST SELECTING IT FROM THE PROGRAM THROUGH RIGHT

1 CLICKING ON THE FILE, THE END RESULT IS THE SAME, IS THAT MY
2 COMPUTER CONNECTS TO THEIR COMPUTER, AND IT PRESENTS TO ME A
3 LIST; AND IT'S A COMPREHENSIVE LIST OF MANY DIFFERENT PIECES
4 OF INFORMATION, BUT IT WOULD INCLUDE THE FILE NAME, THE SHA-1
5 HASH VALUE OF THE FILE, FILE SIZE, THE FILE TYPE; AND IT'S
6 SIGNIFICANT TO LAW ENFORCEMENT BECAUSE THESE ARE WHOLE FILES
7 ON THEIR COMPUTER AT THAT MOMENT IN TIME THAT ARE BEING
8 SHARED.

9 IF A PERSON WOULD CHOOSE TO UNSHARE ONE OF THOSE
10 FILES, IT IMMEDIATELY COMES OFF THE LIST. IT DOES NOT REQUIRE
11 THE PROGRAM TO BE RESTARTED. IF I WERE TO DELETE A FILE FROM
12 THAT -- FROM MY LIMEWIRE THAT WAS SHARING CERTAIN FILES -- IF
13 I DELETED THAT FILE, IT IMMEDIATELY COMES OFF THE LIST AND
14 ISN'T AVAILABLE FOR SOMEONE TO SEE, SO IT'S VERY SIGNIFICANT
15 TO LAW ENFORCEMENT.

16 I'VE TRAINED WELL OVER A THOUSAND INVESTIGATORS OVER
17 THE LAST FEW YEARS, AND I'VE TESTED IT IN EXCESS OF 500 TIMES,
18 PROBABLY CLOSER TO A THOUSAND. IF YOU CONSIDER, YOU KNOW, I'M
19 STANDING AT THE FRONT OF THE CLASS OF 30 PEOPLE, PERFORMING
20 THIS TEST IN A CLASSROOM ENVIRONMENT OVER AND OVER AGAIN, AND
21 I'VE NEVER SEEN AN INSTANCE WHERE A PARTIAL OR DELETED OR
22 UNSHARED FILE APPEARS ON THAT LIST. THAT ABSOLUTELY CANNOT
23 HAPPEN.

24 Q OKAY. SO WHEN DETECTIVE CORDER INDICATES THAT SHE
25 DID A BROWSE HOST OF THE DEFENDANT'S COMPUTER, IF I'M

1 UNDERSTANDING YOU CORRECTLY, SHE HAD OPPORTUNITY AT THAT POINT
2 IN TIME TO SEE ALL COMPLETED FILES THAT WERE AVAILABLE FOR
3 SHARING?

4 A ABSOLUTELY.

5 Q OKAY. NO PARTIAL FILES WOULD HAVE BEEN INCLUDED,
6 BASED ON YOUR TRAINING AND EXPERIENCE, IN THAT LIST?

7 A ABSOLUTELY CORRECT.

8 Q NOW, IF I'M ALSO UNDERSTANDING YOU CORRECTLY, THE
9 INFORMATION THAT DETECTIVE CORDER SEES WHEN SHE DOES THE
10 BROWSE HOST OR A FILE BROWSE IS COMPLETELY OPEN TO THE PUBLIC?

11 A ANYBODY CAN PERFORM THAT FUNCTION --

12 Q OKAY.

13 A -- USING ANY SOFTWARE THAT'S CAPABLE OF DOING A
14 BROWSE HOST.

15 Q SO IT'S AVAILABLE TO ANYONE THAT'S CAPABLE OF USING,
16 SAY, FOR INSTANCE, LIMEWIRE OR ONE OF THE OTHER GNUTELLA
17 PEER-TO-PEER SHARING NETWORKS?

18 A CORRECT. LIMEWIRE AND PHEX ARE THE TWO IN QUESTION
19 HERE. PHEX WAS HER INVESTIGATIVE TOOL, AND LIMEWIRE WAS THE
20 PROGRAM THAT THE DEFENDANT WAS USING, IF I'M TO BELIEVE THE
21 REPORTS THAT I'VE REVIEWED AND PEOPLE I'VE SPOKEN TO.

22 Q OKAY. NOW, BEFORE WE TALK ABOUT PHEX, WHEN YOU DO A
23 BROWSE HOST, IS IT POSSIBLE TO SEE ANY OTHER PART OF A
24 PERSON'S COMPUTER SEPARATE AND APART FROM THE FILES THAT THEY
25 HAVE AVAILABLE FOR SHARING?

1 A NO. IT -- IT DISPLAYS TO THE USER THE SHARED FILES.
2 THAT WOULD INCLUDE -- I COULD PUT THOSE INTO TWO CATEGORIES --
3 I'LL USE THREE CATEGORIES. IF ONE WOULD HAVE BEEN
4 AUTOMATICALLY SHARED BY THE PROGRAM -- FOR INSTANCE, SOME
5 VERSIONS OF FROSTWIRE WILL AUTOMATICALLY -- I DON'T WANT TO
6 MISSPEAK.

7 POTENTIALLY, I'VE SEEN SOME EVIDENCE THAT, MAYBE,
8 THEY'RE SHARING THE SOFTWARE ITSELF AUTOMATICALLY SO OTHER
9 PEOPLE CAN GET FROSTWIRE, FOR INSTANCE, SO SOMETHING
10 AUTOMATICALLY SHARED LIKE THAT.

11 ANY FILES I TRY TO SHARE BY DRAGGING THEM INTO MY
12 SHARED FOLDER, WHICH IS DEFINED BY THE PROGRAM IN ITS
13 SETTINGS; AND THEN, FINALLY, IT'S A DEFAULT FOR, I BELIEVE,
14 EVERY VERSION OF FOUR THAT I'VE REVIEWED AND ALL VERSIONS OF
15 FIVE OF LIMEWIRE BECAUSE THERE WAS DIFFERENT VERSION FOURS
16 THAT WERE AVAILABLE ON LIMEWIRE, AND THEN, THEY JUMPED TO A
17 WHOLE NEW MAJOR CHANGE; AND THEN, THERE WERE VERSIONS OF FIVE
18 THAT WERE AVAILABLE ON LIMEWIRE, INCLUDING FROSTWIRE.

19 THE DEFAULT IS ANYTHING THAT I DOWNLOAD FROM THE
20 INTERNET IS ALSO SHARED, AND IT KIND OF GOES INTO ITS
21 CATEGORY, BUT THE USERS OF THIS PROGRAM ARE TOLD THAT THEY'RE
22 SHARING PROGRAMS AND GIVEN OPTIONS TO NOT SHARE FILES.

23 Q OKAY.

24 THE COURT: SO WHAT DOES BROWSE HOST DO WHAT GOOGLE
25 DOESN'T? THAT'S WHAT I'M STILL NOT UNDERSTANDING.

1 THE WITNESS: JUDGE, I WAS JUST GIVING AN EXAMPLE OF
2 HOW I'M SEARCHING FOR FILES IN LIMEWIRE AND GETTING A SET OF
3 RESULTS. I JUST COMPARED IT TO GOOGLE 'CAUSE GOOGLE'S A
4 WEBSITE YOU CAN INSERT WORDS THAT YOU'RE SEARCHING FOR, AND
5 THEN, YOU GET A SET OF RESULTS. I JUST TRIED TO USE THAT
6 ANALOGY TO GIVE THE COURT SOME UNDERSTANDING.

7 THE COURT: SO BROWSE HOST DOESN'T DO ANYTHING THAT
8 GOOGLE DOES?

9 THE WITNESS: IT'S JUST TWO DIFFERENT TECHNOLOGIES,
10 BUT I WAS JUST TRYING TO EXPLAIN, YOU INSERT KEYWORDS, AND
11 YOU'RE GIVEN A SET OF RESULTS. THERE ARE TWO SEPARATE THINGS
12 THAT I TRIED TO JUST COMPARE.

13 THE COURT: OKAY.

14 Q BY MS. HARRIS: AND SO JUST SO WE'RE CLEAR, A
15 KEYWORD SEARCH IS DIFFERENT FROM A BROWSE HOST?

16 A ABSOLUTELY.

17 Q OKAY.

18 A ONE USES ULTRAPEERS, THE OTHER DOES NOT.

19 Q SO WHEN YOU DID YOUR GOOGLE ANALOGY, YOU WERE
20 REFERRING TO TYPING IN KEYWORDS, WHICH WOULD BE SIMILAR TO A
21 KEYWORD SEARCH?

22 A CORRECT.

23 Q AND NOT SIMILAR TO A BROWSE HOST?

24 A CORRECT.

25 Q OKAY. NOW, IS IT YOUR UNDERSTANDING, THEN, LIMEWIRE

1 WAS TAKEN OFFLINE?

2 A YES. I BELIEVE THE WEBSITE ACTUALLY SHUT DOWN,
3 ALTHOUGH IT WAS -- THERE WAS AN ORDER PRIOR TO THAT,
4 DECEMBER 31ST OF 2010.

5 Q OKAY. BASED ON YOUR TRAINING AND EXPERIENCE AND
6 YOUR KNOWLEDGE OF THE SOFTWARE, CAN YOU STILL FIND VERSIONS OF
7 LIMEWIRE AVAILABLE?

8 A YES.

9 Q HOW?

10 A GO TO GOOGLE AND SEARCH LIMEWIRE DOWNLOAD, AND
11 YOU'LL BE PRESENTED WITH SITES THAT HAVE VERSIONS, THE SAME
12 VERSION THAT LIMEWIRE OFFERED UP; HOWEVER, I'VE BEEN
13 COLLECTING IT FOR YEARS NOW -- COLLECTING ALL THE VERSIONS SO
14 THAT WE IN LAW ENFORCEMENT, JUST LIKE MISS LOEHR'S SAID, IN HER
15 LAB, SHE HAS ALL THE DIFFERENT VERSIONS, I'VE DOWNLOADED ALL
16 THOSE VERSIONS AS THEY BECAME AVAILABLE, SO I HAVE ALL THE
17 DIFFERENT VERSIONS THAT LIMEWIRE GAVE TO ME, SO I CAN DO
18 TESTING IN CASES BECAUSE I'VE BEEN TO TRIAL SEVERAL TIMES IN
19 CASES LIKE THIS WHERE I'M ASKED TO PRESENT AS AN EXPERT, AND
20 WHAT'S MOST RELEVANT IN A CASE IS THE SOFTWARE THAT THE PERSON
21 USED, SO I WILL TAKE THAT SOFTWARE AND PREPARE EXHIBITS FOR
22 COURT, SHOWING THE PROCESS A PERSON WOULD GO TO TO INSTALL THE
23 SOFTWARE, THE FUNCTIONALITY OF THE SOFTWARE; AND AS IS IN THIS
24 CASE, THE TESTING OF HOW THE SOFTWARE FUNCTIONS.

25 I KNOW THESE THINGS TO BE TRUE. I TEST THEM OVER

1 AND OVER AGAIN. EVERY TIME I USE A SOFTWARE, IT BECOMES A
2 TEST BECAUSE I SEARCH FOR FILES AND THEN CHOOSE TO DOWNLOAD
3 THEM. THE SOFTWARE I USE TELLS ME IF THEY HAVE THE WHOLE FILE
4 OR NOT, SO I'M ABLE TO SEE THAT AS SOON AS I ATTEMPT TO
5 DOWNLOAD A FILE.

6 I'VE SEEN HUNDREDS AND HUNDREDS AND HUNDREDS OF
7 TIMES WHERE I'VE DONE KEYWORD SEARCHES, INITIATE A DOWNLOAD
8 THROUGH FILE SWARMING. THE FIRST FILE ON MY LIST IS THE FILE
9 THAT I FOUND VIA THE KEYWORD SEARCH, AND IN PHEX, IT HAS THIS
10 LITTLE HANDY INDICATOR -- IT'S THIS LITTLE STATUS PROGRESS
11 BAR-LOOKING THING. IT WILL BE COLORED IN BLUE OR NOT.

12 IF HE HAS IT ALL THE WAY ACROSS, HE HAS THE WHOLE
13 FILE, AND REASON THAT I KNOW THAT IS THAT'S A TYPE OF
14 COMMUNICATION THAT HAPPENS ON GNUTELLA. IT IS A DIRECT
15 CONNECT FROM HIM TO ME, WHERE HE SAID, HEY, I HAVE THE WHOLE
16 FILE, AND I'VE SEEN THAT HUNDREDS AND HUNDREDS OF TIMES, SO
17 SEPARATE AND APART FROM THE TESTING I DID IN THIS CASE, MY
18 EVERYDAY USE OVER YEARS OF USING PHEX, I'VE INDIRECTLY TESTED
19 THE FACT THAT I HAVE NEVER SEEN A PARTIAL FILE APPEAR AS THAT
20 SEARCH RESULT, AND IT'S CLEARLY DISPLAYED TO US IN PHEX.

21 Q OKAY. NOW, YOU MENTIONED DIFFERENT VERSIONS OF, FOR
22 EXAMPLE, LIMEWIRE.

23 IS IT YOUR OPINION THAT DIFFERENT VERSIONS OPERATE
24 OR CAN FUNCTION DIFFERENTLY?

25 A ABSOLUTELY. THE SOURCE CODE CHANGES OVER TIME.

1 Q OKAY. NOW, YOU MENTIONED PHEX.

2 CAN YOU EXPLAIN TO THIS COURT EXACTLY WHAT PHEX IS.

3 A SO LIMEWIRE IS A GNUTELLA CLIENT THAT SHARES FILES.

4 YOU CAN SEARCH FOR FILES THROUGH IT. YOU CAN GET RESULTS.

5 YOU CAN DOWNLOAD FILES, AND THEN, YOU CAN DO THAT DIRECT

6 CONNECT OR BROWSE HOST.

7 PHEX IS JUST LIKE LIMEWIRE IN THAT IT IS PUBLICLY

8 AVAILABLE. THE SOURCE CODE IS AVAILABLE FOR ANYONE TO REVIEW,

9 JUST LIKE LIMEWIRE, AND IT HAS ALL THE SAME FUNCTIONS. I CAN

10 SEARCH FOR FILES, I CAN GET LISTS OF RESULTS. I CAN CHOOSE TO

11 DOWNLOAD THOSE FILES OR I CAN CHOOSE TO LIST ALL OF A PERSON'S

12 SHARED FILES THROUGH THAT FUNCTION REFERRED TO AS A DIRECT

13 CONNECT.

14 Q OKAY. AND BASED ON YOUR TRAINING AND EXPERIENCE, I

15 BELIEVE YOU'VE ALREADY INDICATED THAT PHEX IS AVAILABLE TO THE

16 GENERAL PUBLIC?

17 A YES, AND AS WELL AS THE SOURCE CODE, AND THAT'S THE

18 INVESTIGATIVE TOOL USED IN THIS CASE.

19 Q WHEN YOU SAY THAT WAS THE INVESTIGATIVE TOOL USED IN

20 THIS CASE, WHAT DO YOU MEAN BY THAT?

21 A WELL -- SO I AM FAMILIAR WITH THE WAY PEER SPECTRE

22 RUNS. IT JUST DOES KEYWORD SEARCHES ON GNUTELLA, AND THEN, IT

23 LOGS ALL THOSE RESULTS FOR INVESTIGATORS TO REVIEW. I COMPARE

24 THAT TO, YOU KNOW, AN ANONYMOUS TIP.

25 Q OKAY.

1 A I DON'T CARE HOW I'VE LEARNED THAT AN I.P. ADDRESS
2 MAY OR MAY NOT HAVE CHILD PORNOGRAPHY, BUT I'LL DO A MUCH
3 BETTER JOB LOOKING AT A LIST PROVIDED BY PEER SPECTRE BECAUSE
4 THEY'RE LOOKING FOR A SET OF FILES KNOWN TO LAW ENFORCEMENT,
5 SO IT -- AND IT DOES A SECOND PART.

6 ALTHOUGH I CAN SEE THE I.P. ADDRESS, WHICH THE I.P.
7 ADDRESS IS JUST THE INTERNET ADDRESS ASSIGNED TO A COMPUTER ON
8 THE INTERNET, WHICH IS UNIQUE TO IT. JUST LIKE A PHONE
9 NUMBER'S UNIQUE TO A HOME, AN I.P. ADDRESS IS UNIQUE TO A
10 COMPUTER ON THE INTERNET SOMEWHERE IN THAT POINT IN TIME, SO I
11 CAN SEE -- IN TELEPHONE AREAS, WE HAVE AREA CODES. I'M GOING
12 TO SEE 412, I'M GOING TO THINK PITTSBURGH, BUT IN I.P.
13 ADDRESSES, I'M GOING TO JUST SEE A BUNCH OF NUMBERS, BUT THERE
14 ARE WAYS TO TURN THOSE NUMBERS INTO AN APPROXIMATE LOCATION.
15 THERE'S COMPANIES THAT DO THAT FOR US, SO PEER SPECTRE DOES
16 THAT FOR US, AS WELL. IT HELPS US GEO-LOCATE SO WE, AS LAW
17 ENFORCEMENT, CAN TARGET THE I.P. ADDRESSES THAT MAY HAVE --
18 MAY OR MAY NOT HAVE CHILD PORNOGRAPHY ON THEIR SYSTEMS, AND
19 THAT'S MY STARTING POINT, SO WHETHER PEER SPECTRE PRESENTED A
20 LIST OF RESULTS TO ME -- NOW, I DON'T HAVE TO RUN PEER SPECTRE
21 TO SEE THE RESULTS. I JUST LOOK AT THE RESULTS THAT ARE
22 PRESENTED TO ME THROUGH THIS LAW-ENFORCEMENT-ONLY SYSTEM, SO
23 IT JUST FEEDS THE PROCESS UP, BUT IT DOESN'T MATTER IF
24 PEER SPECTRE'S TOLD ME ABOUT IT. IT DOESN'T MATTER IF I JUST
25 SAW THE RESULTS ON A WEB PAGE OR SOME OUTPUT OF A PROGRAM. IT

1 DOESN'T MATTER IF I GOT AN ANONYMOUS CALL ON MY PHONE; IF
2 SOMEONE RUNNING DOWN THE STREET YELLED OUT AN I.P. ADDRESS AND
3 SAID, WHY DON'T YOU GO SEE IF HE'S ON LIMEWIRE. IT DOESN'T
4 MATTER BECAUSE THE MOMENT I PLUG THAT I.P. ADDRESS INTO PHEX,
5 MY INVESTIGATIVE TOOL, AND INITIATE A BROWSE HOST, WHERE I
6 DIRECTLY CONNECT TO THE SHARING COMPUTER AND SEE THE LIST OF
7 HIS WHOLE FILES BEING SHARED WITH -- ALONG WITH THE HASH
8 VALUE, THAT'S THE INVESTIGATION. I'VE JUST TURNED SOME
9 ANONYMOUS TIP INTO SOMETHING I CAN SPEAK FIRST PERSON ABOUT IN
10 ANY REPORT I WRITE OR ANY AFFIDAVIT I HAVE TO AUTHOR.

11 THE COURT: AND, IN GOOD FAITH, YOU CAN SAY WHAT I
12 SAW IN BROWSE HOST IS NOT PARTIAL, IT'S NOT DELETED, IT'S THE
13 FULL THING?

14 THE WITNESS: JUDGE, I CAN DO A LIVE DEMONSTRATION
15 WITH THIS COURT. I CAN MEET WITH THEIR EXPERT ANY TIME OF ANY
16 DAY FOREVER AND PROVE THAT THIS IS THE CASE.

17 THE COURT: WELL, HOW COULD AN EXPERT -- AN EXPERT
18 DOING THIS FOR YEARS SAY YOU CAN GET PARTIAL FILES? WHAT --
19 WHAT COULD SHE BE TALKING ABOUT?

20 THE WITNESS: (NO RESPONSE.)

21 THE COURT: YOU HAVE NO ANSWER?

22 THE WITNESS: SHE COULD NOT HAVE DONE IT ON A TEST.
23 I DON'T KNOW WHAT SHE DID BECAUSE SHE DIDN'T PUT IT IN HER
24 REPORT.

25 THE ONE THING THAT THE OFFICER DID IN HER AFFIDAVIT

1 THAT SHE SPECIFICALLY DID 'CAUSE SHE WAS NOT RUNNING
2 PEER SPECTRE -- SHE DID ONE THING, AND THAT IS USE PHEX TO DO
3 A BROWSE HOST AND LIST THE SHARED FILES.

4 THIS IS COMMON PRACTICE IN LAW ENFORCEMENT. I TEACH
5 IT EVERY DAY. I TAUGHT IT A COUPLE WEEKS AGO IN DALLAS, AND I
6 STILL TEACH IT TO THIS DAY. THIS IS THE INVESTIGATIVE
7 PROTOCOL USED BY FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT ALL
8 AROUND THE WORLD.

9 THE COURT: OKAY.

10 Q BY MS. HARRIS: SO IF I'M UNDERSTANDING YOU
11 CORRECTLY, THE INVESTIGATION DONE BY DETECTIVE CORDER WHERE
12 SHE USED PEER SPECTRE, YOU'RE ANALOGIZING THAT TO, SAY, AN
13 ANONYMOUS TIP?

14 A THAT'S CORRECT.

15 Q OKAY. SO IF THERE WAS ANY OTHER WAY, SEPARATE AND
16 APART FROM PEER SPECTRE, THAT DETECTIVE CORDER COULD HAVE
17 GOTTEN THIS INFORMATION ABOUT A PARTICULAR I.P. ADDRESS, SHE
18 COULD HAVE STILL DONE THE EXACT SAME CONNECTION THROUGH PHEX
19 AND LOCATED THE FILES THAT ARE AVAILABLE FOR SHARING ON THE
20 DEFENDANT'S COMPUTER?

21 A THAT'S CORRECT. I'VE ACTUALLY SEEN PEOPLE ONLINE AS
22 I'M SEARCHING GNUTELLA AND CALLED THEM ON THE PHONE AND SAID,
23 HEY, YOU GOT A BAD GUY ONLINE IN, LET'S SAY, PITTSBURGH,
24 PENNSYLVANIA AS THAT EXAMPLE. ALL THE INVESTIGATOR HAS TO DO
25 IS FIRE UP PHEX AND INPUT THE I.P. ADDRESS THAT I TELL HIM

1 OVER THE PHONE AND THEN LIST ALL OF HIS WHOLE SHARED FILES.
2 THAT'S THE INVESTIGATION.

3 Q OKAY. SO IF I'M UNDERSTANDING YOU CORRECTLY,
4 INVESTIGATION STARTS THE MOMENT YOU PUT THE I.P. ADDRESS INTO
5 PHEX AND THEN, YOU DIRECTLY CONNECT?

6 A THAT'S CORRECT.

7 Q OKAY. 'CAUSE AT THAT POINT, YOU CAN SEE ALL
8 COMPLETED FILES AVAILABLE FOR SHARING?

9 A THAT'S CORRECT.

10 Q AND BASED ON YOUR UNDERSTANDING OF THE FACTS IN THIS
11 CASE OR THE TESTIMONY GIVEN BY DETECTIVE CORDER IN HER
12 INTERVIEW, THAT IS WHAT SHE DID IN THIS PARTICULAR CASE?

13 A ABSOLUTELY.

14 Q OKAY. AND NOT ONLY IS THAT WHAT SHE DID IN THIS
15 PARTICULAR CASE, YOU'VE ACTUALLY HAD AN OPPORTUNITY TO TRAIN
16 OFFICERS, INCLUDING DETECTIVE CORDER, HAVE YOU NOT?

17 A THAT'S CORRECT.

18 Q OKAY. AND LET'S TALK ABOUT THAT TRAINING, AND THEN,
19 WE'LL TALK ABOUT YOUR TESTING.

20 WHEN YOU TRAIN AN OFFICER, AND HOW -- YOU'VE BEEN
21 TRAINING FOR OVER TEN YEARS; IS THAT FAIR TO SAY -- OR ABOUT
22 TEN YEARS?

23 A OFFICIALLY TEACHING FOR FOX VALLEY TECHNICAL COLLEGE
24 MAYBE TWO AND A HALF YEARS.

25 Q OKAY.

1 A HOWEVER, IN MY POSITION IN THE COMPUTER CRIME UNIT,
2 I HAVE INSTRUCTED OFFICERS THROUGHOUT MY WHOLE COMPUTER CRIME
3 CAREER, SO I COULD EASILY SAY TEN YEARS WOULD BE A GOOD
4 ESTIMATE.

5 Q OKAY. AND YOU'RE FAMILIAR WITH, OF COURSE,
6 LIMEWIRE, PHEX, PEER SPECTRE, BUT YOU'RE ALSO FAMILIAR WITH
7 WYOMING TOOLKIT?

8 A YES.

9 Q AND I'M TRYING TO MAKE SURE I COVER EVERYTHING.
10 CASE MANAGER?

11 A NO, I'VE NEVER USED CASE MANAGER.

12 Q OKAY. SO WE WON'T ASK YOU QUESTIONS ABOUT THE CASE
13 MANAGER, AT THIS POINT, BUT BASED ON EVERYTHING THAT YOU HAVE
14 READ, BASED ON YOUR TRAINING AND EXPERIENCE, AND BASED ON THE
15 TEACHING THAT YOU PROVIDE TO LAW ENFORCEMENT OFFICERS, IS
16 THERE A REQUIREMENT FOR A LAW ENFORCEMENT OFFICERS TO DO
17 SINGLE SOURCE DOWNLOADS?

18 A NO, THERE IS NO REQUIREMENT, AND THE INSTRUCTION WE
19 GIVE TO THE FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT IS
20 EXACTLY -- EXACTLY THE OPPOSITE OF THAT.

21 IT'S PREFERRED -- IF THEY WANT A DISSEMINATION COUNT
22 IN ALMOST EVERY JURISDICTION THAT I'VE BEEN IN AND WORKED IN,
23 THERE USUALLY IS A SEPARATE COUNT THAT CAN BE APPLIED FOR
24 DISSEMINATION OF A FILE VERSUS THE SIMPLE POSSESSION, BUT WHEN
25 THAT IS NOT POSSIBLE -- AND IT IS NOT ALWAYS POSSIBLE -- THEN

1 THE SECOND BEST THING IS THE BROWSE HOST.

2 Q WHICH IS WHAT DETECTIVE CORDER DID IN THIS CASE?

3 A YES, AND THAT'S THE WAY I TAUGHT IT, YOU KNOW, JUST
4 A COUPLE WEEKS AGO, AND -- AND SHE DID EVERYTHING, YOU KNOW,
5 AS WE INSTRUCTED IT TO HAPPEN. AS A MATTER OF FACT, EVERY
6 STUDENT THAT I TEACH -- AND IT GOES TO MY 500-PLUS TESTS --
7 THE LAST STEP OF THE CLASS IS A VALIDATION OF THE THINGS I
8 SAY, SO NOT ONLY DO I KNOW WHAT A BROWSE HOST REPRESENTS,
9 THERE'S OVER A THOUSAND OFFICERS THAT I'VE TRAINED THAT KNOWS
10 THAT SAME THING FIRSTHAND.

11 THE COURT: SO YOU'RE SAYING PEER SPECTRE IS KIND OF
12 ANALOGOUS TO THE ANONYMOUS TIP, BUT THEN, YOU GO TO PHEX AND
13 BROWSE HOST, AND THAT'S THE INVESTIGATION?

14 THE WITNESS: YES, SIR, THAT'S CORRECT.

15 THE COURT: OKAY.

16 Q BY MS. HARRIS: AND IF I'M UNDERSTANDING YOU
17 CORRECTLY -- I KNOW YOU SAY THERE IS NO REQUIREMENT.

18 IS THERE ANYTHING IN ANY TRAINING MATERIALS THAT
19 YOU'VE REVIEWED OVER THE YEARS OR THAT YOU'VE TAUGHT ON THAT
20 REQUIRES AN OFFICER TO DO A SINGLE SOURCE DOWNLOAD?

21 A NOT REGARDING THE TRAINING I -- I GIVE, NO. I
22 HAVEN'T BEEN TO ANY TRAINING WHERE THEY TAUGHT THAT YOU HAD TO
23 DO A SINGLE SOURCE DOWNLOAD. I KNOW THAT, YOU KNOW, IT MAY BE
24 A POLICY OF A DEPARTMENT SOMEWHERE, THAT THAT'S THE CASE, BUT
25 IT'S CERTAINLY NOT A REQUIREMENT IN ANY TRAINING I'VE BEEN

1 INVOLVED IN.

2 THE COURT: AND THAT'S NOT BUILT INTO PHEX OR INTO
3 BROWSE HOST; A SINGLE -- SINGLE SOURCE DOWNLOAD NOT BUILT INTO
4 ANY OF THAT?

5 THE WITNESS: IT WAS NOT BUILT INTO PHEX. PHEX IS
6 WHAT WE USE AND WHAT DETECTIVE CORDER USED WHEN WE FIRST
7 STARTED DOING THESE INVESTIGATIONS BECAUSE IT SHOWED US THE
8 HASH VALUE AND THE I.P. ADDRESS. IT WAS A VERY GOOD TOOL FOR
9 LAW ENFORCEMENT 'CAUSE WE COULD SEE THE I.P. ADDRESS AND
10 DETERMINE WHERE IT'S AT IN THE WORLD.

11 OVER TIME, THERE WERE TOOLS DEVELOPED THAT BASICALLY
12 MADE IT HARDER FOR LAW ENFORCEMENT BECAUSE INSTEAD OF GETTING
13 THE FILE VERY QUICKLY FROM MULTIPLE COMPUTERS, WE CHOOSE TO
14 GET IT FROM A SINGLE COMPUTER, AND THAT'S WHAT TAMI LOEHRS WAS
15 REFERRING TO AS A SINGLE SOURCE DOWNLOAD. IT IS A FUNCTION OF
16 WHAT WE DO TODAY, BUT AT THE TIME THAT DETECTIVE CORDER DID
17 THIS INVESTIGATION, SHE DID IT EXACTLY AS SHE WAS INSTRUCTED
18 TO, AND I FIND NO FAULT IN THE PROCESS THAT SHE FOLLOWED
19 BECAUSE SHE DID NOT HAVE A PROGRAM CAPABLE OF DOING THE SINGLE
20 SOURCE DOWNLOAD.

21 THE COURT: SO TODAY, WHEN YOU TEACH IT, YOU SAY
22 IT'S BUILT INTO THE SOFTWARE TODAY?

23 THE WITNESS: YES. AN OFFICER HAS AN OPTION TO DO A
24 SINGLE SOURCE DOWNLOAD, WE ENCOURAGE IT. IT'S NOT A
25 REQUIREMENT, AND WE TEACH THEM HOW TO HANDLE THE INVESTIGATION

1 WHEN THEY CAN'T GET A SINGLE SOURCE DOWNLOAD, AND THAT IS TO
2 DO A BROWSE HOST, WHICH DATES WAY BACK WHEN TO THE TRAINING
3 THAT TAMI -- SORRY -- DETECTIVE CORDER RECEIVED, AND SHE
4 FOLLOWED THE PROTOCOL THAT WAS IN PLACE AT THAT TIME.

5 THE COURT: OKAY.

6 Q BY MS. HARRIS: AND I KNOW YOU MENTIONED IT IS NOW,
7 BUT IT IS -- NOW SINGLE SOURCE DOWNLOAD IS INCLUDED IN THE
8 PROGRAM THAT YOU RUN.

9 WHEN EXACTLY DID SINGLE SOURCE DOWNLOAD BECOME AN
10 OPTION IN THE PROGRAM?

11 A AND I'M GOING TO HAVE TO APPROXIMATE. FOR THE TOOL
12 THAT I'M INVOLVED WITH THE DEVELOPMENT OF, I WOULD SAY
13 SOMETIME IN 2009, MAYBE JUNE OF 2009.

14 THE COURT: AND WHAT TOOL ARE YOU TALKING ABOUT?
15 PHEX OR WHAT ARE YOU TALKING ABOUT?

16 THE WITNESS: IT'S A MODIFIED VERSION OF PHEX --

17 THE COURT: OKAY.

18 THE WITNESS: -- WHERE WE'VE ADDED THE OPTION TO DO
19 A SINGLE SOURCE DOWNLOAD --

20 THE COURT: OH, OKAY.

21 THE WITNESS: -- AND THEN, THERE'S A PROGRAM --

22 THE COURT: SO IT'S AN OPTION, IT'S NOT JUST
23 AUTOMATIC?

24 THE WITNESS: NO, BECAUSE WE STILL NEED TO BE ABLE
25 TO DO THE NORMAL DOWNLOAD THAT DETECTIVE CORDER DID. WE STILL

1 USE THE SAME PRACTICE THAT SHE USED BACK IN 2008. WE STILL
2 USE THAT SAME PRACTICE TODAY BECAUSE WE DON'T RESTRICT THE
3 OFFICER TO ONLY DO A SINGLE SOURCE DOWNLOAD. THAT'S TO LET
4 THE OFFICER DO AN INVESTIGATION INTO A DISSEMINATION.

5 WE GIVE THEM THE OPTION TO SEE THAT IT COMES FROM
6 LOTS OF PEOPLE. WE DON'T CARE WHERE IT COMES FROM, WE JUST
7 CARE THAT WE GET THE EXACT SAME FILE THAT WAS PRESENTED TO US
8 IN THAT BROWSE HOST LIST BECAUSE THROUGH ALL THE TESTING I'VE
9 DONE, I KNOW WITH CERTAINTY EVERY FILE IN THAT LIST ARE WHOLE
10 FILES SHARED. IF I KNOW THE VALUE OF THE BROWSE HOST, I DON'T
11 CARE IF YOU DOWNLOAD IT FROM GNUTELLA THE NORMAL WAY; I DON'T
12 CARE IF I CALL YOU UP ON THE PHONE, AND I GIVE IT TO YOU OR
13 MAYBE I'VE INVESTIGATED SOMEONE IN THE PAST WHERE WE HAVE THE
14 VALUE -- WE LOG THE HASH VALUES OF ALL THESE FILES THAT I
15 USE -- SOMEHOW, SOME WAY, I CAN GET THAT SAME FILE TO DESCRIBE
16 IT, THAT'S PROBABLE CAUSE ALL DAY LONG.

17 THE COURT: AND YOU KNOW IT'S RELIABLE TO YOU THAT
18 USER HAS THAT FULL FILE ON HIS MACHINE OR IS THAT TOO MUCH OF
19 A JUMP?

20 THE WITNESS: NO. I'VE BEEN INVESTIGATING THESE
21 CASES FOR YEARS. I'VE BEEN INVOLVED IN THE -- HUNDREDS OF
22 INVESTIGATIONS USING THIS SAME PROCESS. I HAVE NEVER --
23 AND -- AND IF I DO THE CASE, JUDGE, I'M THE GUY DOING THE
24 INVESTIGATION, WHERE I'VE BROWSED HIS FILES, I'M THE GUY
25 WRITING THE AFFIDAVIT TO GET THE SUBSCRIBER FROM THE INTERNET

1 COMPANY, I'M THE GUY THAT DOES THE SEARCH WARRANT, AND I'M THE
2 GUY THAT DOES THE COMPUTER FORENSICS. I GET TO SEE THE CASE
3 BEGINNING TO END, SO -- I KNOW MISS LOEHRS HAD DONE THE
4 FORENSICS ON CERTAIN COMPUTERS, BUT, REALLY, SHE'S MISSING A
5 BIG PART OF THE PICTURE I'M ABLE TO TAKE FROM BEGINNING TO
6 END, AND I KNOW OF NO INSTANCE WHERE I HAVEN'T BEEN ABLE TO
7 FIND THE FILES ON THE COMPUTER AT THE END OF THE -- AT THE END
8 OF THE INVESTIGATION.

9 I JUST WANT TO QUALIFY THAT ANSWER TO SAY THAT THE
10 ONLY SCENARIO IS IS WHEN I DON'T FIND THE COMPUTER THAT WAS IN
11 THE HOUSE THAT DAY, AND WE CAN TELL IN THE FORENSIC WORLD,
12 THERE ARE INDICATORS OR THINGS THAT I CAN LOOK FOR THAT WILL
13 TELL ME WITH ALL CERTAINTY THAT'S THE RIGHT COMPUTER.

14 THE COURT: AND BROWSE HOST, IS THAT THE ONE THAT
15 HAS THE LINE THAT GOES ACROSS AND TELLS YOU IT'S COMPLETE OR I
16 GOT THAT WRONG?

17 THE WITNESS: NO.

18 THE COURT: WHAT DOES THAT?

19 THE WITNESS: THAT'S DURING KEYWORD SEARCHES.

20 THE COURT: OH.

21 THE WITNESS: IF I CHOSE TO DOWNLOAD THE FILE IN A
22 NORMAL WAY, AS SOON AS I DOUBLE CLICK THAT FILE AND SAY I WANT
23 TO DOWNLOAD THE FILE, THE NEXT SCREEN I GO TO IS A DOWNLOAD
24 SCREEN, WHERE IT LISTS THE I.P. ADDRESS THAT HAS THE FILE, THE
25 FILE I FOUND DURING THE KEYWORD SEARCH, BUT THERE'S A LITTLE

1 METER THAT TELLS ME WHAT PERCENT OF THE FILE HE POSSESSES, AND
2 THAT'S WHERE I WAS -- I'M TALKING ABOUT THAT WHOLE OTHER
3 ELEMENT HERE, THAT KEYWORD SEARCH.

4 THAT'S WHERE I WAS ABLE TO SIT HERE IN THIS COURT
5 AND SAY I'VE -- I'VE LOOKED AT HUNDREDS OF PEOPLE THAT I'VE
6 FOUND VIA A KEYWORD SEARCH, AND I'VE NEVER FOUND AN INSTANCE
7 WHERE HE ONLY HAD PART OF THE FILE, LIKE MISS LOEHRS TESTED.

8 THE COURT: OKAY.

9 (THERE WAS A BREAK IN THE PROCEEDINGS AT
10 2:47 P.M. UNTIL 3:03 P.M.)

11 THE COURT: ALL RIGHT. BACK ON THE RECORD, ALL
12 PARTIES AND COUNSEL PRESENT.

13 TURN IT BACK OVER TO MISS HARRIS.

14 Q BY MS. HARRIS: NOW, BEFORE WE TOOK A BREAK,
15 CORPORAL ERDELY, YOU HAD INDICATED THAT, BASED ON YOUR
16 TRAINING AND EXPERIENCE, YOU HAVE NOT EVER COME ACROSS A TIME
17 WHERE A PARTIAL FILE WOULD SHOW AS AVAILABLE FOR SHARING,
18 SIMILAR TO THAT OF A COMPLETED FILE; RIGHT?

19 AM I MISPHRASING THAT?

20 A NO, IN BOTH THE SEARCH -- KEYWORD SEARCH AND THE
21 BROWSE HOST; HOWEVER, THE BULK OF MY TESTING WAS WITH THE
22 BROWSE HOST BECAUSE THAT WAS THE STARTING POINT FOR OUR
23 INVESTIGATIONS.

24 Q AND I THINK WE ALREADY CLARIFIED THAT'S WHAT
25 DETECTIVE CORDER DID IN THIS CASE?

1 A YES, MA'AM.

2 Q NOW, I KNOW YOU MADE REFERENCE TO WHEN YOU GET A --
3 SAY, A PARTICULAR FILE.

4 YOU BROWSE A HOST, YOU FIND A FILE, AND YOU GET --
5 DOWNLOAD IT, AND YOU GET BITS AND PIECES FROM OTHER PLACES?

6 A YES.

7 Q ARE YOU FOLLOWING ME; AND IF I'M UNDERSTANDING YOUR
8 TESTIMONY CORRECTLY, IT DOESN'T MATTER WHERE THE BITS AND
9 PIECES COME FROM, AT THAT POINT, YOU'RE JUST TRYING TO COMPARE
10 IT TO THE FILE YOU SAW WHEN YOU BROWSED THE PERSON YOU
11 CONNECTED TO?

12 A THAT'S CORRECT; AND I WENT ONTO SAY IT DOESN'T
13 MATTER IF I ALREADY HAVE IT. IF I CALL ANOTHER INVESTIGATOR
14 THAT I KNOW HAS IT OR IF WE GET IT FROM THE PLACE THAT,
15 NORMALLY, IT'S FOUND, WHICH HAPPENS TO BE GNUTELLA, MY GOAL IS
16 JUST TO BE ABLE TO COMPARE THE HASH VALUE, THE FILE SIGNATURE
17 THAT TELLS ME WITH CERTAINTY THIS IS THE SAME FILE HE HAD. I
18 WANT TO BE ABLE TO DESCRIBE IT IN AN AFFIDAVIT BECAUSE I KNOW
19 THE MOMENT IN TIME I BROWSED HIM, HE POSSESSED THAT FILE AT
20 THAT MOMENT IN TIME.

21 THE COURT: AND IT WAS COMPLETE?

22 THE WITNESS: AND THAT IT WAS COMPLETE, JUDGE.

23 Q BY MS. HARRIS: NOW, WHEN YOU SAY HASH VALUE, IS
24 THAT THE SAME AS A SHA-1 VALUE?

25 A YES. THERE'S DIFFERENT TYPES OF FILE HASHING. THE

1 TWO BIGGEST OR MOST POPULAR HASH VALUES YOU'LL BE HEARING
2 ABOUT AND TALKING ABOUT IN COURT WOULD BE AN MD5 HASH OR SHA-1
3 HASH. YOU HEAR IT ALL THE TIME AS IT RELATES TO COMPUTER
4 FORENSICS. SHA-1 HASHING IS EVEN MORE UNIQUE AND MORE
5 SPECIFIC TO A FILE, SO JUST LUCKY FOR LAW ENFORCEMENT THAT THE
6 PEOPLE WHO DEVELOPED GNUTELLA, WHICH IS THE FILE SHARING
7 NETWORK THAT LIMEWIRE WORKS ON, THEY HAPPEN TO USE SOME OF THE
8 STRONGER FILE IDENTIFICATION OR HASHING ALGORITHMS OUT THERE,
9 SO ME, AS A LAW ENFORCEMENT OFFICER, I CAN LOOK AT THOSE
10 RESULTS, RELY UPON THOSE RESULTS, AND DO THE INVESTIGATIONS WE
11 DO.

12 I'M NOT SURE WHO TO THANK, BUT THAT WAS GREAT FOR
13 LAW ENFORCEMENT.

14 Q SO A SHA-1 WAS EVEN MORE RELIABLE IN YOUR TRAINING
15 AND EXPERIENCE?

16 A RIGHT. MD5 IS A HUNDRED AND TWENTY-EIGHT BITS LONG,
17 AND SHA-1 IS A HUNDRED AND SIXTY; JUST -- IT'S A BIGGER SET OF
18 NUMBERS AND LETTERS REPRESENTING THE SIGNATURE OF A FILE.

19 Q SAY, FOR EXAMPLE, I CHANGE ANY PORTION OF THAT FILE,
20 BE IT I ALTER THE IMAGE OR ANYTHING LIKE THAT.

21 WOULD THE SHA-1 VALUE OR THE HASH VALUE OF THAT
22 PARTICULAR FILE CHANGE?

23 A YES, AND IT DOESN'T JUST CHANGE A LITTLE BIT. THIS
24 IS A -- A FIXED LENGTH IDENTIFIER FOR A FILE OF ANY SIZE, SO
25 IF I HAD A TEXT DOCUMENT THAT WAS A HUNDRED MILLION CHARACTERS

1 IN LENGTH, AND I CHANGED ONE PERIOD TO A COMMA OUT OF ALL
2 HUNDRED MILLION CHARACTERS IN THIS FILE, THE HASH VALUE IS
3 SIGNIFICANTLY DIFFERENT. INSTEAD OF BEING A12B4F, IT'S NOW
4 SOMETHING COMPLETELY DIFFERENT. IT DOESN'T EVEN LOOK CLOSE TO
5 WHAT IT USED TO -- WHAT THE VALUE USED TO BE, SO IT'S PRETTY
6 HARD -- IT'S PRETTY EASY TO RECOGNIZE DIFFERENCES AND PRETTY
7 HARD TO GET CONFUSED BECAUSE A LITTLE CHANGE IS SIGNIFICANTLY
8 GOING TO ALTER THE HASH VALUE OF THAT FILE.

9 Q OKAY. SO I JUST WANT TO MAKE SURE I'M UNDERSTANDING
10 YOUR TESTIMONY CORRECTLY HERE.

11 WHEN -- IN -- SAY, FOR EXAMPLE, IN THIS CASE WHEN
12 DETECTIVE CORDER DID A BROWSE HOST, AND SHE DIRECTLY CONNECTED
13 TO THE DEFENDANT, MR. MORAN -- OR HIS COMPUTER --

14 A YES.

15 Q -- I GUESS, IS THE BEST WAY TO PHRASE THAT; SHE
16 DIRECTLY CONNECTED TO MR. MORAN'S COMPUTER?

17 A CORRECT.

18 Q OKAY. AND WHEN SHE DIRECTLY CONNECTED TO HIS
19 COMPUTER, AT THAT POINT, SHE THEN DID A BROWSE HOST?

20 A CORRECT.

21 Q WELL --

22 A THE BROWSE HOST DID DIRECTLY CONNECT TO THE COMPUTER
23 AT MR. MORAN'S HOUSE.

24 Q AND AT THAT POINT, THEN, SHE LOOKED AT THE FILES
25 THAT HE HAD AVAILABLE FOR SHARING IS THE QUESTION I MEANT TO

1 ASK.

2 A YES, AND IN THAT LIST IS NOT JUST THE FILE NAME. I
3 THINK, A COUPLE TIMES, THE COURT WAS TOLD JUST THE FILE NAME'S
4 THERE, BUT IT'S THE FILE NAME AND HASH VALUE.

5 Q OKAY. SO WHEN YOU BROWSE A HOST, YOU SEE THE FILE
6 NAME, AND YOU SEE THE HASH VALUE OR THE SHA-1 VALUE?

7 A CORRECT. WE CAN USE, IN THIS CASE, THOSE TWO TERMS.
8 THEY'RE SYNONYMOUS.

9 Q OKAY. AND AT THAT MOMENT, AN INVESTIGATOR IN
10 GENERAL, AND THEN, DETECTIVE CORDER IN PARTICULAR, IN THIS
11 CASE, WOULD THEN DOWNLOAD OR TRY TO SEARCH FOR THE SAME SHA-1
12 VALUE OF -- TO COMPARE IMAGES.

13 IS THAT FAIR TO SAY?

14 A CORRECT. THEY GET IT SOMEHOW, SOME WAY, AND VERIFY
15 IT'S THE SAME HASH VALUE.

16 Q OKAY. AND ONCE YOU DO THAT, YOU THEN ORDINARILY,
17 TYPICAL, LAW ENFORCEMENT WOULD HAVE PROBABLE CAUSE?

18 A CORRECT.

19 Q OKAY. AND AT THAT POINT, GENERATE A SEARCH WARRANT?

20 A CORRECT. I'VE DONE MANY, MANY SEARCH WARRANTS
21 IN-STATE, AND I'VE AUTHORED FEDERAL SEARCH WARRANTS IN
22 DIFFERENT DISTRICTS IN PENNSYLVANIA AND BEEN -- EVEN PARTS OF
23 ONES IN OTHER DISTRICTS, AS WELL, AND IT'S A STANDARD PRACTICE
24 AND USED -- USED TO THIS DAY.

25 Q AND THAT DOESN'T MATTER WHETHER YOU HAVE ONE IMAGE,

1 TEN IMAGES OR 47 IMAGES?

2 A RIGHT. A CRIME'S COMMITTED, AND THIS IS A PLACE WE
3 NEED TO SEARCH.

4 Q AND YOU'VE HAD AN OPPORTUNITY TO LOOK AT THE SEARCH
5 WARRANT AFFIDAVIT IN THIS CASE; CORRECT?

6 A YES.

7 Q IS THERE ANYTHING, BASED ON YOUR TRAINING AND
8 EXPERIENCE, BE IT IN LAW ENFORCEMENT OR YOUR TRAINING AND
9 EXPERIENCE WITH COMPUTERS AND HOW THE SOFTWARE WORKS, THAT YOU
10 FOUND MISLEADING ABOUT THE AFFIDAVIT SUBMITTED BY
11 DETECTIVE CORDER?

12 A NO, ABSOLUTELY NOT. WHEN I WRITE AN AFFIDAVIT FOR A
13 SEARCH WARRANT, I'M NOT REQUIRED TO PUT IN ALL FACTS. I PUT
14 IN ENOUGH FACTS TO ESTABLISH PROBABLE CAUSE.

15 IF THERE WAS A REASON WHY I THOUGHT THAT THE
16 EVIDENCE SOUGHT AFTER WASN'T IN THE LOCATION TO BE SEARCHED, I
17 WOULDN'T BE APPLYING FOR IT, SO -- MATTER OF FACT, IN MY
18 WARRANTS, OFTENTIMES, MOSTLY MY FEDERAL WARRANTS, I'LL
19 ACTUALLY SAY THIS ISN'T EVERY FACT KNOWN TO ME IN THIS CASE,
20 BUT I'M SIMPLY LAYING OUT THE FACTS NECESSARY TO ESTABLISH
21 PROBABLE CAUSE.

22 Q OKAY. NOW, YOU'VE HAD AN OPPORTUNITY TO -- NOT
23 HAVING REVIEWED THE SEARCH WARRANT AFFIDAVIT, YOU'VE HAD AN
24 OPPORTUNITY TO REVIEW THE TWO AFFIDAVITS BY TAMI LOEHR'S, THE
25 DEFENSE EXPERT?

1 A YES, MA'AM.

2 Q OKAY. AND I WANT TO START WITH -- JUST MAKING SURE
3 I HAVE IT RIGHT. HER FIRST --

4 THE COURT: IT'S EXHIBIT 2?

5 MS. HARRIS: YEAH, HER FIRST AFFIDAVIT DATED
6 JANUARY 10TH OF 2010.

7 IF I COULD APPROACH THE WITNESS, JUDGE.

8 THE COURT: SURE.

9 THE WITNESS: YES, MA'AM.

10 Q BY MS. HARRIS: OKAY. AND YOU RECALL LOOKING OVER
11 THAT AFFIDAVIT; CORRECT?

12 A YES.

13 Q OKAY. AND I'M -- YOU WERE PRESENT WHEN I ASKED
14 MISS LOEHRS ABOUT THE VICTOR SMITH ARTICLE?

15 A CORRECT.

16 Q OKAY. NOW, BASED ON YOUR UNDERSTANDING OF THE
17 VICTOR SMITH, ARTICLE WHEN YOU DOWNLOAD A FILE, BE IT
18 CANCELLED OR PARTIAL OR CORRUPTED, DOES THAT DOWNLOAD GO INTO
19 THE DOWNLOAD.DAT?

20 A IT GOES DOWN INTO THE DOWNLOAD.DAT AND DOES NOT GO
21 INTO THE FILEURNS.CACHE.

22 Q SO WHEN YOU REVIEWED MISS LOEHRS -- AND I'M GOING TO
23 START WITH THE FIRST ONE, DATED JANUARY 10TH OF 2010, DID YOU
24 MAKE ANY CONCLUSIONS OR COME TO ANY OPINIONS ABOUT THE
25 AFFIDAVIT IN REFERENCE TO WHERE FILES GO THAT ARE SHARED OR

1 PARTIAL OR DELETED OR CORRUPTED OR INCOMPLETE?

2 A SO AS LONG AS WE'RE TALKING ABOUT INCOMPLETE
3 FILES --

4 Q YES.

5 A -- THEN IT GOES INTO THE DOWNLOADS.DAT. ONCE THAT
6 FILE COMPLETES, IT GOES INTO THE FILEURNS.CACHE.

7 Q OKAY. SO IN OTHER WORDS -- IF I'M UNDERSTANDING
8 YOUR TESTIMONY CORRECTLY, IN ORDER FOR THE FILE TO SHOW IN THE
9 FILEURNS.CACHE, IT WOULD HAVE TO BE A COMPLETED FILE?

10 A YES, AND THAT'S WHY I LOOK FOR ENTRIES IN
11 FILEURNS.CACHE BECAUSE YOU CAN RECOVER THAT OLD INFORMATION
12 FORENSICALLY, A LOT OF TIMES, AND IT'S SIGNIFICANT BECAUSE OF
13 THE FINDINGS OF VICTOR SMITH AND MY OWN PERSONAL TESTING,
14 WHICH I'VE REDONE AND, YOU KNOW, PRESENTED TO YOU.

15 Q OKAY. AND LET'S TALK ABOUT THAT. I'M GOING TO SHOW
16 YOU WHAT HAS BEEN MARKED AS EXHIBIT NUMBER 1. THAT IS
17 MISS LOEHRS AFFIDAVIT DATED MAY 12TH OF 2011.

18 DID YOU HAVE AN OPPORTUNITY TO REVIEW THAT
19 PREVIOUSLY?

20 A YES.

21 Q OKAY. WHAT CONCLUSIONS OR OPINIONS DID YOU COME TO
22 IN REGARDS TO THE ASSERTIONS MADE IN THAT AFFIDAVIT IN REGARDS
23 TO THE TESTING IN LIMEWIRE?

24 A HER TESTING IN LIMEWIRE WAS TROUBLESOME TO ME
25 BECAUSE THE FIRST THING I NOTICED, WELL, WAS -- I CAN'T SAY

1 FOR CERTAIN IT WAS THE ABSOLUTE FIRST THING I NOTICED, BUT I
2 NOTICED THAT SHE HAD ONE COMPLETELY DOWNLOADED FILE THAT WAS
3 BEING SHARED IN AN ENVIRONMENT WHERE SHE'S SUPPOSED TO BE
4 TESTING AND MAKING AN OPINION AS AN EXPERT, AND THAT WAS
5 TROUBLESOME TO ME BECAUSE THE DOCUMENTATION IN THE AFFIDAVIT
6 SAYS THAT SHE HAD A FILE THAT WAS ONLY DOWNLOADED TEN PERCENT,
7 THE AC/DC FILE.

8 WELL, I KNOW, AND THE EXHIBITS THAT I HAVE HERE IN
9 MY TESTING KNOW -- SHOWS ME, IN MY DAILY USE OF THE PROGRAM,
10 THAT LITTLE NUMBER IN THE BOTTOM, THAT ONE THAT WAS CIRCLED
11 AT --

12 Q IF I COULD -- IF I COULD APPROACH -- SORRY -- WE CAN
13 PUT IT UP, AND THEN, WE CAN SHOW THE COURT.

14 A OH, THAT'S AN INDICATOR OF A WHOLE FILE THAT'S BEEN
15 DOWNLOADED AND NOW BEING SHARED. IT DOES NOT GET IMPLEMENTED
16 WHEN A PARTIAL FILE IS PRESENT, SO IF I'M GOING TO DO A TEST
17 AND HAVE IT BE A VALID TEST, I CERTAINLY WOULDN'T BE SHARING A
18 FILE THAT I CAN'T EVEN RECALL WHAT IT WAS FOR.

19 ALL I KNOW IT WAS THE SAME FILE THAT SHE ALLEGES WAS
20 FOUND BY HER ON ANOTHER COMPUTER. SHE WAS ASKED, AND I WAS
21 SITTING HERE, AND SHE TESTIFIED SHE DID TESTING ALL DAY DURING
22 THIS DEMONSTRATION FOR THE FEDERAL PUBLIC DEFENDER'S; I
23 BELIEVE IT WAS BACK IN APRIL. I WROTE DOWN THE DATE, AND SHE
24 CAN'T EVEN RECALL WHAT FILE THAT MIGHT HAVE BEEN, BUT EVEN IN
25 HER OWN TESTIMONY, SHE ACKNOWLEDGES THAT THAT'S A FILE THAT

1 WAS DOWNLOADED COMPLETELY, BEING SHARED AND NOT THE ONE THAT'S
2 HIGHLIGHTED FOR THE PURPOSES OF HER AFFIDAVIT AND HER
3 PRESENTATION TO THIS COURT, SO THAT'S TROUBLESOME BECAUSE NOW,
4 SHE'S GOING TO SAY WITH ALL CERTAINTY THESE ARE THE FACTS, BUT
5 YET SHE HASN'T PROPERLY DOCUMENTED HER OWN TEST.

6 Q OKAY. IS THERE ANYTHING ELSE ABOUT ANY OTHER
7 CONCLUSIONS OR OPINIONS YOU CAME TO IN REGARDS TO MRS. LOEHR'S
8 AFFIDAVIT TO THIS COURT DATED MAY 12TH OF OF 2011?

9 A WELL, SECONDLY, SHE USED LIMEWIRE 4.18.8. SHE USED
10 A VERSION -- AND I UNDERSTAND THAT SHE HAS TESTIFIED THAT
11 THESE SLIDES WERE MADE BEFORE SHE KNEW WHAT VERSION WE WERE
12 TALKING ABOUT, BUT I DON'T KNOW WHY SHE DIDN'T HAVE TIME
13 BETWEEN WHEN SHE LEARNED UNTIL NOW -- SHE CHOSE TO USE SLIDES
14 THAT ARE IRRELEVANT BECAUSE SHE USED A WHOLE DIFFERENT VERSION
15 THAT COULD REACT COMPLETELY DIFFERENTLY THAN THE VERSION IN
16 QUESTION HERE, WHICH WAS -- WHICH IS LIMEWIRE 4.14.0. THAT IS
17 THE MOST APPROPRIATE TEST.

18 WHEN I'M VALIDATING SOFTWARE, IF I WANT TO PROVE, AS
19 A FORENSIC EXAMINER, THAT SOFTWARE WORKS, PART OF WHAT WE DO
20 IS VALIDATE THAT SOFTWARE. WE USE OTHER PIECES OF SOFTWARE TO
21 PROVE ITS RELIABILITY, SO I'M SURE MISS LOEHR'S IS FAMILIAR
22 WITH A PROCESS TO VALIDATE SOFTWARE. HERE, SHE'S COMING TO A
23 CONCLUSION USING A VERSION OF SOFTWARE THAT IS NOT IN
24 QUESTION, SO THE MOST APPROPRIATE TEST WOULD HAVE BEEN TO TAKE
25 SOME TIME, DOWNLOAD LIMEWIRE 4.14.0 AND TRY TO REPLICATE THIS

1 TEST.

2 IN HER TESTIMONY, SHE SAYS THAT SHE CAN'T REPLICATE
3 IT. I DO RECALL THAT, SO THEN, THE FINAL THING THAT I'D LIKE
4 TO NOTE ABOUT HER AFFIDAVIT, WHICH IS -- I THINK, MAKES IT NOT
5 VERY -- IT DOESN'T -- YOU KNOW, I DIDN'T CONSIDER IT MUCH AS
6 IT RELATES TO THIS CASE BECAUSE SHE FAILED TO TEST THE ONE
7 THING THAT'S IN QUESTION HERE: SHE FAILED TO TEST THE BROWSE
8 HOST.

9 I KNOW THAT SHE CANNOT SHOW ME ANY VERSION 4-- LET'S
10 JUST SAY FROM VERSION 4.14.0 TO 4.18.8 -- SHE CANNOT SET UP AN
11 ENVIRONMENT WHERE A BROWSE HOST SHOWS PARTIAL FILES, BUT THAT,
12 I GUESS, WOULDN'T SERVE THEIR POSITION THAT THEY'RE IN TO SHOW
13 THAT IT WAS A WHOLE FILE, BUT IT WAS COMPLETELY LEFT OUT OF
14 HER REPORT; AND SHE TESTED IT BEFORE, AND SHE CAME TO THE
15 CONCLUSION THEY'RE WHOLE FILES.

16 I THINK THAT'S EXTREMELY IMPORTANT FOR THIS COURT TO
17 CONSIDER, AND SO THAT'S -- I DID THE TESTS IN MY REPORT THAT
18 WERE THE SAME VERSIONS BEING SHARED -- OR USED BY THE
19 DEFENDANT IN THIS CASE.

20 Q SO IF I'M UNDERSTANDING YOU CORRECTLY, THE BIGGER
21 QUESTION IS NOT NECESSARILY TESTING PEER SPECTRE, THE BETTER
22 PROGRAM TO TEST IN THIS CASE, AS FAR AS WHAT FILES WERE THERE
23 AND AVAILABLE FOR SHARING WOULD BE THE LIMEWIRE SOFTWARE?

24 A ABSOLUTELY, AND IT'S STILL AVAILABLE IN ITS SOURCE
25 CODE AND THE PROGRAM. I MEAN, IT'S COMPLETELY THE OPPOSITE OF

1 ANY RATIONAL WAY THAT I WANTED TO TEST SOFTWARE, SO IF I
2 WANTED TO TEST TO SEE HOW A -- AN E-MAIL SERVER WORKED, SO
3 WE'RE ALL FAMILIAR ABOUT -- YOU KNOW, E-MAIL AND HOW THE --
4 THERE ARE SERVERS THAT TRACK THE E-MAIL COMING IN AND GOING
5 OUT, SO I WANT TO MAKE SURE THAT THAT'S WORKING PROPERLY.

6 WOULD I TAKE EVERY CLIENT THAT EXISTED IN THE WORLD
7 AND TRY TO SEND AND RECEIVE E-MAIL TO IT? NO, I'D TEST THE
8 SERVER ITSELF. HERE, WE ARE IN A UNIQUE POSITION TO HAVE THE
9 EXACT SOFTWARE THAT THE DEFENDANT WAS USING IN THIS CASE, SO
10 IF SHE NEEDS TO TEST PEER SPECTRE, SHE MIGHT AS WELL TEST
11 LIMEWIRE, PHEX, BEARSHARE, DEXTERWIRE. I MEAN, I'M NAMING OFF
12 ALL THESE NAMES, AND I DON'T WANT TO TROUBLE THE COURT
13 REPORTER, BUT EVERY NEW VERSION OF EVERY GNUTELLA CLIENT NAMED
14 ON THE PLANET OR MAYBE JUST LOOK AT THE SOURCE CODE THAT TELLS
15 YOU EXACTLY WHAT A FILE BROWSE REPRESENTS AND KNOW, WITH ALL
16 CERTAINTY, YOU KNOW WHAT'S HAPPENING IN THE BACKGROUND.

17 TEST LIMEWIRE, DON'T TEST THE SEARCHING CLIENT. THE
18 SEARCHING CLIENT CAN ONLY SEE WHAT LIMEWIRE SHOWS IT. SHE
19 WANTS TO MAKE SURE LAW ENFORCEMENT ISN'T DOING ANYTHING THAT
20 THE GENERAL PUBLIC CAN'T DO. WELL, THE BEST PIECE OF SOFTWARE
21 TO TEST IS THE CLIENT THAT CHOOSES TO GIVE ME THOSE KEYWORD
22 SEARCH RESULTS, AND SHE HAS THAT AT HER DISPOSAL; AND IN THIS
23 PARTICULAR CASE, HE -- SHE'S EVEN IN A MORE UNIQUE POSITION
24 BECAUSE SHE HAS ACCESS TO THE ACTUAL PROGRAM THE INVESTIGATOR
25 USED, UNMODIFIED BY LAW ENFORCEMENT. SHE HAS THE SOURCE CODE

1 TO THAT TO LOOK AT, AS WELL, SO SHE HAS ACTUALLY BOTH ENDS OF
2 THE COMMUNICATION OF THIS INVESTIGATION; AND FROM OCTOBER TO
3 PRESENT, SHE HASN'T TESTED THAT BY HER OWN TESTIMONY, AND I'VE
4 TESTED IT FOR YEARS. I KNOW HOW IT OPERATES, AND I TEACH IT,
5 YOU KNOW, TO PEOPLE ALL AROUND THE WORLD.

6 Q OKAY. SO IF I'M UNDERSTANDING YOU CORRECTLY, THE
7 PROPER THING, IN YOUR OPINION, WOULD BE TO TEST THE LIMEWIRE
8 SOFTWARE?

9 A CORRECT; AND ALTHOUGH SHE SAID THROUGHOUT TIME,
10 SPEAKING HISTORICALLY, SHE'S TESTED LIMEWIRE 4.14.0, I DIDN'T
11 SEE ANY REFERENCE TO IT IN THE TWO AFFIDAVITS I REVIEWED. I
12 DID HEAR IN HER TESTIMONY, ALTHOUGH SHE CAN'T RECALL DATES,
13 TIMES, AND VERSIONS, BUT I'M CERTAIN SHE CANNOT PRESENT TO
14 THIS COURT LIMEWIRE 4.14.0 SHOWING PARTIAL FILES THAT ARE
15 BROWSED.

16 Q OKAY. AND WHAT ABOUT PHEX? WOULD THAT ALSO BE
17 SOMETHING PUBLICLY AVAILABLE THAT YOU WOULD RECOMMEND HER
18 TESTING TO VALIDATE ANY FILES THAT MAY HAVE OR MAY NOT HAVE
19 BEEN ON THE DEFENDANT'S COMPUTER?

20 A YES. IT'S AVAILABLE ON THEIR WEBSITE, BOTH THE
21 BINARY FILE, WHICH IS THE INSTALLER FOR ANY OPERATING
22 SYSTEM -- IN THIS CASE, SHE WOULD WANT TO TEST THE WINDOWS
23 VERSION, SINCE THAT'S WHAT DETECTIVE CORDER USED, AND ITS
24 SOURCE CODE IS AVAILABLE.

25 BOTH LIMEWIRE AND PHEX IS WRITTEN IN JAVA. I HEAR

1 HER SPEAK TO SOME DEGREE ABOUT JAVA AND THE FACT THAT IT'S
2 HARD TO COMPILE, AND YOU CAN SEE THE SOURCE CODE, SO I KNOW
3 SHE HAS SOME KNOWLEDGE INTO JAVA PROGRAMMING, BUT IF SHE IS
4 SKILLED, ANY SKILLED JAVA PROGRAMMER CAN LOOK AT THE SOURCE
5 CODE AND SEE THAT PEER SPECTRE WOULD NOT SEE ANY OTHER RESULTS
6 THAN WHAT LIMEWIRE CHOOSES TO SEND OUT AS A SEARCH HIT.

7 THERE IS ONE MORE FLAW IN HER TESTING, IS -- WELL,
8 NO, I THINK THAT SUMS IT UP. I APOLOGIZE.

9 Q I WANT TO ASK YOU A QUESTION: YOU'RE LOOKING AT THE
10 SCREEN SHOT ON THE AFFIDAVIT, AND I CAN ZOOM OUT A LITTLE BIT.

11 IN THE AFFIDAVIT -- AND THIS IS ON PAGE 2 OF THE
12 MAY 12TH AFFIDAVIT -- WHEN YOU LOOK AT THIS SCREEN SHOT,
13 ORDINARILY, WHEN YOU OPEN UP LIMEWIRE, IS THERE AN OPTION FOR
14 YOU TO SEE, SAY, FOR EXAMPLE, AN I.P. ADDRESS?

15 A WELL, IN THIS VERSION HERE, THE ONE SHE CHOSE TO
16 USE, I THINK, BY DEFAULT, IT'S NOT VISIBLE, BUT THERE'S AN
17 OPTION WHERE YOU COULD RIGHT CLICK ON THE -- ABOVE ALL THOSE
18 FILE NAMES THAT ARE THERE, THERE'S A BAR, AND IT WOULD
19 DESCRIBE ON WHAT EACH COLUMN REPRESENTS. IF YOU CLICK ON THAT
20 BAR, THERE ARE OPTIONS TO SHOW MORE INFORMATION TO THE USER OF
21 THE PROGRAM.

22 BY DEFAULT, IT'S NOT THERE, BUT IF I WAS GOING TO DO
23 A TEST -- AND I DID DO A TEST, AND THIS IS WHAT I DID; I CHOSE
24 TO SHOW THE I.P. ADDRESS THAT WAS SHARING THE FILE, THE FACT
25 THAT ETHERNET IS THERE OR NOT THERE, I WOULD SUGGEST YOU WOULD

1 HAVE TO GO INTO THE SOURCE CODE TO DEFINE WHAT THAT MEANS; AND
2 NOT KNOWING EXACTLY HOW THIS -- YOU KNOW, THIS EXAMPLE WAS
3 LAID OUT, BUT IN A HOTEL ROOM, I CAN -- OR IN A HOTEL
4 CONFERENCE CENTER, I CAN TELL YOU THAT THERE ARE MANY
5 COMPUTERS THAT WOULD BE CLASSIFIED AS BEING ON THAT SAME
6 ETHERNET CONNECTION.

7 IS IT POSSIBLE IT WAS ANOTHER COMPUTER? YES. IS
8 THERE SOMETHING SHE COULD HAVE DONE THAT WOULD HAVE TAKEN
9 ABOUT A HALF A SECOND TO IMPLEMENT TO SAY, WITH ALL CERTAINTY,
10 YES, AND THAT WOULD BE TO DOCUMENT THE INTERNET ADDRESS OF
11 COMPUTER ONE AND SHOW IT APPEARING IN THE INTERFACE OF
12 COMPUTER TWO.

13 AGAIN, EVEN IF THAT HAPPENED, I WOULD QUESTION WHY
14 SHE WOULD USE THAT VERSION TO PRESENT TO THIS COURT BECAUSE
15 I -- I HAVEN'T SEEN IT.

16 Q AND BY THE 4.18 VERSION, YOU MEAN YOU WOULD QUESTION
17 WHY SHE USED THAT VERSION IN RELATION TO THE 4.14 VERSION THAT
18 THE DEFENDANT USED IN THIS CASE?

19 A RIGHT. I WOULD WANT TO TEST THE VERSION IN
20 QUESTION. JUST LIKE WHEN I VALIDATE SOFTWARE, I VALIDATE THE
21 SOFTWARE THAT I'M GOING TO USE.

22 Q OKAY. LET'S MAKE REFERENCE TO YOUR TESTING IN THIS
23 CASE. I WANT TO TALK ABOUT THAT SPECIFICALLY.

24 CAN YOU TALK ABOUT WHEN YOU TESTED VERSION 4.14.

25 A I TESTED IT ON TWO OCCASIONS. I ASSISTED

1 DETECTIVE CORDER AND DETECTIVE LITCHFIELD IN THE FIRST TEST,
2 AND DETECTIVE LITCHFIELD ACTUALLY DID THE SCREEN CAPTURES --

3 Q OKAY.

4 A -- HOWEVER I WAS THERE PRESENT VIRTUALLY, VIA REMOTE
5 COMPUTING TECHNOLOGY, WHERE I COULD SEE HIS SCREEN, AND I
6 COULD MOVE HIS MOUSE OR HE COULD MOVE HIS MOUSE WHILE
7 EVERYTHING WAS HAPPENING. WE BOTH SAW IT SIMULTANEOUSLY, EVEN
8 THOUGH I WAS PHYSICALLY LOCATED IN DALLAS ON THAT DAY --

9 Q OKAY.

10 A -- AND THAT WAS ON AUGUST 11TH.

11 Q ALL RIGHT. I WANT TO SHOW YOU WHAT HAS BEEN MARKED
12 AS EXHIBIT NUMBER 13.

13 MR. GILLESPIE: WAS THIS DISCLOSED TO US?

14 MS. HARRIS: YES, THESE ARE THE SAME SCREEN SHOTS
15 THAT ARE IN HIS REPORT.

16 Q BY MS. HARRIS: DO YOU RECOGNIZE THAT?

17 A YES. IT WAS MY TESTING THAT I PREPARED, AND IT WAS
18 IN A REPORT DATED AUGUST -- AUGUST 16TH THAT I GAVE TO YOUR
19 OFFICE THAT, IN TURN, WAS GIVEN TO THE DEFENSE.

20 ONE CAVEAT IS THAT THE SCREEN SHOTS REGARDING THE
21 AUGUST 11TH TEST, WHICH IS ALSO IN EVIDENCE, THOSE ARE THE
22 SCREEN SHOTS THAT DETECTIVE LITCHFIELD ACTUALLY SAID, CAPTURE
23 THIS PART OF THE SCREEN, BUT I SAT THERE AND WATCHED IT.

24 MR. GILLESPIE: IF I MAY, WHEN ON THE 16TH WERE
25 THOSE DISCLOSED TO MISS HARRIS? WHAT TIME?

1 THE WITNESS: JUST BEFORE THE END OF THE BUSINESS
2 DAY. I WAS -- I STAYED UP THE NIGHT OF THE 15TH AND THEN
3 WORKED ALL DAY THE 16TH, UNTIL -- IT WOULD HAVE BEEN ABOUT
4 7:30 MY TIME, I THINK, ON THE 16TH, WHICH IS 4:30 HERE, RIGHT?
5 IT WAS RIGHT BEFORE THE CLOSE OF BUSINESS.

6 MR. GILLESPIE: IF I REMEMBER CORRECTLY, JUDGE, AND
7 MISS HARRIS, I'M SURE, WILL CORRECT ME IF I'M WRONG, SOME OF
8 WHAT HE DID WASN'T DISCLOSED TO US UNTIL THE NEXT DAY, WHICH
9 WOULD HAVE BEEN AFTER THE COURT-IMPOSED DEADLINE.

10 MS. HARRIS: JUDGE, IF I COULD CLARIFY, NONE OF THAT
11 SUPPLEMENTAL INFORMATION -- BECAUSE LET ME JUST STATE FOR THE
12 RECORD, WHEN CORPORAL ERDELY DID HIS TESTING, HE PUT IN HIS
13 REPORT THAT HE WAS GOING TO CONTINUE TO RUN THE TEST UNTIL HE
14 HAD TO TESTIFY IN COURT.

15 ANYTHING HE GAVE ME AFTER THE 16TH, ALTHOUGH I
16 DISCLOSED IT TO DEFENSE COUNSEL OUT OF AN ABUNDANCE OF
17 CAUTION, THE STATE IS NOT PRESENTING. THOSE SCREEN SHOTS ARE
18 OUT OF HIS REPORT THAT HE PROVIDED TO THE STATE ON
19 AUGUST 16TH, WHICH WAS DISCLOSED TO DEFENSE COUNSEL.

20 THE COURT: OKAY. ALL RIGHT. I GOT BOTH OF WHAT
21 YOU'RE SAYING.

22 Q BY MS. HARRIS: NOW, YOU MADE REFERENCE TO
23 DETECTIVE LITCHFIELD'S EXAMINATION; CORRECT -- OR THE
24 EXAMINATION YOU DID IN CONJUNCTION WITH DETECTIVE LITCHFIELD?

25 A CORRECT, THE TEST WE RAN.

1 Q OKAY.

2 MS. HARRIS: AND BEFORE WE TALK ABOUT THAT, JUDGE, I
3 WOULD LIKE TO MOVE TO ADMIT EXHIBIT 13.

4 THE COURT: OKAY. FOR PURPOSES OF THE HEARING.
5 ANY OBJECTION?

6 MR. GILLESPIE: WELL, AGAIN, JUDGE, I WOULD OBJECT
7 TO ANYTHING THAT WAS DONE AFTER THE COURT-IMPOSED DEADLINE,
8 WHICH IS, AS I UNDERSTAND IT, A PORTION OF WHAT'S IN
9 EXHIBIT 13.

10 MS. HARRIS: AND JUST FOR THE RECORD, JUDGE, IT IS
11 NOT.

12 THE COURT: OKAY. ALL RIGHT. I'LL RULE ON THAT
13 BEFORE THE CASE IS OVER.

14 GO AHEAD. I'VE GOT NOTES ON WHAT I HAVE TO DO.

15 MS. HARRIS: SO IS IT ADMITTED OR NOT? I'M SORRY.

16 THE COURT: OKAY. GO AHEAD -- NO, IT'S ADMITTED FOR
17 PURPOSES OF THIS HEARING.

18 MS. HARRIS: OKAY.

19 Q BY MS. HARRIS: I'M GOING TO SHOW YOU WHAT HAS BEEN
20 MARKED AS EXHIBIT NUMBER 5.

21 DO YOU RECOGNIZE THAT DOCUMENT?

22 A YES, IT'S DETECTIVE -- DETECTIVE LITCHFIELD'S REPORT
23 OF OUR TEST THAT WE WORKED ON TOGETHER ON AUGUST 11TH OF THIS
24 YEAR.

25 Q AND DOES THAT REPORT INCLUDE SCREEN SHOTS?

1 A YES, IT DOES.

2 Q OKAY. AND DID YOU HAVE AN OPPORTUNITY TO REVIEW
3 THOSE SCREEN SHOTS?

4 A YES, I DID.

5 Q OKAY.

6 MS. HARRIS: IF I CAN APPROACH, JUDGE, WITH EXHIBIT
7 NUMBER 4.

8 THE COURT: YES.

9 Q BY MS. HARRIS: DO YOU RECOGNIZE THIS DOCUMENT?

10 A YES.

11 Q WHAT EXACTLY IS THAT?

12 A THAT'S THE -- THE SCREEN SHOTS, A MORE CLEAR VERSION
13 OF THEM THAT ARE BLOWN UP BUT ARE IN THAT REPORT.

14 Q OKAY. WHEN YOU SAY, THAT REPORT, YOU'RE REFERRING
15 TO EXHIBIT NUMBER 5 IN DETECTIVE LITCHFIELD'S REPORT?

16 A YES.

17 MS. HARRIS: AT THIS POINT IN TIME, THE STATE WOULD
18 MOVE TO ADMIT EXHIBITS -- NUMBER 4 AND EXHIBIT NUMBER 5.

19 THE COURT: ANY OBJECTION?

20 MR. GILLESPIE: COULD I JUST LOOK AT THE EXHIBITS
21 REAL QUICK, JUDGE?

22 THE COURT: OH, SURE.

23 MR. GILLESPIE: NO OBJECTION FOR PURPOSES OF THIS
24 HEARING.

25 THE COURT: ALL RIGHT. ADMITTED FOR PURPOSES OF THE

1 HEARING.

2 MS. HARRIS: IF I COULD APPROACH, JUDGE?

3 THE COURT: YEAH.

4 Q BY MS. HARRIS: I'M JUST GOING TO RETRIEVE FROM YOU
5 EXHIBIT NUMBER 4, I BELIEVE, IS THE SCREEN SHOTS -- OH, NO
6 EXHIBIT NUMBER 4.

7 A OH.

8 Q OKAY. NOW, I WANT TO START, IF YOU CAN EXPLAIN --
9 I'M GOING TO GO THROUGH EACH PAGE, STARTING WITH THE FIRST
10 PAGE OF EXHIBIT NUMBER 4.

11 A I HAVE THOSE IN MINE IN COLOR, ALSO.

12 Q OH, THAT'S WHAT I THOUGHT, BUT...ACTUALLY, LET'S
13 JUST START WITH YOUR REPORT, EXHIBIT NUMBER 13, YOUR SCREEN
14 SHOTS.

15 FIRST PAGE, WHAT EXACTLY DOES THIS DEPICT?

16 A THAT'S JUST A SCREEN SHOT OF THE VERSION THAT I WAS
17 TESTING WITH, AND IT SAYS LIMEWIRE 4.14.0 --

18 Q OKAY.

19 A -- WHICH IS THE VERSION IN QUESTION.

20 Q AND WHEN YOU SAY THE VERSION IN QUESTION, YOU MEAN
21 THE VERSION USED BY THE DEFENDANT, MR. MORAN?

22 A CORRECT.

23 Q OKAY. I'M GOING TO TRY TO ZOOM IN JUST A LITTLE BIT
24 SO YOU CAN SEE THIS A LITTLE BIT BETTER.

25 THE SECOND PAGE IS EXHIBIT 13, WHAT DOES THAT

1 DEPICT?

2 A THAT IS A SCREEN SHOT OF THE LOWER LEFT PORTION OF
3 LIMEWIRE 4.14.0. IF YOU ZOOM IN ALL THE WAY, I CAN DESCRIBE
4 IT WITHOUT THOSE DOCUMENTS AT THE TOP.

5 Q OKAY.

6 A AND I BELIEVE MISS LOEHRS WAS ASKED THE SAME
7 QUESTION, BUT THE FIRST ONE THAT LOOKS LIKE A CELL PHONE BAR
8 IS THE QUALITY OF CONNECTION. BASICALLY, THAT JUST TELLS YOU
9 YOU'VE CONNECTED TO THOSE ULTRAPEERS, AND THOSE ARE THOSE
10 COMPUTERS ON THE GNUTELLA NETWORK THAT HELP YOU FIND YOUR
11 KEYWORD RESULTS.

12 Q AND YOU'RE REFERRING TO THIS RIGHT HERE; CORRECT?

13 A CORRECT.

14 Q AND I'M GOING TO MARK THAT...JUST SO THE RECORD IS
15 CLEAR, I'M GOING TO MARK THAT IN RED; PUT A RED CIRCLE AROUND
16 THAT.

17 A THEN, TO THE RIGHT OF THAT, THAT'S A GLOBE, AND
18 THAT'S A FIREWALL INDICATOR. I DON'T BELIEVE THEIR EXPERT
19 KNEW WHAT IT WAS, BUT IT'S A GLOBE BECAUSE IT'S UN-FIREWALLED.
20 MY WINDOWS COMMUNICATION ISN'T IMPEDING -- FIREWALL ISN'T
21 IMPEDING THIS COMMUNICATION OR PROGRAM. IF I WAS FIREWALLED,
22 A RED BALL WOULD HAVE APPEARED IN FRONT OF THAT GLOBE.

23 Q AND WHAT DOES FIREWALL MEAN?

24 A A FIREWALL IS SOMETHING THAT RUNS IN YOUR OPERATING
25 SYSTEM, IF THERE'S ONE INSTALLED, THAT WOULD PREVENT PEOPLE

1 FROM COMING INTO YOUR COMPUTER WHEN THEY'RE UNWANTED;
2 BASICALLY, IT WOULD BLOCK UNSOLICITED COMMUNICATION FROM
3 COMING INTO YOUR COMPUTER.

4 Q OKAY. SO RIGHT NEXT TO THE BOX, CLOSEST TO THE LEFT
5 TO THE SMALL BOX WITH THE EARTH SYMBOL, MEANS EXACTLY WHAT?

6 I KNOW YOU WENT OVER IT.

7 A AN UNFIREWALLED -- THIS APPLICATION IS GOING TO
8 PROPERLY FUNCTION, AND MY -- AND LET COMMUNICATION INTO IT
9 LIKE IT'S SUPPOSED TO.

10 Q OKAY. AND THE BOX IMMEDIATELY TO THE RIGHT OF THAT
11 WITH THE CIRCLE AND THE NUMBER 0 IN IT -- I'M GOING TO SEE IF
12 I CAN HIGHLIGHT IT THAT BOX.

13 A THAT'S A SHARED FILE INDICATOR, AND IT APPEARS IN
14 GREEN, AND IT'S A ZERO BECAUSE I HAVE ZERO FULL FILES BEING
15 SHARED. THAT NUMBER ONLY INCREMENTS IF I HAVE A NEW SHARE --
16 SHARED FILE; AND WHEN I SAY THAT, I WANT TO QUALIFY THE FACT
17 THAT A PARTIALLY SHARED FILE DOES NOT CAUSE THAT NUMBER TO BE
18 INCREMENTED. ONLY A WHOLE FILE THAT'S COMPLETELY DOWNLOADED
19 THAT WOULD HAVE THAT ENTRY IN THE FILEURNS.CACHE THAT WE'VE
20 HEARD SO MUCH ABOUT.

21 Q OKAY.

22 THE COURT: SO YOU DON'T HAVE -- YOU ONLY HAVE A ONE
23 IN THERE IF IT'S A COMPLETED FILE?

24 THE WITNESS: CORRECT.

25 Q BY MS. HARRIS: AND WHEN YOU SAY A COMPLETED FILE,

1 YOU MEAN ONE THAT'S AVAILABLE FOR SHARING SHOULD ANOTHER
2 PERSON CONNECT TO IT?

3 A AND A COMPLETED SHARE, AND IT'S SHARED. IF I
4 UNSELECT SHARE, IT WILL GO DOWN TO ZERO.

5 Q OKAY. THE NEXT, WHAT IS THAT?

6 A THAT'S A DOWN GREEN ARROW AND AN UP GREEN ARROW.
7 THAT'S HOW MUCH TIME YOU'D BE USING FOR THE SHARING OF FILES
8 OR THE DOWNLOADING OF FILES, SO THE ARROW WOULD INDICATE I'M
9 USING SO MANY KILOBYTES PER SECOND TO DOWNLOAD MY FILES, AND
10 THE UP -- TO UPLOAD IN THIS CASE, IF I WAS SHARING CHILD
11 PORNOGRAPHY, THAT GREEN UP ARROW WOULD HAVE A NUMBER TO THE
12 RIGHT AND HOW MUCH SPEED OF MY INTERNET CONNECTION WAS BEING
13 USED FOR SENDING FILES TO OTHER PEOPLE ALL AROUND THE WORLD.

14 Q OKAY. I WANT TO ASK YOU ABOUT THE THIRD PAGE IN
15 EXHIBIT NUMBER 13. I'M GOING TO LAY IT OUT A LITTLE BIT.

16 WHAT EXACTLY ARE WE LOOKING AT?

17 A THAT'S JUST THE PHEX HOME PAGE. THE HOME PAGE, YOU
18 CAN GO TO THAT. YOU COULD DOWNLOAD THE SOURCE CODE, AND
19 INSTALLER IS RIGHT THERE.

20 THIS IS IMPORTANT BECAUSE THIS IS WHAT
21 DETECTIVE CORDER USED, SO WE CHOSE TO USE AND SET UP THE
22 ENVIRONMENT JUST AS IT WAS BACK IN 2010 WHEN SHE DID HER
23 INVESTIGATION.

24 Q OR 2008?

25 A 2008, I'M SORRY.

1 Q I'M GOING TO SHOW YOU THE FOURTH PAGE OF EXHIBIT 13.
2 EXACTLY WHAT IS THAT?

3 A THAT JUST TELLS YOU ABOUT THE VERSION OF THE
4 PROGRAM. I DOCUMENTED WHAT VERSION LIMEWIRE WAS USED, SO I
5 DOCUMENTED WHAT VERSION OF PHEX WAS BEING USED.

6 Q AND THE VERSION OF PHEX THAT WAS BEING USED WAS
7 3.4.2?

8 A CORRECT.

9 Q OKAY. NOW, I'M GOING TO ZOOM OUT JUST FOR A LITTLE
10 BIT SO YOU CAN TALK TO US ABOUT THE TESTING YOU DID, AND KIND
11 OF OUTLINE, AND WE'LL GO THROUGH PIECE BY PIECE AS OUTLINED IN
12 YOUR EXHIBIT, BUT, FOR RIGHT NOW, I PUT UP PAGE 5 OF
13 EXHIBIT 13.

14 WHAT ARE WE LOOKING AT HERE?

15 A HERE, I'M JUST SHOWING YOU THE VERSION THAT I'M
16 USING IN THIS TEST, AND I CHOSE TO DO A SCREEN CAPTURE. IN
17 THE BACKGROUND, YOU CAN SEE ACTUALLY MY TEST -- SEE MY TEST
18 ENVIRONMENT TO GIVE AS MUCH INFORMATION TO THE COURT AS
19 POSSIBLE TO LET THEM KNOW THAT I AM ACCURATELY REPORTING WHAT
20 I'M SUGGESTING IS IN MY REPORT.

21 YOU CAN SEE THAT LIMEWIRE'S RUNNING IN THE
22 BACKGROUND, AND YOU CAN SEE THAT THE VERSION THAT I'M USING IS
23 LIMEWIRE 4.14.0.

24 Q I'M GOING TO SHOW YOU PAGE 6 OF EXHIBIT 13.

25 CAN YOU TELL US WHAT WE'RE LOOKING AT HERE; AND I'M

1 GOING TO SPECIFICALLY ZOOM IN TO YOUR RED ARROW.

2 A SO WE WANTED TO INDICATE THAT PARTIAL FILE SHARING
3 WAS ENABLED. THAT WAS IMPORTANT BECAUSE A LOT OF THE -- WHY
4 WE'RE HERE IS ALL ABOUT PARTIAL FILE SHARING, AND WHAT IT IS,
5 AND WHEN IT'S PRESENTED TO AN INVESTIGATOR, SO WE OPTED TO
6 LEAVE THAT OPTION ON. EVEN THOUGH IT'S UNCLEAR WHAT HIS
7 SETTINGS WERE BACK IN 2008, WE CHOSE TO ENABLE PARTIAL FILE
8 SHARE.

9 Q AND WHEN YOU SAY IT'S UNCLEAR WHAT HIS SETTINGS
10 WERE, ARE YOU REFERRING TO THE DEFENDANT, ROBERT MORAN?

11 A CORRECT.

12 Q SO THIS PARTICULAR TESTING ENVIRONMENT, YOU
13 SPECIFICALLY WANTED TO ALLOW THE PARTIAL FILE SHARING JUST SO
14 YOU COULD TEST THE THEORY THAT'S ULTIMATELY IN QUESTION IN
15 THIS CASE?

16 A CORRECT.

17 Q OKAY. I'M GOING TO REFER YOU TO PAGE 7, AND I'VE
18 GOT TO ZOOM OUT SO YOU CAN SEE THAT, AND...I THINK THE BETTER
19 FOCUS WOULD BE AT THE BOTTOM; IS THAT CORRECT?

20 A IF YOU START AT THE TOP, THE TAB THAT'S HIGHLIGHTED
21 IN BLUE, YOU CAN MOVE TO THE BOTTOM.

22 Q OKAY. THEN, I'LL ZOOM UP.

23 A YOU CAN ZOOM INTO -- MOVE IT.

24 Q (COMPLYING.)

25 A FIRST THING I DID WAS INITIATED A KEYWORD SEARCH. I

1 BELIEVE THE KEYWORD SEARCH I USED WAS TREE.JPG. I DIDN'T WANT
2 TO VIOLATE ANY COPYRIGHT LAWS. I LOOKED FOR PICTURES THAT
3 PEOPLE TAKE THEMSELVES, SO TREE IS THE MOST -- OR FLOWERS ARE
4 THE MOST INNOCENT THING I COULD THINK TO SEARCH FOR; AND THEN,
5 BELOW THAT, IF YOU SCROLL DOWN JUST A LITTLE BIT, YOU GET
6 PRESENTED WITH A BUNCH OF RESULTS, SO AT THIS POINT IN TIME,
7 THERE'S NOTHING ON, MY GNUTELLA NET HAS TOLD ME.

8 YOU SEARCH FOR TREE.JPG, AND SO HERE ARE A LIST OF
9 RESULTS THAT YOU CAN CHOOSE FROM. THE NAMES ARE VERY
10 DESCRIPTIVE; AND THEN, BASED ON THE NAME -- THAT'S REALLY ALL
11 WE HAVE TO GO ON -- AND THE TYPE OF FILE, WE CHOOSE TO
12 DOWNLOAD SOMETHING, SO THEN, IF YOU SCROLL DOWN TO THE BOTTOM,
13 WHAT I CHOSE TO DO IS I CHOSE TO DOWNLOAD FOUR FILES
14 COMPLETELY AND FOUR FILES PARTIALLY.

15 IF YOU ZOOM TO THE LEFT, WE CAN LOOK AT THE FILES
16 FIRST, AND YOU CAN SEE THAT THE TOP FOUR, TREE.JPG, THE FOUR
17 THAT APPEAR AT THE TOP, UNDERNEATH THE NAME COLUMN -- I'M NOT
18 GOING TO READ THEM ALL. THOSE ARE THE ONES THAT ARE PARTIALLY
19 DOWNLOADED; AND THEN, THE BOTTOM FOUR, THOSE ARE THE ONES THAT
20 ARE COMPLETELY DOWNLOADED, AND YOU CAN CONFIRM THAT BY
21 SCROLLING TO THE RIGHT.

22 Q AND THEN, BEFORE I DO THAT, I'M GOING TO SAY THE
23 BOTTOM FOUR ARE THE ONES THAT YOU SAY ARE COMPLETELY
24 DOWNLOADED?

25 A YES.

1 Q SCROLL TO THE RIGHT...

2 A AND THE PROGRESS REPORT INDICATES THAT I HAVE FOUR
3 COMPLETELY DOWNLOADED FILES, AND IT'S INDICATED BECAUSE THE
4 STATUS BAR SAYS 100 PERCENT; AND THEN, TO FURTHER ILLUSTRATE
5 WHAT THAT LOWER CIRCLE MEANS, THE SHARED FILE INDICATOR, IF
6 YOU SHOW THE GREEN CIRCLE ON THE BOTTOM HERE, YOU CAN SEE THAT
7 THE INDICATOR IS THAT THERE ARE FOUR SHARED FILES. THE FOUR
8 PARTIALLY DOWNLOADED FILES DO NOT CAUSE THAT NUMBER TO
9 INCREMENT.

10 Q AND I'M GOING TO MARK THAT IN BLACK, SO WHEN YOU
11 REFER TO THIS NUMBER 4, THOSE ARE THE FOUR COMPLETELY
12 DOWNLOADED FILES?

13 A RIGHT; AND SO NOW, WE HAVE A COMPUTER ON THE
14 INTERNET, RUNNING THE EXACT SAME VERSION THAT WAS FOUND ON
15 MR. MORAN'S COMPUTER, WITH FOUR FILES COMPLETELY DOWNLOADED
16 AND FOUR FILES PARTIALLY DOWNLOADED, SO AT THIS POINT IN TIME,
17 WE WILL...SHOW...

18 Q (COMPLYING.)

19 A WELL, IT'S JUST SHOWING HERE THAT THEY'RE PAUSED, I
20 THINK.

21 Q OKAY. AND HERE?

22 A AND THIS IS A BLOW-UP OF THAT SCREEN. I JUST WANTED
23 THERE TO BE NO MISUNDERSTANDING. THE TOP PORTION OF THIS
24 SLIDE IS JUST THAT PREVIOUS SLIDE, SHOWING THE BOTTOM FOUR A
25 HUNDRED PERCENT. IT'S CIRCLED IN RED; AND THEN, THE LOWER

1 SCREEN CAPTURE, I HIGHLIGHT AND CIRCLE IN RED, RATHER, THE
2 FOUR THAT'S PARTIALLY DOWNLOADED, AND I SET UP MY TEST
3 ENVIRONMENT TO DO FOUR BECAUSE I JUST DIDN'T WANT TO SAY, AT
4 TEN PERCENT, IT'S SOMETHING; AT 50 PERCENT, IT'S SOMETHING; I
5 HAVE THESE FILES PAUSED AND INCOMPLETE IN VARIOUS STAGES OF
6 THE DOWNLOAD PROCESS, SO I'M NOT JUST TRYING TO SAY, AT TEN
7 PERCENT, IT'S NOT THERE OR 50. I'VE GOT ONE THAT'S ALMOST
8 90-SOME PERCENT.

9 WHAT'S THE TOP NUMBER THERE?

10 Q I BELIEVE IT'S 98 PERCENT.

11 A I HAVE ONE FILE THAT'S 98 PERCENT DOWNLOADED, AND IF
12 ANY PARTIAL FILES ARE GOING TO SHOW UP IN THE BROWSE, IT
13 SHOULD CERTAINLY BE ONE THAT'S ALMOST COMPLETELY DOWNLOADED,
14 SO...SO THAT'S OUR TEST ENVIRONMENT SET UP JUST LIKE
15 MR. MORAN'S COMPUTER --

16 Q OKAY. AND THAT'S PAGE --

17 A -- EXCEPT FOR HE DIDN'T HAVE TREES.

18 Q THAT'S PAGE 9 OF YOUR EXHIBIT 13.

19 I'M GOING TO SHOW YOU PAGE 10 OF EXHIBIT 13.

20 A SO NOW, WE RUN PHEX, AND I IMPLEMENT A BROWSE HOST,
21 SO IF YOU CAN ZOOM IN AND GO TO THE LEFTMOST COLUMN, THE BLUE
22 COLUMN, YOU CAN SEE THAT I -- I PUT IN AN I.P. ADDRESS AND
23 USED A BROWSE HOST FUNCTION IN PHEX, WHICH IS REFERRED TO --
24 THAT THE EQUIVALENT IN LIMEWIRE IS CALLED DIRECT CONNECT, AND
25 I JUST PUT THE I.P. ADDRESS OF MY TEST MACHINE IN THERE; AND

1 AS SOON AS I HIT BROWSE HOST, I GOT TO SEE ALL OF THE WHOLE
2 FILES BEING SHARED, SO IF YOU SCROLL TO RIGHT, AND WE TAKE --
3 NO, GO LEFT A LITTLE BIT.

4 Q I'M GOING TO ZOOM OUT.

5 A OH, OKAY, BUT THE FILE NAME'S AVANT BARK 5, BARK --
6 I DON'T KNOW -- AND ANNUL SOMETHING -- THOSE ARE THE FOUR
7 FILES PRESENTED TO ME; AND IF YOU CAN SOMEHOW PUT THE PRIOR
8 EXHIBIT ON THERE, YOU'LL SEE THAT THOSE ARE THE HUNDRED
9 PERCENT DOWNLOADED FILES.

10 Q SORRY.

11 A MAYBE YOU CAN'T.

12 Q YOU CAN IF I ZOOM OUT.

13 A BUT THEY'RE THE SAME FILES THAT WERE A HUNDRED
14 PERCENT DOWNLOADED.

15 Q LET'S DO IT THIS WAY.

16 A YOU ALMOST HAVE TO LOOK AT THEM, BUT YOU CAN SEE
17 LMINT BARK 5 -- BARK 5 (PHONETIC). YOU CAN SEE THAT THOSE ARE
18 THE EXACT SAME FILES. YOU DO NOT SEE THE 98 PERCENT
19 DOWNLOADED FILES OR ANY OF THE INCOMPLETE.

20 I'VE TRAINED A THOUSAND LAW ENFORCEMENT OFFICERS.
21 I'VE PRESENTED THINGS OUT OF FORMALIZED TRAININGS FOR
22 PROSECUTORS, DEFENSE EXPERTS. IT'S ALWAYS THE SAME, AND --
23 AND I TRY TO HELP THEM UNDERSTAND HOW WE'RE DOING THINGS TO
24 AVOID HEARINGS SUCH AS THIS.

25 Q OKAY. AND WHEN YOU TALK ABOUT THOSE FOUR COMPLETED

1 FILES, I THINK YOU COMBINED -- I THINK IT'S PAGE 11 OF
2 EXHIBIT 13, THOSE FOUR COMPLETED FILES?

3 A RIGHT. I PUT THEM TOGETHER FOR YOU SO YOU CAN SEE
4 IT. THEY'RE ALWAYS THE HUNDRED PERCENT DOWNLOADED COMPLETELY
5 SHARED FILES.

6 Q OKAY. I'M GOING TO REFER TO PAGE 13.

7 WHAT EXACTLY ARE WE LOOKING AT HERE?

8 A SO NOW, I HAVE FOUR SHARED FILES. THEY'RE -- THEIR
9 THEY'RE A HUNDRED PERCENT DOWNLOADED, AND THEY'RE THE ONLY
10 FILES I SAW ON THAT LIST, SO I WANTED TO IMPLEMENT AN OPTION
11 WHERE I STOPPED SHARING ONE OF THOSE FILES TO PROVE THE SECOND
12 HALF OF MY STATEMENT, SO THE ONE THAT BEGINS WITH THE LETTER
13 "E," I'M NOT GOING TO ATTEMPT TO PRONOUNCE IT, THE BOTTOM
14 SHARED FILE, I JUST RIGHT CLICKED ON THE FILE AND SAID STOP
15 SHARING IT --

16 Q OKAY.

17 A -- AND I WANT TO CLARIFY: I DIDN'T RESTART
18 LIMEWIRE. IT'S RUNNING LIVE IN AN OPERATING SYSTEM. I DIDN'T
19 HAVE TO DO ANYTHING TO GET IT TO STOP REPORTING AS BEING
20 SHARED, LIKE HAS BEEN SUGGESTED IN TAMI LOEHRS' AFFIDAVIT. I
21 HIT STOP SHARING FILE, AND I WOULD ESTIMATE LESS THAN ONE
22 MINUTE LATER, PROBABLY EVEN LESS THAN THAT, WE DID --
23 IMPLEMENTED ANOTHER BROWSE HOST: SHOW ME ALL OF YOUR SHARED
24 FILES.

25 Q AND THAT'S DEMONSTRATED IN THE NEXT EXHIBIT;

1 CORRECT?

2 A CORRECT.

3 Q OKAY.

4 A NOW, WE ONLY HAVE THREE SHARED FILES. THE FILE I'M
5 NOT SHARING DOES NOT APPEAR IN THE LIST, AND IT GOES -- IT
6 SUPPORTS MY POSITION. I'VE NEVER KNOWN IT TO NOT BE TRUE
7 WHOLE FILES BEING SHARED ARE WHAT'S PRESENTED TO YOU DURING A
8 BROWSE HOST, NOTHING ELSE, SO IF I, AS AN INVESTIGATOR, CAN
9 DESCRIBE THOSE FILES BASED ON THE HASH VALUE, I'M IN THE DOOR.

10 Q OKAY. AND WHEN YOU SAY HASH VALUE, YOU'RE TALKING
11 ABOUT THOSE...

12 A (INDICATING.)

13 Q CORRECT...NUMBERS THAT SAY SHA-1 ON THE FAR RIGHT
14 SIDE OF PAGE 13 OF YOUR EXHIBIT.

15 A CORRECT. NOW -- SO THAT'S THE FINGERPRINT OF THE
16 FILE. THAT'S THE SHA-1 HASH VALUE WE RELY ON IN FORENSICS ALL
17 THE TIME; AND IF YOU SCROLL A LITTLE TO YOUR LEFT, THE OTHER
18 BIG PIECE OF THE ADDRESS IS RIGHT THERE, THE I.P. ADDRESS, AND
19 IT'S 71.61.71.137; AND SO NOW, I HAVE EVERYTHING I NEED.

20 I KNOW, AT THIS MOMENT IN TIME, A CERTAIN
21 I.P. ADDRESS IS SHARING COMPLETELY THREE PICTURES OF TREES.
22 IF THAT WOULD BE CONTRABAND, THEN I WOULD BE...NOT COMPLETE MY
23 INVESTIGATION, BUT READY TO MOVE FORWARD TO FIGURE OUT WHO THE
24 SUBSCRIBER OF THAT INTERNET SERVICE IS AND AUTHOR A SEARCH
25 WARRANT UPON RECEIVING THOSE RESULTS.

1 Q OKAY. AND THAT'S WHAT DETECTIVE CORDER DID IN THIS
2 CASE?

3 A THAT'S EXACTLY WHAT SHE DID IN THIS CASE.

4 MS. HARRIS: AND JUST FOR THE RECORD, JUDGE, WE'RE
5 GOING TO HIGHLIGHT THE PORTION IN YELLOW THAT MR. ERDELY WAS
6 REFERRING TO AS THE I.P. ADDRESS. I'M THEN GOING TO CIRCLE IN
7 THE PORTION WHERE WE'RE REFERRING TO THE SHA-1 VALUE.

8 Q BY MS. HARRIS: I'M GOING TO SKIP THROUGH A FEW
9 PAGES, SO THIS IS THE TEST THAT YOU HAD AN OPPORTUNITY TO DO
10 WITH DETECTIVE LITCHFIELD; CORRECT?

11 A CORRECT.

12 Q AND THAT WAS SIMULTANEOUSLY YOU TWO WORKING IN
13 CONJUNCTION ON THE COMPUTER?

14 A CORRECT.

15 Q DID YOU THEN DO ANY ADDITIONAL TESTING ON --

16 A YES. I WANTED TO LOOK AT SOME OF OTHER THINGS THAT
17 WERE STATED IN HER AFFIDAVIT BECAUSE I THOUGHT IT WAS
18 INCOMPLETE. I DIDN'T WANT TO JUST SAY THAT WITHOUT SOMETHING
19 TO SUPPORT IT. SOMETHING WE DON'T DO A LOT OF TESTING ON,
20 ALTHOUGH MY NORMAL USE OF THIS PROGRAM LETS ME TEST WHAT A
21 KEYWORD RESULT IS.

22 AS I DESCRIBED EARLIER, IT'S NOT SOMETHING I
23 FORMALLY SIT DOWN IN THE LAB EVERY DAY AND DO BECAUSE WE RELY
24 ON THE BROWSE HOST. THAT'S MY ANONYMOUS TIP. I'M NOT REALLY
25 CONCERNED WITH THAT, SO I DID MY TESTING WITH THE EXACT

1 VERSION USED IN THIS CASE.

2 Q AND I'M GOING TO REFER TO PAGE, I BELIEVE, 15 OF
3 EXHIBIT 13.

4 I'M JUST GOING TO SCROLL OUT; AND YOU AUTHORED --
5 YOU GENERATED A REPORT IN THIS PARTICULAR CASE IN REGARDS TO
6 YOUR ADDITIONAL TESTING THAT YOU DID?

7 A RIGHT; AND HERE, I'M JUST SHOWING YOU I'M RUNNING
8 LIMEWIRE 4.14.0, AND I HAVE IN THE BACKGROUND -- YOU CAN SEE
9 THAT THERE'S A FILE PARTIALLY DOWNLOADED, BUT THE NEXT SLIDE'S
10 GOING TO SHOW IT BETTER.

11 Q I WAS JUST ABOUT TO GO THERE. PAGE 16, AND I'LL
12 ZOOM IN. I'LL START IN WITH THE NAME OF THE FILE, AND THEN,
13 WE CAN TALK ABOUT WHAT WE SEE HERE.

14 A AND THE NAME IS -- I NAMED THE FILE. IT'S NAMED,
15 LIKE, CHILD PORNOGRAPHY; HOWEVER, IT'S A FILE THAT I CREATED.
16 IT'S PUBLICLY AVAILABLE AND NOT COPYWRITTEN --

17 Q OKAY.

18 A -- AND -- AND YOU CAN SEE THAT I'M DOWNLOADING --
19 DOWNLOADING THE FILE; AND IF YOU SCROLL TO RIGHT, YOU CAN SEE
20 THAT I HAVE 30 -- MY EYES ARE GONE -- 30 PERCENT DOWNLOADED.

21 Q AND I CAN GO IN A LITTLE BIT MORE.

22 A YEAH, AND THERE'S AN ARROW POINTING TO IT.

23 Q THIRTY PERCENT DOWNLOAD; AND THEN, IT SHOWS THE
24 SPEED AND THE TIME?

25 A YUP; AND YOU CAN JUST MOVE THROUGH, I GUESS.

1 Q OKAY.

2 (MS. ANDRUS CONFERRING WITH MS. HARRIS.)

3 MS. HARRIS: DO YOU NEED MORE WATER?

4 THE WITNESS: NO, I'M GOOD.

5 Q BY MS. HARRIS: OKAY. WE'RE GOING TO SHOW YOU PAGE
6 I BELIEVE -- AND YOU CAN LET ME KNOW IF THESE ARE OUT OF
7 ORDER, BUT I BELIEVE THEY'RE IN ORDER -- THE NEXT PAGE OF YOUR
8 REPORT.

9 A OKAY. AND I'M JUST INDICATING HOW MUCH IS
10 DOWNLOADED. IF YOU COULD ZOOM INTO THE -- BELOW THE ARROW, I
11 CAN SEE IT.

12 Q RIGHT. I KNOW, AT THIS POINT, IT'S A HUNDRED
13 PERCENT.

14 A OKAY. I HAVE A FILE THAT'S A HUNDRED PERCENT
15 DOWNLOADED, CORRECT.

16 Q WHAT DOES THIS SCREEN ON PAGE, I BELIEVE, 18 -- WHAT
17 DOES THIS SCREEN SHOW US -- WHOOPS.

18 A SO I BELIEVE I'M IN THE LIBRARY VIEW. IF YOU ZOOM
19 IN ABOVE THE ARROW...

20 Q (COMPLYING.)

21 A SO HERE'S THE RELEVANCE AS I TAKE YOU THROUGH THIS:
22 THE PRIOR SCREEN SHOWED THAT I DOWNLOADED A HUNDRED PERCENT.
23 I LET IT RUN FOR OVER 24 HOURS. I SEARCHED FOR THAT FILE THAT
24 I CREATED. I'M THE ONLY ONE IN THE WORLD THAT HAD IT AT THE
25 MOMENT THAT I CREATED IT, AND I HAD A WHOLE LAB THAT WAS AT MY

1 DISPOSAL AT OUR HEADQUARTERS SEARCH FOR THAT FILE, AND I FOUND
2 33 INSTANCES WHERE THE FILE WAS SENT OUT, SAYING, YUP, I'M
3 SHARED; I HAVE THE WHOLE FILE.

4 I SHUT DOWN THE PROGRAM AND THEN STARTED IT BACK UP,
5 AND IN 15 MINUTES, FROM THIS VIEW IN LIMEWIRE, I SAW THAT I
6 HAD A THOUSAND FORTY-FOUR HITS, SO JUST 15 MINUTES.

7 Q AND WHY IS THAT SIGNIFICANT?

8 A I'M JUST TRYING TO SHOW HOW QUICKLY THAT THIS FILE
9 WOULD BE FOUND BECAUSE I USED NAMES OF CHILD PORNOGRAPHY TO
10 DESCRIBE IT.

11 Q OKAY. AND WHEN YOU SAY NAMES OF CHILD PORNOGRAPHY,
12 I THINK WE'VE ALREADY KIND OF GONE OVER THIS WITH MISS LOEHR,
13 BUT SOME OF THOSE TERMS ARE P.T.H.C.; RIGHT?

14 A RIGHT. HUSSYFAN, R@YGOLD; ALL THOSE TERMS THAT I
15 KNEW USED CHILD PORNOGRAPHY. I ACTUALLY PUT MY BADGE NUMBER
16 AT THE END. I ALSO KNEW MY HASH VALUE AND FILE NAME THAT I
17 CREATED AT THAT FILE.

18 Q OKAY. I WANT TO SHOW YOU THE NEXT PAGE OF YOUR
19 EXHIBIT 13, AND I BELIEVE YOU HIGHLIGHT A BOX IN THE TOP. I
20 WANT TO SHOW YOU IN THIS SCREEN WHERE YOU CLICK ON
21 INDIVIDUALLY SHARED FILES.

22 IS THAT THE NEXT SLIDE OR AM I...

23 THE COURT: MAYBE THAT'S OUT OF ORDER.

24 THE WITNESS: DO YOU HAVE A SECOND COPY OF MY...

25 MS. HARRIS: SLIDES?

1 THE WITNESS: -- MY SLIDES. CAN I LOOK AT THEM OR
2 AM I NOT ALLOWED?

3 MS. HARRIS: I THINK SO. GIVE ME A SECOND.

4 IF I CAN APPROACH...

5 THE COURT: (NO RESPONSE.)

6 MS. HARRIS: THEY CAN BE OUT OF ORDER.

7 THE COURT: REALIZING WE'RE NOT GOING TO GET THROUGH
8 WITH CROSS, MAYBE NOT EVEN DIRECT, IS THERE ANY WAY, SINCE
9 WE'VE BEEN USING SKYPE IN THE LAST COUPLE OF TRIALS, SO HE
10 DOESN'T HAVE TO COME BACK FROM PITTSBURGH, TO JUST DO SKYPE
11 FOR EVERYTHING ELSE?

12 MS. HARRIS: JUDGE, IT'S MY UNDERSTANDING THAT OUR
13 OFFICE HAS NO ISSUE AT THIS POINT BRINGING HIM BACK TO
14 TESTIFY; IT'S JUST A MATTER OF WHEN --

15 THE COURT: OH, OKAY.

16 MS. HARRIS: -- AND IF WE -- THE STATE'S PREFERENCE
17 WOULD BE, IF POSSIBLE, TO PLOW THROUGH TO TOMORROW, BUT I
18 UNDERSTAND THAT THERE MAY BE A CONFLICT WITH DEFENSE COUNSEL,
19 SO WE CAN STOP DETECTIVE -- OR CORPORAL ERDELY'S TESTIMONY AND
20 THEN RESUME IT UPON HIS RETURN AT A DAY CERTAIN THAT WE'RE
21 GOING TO TRY TO GET TOGETHER.

22 THE COURT: SURE. YOU HAVE A DATE?

23 THE WITNESS: IT'D BE SOMETIME AFTER MY FRANCE TRIP,
24 WHICH ENDS ON THE 16TH -- OH, MAYBE NOT.

25 THE COURT: SEPTEMBER?

1 THE WITNESS: YEAH. I GAVE YOU THE DATES; THE 2ND
2 THROUGH THAT FOLLOWING SATURDAY.

3 MS. HARRIS: WHICH IS, I THINK, THE 10TH OR THE
4 11TH.

5 THE WITNESS: AND I JUST HAVE TO CHECK MY BOARD
6 CALENDAR TO SEE IF I CAN COME BACK DOWN HERE.

7 THE COURT: OKAY.

8 THE WITNESS: I CAN LET YOU KNOW. I'LL LET THEIR
9 OFFICE KNOW BY TOMORROW, IF THAT'S OKAY.

10 THE COURT: OH, SURE, SURE, OKAY, SO I'D HAVE TO
11 CHECK WITH THE DEFENSE TO SEE IF THEY HAVE A PROBLEM.

12 THE WITNESS: RIGHT.

13 Q BY MS. HARRIS: AND, CORPORAL, IF YOU CAN, LET ME
14 KNOW -- MAYBE MY PAGES ARE OUT OF ORDER.

15 A NO, THAT'S RIGHT.

16 Q OH.

17 A SO THAT ONE, WHAT I DID FOR MY TEST IS I DELETED THE
18 FILE --

19 Q OKAY.

20 A -- AND I DID NOT RESTART THE PROGRAM BECAUSE I FOUND
21 IT 33 TIMES RANDOMLY, LETTING MY WHOLE LAB SEARCH FOR IT OVER
22 A 24-HOUR PERIOD, SO THEN, I LET IT CONTINUE TO RUN AND SEARCH
23 AND SEARCH AND SEARCH AND FOUND NO INSTANCE OF THIS FILE
24 SHOWING UP AS A KEYWORD SEARCH HIT, WHICH IS CONTRADICTIONARY TO
25 WHAT TAMI LOEHRS SAID IN HER REPORT, SO I HAD A HUNDRED

1 PERCENT DOWNLOADED FILE, FOUND IT 33 TIMES, I ILLUSTRATED TO
2 THE COURT THAT, JUST RUNNING IT 15 MINUTES.

3 THE WHOLE WORLD SAW IT A THOUSAND FORTY-FOUR TIMES,
4 BUT THEN, I RUN IT FOR ANOTHER DAY AFTER IT'S DELETED AND THE
5 COMPUTER'S NOT RESTARTED, AND THAT'S EXACTLY WHAT SHE'S
6 PRESENTING TO THIS COURT IN HER AFFIDAVIT; THAT IT'S GOING TO
7 KEEP SAYING, HEY, I'M SHARED. I'M SHARED FOREVER UNTIL I KEEP
8 RESTARTING LIMEWIRE.

9 I'M JUST WONDERING WHY I WASN'T ABLE TO RECREATE HER
10 TEST, THAT SAME TEST THAT SHE SAYS, I CAN'T EVEN RECREATE.

11 Q SO WHEN YOU SEE THIS SCREEN, THE EMPTY BOX THAT
12 INDICATES YOU LOOKED FOR THE FILE THAT WAS DELETED AND IT'S NO
13 LONGER THERE?

14 A I SEARCHED AND SEARCHED. YOU CAN ALSO CONFIRM IT IN
15 THE BOX -- THAT CIRCLE WITH THE ZERO IN IT INDICATES THAT IT
16 WAS NOT BEING SHARED. I DELETED THAT FILE THAT I HAD
17 PREVIOUSLY BEEN FINDING NO PROBLEM WITH WHATSOEVER.

18 Q OKAY. LET'S TALK ABOUT THE NEXT PAGE.

19 WHAT EXACTLY ARE WE LOOKING AT HERE?

20 A SO THE NEXT FOUR SLIDES -- AND WE CAN SPEED THROUGH
21 TIME HERE VERY QUICKLY --

22 Q OKAY.

23 A -- IS THAT I JUST CHOSE TO -- THE NEXT HALF OF MY
24 TEST ON A SEPARATE MACHINE, WITH A SEPARATE COPY OF LIMEWIRE,
25 SO I'VE GOT THE ONE RUNNING WHERE I'VE NOW DELETED IT, AND I

1 HAVE ANOTHER COMPUTER ALTOGETHER WITH THE SAME VERSION OF
2 LIMEWIRE INSTALLED, AND I SHOW FOUR SLIDES OF JUST THE PROCESS
3 OF THIS FILE DOWNLOADING; AND THEN, I STOP IT AT 91 PERCENT,
4 SO YOU MAY WANT TO JUST JUMP FORWARD TO THE FOURTH SLIDE
5 THERE --

6 Q YES.

7 A -- AND YOU'LL SEE THAT I DOWNLOADED 91 PERCENT OF
8 THE FILE USING LIMEWIRE 4.14.0, SO THIS IS MORAN NINE TIMES
9 MORE -- I HAVE NINE TIMES MORE OF THE FILE THAN TAMI DID IN
10 HER TEST.

11 I SEARCHED -- I ACTUALLY SEARCHED THE SAME TIME I
12 WAS SEARCHING, YOU KNOW, IN THIS PREVIOUS TEST. I HAVE A
13 WHOLE LAB WORTH OF COMPUTERS SEARCHING GNUTELLA AND FOUND NO
14 INSTANCE OF IT BEING SHARED.

15 Q OKAY. AND THAT'S -- THAT'S DISPLAYED TWO PAGES
16 LATER ON THIS EXHIBIT, CORRECT, WHEN YOU HAVE THE RED
17 HIGHLIGHT FOR HITS?

18 A YEAH, ZERO HITS. THE OTHER ONE HAD A THOUSAND
19 FORTY-FOUR HITS IN 15 MINUTES, SO I HAVE NO HITS.

20 Q SO THE PARTIAL FILE, IF I'M UNDERSTANDING YOUR
21 TESTIMONY CORRECTLY, THAT YOU DOWNLOADED 95 -- 91 PERCENT DID
22 NOT SHOW AS AVAILABLE FOR SHARING?

23 A CORRECT. THAT WAS MY TEST.

24 Q AND I BELIEVE YOU HAVE A CLOSE-UP TO -- TO KIND OF
25 DEMONSTRATE THAT THERE WERE NO HITS, AND NO ONE --

1 A RIGHT.

2 Q -- THAT COULD --

3 A CORRECT.

4 Q -- GET THE FILE?

5 A AND IT WAS NAMED THE SAME WAY. IT'S ACTUALLY THE
6 SAME FILE THAT YOU FOUND A THOUSAND FORTY-FOUR TIMES ON THE
7 OTHER SCREEN. IT'S ACTUALLY THE SAME FILE. IT'S NAMED THE
8 EXACT SAME WAY; VERY, VERY POPULAR TERMS ON GNUTELLA.

9 Q OKAY. AND BY THAT, YOU'RE REFERRING TO THE P.T.H.C.
10 THAT WE WENT OVER EARLIER?

11 A RIGHT, 15 MINUTES WITH A THOUSAND FORTY-FOUR.

12 Q SO THEN, WHAT DID YOU DO NEXT?

13 I SKIPPED AHEAD ABOUT THREE OR FOUR SLIDES, AND I'M
14 GOING TO ZOOM OUT JUST A LITTLE BIT.

15 A SO I ACTUALLY PERFORMED THIS TEST TWO WAYS TO TRY
16 TO -- I DID EVERYTHING I COULD TO REPLICATE WHAT TAMI LOEHRS
17 HAD PRESENTED TO THIS COURT, SO WITH -- WHEN LIMEWIRE'S
18 RUNNING, YOU CAN JUST USE -- WITHIN THE PROGRAM LIMEWIRE, AS
19 YOU -- A FILE'S HIGHLIGHTED, YOU CAN JUST HIT THE DELETE KEY,
20 AND IT'S GONE. IT'LL SEND IT TO YOUR RECYCLE BIN OR BYPASS
21 THE RECYCLE BIN AND GO RIGHT INTO THE DELETED SPACE, SO TO
22 SPEAK, BUT THEN, I ALSO CHOSE TO TRY TO DELETE IT OUTSIDE THE
23 LIMEWIRE. I JUST USED THE OPERATING SYSTEM AND NAVIGATED TO
24 WHERE THE FILE LIVES ON THE HARD DRIVE AND DELETED IT THAT
25 WAY.

1 Q WHY WAS THAT IMPORTANT TO YOU?

2 A WELL, BECAUSE I WANTED TO SHOW THAT REGARDLESS OF
3 WHETHER I DELETED IT IN THE APPLICATION, WHICH WAS SEVERAL
4 SLIDES AGO OR IF I DOWNLOAD -- OR IF I DELETED IT OUTSIDE OF
5 LIMEWIRE, SO LIMEWIRE'S NOT EVEN SMART ENOUGH TO KNOW I
6 DELETED IT, IT'S GONE; NOW, AM I GOING TO SEE SOME KEYWORD
7 SEARCH HITS NOW NOW THAT I DELETED IT.

8 Q AND I MEANT TO -- JUST MAKE SURE I HAVE THE NEXT
9 SLIDE; CORRECT? IS THIS THE NEXT SLIDE THAT YOU'RE SHOWING?

10 A YES; AND BECAUSE I DELETED IT OUTSIDE OF THE
11 LIMEWIRE PROGRAM ITSELF, YOU KNOW, STILL IN THE INTERFACE,
12 STILL IN THE INTERFACE, THE FILE IS PRESENTED TO US, BUT I
13 TRIED TO SPIN THIS IN THE MOST FAVORABLE LIGHT TO THE DEFENSE
14 AS POSSIBLE AND GIVE EVERY OPPORTUNITY FOR MY TEST TO FAIL, SO
15 I DID THIS DELETION OF THE FILE AND MADE IT SO THAT IT STAYED
16 IN THE PROGRAM, AND STILL, I HAD NO SEARCH HIT ON THAT FILE,
17 WHICH IS NAMED WITH VERY POPULAR TERMS.

18 Q OKAY. AND, I BELIEVE, AFTER THAT, YOU MAKE
19 REFERENCE TO MISS LOEHRS' SCREEN SHOTS THAT WE HAVE PREVIOUSLY
20 GONE OVER THAT ARE ATTACHED TO HER AFFIDAVIT; CORRECT?

21 A RIGHT; AND I'VE ALREADY COMMENTED ON THIS --

22 Q RIGHT.

23 A -- BUT SHE -- SHE DOWNLOADED AC/DC VIDEO, I BELIEVE,
24 OR M.P.3, AND IT'S ONLY DOWNLOADED TEN PERCENT, SO IF YOU ZOOM
25 INTO THE LOWER LEFT CORNER, MY QUESTION IS...

1 Q WHICH IS PROBABLY DEMONSTRATED ON THE NEXT SLIDE.

2 A YEAH. MY QUESTION IS, WHY IS SHE SHARING A FILE
3 THAT'S COMPLETELY DOWNLOADED, SO I -- I WANTED TO TEST THAT.
4 I WANTED TO SEE, CAN I SET UP AN ENVIRONMENT WHERE I HAVE A
5 FILE PARTIALLY DOWNLOADED THAT HAS A CERTAIN HASH VALUE AND A
6 CERTAIN FILE NAME, GET THAT SAME FILE AND SHARE IT, COMPLETELY
7 DOWNLOADED WITH THE SAME FILE NAME AND THE SAME HASH VALUE TO
8 TRY TO REPLICATE THIS ENVIRONMENT SHE HAD, AS SHE PRESENTED
9 FOR THE FEDERAL PUBLIC DEFENDERS.

10 Q OKAY. AND BEFORE WE GO OVER THAT, I BELIEVE YOU
11 PROVIDED --

12 A OH, OH, OH, OKAY.

13 Q -- YOU PROVIDED THIS INFORMATION?

14 A CORRECT.

15 Q CAN YOU EXPLAIN TO THE COURT WHAT WE'RE LOOKING AT
16 HERE.

17 A SO -- AND THIS -- THIS GOES TO HER MISSPEAKING AND
18 HER -- I DON'T KNOW WHICH AFFIDAVIT IT WAS; ONE OF HER
19 AFFIDAVITS WHERE SHE REFERENCED VICTOR SMITH, SO WHAT I DID
20 WAS I INSTALLED LIMEWIRE, AND I FORENSICALLY LOOKED AT THE
21 FILEURNS.CACHE.

22 Q AND IS THAT THE SYSTEM OF NUMBERS AND LETTERS THAT
23 WE SEE IN THE BOTTOM BOX?

24 A IN THE BOTTOM BOX; AND IF YOU ZOOM IN THERE IN THIS
25 FRESHENED INSTALL OF LIMEWIRE AND SEE NO ACTIVITY, THERE'S

1 ONLY ONE HASH VALUE -- IF YOU GO LEFT --

2 Q GO LEFT?

3 A GO RIGHT.

4 Q GO RIGHT?

5 A I'M SORRY. I'M BACKWARDS -- AND YOU ZOOM IN THERE,

6 THE ONLY REFERENCE TO ANY HASH VALUE IS THIS ONE THAT BEGINS

7 WITH B-- SEE, READ IT HERE...B3G -- COULD YOU SEE, YOUR HONOR,

8 SHA-1, COLON, IT'S THERE BY DEFAULT. IT'S THERE BY DEFAULT IN

9 LIMEWIRE 4.14, FOR WHATEVER REASON. IF YOU SEE IT -- SEE THE

10 WORD SHA-1? THERE'S RED TEXT.

11 Q I SEE THIS.

12 A NOW, MOVE UP...GO LEFT, THERE'S A HASH VALUE. IT'S

13 THERE BY DEFAULT. I'M NOT SHARING. I KNOW IT'S THERE BY

14 DEFAULT, AND I'M SHARING NO FILES, BUT -- SO NOW, WHAT I

15 WANTED TO DO IS I WANTED TO DOWNLOAD PART OF A FILE, WHICH

16 SHOULD BE THE NEXT SLIDE.

17 Q OKAY. I BELIEVE YOU GO BACK TO THE LIMEWIRE VERSION

18 WE USE, WHICH IS 4.14?

19 A CORRECT.

20 Q BUT THEN, YOU GO THREE -- TWO SLIDES LATER, AND --

21 A CORRECT.

22 Q -- YOU'RE DOWNLOADING OR ATTEMPTING TO DOWNLOAD

23 MORNING SNOW AND TREE?

24 A THAT'S CORRECT. I DOWNLOAD MORNING SNOW AND TREE,

25 AND YOU CAN SEE I PAUSED IT AT 28 PERCENT.

1 Q LET ME JUST ZOOM IN A LITTLE BIT.

2 A SO I'VE DOCUMENTED WHAT IT LOOKS LIKE EMPTY, AND
3 NOW, I DOWNLOAD 28 PERCENT OF A FILE; AND AT THIS POINT, I
4 KNOW THAT MANY OF THE LIMEWIRE ARTIFACTS GET WRITTEN WHEN YOU
5 SHUT IT DOWN. IT'S OPERATING, AND IT RUNS THE PROGRAM JUST IN
6 THE COMPUTER'S MEMORY, AND IT HASN'T WRITTEN IT OUT TO THE
7 HARD DISK, WHICH IS WHAT WE ANALYZE IN FORENSICS, SO I HAVE TO
8 SHUT DOWN THE PROGRAM TO MAKE SURE THAT EVERYTHING GETS
9 WRITTEN TO DISK, SO I SHUT DOWN THE PROGRAM; AND NOW, I
10 REEXAMINE THAT FILEURNS.CACHE.

11 Q OKAY. AND THAT IS THE NEXT SLIDE. NOW, LET'S --
12 ACTUALLY, I THINK I'LL KEEP IT WHERE WE WERE 'CAUSE I THINK
13 YOU HIGHLIGHTED THE SAME.

14 WE'RE STILL IN THE SAME AREA; CORRECT?

15 A IS THAT THE SAME ONE OR THE NEXT ONE?

16 Q THAT WAS THE NEXT.

17 A OH, THAT'S THE NEXT ONE? SO THIS IS AFTER I
18 DOWNLOAD 28 PERCENT OF A FILE. YOU CAN ONLY SEE THE REFERENCE
19 THAT SAME SHA, B3, WHATEVER HASH VALUE.

20 MY POINT IN THIS TEST IS THAT A PARTIALLY DOWNLOADED
21 FILE DOES NOT APPEAR IN THE FILEURNS.CACHE, AND TAMI LOEHRS
22 SAID IN HER AFFIDAVIT, AND I'VE BEEN FORTUNATE ENOUGH TO HEAR
23 HER TESTIFY, SHE TESTIFIED UNDER OATH THAT, ABSOLUTELY, FILES
24 GO IN THERE THAT ARE INCOMPLETE.

25 DOES IT PERTAIN TO THIS CASE SPECIFICALLY? NO.

1 IT -- IT -- I SIMPLY DID THE TEST BECAUSE SHE MADE A STATEMENT
2 THAT I KNEW WAS WRONG, AND I THINK THAT HER TESTING IS FLAWED
3 AND, YOU KNOW, INCOMPLETE AND INACCURATE.

4 Q OKAY. SO IN THE NEXT SCREEN, YOU GO TO THE
5 INCOMPLETE FOLDER; IS THAT CORRECT?

6 A RIGHT; AND -- AND SO THEN, I NAVIGATED TO WHERE THE
7 DOWNLOADS.DAT WAS --

8 Q OKAY.

9 A -- BECAUSE I HAVE THIS FILE THAT'S 28 PERCENT
10 DOWNLOADED. I SHUT DOWN LIMEWIRE, AND SO WHERE IS IT -- WHERE
11 IS IT STORED? WELL, IT'S IN THIS FILE. THIS IS ONE OF THE
12 FILES THAT MAKES LIMEWIRE WORK, AND I HIGHLIGHTED A CORRECT
13 PORTION -- I BELIEVE IF YOU ZOOM IN AND KEEP MOVING LEFT A
14 LITTLE BIT...

15 Q OKAY. THIS PORTION?

16 A -- AND YOU CAN SEE THE PATH OF THE FILES THERE.
17 DOCUMENTS AND SETTINGS, THAT'S A FOLDER ON YOUR COMPUTER; AND
18 THEN, ADMIN, THAT'S THE USER NAME OF THE COMPUTER; AND THEN,
19 INCOMPLETE, SO THAT'S THE PATH TO THE FILE. IT'S REFERRED TO
20 AS, YOU KNOW, COMPUTER PATH; AND THEN, YOU SEE THE FILE, BUT
21 THERE'S SOMETHING THAT WAS PUT IN FRONT OF THE FILE NAME, AND
22 IT'S THE LETTER "J" AND THEN SOME NUMBERS; AND THEN, YOU SEE
23 THE FILE NAME, WELL, THAT'S HOW LIMEWIRE STORES THOSE
24 PARTIALLY INCOMPLETE FILES. THEY HAVE THAT T-DASH VALUE, "D,"
25 BIG LONG FILE NAME.

1 Q OKAY. AND BASED ON YOUR TESTING, THAT FILE DID NOT
2 SHOW AS AVAILABLE FOR SHARING?

3 A CORRECT. NO, IT DID NOT SHOW. IN ALL MY TESTS, IT
4 DOESN'T SHOW AVAILABLE FOR SHARING; AND ONE THING SIGNIFICANT
5 HERE IS HOW IT'S NAMED: I'M AN INCOMPLETE FILE, AND I HAVE
6 T-DASH, AND THEN, IT'S A BUNCH OF NUMBERS. THOSE NUMBERS
7 REPRESENT HOW BIG THE FILE WILL BE WHEN IT BECOMES A COMPLETE
8 DOWNLOAD.

9 IN TAMI LOEHRS' TEST, SHE FOUND A FILE, AC/DC, AND
10 THERE WAS A NAME; RIGHT? DID IT HAVE A T-DASH VALUE IN FRONT?
11 IT DIDN'T, SO THE FILE NAME, AS IT'S AN INCOMPLETE VALUE, IS
12 T-DASH VALUE, AND SHE DID THIS DEMONSTRATION BEFORE A GROUP OF
13 PEOPLE AND FOUND A FILE THAT DIDN'T HAVE A TEMPORARY FILE
14 NAME. I WOULD EXPECT THAT EVEN IF LIMEWIRE DID WHAT SHE
15 SUGGESTED DID, THAT THE NAME WOULD BE COMPLETELY DIFFERENT.

16 Q AND THAT'S REPRESENTED BY THIS "T" I'M GOING TO
17 HIGHLIGHT HERE, AND I HIGHLIGHTED A FEW OTHER PORTIONS.

18 A RIGHT, AND THAT'S WHAT INDICATES TO LIMEWIRE IT'S A
19 TEMPORARY FILE. IF IT WAS PREVIEW, IT WOULD HAVE THE WORD
20 PREVIEW IN FRONT OF IT.

21 Q I'M GOING TO SKIP A COUPLE OTHER SLIDES. I'M JUST
22 GOING TO MOVE IT UP HERE.

23 CAN YOU EXPLAIN TO US WHAT DID YOU DO HERE.

24 A SO BECAUSE OF HER TEST, THAT I ONLY HAD THOSE FIVE
25 OR SIX SCREEN SHOTS TO GO BY, I WANTED TO RECREATE AN

1 ENVIRONMENT WHERE I COULD SHARE A WHOLE FILE WITH A CERTAIN
2 NAME AND THEN HAVE A PARTIAL FILE THERE ALSO, WHICH IS, I
3 SUGGEST, MAYBE WHAT HAPPENED HERE, AND I WAS ABLE TO DO IT,
4 SO -- SO IF YOU LOOK AT THE LOWER LEFT-HAND SCREEN OF THIS
5 EXHIBIT, YOU CAN SEE THAT BEFORE I START DOWNLOADING THIS
6 FILE, THERE'S A ONE IN THAT CIRCLE.

7 Q RIGHT.

8 A I'VE DOWNLOADED THE WHOLE FILE ALREADY. IT'S IN MY
9 COMPLETED DOWNLOAD SECTION, AND IT'S ACTIVELY BEING SHARED OUT
10 OVER THE INTERNET RIGHT NOW. THEN, I TRY TO DOWNLOAD THE SAME
11 FILE WITH THE SAME FILE NAME AND THE SAME HASH VALUE, AND I
12 WANTED TO SEE HOW LIMEWIRE WOULD REACT.

13 Q AND HOW DID LIMEWIRE REACT?

14 A IT SAID, HEY, YOU ALREADY HAVE THIS FILE.

15 Q AND IS THAT WHAT IS DEMONSTRATED BY THIS BOX THAT
16 HAS WARNING ON IT?

17 A CORRECT, AND IT ASKS ME WHAT I WANT TO DO, AND I
18 TOOK THE DEFAULT OPTION, WHICH IS OVERWRITE.

19 Q OKAY. AND WHAT DOES THAT MEAN?

20 A SO IT JUST MEANS THAT ONCE THIS FILE THAT I ALREADY
21 HAVE COMPLETES DOWNLOADING, IT'S GOING TO OVERWRITE WHAT I
22 ALREADY HAVE, BUT WHAT I'VE DONE IS CREATED AN ENVIRONMENT
23 WHERE I HAVE A FILE THAT'S COMPLETELY DOWNLOADED WITH A
24 CERTAIN NAME AND HASH VALUE; AND NOW, I HAVE A COPY OF THAT
25 SAME FILE IN ITS INCOMPLETE STATE --

1 Q OKAY.

2 A -- AND THAT IS ONE EXPLANATION AS TO WHY TAMI LOEHRS
3 MAY HAVE FOUND HER FILE THAT WAS DOWNLOADED TEN PERCENT.

4 Q AND BY THAT, YOU'RE REFERRING TO THE ONE SHARED FILE
5 THAT WAS COMPLETELY DOWNLOADED?

6 A THAT SHE CAN'T REMEMBER WHAT IT WAS.

7 Q I'M GOING TO SKIP THROUGH THE NEXT SLIDE...THE NEXT
8 SLIDE DEMONSTRATES, I BELIEVE, IT'S 27 PERCENT DOWNLOADED;
9 CORRECT?

10 A RIGHT. THAT'S THE FILE THAT I WAS IN THE PROCESS OF
11 DOWNLOADED -- DOWNLOADING. IT'S A DUPLICATE FILE, I HAVE A
12 WHOLE FILE, AND I HAVE A PART OF A FILE, AND THE NEXT SCREEN
13 KIND OF TELLS THE TALE.

14 Q AND JUST TO CLARIFY, YOU KNOW YOU HAVE A WHOLE FILE
15 BECAUSE YOU HAVE ONE COMPLETED FILE AVAILABLE FOR SHARING AS
16 INDICATED BY THIS ONE BOX IN THE LOWER LEFT CORNER?

17 A RIGHT; AND WHEN YOU GO TO THE NEXT SLIDE, IT'S EVEN
18 MORE APPARENT --

19 Q OKAY.

20 A -- BECAUSE NOW, I'M GOING TO SHOW YOU THAT WHOLE
21 FILE, EVEN THOUGH I HAVE ONE IN THE PROCESS OF BEING
22 DOWNLOADED, INCOMPLETE --

23 Q RIGHT.

24 A -- HERE'S THE WHOLE FILE, AND LOOK AT THE HITS
25 COLUMN IN THE UPPER RIGHT. IT'S BEING SHARED.

1 Q OKAY. SO THE ONE COMPLETED FILE THAT'S DEMONSTRATED
2 BY THE ZERO -- I MEAN, THE 1 IN THE BOTTOM LEFT CORNER IS
3 COMPLETE AND AVAILABLE FOR SHARING?

4 A RIGHT; AND THIS IS DONE WITH THE VERSION THAT'S IN
5 QUESTION HERE, NOT 4.18.8. I DIDN'T TAKE THE TIME TO TEST
6 THAT VERSION AS OF YET IN THIS -- IN THIS EXACT PROCESS THAT I
7 FOLLOWED FOR THE VERSION THAT'S IN QUESTION IN THIS CASE, THE
8 MORAN INVESTIGATION.

9 Q SO YOU USED THE VERSION THAT THE DEFENDANT USED IN
10 THIS CASE?

11 A RIGHT.

12 Q AND THAT DETECTIVE CORDER OBSERVED?

13 A CORRECT.

14 Q OKAY. AND LET'S TALK ABOUT THE LAST PAGE OF YOUR
15 EXHIBIT.

16 WHAT ARE WE LOOKING AT HERE?

17 A SO THEN, I SHOWED YOU A -- IF YOU SCROLL OVER TO THE
18 LEFT, THIS IS THE -- NO, TO THE -- LEFT.

19 IS THAT THE RIGHT OR LEFT?

20 Q LEFT.

21 A I'M SORRY. IS THAT RIGHT -- OR THE OTHER WAY.

22 Q I THINK YOUR LEFT IS MY RIGHT.

23 A I WANT YOU TO GO TO YOUR LEFT.

24 Q MY LEFT IS HERE.

25 A YEAH. SCROLL DOWN.

1 Q (COMPLYING.)

2 A YOU CAN SEE HOW IT SAYS, INCOMPLETE FILES.

3 Q YES.

4 A I'M JUST SHOWING YOU THAT THIS IS THAT INCOMPLETE
5 FILES THAT IS COEXISTING WITH THE COMPLETED FILE, NO PROBLEM;
6 AND IF YOU SCROLL OVER TO THE HITS COLUMN, IT'S STILL A ZERO,
7 SO MY COMPUTER'S RESPONDING I HAVE A FILE BECAUSE I HAVE A
8 COMPLETED FILE, BUT HERE, I HAVE CREATED AN ENVIRONMENT WHERE
9 I'M, YOU KNOW, REPORTING OUT TO THE NETWORK THAT I HAVE A
10 CERTAIN FILE, BUT IT'S RESPONDING TO THE WHOLE FILE, NOT THE
11 PARTIAL FILE.

12 Q OKAY. SO IF I'M UNDERSTANDING YOUR TESTIMONY
13 CORRECTLY, AS DEMONSTRATED BY THE LAST PAGE IN YOUR SLIDE, YOU
14 DOWNLOADED A COMPLETE FILE; THEN, YOU WENT BACK AND ATTEMPTED
15 TO DOWNLOAD THE SAME FILE ONLY 27 PERCENT, I BELIEVE, IS WHAT
16 YOUR TESTING --

17 A RIGHT.

18 Q -- DEMONSTRATED; AND YOU TRIED TO MAKE THAT PARTIAL
19 FILE THAT YOU DOWNLOADED 27 PERCENT AVAILABLE FOR SHARING?

20 A RIGHT.

21 Q AND WHEN YOU MADE IT AVAILABLE FOR SHARING, YOU WERE
22 SHOWING NO HITS, MEANING, NO ONE WAS THERE OR NO ONE -- IT
23 COULDN'T BE SHARED TO ANYBODY?

24 A CORRECT. THE MOST IMPORTANT PART OF THIS LAST
25 PROCESS IS TRY TO EXPLAIN, AND I DIDN'T HAVE THE LUXURY OF

1 SPEAKING WITH TAMI LOEHRS WHEN I WAS DOING THIS. ALL I COULD
2 DO IS READ HER REPORT, TRY TO EXPLAIN THE ANOMALY THAT I SAW
3 HERE: HEY, WAIT A MINUTE. SHE'S SHARING THAT ONE FILE. I
4 KNOW THAT ONE INDICATOR SHOULD BE A ZERO WHEN SHE HAS THIS
5 AC/DC ALREADY DOWNLOADED, SO I KNEW MY QUESTION TO HER WAS
6 WHAT IS THAT FILE, AND I SAT AND LISTENED TO HER TESTIMONY,
7 AND SHE SAID, I DON'T KNOW.

8 Q AND THAT'S IN DIRECT REFERENCE TO THIS PARTICULAR
9 SCREEN SHOT FROM MISS LOEHRS' TESTING?

10 A RIGHT. SHE HAD A SHARED FILE, EVEN THOUGH SHE'D
11 ONLY DOWNLOADED TEN PERCENT OF A FILE "A," TO HAVE A
12 SCIENTIFIC TEST PERFORMED, SHE SHOULD BE ABLE TO REPLICATE THE
13 TEST: I CAN REPLICATE MY TEST; AND "B," I NEED TO DOCUMENT IT
14 WELL SO THAT IT'S BEING TOLD TO THE COURT HERE.

15 SHE HAS NO IDEA WHAT SHE'S SHARING, AND SHE'S
16 REPRESENTING IT AS PROOF POSITIVE AND TAKING A POSITION IN
17 SOMETHING THAT SHE CAN'T RECREATE BY HER OWN TESTIMONY.

18 Q NOW, YOU ADMIT YOU'RE FAMILIAR WITH PEER SPECTRE,
19 AND YOU KNOW THE REASON, HAVING SAT HERE THROUGH TESTIMONY IN
20 THIS CASE, AS TO WHY DEFENSE COUNSEL PURPORTS TO NEED THE
21 SOFTWARE.

22 DO YOU, AS A LAW ENFORCEMENT OFFICER AND A TRAINER
23 ON THIS MATERIAL, SEE ANY HARM IN PROVIDING THE PEER SPECTRE
24 SOFTWARE?

25 A ABSOLUTELY.

1 Q AND WHAT IS THAT HARM?

2 A I DO NOT WANT TO GIVE ANY SOFTWARE THAT I HAVE THAT
3 IS TRICKS OF THE TRADE, SO TO SPEAK, BUT -- YOU KNOW, TO THE
4 DEFENSE.

5 IT IS LAW ENFORCEMENT SENSITIVE. IT'S WHAT WE'RE
6 USING TO IDENTIFY THESE POTENTIAL TARGETS. IT'S PART OF A
7 SYSTEM AND ISN'T -- SO IT'S IMPORTANT TO ME TO KEEP THAT IN
8 LAW ENFORCEMENT'S HANDS. THIS IS ALREADY, YOU KNOW, I KNOW,
9 F.B.I. EP2P TOOL. THEY WANTED THAT, AND THEY WEREN'T ABLE TO
10 GET THAT IN THE NINTH CIRCUIT HERE, BUT WE'RE IN A UNIQUE
11 SITUATION WHERE THEY'RE ASKING FOR SOMETHING THAT DOESN'T
12 MATTER.

13 I DON'T WANT THEM TO HAVE IT BECAUSE IT'S HOW WE
14 OPERATE. IT'S LAW ENFORCEMENT SENSITIVE. IT OPERATES IN A
15 CERTAIN AUTOMATED WAY, BUT AT THE END OF THE DAY, IT CANNOT
16 SEE ANY SEARCH HITS EXCEPT FOR WHAT LIMEWIRE 4.14.0 WILL SEND
17 TO IT.

18 IF I WAS ON THE DEFENSE SIDE, AND I WAS THEIR
19 EXPERT, I WOULD HAVE LIMEWIRE 4.14.0 AND SEE BY LOOKING AT THE
20 SOFTWARE AND THE SOURCE CODE WHAT RESULTS IT WILL ISSUE OUT TO
21 ANY CLIENT, PEER SPECTRE OR BEARSHARE OR LIMEWIRE. THEY CAN
22 ANSWER ALL QUESTIONS WITH A PIECE OF SOFTWARE THEY ALREADY
23 HAVE; AND AS IT RELATES TO OTHER ARGUMENTS I'M AWARE OF IN
24 COURTS, YOU KNOW, THE INVESTIGATIVE TOOL THAT THE F.B.I. USES,
25 EP2P, THE NINTH CIRCUIT SAID THE DEFENSE WAS NOT ENTITLED TO

1 IT, BUT THEY'RE IN A UNIQUE SITUATION. THEY ACTUALLY HAVE
2 ACCESS TO THE SOURCE CODE AND THE PROGRAM USED IN THIS CASE.
3 THEY HAVE MORE IN THIS INVESTIGATION THAN IN THAT NINTH
4 CIRCUIT CASE, AND YET, THEY CHOSE TO NOT EVEN LOOK AT THE
5 SOFTWARE THAT THEY HAVE AVAILABLE TO THEM TODAY.

6 Q IS IT THAT SOFTWARE BEING LIMEWIRE AND PHEX?

7 A LIMEWIRE AND PHEX SOURCE CODE IS AVAILABLE TO ANYONE
8 WHO WANTS IT.

9 Q NOW, I KNOW YOU MENTIONED YOU, AS A LAW ENFORCEMENT
10 OFFICER, WOULD NOT WANT THE DEFENSE TO HAVE THE TRICKS OF THE
11 TRADE.

12 DO ANY OTHER LAW ENFORCEMENT OFFICERS FEEL THE SAME
13 WAY THAT YOU DO?

14 A ABSOLUTELY. I'M A DEVELOPER OF A PROGRAM FOR LAW
15 ENFORCEMENT, AND I WILL CONTINUE TO MAKE MYSELF AVAILABLE TO
16 FIGHT THIS BECAUSE WE ARE USING OPEN SOURCE PROGRAMS AND JUST
17 TWEAKING THEM TO HELP INVESTIGATORS, BUT THE BASIC FUNCTIONING
18 OF PEER SPECTRE, OF THE MODIFIED PHEX VERSION I'M INVOLVED
19 WITH OR THE EP2P TOOL, IS THAT IT OPERATES THE SAME WAY; AND
20 AT THE END OF THE DAY, ANYTHING THE DEFENSE WOULD EVER NEED TO
21 ANSWER WHAT IT WAS ABLE TO COLLECT CAN BE FOUND IN THE CLIENT
22 OR THE SUSPECT IN THAT CASE OR THE ACCUSED IN THAT CASE WAS
23 RUNNING, AND THAT'S ALL THEY NEED TO ANSWER THEIR QUESTIONS,
24 SO I DON'T WANT SOME DEFENSE EXPERT OR DEFENSE ATTORNEY
25 WRITING A PAPER EDUCATING THE POTENTIAL TARGETS WE WOULD HAVE

1 IN THE FUTURE ON HOW WE'RE DOING OUR JOB.

2 I DON'T WANT THEM TO KNOW HOW I AM CONDUCTING MY
3 INVESTIGATIONS SO WE CAN CONTINUE TO SAVE CHILDREN AND NOT
4 HAVE THEM BE ABUSED BY PEOPLE ON -- THROUGH THE -- THE ABUSE
5 THAT HAPPENS THROUGH CHILD PORNOGRAPHY IN ITSELF AND --
6 CONSIDERING THESE ARE LIVE VICTIMS OUT THERE BEING ABUSED.

7 Q IF THIS INFORMATION WERE DISCLOSED, COULD THAT
8 AFFECT THE WAY LAW ENFORCEMENT OPERATES IN REGARDS TO THEIR
9 INVESTIGATION IN COMPUTER CRIMES?

10 A YES; AND -- AND ON TOP OF THAT IS THEY DON'T NEED IT
11 TO PERFORM THE TEST THAT THEY'RE ASKING TO TEST, THEY NEED TO
12 TEST LIMEWIRE.

13 (MS. ANDRUS CONFERRING WITH MS. HARRIS.)

14 Q BY MS. HARRIS: AND WHAT ABOUT -- SEPARATE AND APART
15 FROM THE PEER SPECTRE, WHAT ABOUT THE TRAINING MATERIALS AND
16 THE MANUALS THAT GO ALONG WITH THE SOFTWARE? IS THERE ANY
17 HARM IN DISSEMINATING THAT INFORMATION?

18 A THOSE ARE METHODS THAT WE USE TO INVESTIGATE PEOPLE
19 ONLINE. THERE'S NO NEED FOR THEM TO HAVE THAT. I'M SITTING
20 HERE, TESTIFYING THAT STILL, TO THIS DAY, WE FOLLOW THE SAME
21 PROTOCOL THAT THE DETECTIVE USED IN THIS CASE. IT DOESN'T
22 SERVE ANY PURPOSE WHATSOEVER. THEY NEED TO LOOK AT THE
23 LIMEWIRE AND ANALYZE THE VERSION OF THE PROGRAM THAT DEFENDANT
24 WAS USING.

25 I DON'T WANT THEM TO KNOW HOW WE -- YOU KNOW, HOW WE

1 CONNECT TO THEM. MAYBE WE TRY TO INITIATE A CHAT -- I'M JUST
2 MAKING THINGS UP FOR SAKE OF ARGUMENT. WHATEVER PROCESS IS,
3 AND WHATEVER INVESTIGATIVE PROTOCOL WE FOLLOW, I DON'T WANT
4 THE DEFENSE TO KNOW -- IF PART OF OUR PROTOCOL IS THAT WE WILL
5 ALWAYS TRY TO CHAT WITH A PERSON, I DON'T WANT THEM TO KNOW
6 THAT WE ALWAYS TRY TO CHAT WITH A PERSON SO THEY CAN PUBLISH
7 THIS TO THE PUBLIC AND MAKE CRIMINALS AWARE THIS IS HOW LAW
8 ENFORCEMENT OPERATES.

9 Q ARE THERE OTHER THINGS OR OTHER INFORMATION OR
10 TECHNIQUES INCLUDED IN THESE MANUALS, SEPARATE AND APART FROM
11 HOW THIS SOFTWARE FUNCTIONS; FOR EXAMPLE, HOW TO DO CERTAIN
12 INVESTIGATIVE TECHNIQUES?

13 I BELIEVE YOU KIND OF MADE REFERENCE TO IT, AS FAR
14 AS INITIATING CHATS AND THAT TYPE OF THING.

15 A YES. I MEAN, I DON'T KNOW WHAT ALL'S IN ALL THE
16 MANUALS -- THE MANUALS THAT I'M INVOLVED WITH. I DON'T KNOW
17 WHAT MANUALS SHE HAS. I DON'T KNOW WHAT THE WYOMING PROTOCOL
18 GAVE TO HER, BUT IT IS VERY POSSIBLE -- I KNOW THAT, AS A
19 WHOLE, IT TEACHES AN INVESTIGATOR FROM THE GROUND UP WHAT
20 GNUMELLA IS, AND HOW TO DO THIS INVESTIGATION, HOW TO COLLECT
21 THE EVIDENCE, AND THINGS OF THAT NATURE THAT DOESN'T
22 PERTAIN -- OR DOES -- I DON'T BELIEVE SHOULD BE AVAILABLE TO
23 THE DEFENSE, AND IT ISN'T RELEVANT. THEY HAVE EVERYTHING THEY
24 NEED.

25 Q IS IT POSSIBLE THAT IT COULD CONTAIN HOW TO

1 INTERVIEW A SUSPECT IN REGARDS TO FILES OR INFORMATION YOU
2 RECEIVED ON LIMEWIRE?

3 A ABSOLUTELY.

4 Q AND WOULD THAT BE DAMAGING TO YOU AS A LAW
5 ENFORCEMENT OFFICER?

6 A CORRECT. I WOULDN'T WANT -- I WOULDN'T WANT SOMEONE
7 TO KNOW THE INTERVIEWING TECHNIQUES THAT I USE TO ELICIT A
8 CONFESSION.

9 MS. HARRIS: I HAVE NO FURTHER QUESTIONS, YOUR
10 HONOR.

11 THE COURT: ALL RIGHT. THANK YOU.

12 IS THIS THE BEST TIME TO JUST STOP NOW AND COME BACK
13 TO -- ANOTHER DAY? I'M ASSUMING BOTH COUNSEL WILL CHECK WITH
14 EACH OTHER AND GIVE US A TIME. IF I'M IN A TRIAL, WE'LL JUST
15 TAKE A DAY RECESS.

16 MS. HARRIS: THANK YOU, JUDGE.

17 THE WITNESS: THANK YOU, YOUR HONOR.

18 THE COURT: THANK YOU. THANKS, EVERYONE.

19 MS. HARRIS: AND, JUDGE, JUST FOR THE RECORD, I
20 BELIEVE DEFENSE COUNSEL SAID THAT HE WAS AVAILABLE ON MONDAY.
21 I WILL CLEAR MY CALENDAR AND BE AVAILABLE ON MONDAY SO THAT WE
22 CAN TIE UP THE REMAINING WITNESSES THAT ARE ACTUALLY HERE IN
23 ARIZONA SO THAT ALL WE WOULD HAVE LEFT IS CORPORAL ERDELY.

24 THE COURT: OKAY. WE'LL START AT 10:30 MONDAY.

25 IS THAT OKAY? ELEVEN?

1 MR. GILLESPIE: ACTUALLY, I HAVEN'T CHECKED MY
2 CALENDAR, BUT I CAN DO THAT RIGHT NOW.

3 THE COURT: OKAY. LET US KNOW.

4 MR. GILLESPIE: YES, SIR.

5 THE COURT: WE'VE GOT IT DOWN FOR 10:30 MONDAY. LET
6 US KNOW IF THAT'S NOT GOING TO GO.

7 OKAY. WE'RE AT RECESS. EVERYBODY RELAX.

8 (THERE WAS A BREAK IN THE PROCEEDINGS AT
9 4:19 P.M. UNTIL 4:20 P.M.)

10 MS. HARRIS: I WANT TO CLARIFY A POINT BECAUSE I
11 WANT TO MAKE SURE WE'RE ALL ON THE SAME PAGE, AS FAR AS THE
12 ORDER THAT WE HAVE LEFT. I BELIEVE DEFENSE COUNSEL WANTED TO
13 CALL DETECTIVE LITCHFIELD, AND THE STATE HAD --

14 THE COURT: ON MONDAY?

15 MS. HARRIS: ON MONDAY; AND THEN, THE STATE -- IF
16 DEFENSE IS DONE WITH THAT PORTION OF THEIR QUESTIONING, THE
17 STATE HAS A WITNESS, DETECTIVE BALE (PHONETIC), WHO IS THE
18 INVESTIGATOR ON THE ROBISON CASE, AND WE WANT TO GET THROUGH
19 THOSE TWO, IF WE CAN, ON MONDAY, BUT I BELIEVE -- AND I JUST
20 WANT TO MAKE SURE -- AFTER WE ARE DONE WITH THOSE WITNESSES,
21 THAT WILL JUST LEAVE CORPORAL ERDELY AND MRS. LOEHRS.

22 THE COURT: OKAY. AND YOU BUY THAT?

23 MR. GILLESPIE: AS FAR AS I KNOW. I MEAN, WE HAVE
24 THE RIGHT TO CALL MISS LOEHRS IN REBUTTAL --

25 MS. HARRIS: RIGHT.

1 MR. GILLESPIE: -- SO...

2 THE COURT: SURE.

3 MR. GILLESPIE: -- AS FAR AS I KNOW, I THINK THAT
4 WOULD CONCLUDE THE EVIDENCE.

5 THE COURT: AND, SERIOUSLY, IF BOTH BOTH OF YOU WANT
6 TO CONSIDER TO STIPULATE THAT PROGRAM ABOUT WE'VE BEEN USING
7 IT, PEOPLE IN FLORIDA, ALL OVER THE PLACE -- THEY'VE BEEN
8 TESTIFYING IN ACTUAL JURY TRIALS...

9 MR. GILLESPIE: USING WHICH PROGRAM?

10 THE COURT: SKYPE. WE'VE GOT THE SKYPE EXPERT IN
11 TOWN. HE COMES -- I DON'T KNOW WHERE HE COMES FROM.

12 DO YOU KNOW WHO THAT WAS, THE SKYPE CLERK?

13 THE CLERK: THE SKYPE GUY? I HAVE NO IDEA...

14 THE COURT: BE SURE AND THINK OF SKYPE. IT'S SO
15 MUCH CHEAPER.

16 MS. HARRIS: I DO NOT HAVE THAT. I BELIEVE COUNSEL
17 HAD THAT.

18 THE CLERK: COUNSEL, COPY OF THE AFFIDAVIT OF SEARCH
19 WARRANT, EXHIBIT 3, I'M MISSING IT.

20 MR. GILLESPIE: (COMPLYING.)

21 THE COURT: THANK YOU VERY MUCH.

22 MS. HARRIS: NO PROBLEM.

23 THE COURT: OKAY. SOMETHING ELSE YOU WANTED ON THE
24 RECORD.

25 OKAY. WHAT ELSE?

1 MS. ANDRUS: JUDGE, I THINK MY -- THIS IS JUST SO
2 THAT I UNDERSTAND. I UNDERSTOOD THAT, EITHER YESTERDAY OR THE
3 DAY BEFORE, YOU SAID THAT, AFTER THE EXPERTS TESTIFY, THAT YOU
4 WOULD ALLOW EACH PARTY TO RECALL EACH EXPERT.

5 THE COURT: SURE.

6 MS. ANDRUS: OKAY. SO IN KEEPING WITH THAT, CAN
7 WE -- WHEN WE BLOCK OFF THE TIME, CAN WE HAVE AT LEAST -- I
8 MEAN, I THINK IT'LL TAKE AT LEAST ONE DAY BECAUSE WE HAVE
9 CROSS AND, POTENTIALLY CALLING MISS LOEHRS AGAIN, AND THEN,
10 POTENTIALLY CALLING CORPORAL ERDELY AGAIN; POSSIBLY TWO OR
11 THREE DAYS.

12 THE COURT: WHATEVER TIME YOU NEED, WE'RE GOING TO
13 GIVE YOU.

14 MS. ANDRUS: WE JUST DIDN'T WANT TO MESS WITH YOUR
15 TRIAL SCHEDULE, BUT WE WANT TO MAKE SURE WE'RE NOT MESSING UP
16 MISS LOEHRS' TIME OR CORPORAL ERDELY'S TIME, IF THE COURT HAS
17 OTHER STUFF...

18 THE COURT: YOU'LL GIVE US THOSE DATES AS SOON AS
19 POSSIBLE, WE'LL JUST MAKE OURSELVES AVAILABLE. IT IS
20 IMPORTANT.

21 MR. GILLESPIE: IT IS IMPORTANT.

22 I GUESS WE'RE PROBABLY NOT ON THE RECORD.

23 ALL OF THIS IS COMING AT US AT THE LAST MINUTE. WE
24 WOULD LIKE TO DO SOME ADDITIONAL TESTING NOW, AND I WOULD LIKE
25 YOU TO ALLOW US TO DO THAT SO THAT WE COULD PRESENT THAT IN

1 OUR CROSS-EXAMINATION AND REBUTTAL.

2 THE COURT: YEAH, I DON'T EVEN HAVE A PROBLEM WITH
3 THAT, BUT BOTH SIDES COULD DO MORE TO REBUT THE EXPERTS.

4 MR. GILLESPIE: OKAY.

5 MS. HARRIS: JUDGE, I DO HAVE A PROBLEM WITH THAT.
6 WE'RE GOING TO EXTEND THIS HEARING INTO INFINITY ON PEOPLE
7 DOING TESTS AND RETESTS.

8 WE DID IMPOSE A DEADLINE ON TESTING. I BELIEVE
9 DEFENSE COUNSEL KNEW WHAT THE ISSUE WAS BECAUSE THEY RETAINED
10 MISS LOEHRS TO SET FORTH THE TESTING. CORPORAL ERDELY
11 PROVIDED INFORMATION THAT WAS COUNTER TO THAT, SO I BELIEVE
12 IT'S UP TO THE JUDGE TO THEN DETERMINE WHICH VERSION HE IS
13 RELYING ON MORE AND MORE CREDIBLE TO MAKE A RULING, SO TO KEEP
14 DOING ADDITIONAL TESTING TO INFINITY, AT THIS POINT, WE WOULD
15 THEN BE EXTENDING THIS HEARING MORE THAN JUST THE DAY OR TWO
16 REMAINING IN THE FUTURE; WE'LL BE DOING ANOTHER FOUR OR FIVE
17 DAYS ON TESTING AND RETEST, SO MY CONCERN IS THIS WILL BE
18 DRAGGING OUT, AND WE'LL KEEP INCURRING NOT ONLY EXPENSES BUT
19 WASTING TIME: CORPORAL ERDELY'S TIME, MRS. LOEHRS' TIME.

20 I WOULD LIKE TO TRY TO GET THIS HEARING AND THE
21 RECORD AS CLEAR AS POSSIBLE, BUT I AM ALSO CONCERNED WITH
22 ADDITIONAL TESTING WILL COME ADDITIONAL TESTIMONY. NOT JUST
23 REBUTTAL TESTIMONY BUT TESTIMONY THAT CAN GO ON FOR WEEKS AND
24 WEEKS AT A TIME.

25 THE COURT: WELL, I'LL PLAY THAT BY EAR BECAUSE

1 THINGS WEREN'T DISCLOSED FOR EACH SIDE. I WANT TO GET THE
2 CORRECT ANSWER FOR THE APPELLATE COURT. WE'LL SEE HOW IT
3 GOES.

4 MR. GILLESPIE: VERY FINE.

5 (WHEREUPON, THE PROCEEDINGS CONCLUDED AT
6 4:26 P.M.)

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CERTIFICATE OF REPORTER

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I, KIMBERLY D. MC ANDREWS, OFFICIAL REPORTER IN THE SUPERIOR COURT OF THE STATE OF ARIZONA, IN AND FOR THE COUNTY OF MARICOPA, DO HEREBY CERTIFY THAT I MADE A SHORTHAND RECORD OF THE PROCEEDINGS HAD AT THE FOREGOING ENTITLED CAUSE, AT THE TIME AND PLACE HEREINBEFORE STATED;

THAT SAID RECORD IS FULL, TRUE, AND ACCURATE;

THAT THE SAME WAS THEREAFTER TRANSCRIBED UNDER MY DIRECTION; AND

THAT THE FOREGOING EIGHTY-NINE (89) TYPEWRITTEN PAGES CONSTITUTE A FULL, TRUE, AND ACCURATE TRANSCRIPT OF SAID RECORD, ALL TO THE BEST OF MY KNOWLEDGE AND ABILITY.

DATED AT PHOENIX, ARIZONA, THIS 11TH DAY OF SEPTEMBER, 2011.

/S/ KIMBERLY D. MC ANDREWS
KIMBERLY D. MC ANDREWS,
C.S.R./C.C.R./C.R., R.P.R.