

## Robert Herz

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**From:** Robert Herz [rmherz@gci.net]  
**Sent:** Friday, December 06, 2019 5:04 PM  
**To:** 'Walker, Jonas (USAASK) 5'  
**Cc:** 'Jeff M. Fischbach, ABFE'  
**Subject:** RE: Hardware and software Specifications

Mr. Walker,

I would agree that Mr. Fischbach is in the best position to know what his needs are in order to conduct defense testing of the TD software. As such, Mr. Fischbach has concluded his inspection of the system requirements of the laptop supplied by the FBI, and it will not be sufficient to meet defense testing needs. It is a 2014 vintage A1398 MacBook Pro, with minimal speed and memory, and outdated hardware and port specifications. Similar to the machine currently in use at the RCFL, it is unlikely that this laptop also will not support running the Virtual Machines supplied by Mr. Erdely. This machine was the least powerful configuration of MacBook Pro produced in 2014. But, is far slower than the minimum requirements of today's Macs. Notably, at this juncture the Government is seeking an order that Mr. Fischbach only use an Ethernet port. This machine does not have an Ethernet port.

The following are the *minimum requirements* needed in a government supplied machine necessary to conduct defense testing of the TD software. Defense specifications are in black, corresponding specifications of the computer supplied by the government are in red:

2.6GHz 6-core 9th-generation Intel Core i7 processor (4-core 4th generation processor discontinued in 2015 nearly five years ago)

64GB 2666MHz DDR4 memory (16GB 1600 MHz DDR3 -- incapable of additional RAM)

AMD Radeon Pro 5500M with 8GB of GDDR6 memory (2GB discontinued graphics processor)

512GB SSD storage (Unknown)

Thunderbolt / USB-C (No USB-C)

WiFi & RJ45 Ethernet (No Ethernet)

The Mac laptop also must have Bootcamp & **valid** Windows 10 installed.

Please let me know when a machine with these minimum requirements will be supplied and available for Mr. Fischbach's use.

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**From:** Walker, Jonas (USAAC) 5 [mailto:Jonas.Walker@usdoj.gov]  
**Sent:** Friday, December 06, 2019 3:31 PM  
**To:** Robert Herz  
**Cc:** 'Jeff M. Fischbach, ABFE'; Arce, Charisse (USAAC) 1; Russo, Frank (USAAC); Allison, Daryl (AN) (FBI)  
**Subject:** RE: Hardware and software Specifications

Mr. Herz:

Thank you for contacting me regarding your concerns.

Per my email of 12/4 below, the government believes that the computer provided is sufficient to run TD as it would be used in an investigation.

The government does not know what tests Mr. Fischbach intends to run, as the defense has withheld that information from the government. Without knowing what tests Mr. Fischbach intends to run, and the technical requirements of those tests, the government is not in a position to opine regarding what technical specifications are necessary to meet Mr. Fischbach's needs.

Because Mr. Fischbach has access to the technical specifications of the computer, as described below, Mr. Fischbach is the person best situated to answer your question regarding whether the computer is sufficient to run Mr. Fischbach's tests.

Thank you,

-AUSA Jonas M. Walker  
907.271.3983

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**From:** Robert Herz <rmherz@gci.net>  
**Sent:** Friday, December 6, 2019 2:56 PM  
**To:** Walker, Jonas (USAAC) 5 <JWalker5@usa.doj.gov>  
**Cc:** 'Jeff M. Fischbach, ABFE' <jeff@secondwave.com>  
**Subject:** RE: Hardware and software Specifications

Mr. Walker,

I agree the court stayed the requirement that the government does not need to provide the TD computer. But the court did not stay the entire order at Doc. 254. As such, the requirement that the government provide all software documentation related to TD is still binding on the government.

Moreover, I believe this was in recognition that the defense needs the TD software specifications in order to provide a tailored request for computer specifications for the computer that the defense needs to run its tests. Nevertheless, the government prior to knowing what the defense specifications would be, "selected" a computer that the *government believes* the defense should use. This was not the process the court envisioned by its order at Doc.254 and seems a bit "cart before the horse." Given that Doc.254 was not stayed in its entirety, I disagree that the government has complied with the court's orders, or that the court's orders have been exceeded. That Mr. Fischbach is attempting to ascertain the system requirements of the computer the government provided, prior to defense input, only means we are evaluating what has been sent to see if it will meet defense needs. Our preliminary review suggests that it will not be

adequate. When Mr. Fischbach completes his work at the RCFL later today, I will provide the government notice of what specifications are, in fact, needed, and whether the computer sent prematurely will meet defense needs. However, the lack of TD software specifications has significantly hampered the defense in this evaluation.

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**From:** Walker, Jonas (USAAC) 5 [<mailto:Jonas.Walker@usdoj.gov>]  
**Sent:** Thursday, December 05, 2019 5:44 AM  
**To:** Robert Herz  
**Cc:** 'Jeff M. Fischbach, ABFE'; Monroe, Joseph; Allison, Daryl (AN) (FBI); Steeves, Holly J. (AN) (FBI); Arce, Charisse (USAAC) 1  
**Subject:** RE: Hardware and software Specifications

Mr. Herz:

Good morning. I replied in a separate email chain regarding the defense request for Mr. Monroe to show Mr. Fischbach the computer settings. As indicated, I don't object to that request, and I appreciate Mr. Fischbach's suggestion that he see the settings in person to get the data he needs. That seems like an efficient way to get the data directly to Mr. Fischbach.

At Dkt. 262, the court vacated the order at Dkt. 254 in that the government does not have to provide the TD computer to Mr. Fischbach at this time.

Also in Dkt. 262, the court ordered the defense to provide specifications by 12/6. To assist the defense in this process, I provided the specifications of the selected computer in a prior email chain yesterday; see below, immediately prior to your email.

Accordingly, the government has complied with the Court's orders, and, in fact, has exceeded them, in that Mr. Monroe will be showing the computer details to Mr. Fischbach, which is what Mr. Fischbach requested.

The Court will, no doubt, appreciate the parties' cooperation regarding these technical details.

Thank you,

-AUSA Jonas M. Walker  
907.271.3983

**From:** Robert Herz <[rmherz@gci.net](mailto:rmherz@gci.net)>  
**Sent:** Wednesday, December 4, 2019 2:49 PM  
**To:** Walker, Jonas (USAAC) 5 <[JWalker5@usa.doj.gov](mailto:JWalker5@usa.doj.gov)>  
**Cc:** 'Jeff M. Fischbach, ABFE' <[jeff@secondwave.com](mailto:jeff@secondwave.com)>  
**Subject:** RE: Hardware and software Specifications

Mr. Walker,

Unfortunately, this is insufficient information to allow the defense to make a determination whether this machine will be adequate for defense testing purposes. Will you allow Joe Monroe to boot up the computer on Friday in Mr. Fischbach's presence so that more specific information can be obtained about what has been sent?

In addition, does the government intend to provide more and complete information regarding TD software specifications before this Friday, and as required by the court's order at Doc.254?

Thank you for your attention to these requests.

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**From:** Walker, Jonas (USAAC) 5 [<mailto:Jonas.Walker@usdoj.gov>]  
**Sent:** Wednesday, December 04, 2019 12:41 PM  
**To:** Robert Herz  
**Cc:** 'Jeff M. Fischbach, ABFE'; Allison, Daryl (AN) (FBI)  
**Subject:** RE: Hardware and software Specifications

Mr. Herz:

I am advised that a computer with the following characteristics has been identified, which the government expects to be sufficient:

**Apple MacPro laptop with Windows 10 Pro loaded on Bootcamp partition Laptop has 16GB of RAM, 64-bit Operating System x64 based processor with a 250GB Hard Drive**

Thank you;

-AUSA Jonas M. Walker  
907.271.3983

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**From:** Robert Herz <[rmherz@gci.net](mailto:rmherz@gci.net)>  
**Sent:** Tuesday, December 3, 2019 11:41 AM  
**To:** Walker, Jonas (USAAC) 5 <[JWalker5@usa.doj.gov](mailto:JWalker5@usa.doj.gov)>

Cc: 'Jeff M. Fischbach, ABFE' <[jeff@secondwave.com](mailto:jeff@secondwave.com)>

Subject: Hardware and software Specifications

Mr. Walker,

At Doc. 262 the court ordered the defense to provide the government with the computer specifications the defense deems necessary to allow defense testing of the TD Software on a computer the government will provide for defense testing. Based on information provided to the government in email correspondence, pleadings, and declarations, the defense has made it clear that hardware specifications are predicated in part on the software the computer will run, meaning that it is important to know the specifications of the TD software. Ultimately, defense computer hardware specifications will be based on TD specifications as well as the various software Mr. Fischbach will install and that are needed for defense testing. The court ordered the government at Doc. 254 to provide the defense “with all applicable TD software documentation for versions 1.15 and 1.23, including installation instructions and minimum operating requirements.” To date, the government has provided only a user manual for TD version 1.23, and it was redacted. This does not comply with the court order, and prevents the defense from more meaningfully providing computer specifications to the government by this Friday. The defense has provided the government with specifications recently in Mr. Fischbach’s declaration at Doc. 261 para.8. The defense believes that the court intends for the parties to refine these specifications which is why the court changed the defense deadline to December 6. If the parties are to refine the specifications as the court intends, then the government must provide TD software specifications as directed in the court’s order at 254, which in turn will allow the defense to make a more refined and tailored request concerning computer specifications. If the government is not willing to fully disclose software specifications to both TD versions in a timely manner and *before* Friday, which is necessary to allow for defense review and evaluation, then the defense will be unable to refine the specifications previously provided to the government, and those previously provided specifications will stand as to what the defense will be requesting.

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