

1 UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4
5 UNITED STATES OF AMERICA)
6 vs.) CASE NO. 3:05-00185
7 TIMOTHY RYAN RICHARDS)
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11 TRANSCRIPT OF PROCEEDINGS
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15 BEFORE: THE HONORABLE ALETA A. TRAUGER
16 DATE: JULY 31, 2007
17 TIME: 1:00 P.M.
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21 REPORTED BY: BEVERLY E. "BECKY" COLE, RPR CCR
22 OFFICIAL COURT REPORTER
23 A-837 U.S. COURTHOUSE
24 NASHVILLE, TN 37203
25 (615) 254-6727
BECKY_COLE@TNMD.USCOURTS.GOV

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APPEARANCES

FOR THE GOVERNMENT: CARRIE DAUGHTREY
U.S. Attorney's Office
Nashville, Tennessee

FOR THE INTERVENOR: TIMOTHY PERKINS
Dallas, Texas

WINSTON EVANS
Nashville, Tennessee

FOR THE DEFENDANT: PETER STRIANSE
KIMBERLY HODDE
Nashville, Tennessee

ALSO APPEARING: DOUG PIERCE
Nashville, Tennessee

1 THE COURT: Good afternoon. We are here on
2 United States vs. Timothy Ryan Richards. We are here on a
3 motion to quash some subpoenas. The motion to quash was
4 filed by Mr. Timothy Perkins.

5 MR. PERKINS: Yes, Your Honor.

6 THE COURT: This is Mr. Perkins. Hello.

7 MR. PERKINS: Good afternoon.

8 THE COURT: Welcome.

9 MR. PERKINS: Thank you.

10 THE COURT: And Mr. Winston Evans is here --

11 MR. EVANS: Yes, Your Honor. I'm local counsel
12 for the movant.

13 THE COURT: -- serving for the movant. And the
14 subpoenas were issued by counsel for the defendant.

15 MR. STRIANSE: That's correct, Your Honor.

16 THE COURT: -- Peter Strianse and Kim Hodde.

17 MS. HODDE: Good afternoon.

18 THE COURT: The defendant is in the courtroom.
19 For the government -- where is Ms. Daughtrey? You think you
20 don't have a dog in this fight?

21 MS. DAUGHTREY: Your Honor, I do not.

22 THE COURT: I may be calling on you for some
23 comments anyway.

24 MS. DAUGHTREY: Thank you. I expected that.

25 THE COURT: All right. Initially I want to say

1 that I'm going to lift these proceedings out from under the
2 sealed nature of them for purposes of this hearing and
3 probably for hereafter purposes.

4 Having read the volumes of material that has been
5 provided to me, it appears as though there really are no
6 secrets here in terms of the movant and the reasons for
7 these subpoenas.

8 The only thing that I wish to continue to protect
9 will be the actual Master Card and VISA account numbers and
10 anything that I do not find relevant with regard to those
11 account numbers, but we'll deal with that later in terms of
12 any redactions.

13 But I'm not going to have anybody's Master Card or
14 VISA account numbers whether the holder of the account is
15 named in the subpoena or not floating around in public.

16 We are here on a motion to quash filed by Kurt
17 Eichenwald. And the initial motion related to a subpoena
18 served on the CitiBank of South Dakota with reference to a
19 Master Card account number, which apparently belongs to
20 Mr. Eichenwald, and to AOL for a -- an e-mail address that
21 apparently is held by Mr. Eichenwald.

22 A supplement to the motion to quash was later filed
23 seeking to quash a third subpoena issued to the Bank of
24 America for Mr. Eichenwald's VISA account to PayPal in
25 connection with some specific payments, and I don't think I

1 have that list of payments, I don't think that was given to
2 me, and the fifth subpoena to Yahoo for another e-mail
3 address.

4 I'm going to rule that Mr. Eichenwald has standing to
5 bring these motions to quash as it seems pretty apparent
6 they involve requests to receive his personal information.

7 These subpoenas have been issued by the defense in
8 this case in preparation for the sentencing of Mr. Richards
9 scheduled at the present time for August 17th of next
10 month and four justifications have been given for the
11 relevancy and pertinence of these -- of this information.

12 Those justifications are that at sentencing the
13 defendant wishes to present information to me concerning --
14 that they consider relevant to the nature and circumstances
15 of the offense, obviously the nature and circumstances of
16 the offense are relevant to sentencing; to disparity; to
17 wrongful conduct of the victim, Justin Berry; and material
18 in connection with the imperfect entrapment defense.

19 The subpoenas were issued for these materials to be
20 brought to the sentencing August 17, and I have kind of put
21 a stay on all of that pending this hearing.

22 Under Rule 17, the standard announced by the Supreme
23 Court in *United States vs. Nixon* requires that the party
24 issuing the subpoena show why the motion to quash should be
25 denied.

1 So I guess I'm going to ask for the defense to be on
2 their feet first, and I want to ask you some specific
3 questions and then let you justify for me these subpoenas.

4 First of all, in terms of disparity, what is relevant
5 to sentencing is the need to avoid unwarranted sentencing
6 disparities among defendants with similar records who have
7 been found guilty of similar conduct, not disparities
8 between a defendant who has been convicted of offenses and
9 someone else who the defendant thinks should be indicted for
10 offenses. So that's my first large problem with that
11 argument.

12 And the -- another justification is the imperfect
13 entrapment defense. And in researching this particular
14 issue, several circuits, including the Sixth Circuit, seemed
15 to recognize something that is not referenced in Section
16 5K2.12 of the Sentencing Guidelines, coercion and duress,
17 but which has been nominated imperfect entrapment and put
18 under that section.

19 However, all of the case law that either of the
20 parties have cited to me or that I have found on my own
21 requires that the action that encouraged -- aggressively
22 encouraged the wrongdoing be done by the government for
23 government agents.

24 And so far as I can determine, at the time that Mr.
25 Richards is focusing on, so far as I know or so far as

1 anybody has brought to my attention, Mr. Eichenwald was not
2 a government agent at that time. So I'm having a hard time
3 envisioning how any imperfect entrapment defense applies.

4 So if you would speak to my problems with your
5 disparity argument and your imperfect entrapment argument
6 and then give me whatever additional justifications you can
7 for the subpoenas, that would be helpful.

8 MS. HODDE: Well, Your Honor, obviously the
9 defense's position is that we have advanced, you know, kind
10 of given the Court, if you will, a tasting of the potential
11 areas of relevancy that we would seek to advance this
12 information to assist us in advocating for our client's
13 sentencing.

14 Obviously, we have not set forth our full sentencing
15 positions. We really honestly didn't want to do that given
16 the fact that this is a preview for the government of our
17 sentencing positions, and we really didn't want to have to
18 do that.

19 At this point we haven't fully developed all of our
20 arguments on sentencing. We know that we're going to
21 advance this issue for *Booker* purposes on nature and
22 circumstances of the offense.

23 We believe it's relevant for disparity considerations
24 as well, and I recognize the strict language of 3553(a) when
25 it comes to disparity.

1 However, if the Court will recall, Justin Berry was
2 actually immunized for his conduct in this case. And so to
3 that extent, I think that, first of all, Justin Berry's
4 disparity would be properly considered by the Court because
5 that is a disposition that is obviously wholly in the
6 control of the government.

7 So to a certain extent, and I'd -- I guess citing
8 back to the Court a case that I had a sentencing a la *U.S.A.*
9 *vs. Hunt*. To a certain extent, the government has control
10 over who gets charged, who doesn't get charged, who gets
11 immunity, pretrial diversion, things of that nature.

12 And in this setting Justin Berry got immunity.
13 That's obviously beyond the scope of Defendant Richards'
14 control, but I think it is a proper consideration, a
15 disparity consideration at sentencing when weighing how all
16 of these cases are going to be handled.

17 Aaron Brown, for example, is -- it's expected he's
18 going to receive a ten year sentence. He has cooperated.
19 There are other individuals that we would parallel for the
20 Court.

21 Now, we are not suggesting that Mr. Eichenwald is
22 somebody that needs to be included in the analysis of the
23 disparity. Really, the disparity analysis is going to the
24 full scope of Justin Berry's conduct and the actual
25 treatment that he received as a result of that conduct,

1 including the fact that he was not entirely honest with the
2 government when he received this immunity agreement.

3 So for those purposes we think that it's proper to
4 consider under *Booker* and under the 3553(a) analysis for
5 disparity.

6 Now, on the imperfect entrapment defense, I candidly
7 acknowledged to the Court that the imperfection in the
8 entrapment defense from the defense's perspective is the
9 fact that the government wasn't the one doing the
10 entrapping.

11 It would be Justin Berry and his cohorts who revived
12 the Justinsfriends site in late May of 2005 and early June
13 of 2005 and then enticed Defendant Richards into his own
14 involvement with the site on June 17, 2005.

15 So that's really the imperfection in the entrapment
16 defense. I recognize the law speaks in terms of the
17 government doing the entrapping. And to a certain extent,
18 we are not really sure whether the government -- and I
19 certainly am not impugning the government's actions in June
20 and May of 2005, I don't think the government knew about
21 this, but when the Court sees the presentence report, the
22 Court is going to see that Justin Berry in his victim impact
23 statement actually claims to be a government informant
24 acting at the behest of the government after he receives his
25 immunity.

1 Now, obviously, Mr. Strianse and I didn't know that
2 information in anticipation of trial. I have sent a letter
3 to the government asking for further information about what
4 extent Mr. Berry may have been actively cooperating as a
5 government agent during the course of this investigation.
6 We just don't know the answer to that at this point.

7 I don't know if the government fully knows the answer
8 to that, if Mr. Berry has been truthful or untruthful with
9 the probation officer in the victim impact statement.

10 THE COURT: Well, what does that have to do with
11 what was happening between Mr. Berry and Mr. Eichenwald in
12 May and June of 2005? He wasn't immunized until after that.

13 MS. HODDE: He wasn't immunized until actually
14 September. He proffered at the end of July, 2005 and then
15 was immunized in September.

16 And according to his victim impact statement, he
17 claims to have been cooperating during those intervening
18 periods between July and September, 2005.

19 So I don't claim that -- I don't really know is the
20 answer that I can give the Court, I don't know what action
21 Justin Berry was taking on behalf of the government, if any.

22 He claims to have taken some action at some point in
23 time, but we don't have confirmation of that at this point.
24 So it's a little premature for us to be fully developing
25 this issue. We are still waiting for information to come

1 back from the government.

2 But as far as an imperfect entrapment defense
3 involving Mr. Berry and Eichenwald's conduct in May and June
4 of 2005, my response is really this. That we know that
5 Justin Berry with the assistance of Andrew McDonald was up
6 to some no good conduct and that the two of those
7 individuals -- this is the purpose of the subpoena, was to
8 gather information about Andrew McDonald, that the two of
9 those individuals assisted in orchestrating the revival of
10 the Justinsfriends site, which leads into Defendant Richards
11 being enticed on June 17, 2005 to become active with the
12 site by basically being an IT guy and doing some service
13 work with HTML codes.

14 So to the extent -- and, honestly, at this point we
15 are not entirely sure the scope of all of the conduct, but
16 we know that there was nefarious conduct occurring before
17 Mr. Richards basically got enticed into the site. And I
18 think that that is a proper consideration for the Court.

19 And if it doesn't rise to the level of a true
20 downward departure, then I think it falls back into our
21 *Booker* mitigation argument for nature and circumstances of
22 the offense.

23 I hope I have answered the Court's question.

24 THE COURT: Any other argument you want to make?
25 I thought Justin Berry -- I don't know how all of a sudden

1 he became a victim in this case because it was my
2 understanding -- and this may be a question for Ms.
3 Daughtrey -- it was my understanding that in this case
4 Justin Berry was more a co-conspirator than a victim.
5 Wasn't that your understanding as we tried this case?

6 MS. HODDE: That was certainly how I felt as we
7 tried this case. And I think if the Court takes a look at
8 the footnote that I cited in my response, which is
9 Ms. Bakshi's explanation at the charge conference on the
10 missing witness instruction, Ms. Bakshi basically advises
11 the Court that Mr. Berry kind of falls into a smorgasbord of
12 categories for the government. He's a victim in some
13 aspects, he's clearly a co-conspirator and things of that
14 nature.

15 But he characterizes himself as a victim. He has
16 filed a victim impact statement that has been attached and
17 produced to the defense as part of the presentence report,
18 so we just have to deal with that.

19 THE COURT: Okay. Anything else?

20 MS. HODDE: Your Honor, I mean, I do have other
21 arguments that I would like to make to the Court about
22 why -- you know, obviously there are a lot of personal
23 attacks on counsel, and things like that, that I would like
24 to explain to the Court if the Court wants to hear that?

25 THE COURT: Yes, sure.

1 MS. HODDE: Is this the time to do that?

2 THE COURT: Yes.

3 MS. HODDE: Your Honor, these subpoenas should
4 clearly survive the *Nixon* standard. They are relevant. I
5 mean, I think we have cited four purposes. I know that at
6 least some of those are absolutely proper purposes.

7 The statutes themselves, if we look at 18 U.S.C.
8 3661, it says that pursuant to statute, there are no
9 limitations on the information the Court may consider at
10 sentencing concerning the background, character and conduct
11 of a person convicted of an offense. This is clearly
12 background information.

13 This is proper. It is relevant. It is also
14 admissible. As the Court knows, the standard for
15 admissibility at sentencing is simply reliable hearsay. And
16 this is going to meet that standard.

17 We would not make factual allegations lightly. And
18 the specificity, the third prong of the *Nixon* test, the
19 specificity with respect to the documents, these are not
20 broad, sweeping subpoenas that request, you know, all
21 documents between 2001 and 2005, or something.

22 These are very narrow, specific requests for
23 information that has been identified to be relevant at the
24 sentencing. We have not asked for all records. We have
25 asked for very narrow timeframes.

1 We have asked for logical information about the name
2 and address of the person who is associated with a specific
3 card or an e-mail account. They're narrow, specific
4 requests. We certainly meet the *Nixon* standard.

5 And quite frankly, Mr. Eichenwald does not meet the
6 standard for quashing the subpoena. These subpoenas are not
7 unreasonable, and they are not oppressive. They don't even
8 make a request of him personally.

9 These documents, if the Court looks at the four
10 corners of the subpoena, and the Court has already observed
11 this, they don't mention Mr. Eichenwald top, side or bottom.
12 They are requests for information pertaining to Andrew
13 McDonald.

14 In fact, we really didn't -- weren't entirely sure we
15 were dealing with Mr. Eichenwald until Mr. Perkins replied
16 that the CitiBank card was, in fact, Mr. Eichenwald's and
17 wanted to have some discussions about it.

18 So this was not an effort to attack or harass
19 Mr. Eichenwald certainly not by defense counsel. This is an
20 effort to do our due diligence to prepare to present a
21 constitutionally adequate and effective sentencing
22 presentation to the Court for a man who faces very steep
23 sentencing.

24 And I think we have a lot of duties here. And unlike
25 the civil standards cited by Mr. Perkins, this defendant

1 enjoys some constitutional rights that we as counsel really
2 have to protect.

3 He has that right to counsel. He has a right to
4 present mitigation evidence. I have cited an abundance of
5 case law on this proposition, and he also has a Sixth
6 Amendment right to compulsory process.

7 And when the Court balances the defendant's
8 constitutional rights and the ethical obligations of counsel
9 to zealously and effectively advocate for Mr. Richards, I
10 think that the Court will find that these subpoenas do not
11 need to be quashed and clearly there's no bad faith on
12 behalf of the defendant or defense counsel.

13 There should be no sanctions in this case. I don't
14 even know of a case that allows for sanctions to be imposed
15 for a criminal subpoena, but I hope that the Court doesn't
16 even get there in the analysis because counsel has acted in
17 good faith here.

18 Now, I do want to say briefly, I'm probably going to
19 have some comments after we hear from Mr. Perkins, so if the
20 Court doesn't have any questions, I'll just reserve my --

21 THE COURT: All right. I want to get a little
22 more information from you. In terms of the Master Card and
23 VISA account -- accounts, the CitiBank and Bank of America,
24 what you are looking for is payments during that time frame
25 that went to Mr. Berry. Isn't that what you're looking for?

1 MS. HODDE: Well, they're PayPal -- so the
2 record is very clear, and this is kind of confusing, complex
3 stuff, but the -- what happened was we issued a subpoena to
4 PayPal because we saw in the PayPal records that the
5 Mostin2003@Yahoo.com e-mail address was associated with
6 Andrew McDonald, and we saw a reference in the actual
7 commentary section from Andrew McDonald that Skywrite55
8 could be an alternate e-mail address for Mr. McDonald.

9 We issued subpoenas for AOL, the -- to figure out who
10 is behind skywrite55@aol.com and Yahoo to find out who's
11 behind Mostin2003@Yahoo.com. They were specific requests
12 for the information relating to the person so we could
13 identify who is Andrew McDonald.

14 Then the credit card information when -- PayPal
15 actually didn't wait until sentencing to deliver its
16 response to us. I think probably naturally it hopes that we
17 would be able to reach some sort of stipulation or wouldn't
18 need their testimony. They provided their response to us in
19 advance.

20 And what we saw in the response was that Andrew
21 McDonald provided a fake address in Dallas, Texas -- I'm
22 pretty sure it was Dallas, Texas -- it was definitely
23 Texas -- and that Andrew McDonald was using two credit
24 cards, one CitiBank card and one Bank of America card.

25 And that's really all they could tell us about that,

1 PayPal transactions. Since they couldn't identify for us
2 who Andrew McDonald really is behind the PayPal
3 transactions, we subpoenaed CitiBank and Bank of America to
4 provide the credit card identifying information relating to
5 the two credit cards Andrew McDonald was using, believing
6 that would basically back us into the information about who
7 was actually using those credit cards. And then that's how
8 we end up in the motion to quash.

9 THE COURT: Then if you just want to find out
10 whose credit cards they were, why are you asking for billing
11 statements?

12 MS. HODDE: Well, it's important to go
13 through -- the request for billing statements is pretty
14 narrow as well. It's --

15 THE COURT: May to something, August or June.

16 MS. HODDE: May or June of 2005 to September of
17 2005, I think, that narrow time frame where the defendant is
18 alleged to be involved in Justinsfriends.

19 It is because we don't really know until we see those
20 records what the real scope of Andrew McDonald's conduct may
21 have actually been as it related to the conspiracy and the
22 time frame that the defendant was actually in it.

23 So we believe that information is actually going to
24 provide us with more details about PayPal payments that will
25 actually relate to the defendant's conduct.

1 THE COURT: You tell me exactly if you get the
2 billing statements what will you be looking for?

3 MS. HODDE: We'll be looking for a connection
4 between that billing statement and other PayPal
5 transactions.

6 THE COURT: So will it show on the billing
7 statement PayPal?

8 MS. HODDE: I don't know exactly until I see it,
9 but I believe that is exactly how it's going to show up.

10 THE COURT: And you have no interest in his
11 payments to Brookes Brothers or Kroger --

12 MS. HODDE: No.

13 THE COURT: -- or anybody else?

14 MS. HODDE: No, absolutely not. We have no
15 interest in invading this individual's privacy on any of
16 those issues.

17 We want the information that is narrowly tailored to
18 assist us in the representation of our client at sentencing
19 which show his PayPal payments during the relevant time
20 period.

21 THE COURT: The list that was attached to the
22 PayPal showed what? Do you have that list? Because I don't
23 believe anybody has furnished that to me.

24 MS. HODDE: I'm sorry. Which list are we
25 talking about?

1 THE COURT: The PayPal subpoena references a
2 list of payments attached, and I don't believe anybody gave
3 that list to me.

4 MS. HODDE: And, Your Honor, I don't have that
5 -- do you have it?

6 THE COURT: Do you have it, Mr. Perkins?

7 MR. PERKINS: No, Your Honor, I have never seen
8 that animal.

9 THE COURT: All right.

10 MR. PERKINS: Is this an extra copy?

11 MS. HODDE: That's our copy.

12 THE COURT: Is that the list that was attached
13 to the PayPal subpoena?

14 MS. HODDE: It's my understanding that it is.

15 THE COURT: Okay. I presume you have seen this?

16 MR. PERKINS: No, I have not. No, Your Honor, I
17 have not seen this list. Would you -- may I approach?

18 THE COURT: Yeah, I would like to see that.
19 I'll give it right back.

20 MR. PERKINS: All right.

21 THE COURT: Transaction ID number, that is not a
22 credit card number, I presume, that's a PayPal number of
23 some sort?

24 MS. HODDE: Probably. I don't have a copy of
25 that in front of me.

1 THE COURT: It doesn't look like credit card
2 numbers, so it has got the date, the time, all of these are
3 for Andrew McDonald, the amount of money, the fee, the net,
4 the e-mail address from and to, all of these are from this
5 Mostin2003@Yahoo.com addressed to Greg Mitchell's e-mail
6 address.

7 And so you already have this, and this particular
8 list -- this list does not contain credit card numbers, but
9 you're saying you have already received the return from
10 them?

11 MS. HODDE: Yes.

12 THE COURT: And may I see that, please?

13 MS. HODDE: Do you have the return?

14 MR. STRIANSE: (Counsel moves head from side to
15 side.)

16 MS. HODDE: Your Honor, I'm sorry, I don't have
17 the return.

18 THE COURT: That has credit card numbers on it?

19 MS. HODDE: It has the two credit card numbers I
20 just referenced to the Court, the one CitiBank card and Bank
21 of America card. It's a very short response. It's two or
22 three pages. I faxed -- I forwarded it to you all this
23 morning. Did you happen to bring that PayPal response?

24 MR. EVANS: What we had did not have all that
25 list on it.

1 MS. HODDE: No, no.

2 THE COURT: That's the list that was attached to
3 the subpoena. She's saying she gave you a copy of what she
4 got from PayPal.

5 MR. EVANS: Like one page that didn't list
6 anything, gave total amounts of payments, gave the name of
7 the person.

8 THE COURT: But it had credit card numbers on
9 it.

10 MR. PERKINS: I believe it did, Your Honor, at
11 the bottom.

12 THE COURT: And those are the two credit cards
13 that you have subpoenaed now?

14 MS. HODDE: Correct.

15 THE COURT: Except that you have the Master Card
16 number before you got the PayPal records, so you must have
17 had that Master Card number from somewhere else. You
18 issued --

19 MS. HODDE: No.

20 THE COURT: -- the Master Card subpoena to
21 CitiBank before you got the PayPal records? No, you issued
22 them all at the same time?

23 MS. HODDE: We couldn't have. We didn't have
24 that credit card until we got the PayPal response.

25 THE COURT: All right.

1 MS. HODDE: I'll be glad to as a supplement to
2 this hearing file the PayPal response with the Court so the
3 Court can see exactly what we received.

4 THE COURT: I'll ask you for that if I need it.

5 MS. HODDE: Okay.

6 THE COURT: So apparently Mr. Eichenwald just
7 didn't know about these all at the same time, these
8 subpoenas, because the motions to quash came in two waves,
9 so --

10 MS. HODDE: Well, I think what happened is, I
11 think that some of the -- and I don't presume to know how
12 CitiBank conducts its business, but I think some of these
13 providers probably have a policy of contacting the
14 underlying person and maybe others don't.

15 THE COURT: Right. And from AOL and Yahoo,
16 basically all you are really looking for there is who had
17 these e-mail addresses, right?

18 MS. HODDE: Yes, Your Honor.

19 THE COURT: You have the relevant e-mails; you
20 just want to hook them up with Mr. Eichenwald?

21 MS. HODDE: I want to know definitively -- and
22 that's what all of the requests -- for example, if we look
23 at the AOL subpoena, that's what that information is
24 targeting.

25 It's targeting the identifying information for

1 Skywrite55@aol.com, registration date, time. Obviously we
2 are interested in knowing if this is an account that's
3 created specifically for the purpose that we are wondering
4 about, the source IP address, and that's because we have
5 other -- we have one unidentified IP transaction coming out
6 of the Dallas, Texas area where we know Mr. Eichenwald
7 resides that we have not been able to definitively link to
8 Mr. Eichenwald.

9 We didn't know if the Skywrite55@aol.com information
10 might have that as an IP address that is associated with
11 Skywrite55.

12 The name and other identifiers for the registrant,
13 basically any other aliases that he associated with his
14 registration or any other e-mail accounts that he
15 associated, so that we can fully search the PayPal records
16 and see if there are any other transactions that we missed.

17 Billing and payment information, which obviously is,
18 I guess, less important at this point. The log-in IP
19 history, which is basically another way of asking for the IP
20 addresses and other AOL e-mail addresses registered by the
21 individual, which again goes to seeing what other e-mail
22 accounts are out there that we may need to look at.

23 THE COURT: Okay. Thank you. Mr. Perkins?

24 MR. PERKINS: Thank you, Your Honor. Please the
25 Court, Your Honor, I -- without question, you probably know

1 this by my -- by my response, I don't practice in the
2 criminal courts, and I was asked to file and intervene when
3 these subpoenas came in, and that's what we did, Your Honor.

4 The first thing I did, however, just so that we are
5 clear, is I called counsel numerous times and sent e-mails
6 to try and understand what now has been explained to me or
7 alleged or whatever conspiracy theory or whatever theories
8 they have, I would have been -- had I been apprized of
9 those, we could have brought this in perhaps a different
10 manner.

11 We are here today, Judge -- and, frankly, I hear the
12 Court's questions regarding the imperfect entrapment; we
13 have briefed that. Mr. Eichenwald is either a
14 co-conspirator or a government agent.

15 And I don't know that they have proven either one. I
16 know that they may be entitled to argue that to Your Honor.

17 THE COURT: Let me help you a little bit in
18 terms of focus.

19 MR. PERKINS: Yes, Your Honor.

20 THE COURT: In terms of the rationale for this
21 information that have been presented, whether I eventually
22 rule that Justin Berry was or was not a victim in this case,
23 whether I eventually rule that the imperfect entrapment
24 defense as presented is a -- an appropriate downward
25 departure consideration in this case, and whether the

1 defense convinces me that in -- somehow disparity is a
2 relevant consideration here, given the nature of their
3 argument, regardless of those three things, the nature and
4 circumstances of the offense is pretty broad. And that
5 encompasses some of what they're after --

6 MR. PERKINS: Right.

7 THE COURT: -- and because of the timing of
8 Mr. Eichenwald's activities is so close to some of the
9 timing involved in this case, under that broad nature and
10 circumstances of the offense and mitigation, quite a bit of
11 this I will listen to. I will not listen to days of it.

12 MR. PERKINS: Right.

13 THE COURT: I'm not going to allow the defense
14 to have any personal information that could be
15 inappropriately exploited against your client. Credit card
16 numbers and that sort of thing are just not going to become
17 public and his spending habits and anything about his family
18 or his spouse or anything like that.

19 But it does seem to me that a limited inquiry by the
20 defense into e-mail addresses used by your client, payments
21 made by your client which apparently were not really known
22 at an early stage of all this, certainly by -- it seems as
23 though they were not known to the journalism community, and
24 they may not have been known to the government, it does seem
25 to me that that area, that arena, has some relevance in the

1 sentencing of Mr. Richards.

2 So with that kind of background --

3 MR. PERKINS: I appreciate that, Your Honor.
4 And I have seen those allegations. I have seen what these
5 -- the *Booker* case, and the like, so I understand that. And
6 that's why I believe preempting this with discussions with
7 counsel would have avoided this.

8 My big concern, Your Honor, I believe they got the
9 first Master Card number -- you asked about that, and I
10 wanted to address that. In the Aaron Brown case in Virginia
11 there was a similar attempt of -- by defense counsel to
12 issue subpoenas in that case for CitiBank and, I believe,
13 one other -- may have been this Master Card, I don't have
14 those documents with me, and we approached the defense
15 counsel and they withdrew and actually sent us back --
16 because they had pretrial returns on those subpoenas.

17 So they -- when we found out about it, it was -- they
18 were already en-route so we made a compelling argument, if
19 you will, to those defense lawyers, and they shipped them
20 unopened to my client directly.

21 So I think that may be -- and I don't know where the
22 Aaron Brown lawyers obtained that particular information to
23 receive those account numbers. I don't know where they
24 obtained those other than the only source of those, I think,
25 would be through some of the investigation by the FBI that

1 was presented and given to the defense to use in their
2 defense.

3 So I'm unaware of that, haven't seen the 302's, as
4 they call them, I think that's right, and I haven't seen any
5 of the PayPal documents other than what's been presented to
6 the Court today in reference to what was provided.

7 So my big concern is this is -- this has been --
8 Mr. Eichenwald was called in the *Gourlay* trial by the
9 government, subpoenaed involuntarily to that trial, and the
10 next day there were -- you have seen our allegations. The
11 next day there were newspaper articles about that that
12 mischaracterized it.

13 What we would like to do is have some protection for
14 Mr. Eichenwald's privacy, and I understand he's a public
15 figure and he's --

16 THE COURT: He's made himself a public figure,
17 hasn't he?

18 MR. PERKINS: Absolutely. No question about it.
19 But I don't think, Your Honor, that a public figure ought to
20 be stalked, if you will, by these -- not these defense
21 lawyers but I think by those acting in this community and
22 transmitting this information.

23 The copy of the \$2,000 check was in a blog called
24 GenerationQ that the Court has seen, and we are not
25 interested in destroying or eroding the constitutional

1 rights the defendant has in sentencing.

2 We just don't want there to be an outpouring of all
3 this -- these private documents that are -- that are just
4 used to embarrass my client and to try to destroy him.

5 As you have seen, you know, they want to have him
6 indicted, they want to have him lose his job. And that's in
7 the blog that someone under the name of the defendant is
8 using on the computer.

9 I don't have any way, I haven't done a forensic
10 check, but it's pretty clear to me that this is directed by
11 either the defendant or those in concert with him.

12 So we would ask that to the extent the Court pares
13 down any of these requests to be more specific as to what
14 counsel really believes they need at this point.

15 After seeing the exhibit on the PayPal, all these
16 payments were made to Greg Mitchell, who also, as you know,
17 is another defendant whose been convicted.

18 So we would ask the Court to weigh those issues and
19 to the extent necessary to review those in camera so that
20 there is not a wholesale production of these to -- you know,
21 to the world so that they can draw inferences that really
22 have no -- that really are not legitimate inferences.

23 And we know that you are going to have to make these
24 decisions on August 17 based on whatever you hear, but we
25 would ask that these subpoenas be quashed to the extent that

1 they are not relevant to what the Court believes that you
2 need to hear and in some way redacted or reduced to satisfy
3 the Court's needs but also to balance against
4 Mr. Eichenwald's.

5 THE COURT: Okay.

6 MR. PERKINS: And that's what we have, Your
7 Honor. And I'm happy to answer any questions about what's
8 transpired in this process.

9 THE COURT: Okay. Thank you, Mr. Perkins.

10 MR. PERKINS: Thank you.

11 THE COURT: Ms. Daughtrey, do you have any
12 comments you want to make?

13 MS. DAUGHTREY: Not at this time, Your Honor.

14 THE COURT: Would you like to comment on whether
15 or not Justin Berry is a victim in this case and why he's
16 submitting a victim impact statement to the presentence
17 report writer?

18 MS. DAUGHTREY: Your Honor, the issue with
19 Justin Berry has always been a complicated and complex one.
20 I think we spoke about it quite a bit in preparation for the
21 trial.

22 According to what we understand from the government,
23 he was initially a victim, albeit a developed -- he
24 developed into a situation where he was promoting his own
25 websites of himself engaged in child pornography or sexual

1 activity when he was underage.

2 So in that sense, he started out as a victim, and I
3 think that in a very general way that the government's
4 position is that once he became 18 and continued with this
5 activity, that he was essentially involved in criminal
6 activity as an adult and really changed his position from
7 being a victim to being a co-conspirator.

8 So it makes it a little bit difficult in dealing with
9 the case to definitively put him in one category or another.
10 I think there are aspects of Mr. Berry in his situation that
11 would allow him to be classified as initially a victim and
12 subsequently a co-conspirator, which is the reason, of
13 course, that he has immunity from the Department of Justice
14 and from an office up in DC at this time.

15 THE COURT: Remind me, because I can't remember
16 all the intricacies of this case at the moment, but what
17 proof was there at trial of any communication or contact
18 between Mr. Richards and Mr. Berry before Mr. Berry turned
19 18?

20 MS. DAUGHTREY: There is no evidence of any
21 contact between the two of them before Berry turned 18. I
22 believe Berry turned 19 in July of 2005, and the interaction
23 between them began occurring in or about June of 2005 when
24 Berry was 18, just about to turn 19.

25 THE COURT: Well, then just on those bare facts,

1 how is he a victim in this case?

2 MS. DAUGHTREY: Your Honor, I guess -- and I
3 haven't thought through all of this directly, I wasn't
4 anticipating this question from Your Honor at this time, but
5 some of the websites that -- the Justinsfriends website that
6 was involved in this case and the Mexicofriends website,
7 which was the precursor to that, contained images of
8 Mr. Berry when he was a minor.

9 Those were not -- that's not information that was
10 forwarded at trial. What -- the information that we were
11 putting forward at trial was information about other minors
12 that were on the website.

13 But the government's position is, and always has
14 been, even though we haven't put on the proof at trial, that
15 the Justinfriends website actually did contain child
16 pornography involving Justin himself before he turned age
17 18.

18 THE COURT: So when this defendant took it over
19 he was exploiting Mr. Berry as a minor?

20 MS. DAUGHTREY: That is correct. That was not
21 part of the proof at trial, but that is the underlying
22 background in the case as well.

23 THE COURT: Okay.

24 MS. DAUGHTREY: Thank you.

25 THE COURT: All right. Thank you. Okay. Any

1 response?

2 MS. HODDE: Your Honor, other than to say that
3 Mr. Eichenwald has not been stalked by defense counsel,
4 certainly not this defense counsel. We have acted with the
5 utmost diligence and professionalism and have exhibited
6 nothing but ethical conduct in this case.

7 THE COURT: Okay. In order to balance the needs
8 of everyone, I think the best procedure to follow here is to
9 have these subpoenas returned to the Court under seal and to
10 have them reviewed by the Court for any relevant
11 information.

12 And I'm going to ask Magistrate Judge Brown, who I
13 asked to sit in on this hearing so he could grasp the scope
14 of this thing, I'm going to ask him to do that review for
15 the Court and then to give to all parties anything that
16 might be relevant to sentencing.

17 I'm going to ask the defense to provide to the Court
18 under seal because it contains credit card information the
19 return from the PayPal subpoena.

20 And I'm going to ask you to gather up from your
21 client if he has copies of that return or anybody in his
22 family or anybody else that has copies of this return, I
23 want you to gather them up and put them in an envelope and
24 file them under seal with the Court.

25 I do not want Mr. Richards or his family or anyone

1 else in possession of these subpoena returns, any of the
2 subpoena returns.

3 And what Judge Brown may want to do is to have a
4 hearing -- go ahead. If you need to confer, go ahead.

5 (Pause.)

6 MS. HODDE: Your Honor, honestly, I don't have
7 who has a copy of this return at this point, but we'll find
8 out. I do know I provided a copy to the government. Do I
9 also need to retrieve the government's copy and provide it
10 to the Court? And we have obviously provided it to
11 Mr. Eichenwald's counsel.

12 MR. PERKINS: Well, I don't know that we have --
13 all we received are the two pages, Judge.

14 MS. HODDE: That's all. That's the return.

15 THE COURT: That's apparently all there is --

16 MR. PERKINS: Of the PayPal?

17 MS. HODDE: Yes.

18 THE COURT: -- from PayPal.

19 MR. PERKINS: We received -- Mr. Evans received
20 an e-mail that said the PayPal documents -- maybe I'm
21 confused -- was contained on a CD it was so voluminous.

22 MR. EVANS: Let me get this straight. I hope I
23 get this straight too, things have been happening so fast,
24 Your Honor.

25 I think I got an e-mail from Mr. Strianse with the

1 return, which I think was a one page document. Then later,
2 you know, I got from Ms. Hodde an e-mail saying that the
3 entire return or maybe other records they have gotten -- and
4 they may have gotten them in discovery in the underlying --
5 in the case before the trial, not in sentencing discovery
6 but in the discovery with the trial, additional large PayPal
7 records. I may be wrong. So I have got two e-mails, one
8 which --

9 THE COURT: Let me have Ms. Hodde explain.

10 MS. HODDE: Let me clarify. Your Honor, in
11 discovery in this case, the government gave us, as the Court
12 will recall, massive amounts of discovery. One of those
13 items of paper discovery was an FBI CD labeled something to
14 the effect of Mitchell PayPal Records.

15 After going through all the post-trial discovery
16 review and stumbling across some of this information, we
17 went back and took a look at our own PayPal records produced
18 to us by the government in discovery, and that is where --
19 that's the CD he's referring to.

20 Then, obviously, we issued a subpoena to PayPal
21 asking for the identifying information behind the PayPal
22 account. PayPal returned like a two page return.

23 The CD he's referring to he e-mailed -- there's been
24 a lot of miscommunication. The e-mail that I sent them this
25 morning, they asked me if I could provide all the PayPal

1 information, and I said, well, all the PayPal information is
2 on either a CD or DVD and I'm not sure that I could provide
3 that to you. Obviously, Ms. Daughtrey is the better person
4 to provide that, so -- since it was discovery.

5 But the PayPal return is like a two page, could be a
6 three page, return that is very short.

7 THE COURT: Okay. So the PayPal record you got
8 on the CD doesn't sound like it is relevant to
9 Mr. Eichenwald in any way.

10 MS. HODDE: Well, it's going to be relevant to
11 the extent that's kind of how once we found the post-trial
12 discovery, went back and looked at that; it's a piece of the
13 puzzle, but it's nothing that was given to us by PayPal.

14 THE COURT: Then you can keep that, and it's not
15 coming into court for any purpose as far as I know. I mean,
16 we are dealing with this information pursuant to these
17 subpoenas --

18 MR. PERKINS: Right.

19 THE COURT: -- and those -- that CD was not
20 pursuant to the subpoena. The government gave them that in
21 discovery.

22 MR. EVANS: At this day in time, this may be a
23 stupid question but I want to ask it. Should I delete that
24 e-mail that has the attachment with the return?

25 THE COURT: Return from PayPal?

1 MR. EVANS: From the subpoena from PayPal,
2 should I delete that?

3 THE COURT: I think you are entitled to see that
4 entire return.

5 MR. PERKINS: Thank you.

6 THE COURT: And the government can see that
7 entire return; if you have given a copy to them, they can
8 keep that as well.

9 I'm concerned about copies that are circulating in
10 cyberspace somewhere because of your giving them to Mr.
11 Richards. That's what I'm concerned about, so -- if you
12 gave them to him. Maybe you haven't. Okay.

13 So those will be filed. The -- I'm going to put down
14 an order that requests a return on the other four subpoenas
15 within the next five days, or something, so that we can have
16 this process and not delay the sentencing. Okay? Yes,
17 Mr. Perkins?

18 MR. PERKINS: Well, Your Honor, I want to be --
19 if I need to be involved in the process of that because as
20 the Court knows, we sent them -- after you ruled, we sent
21 letters that were pretty vague but said to stand down. And
22 is your next order going to be under seal?

23 THE COURT: No, it will not be under seal.

24 MR. PERKINS: So we can -- somebody can send
25 that to us.

1 THE COURT: And you can furnish it to those
2 subpoenaed parties.

3 MR. PERKINS: All right. Thank you, Your Honor.

4 THE COURT: And I will have those returns
5 made -- and I'll figure out how to word this, but I'll have
6 them provide the documents under seal to the Court within
7 five days or something of that nature.

8 And then we will go through those records and furnish
9 to all parties whatever is relevant to the nature and
10 circumstances of the offense in kind of a broad way since we
11 haven't fully litigated all these other grounds that you're
12 arguing. But that is a pretty broad inquiry, it seems to
13 me, and then we'll make those available to the defense.

14 I'm going to -- so what I'm doing is granting the
15 motion to quash in the sense of modifying these subpoenas,
16 and I am going to deny the motion for sanctions. I find no
17 grounds for that.

18 I have to express some curiosity as to how Mr.
19 Richards is conducting a blog from jail.

20 MR. STRIANSE: Your Honor, I think it's simply
21 picking up the telephone and calling his family and friends,
22 as far as I know.

23 THE COURT: And then they are entering blogs as
24 if they are coming from him? He doesn't have access to a
25 computer in jail?

1 MR. STRIANSE: He does not have access to a
2 computer in jail.

3 THE COURT: Okay. I'm going to order that all
4 these documents filed in connection with the motion to quash
5 be taken out from under seal, but I'm going to order the
6 redaction of any credit card information or Social Security
7 numbers -- I haven't run across anything like that -- but
8 any personal information about Mr. Eichenwald.

9 MR. PERKINS: Will that be something that the
10 Court would want us to work on with the Magistrate on or are
11 you just going to do that -- what's the process you want us
12 to follow?

13 THE COURT: It didn't seem to me that there was
14 really anything except for the subpoenas themselves that had
15 the credit card numbers or anything approaching that that
16 would be a problem.

17 MR. PERKINS: And I don't recall, Your Honor. I
18 mean, I would just propose that we have an opportunity to
19 look at that tomorrow, correspond with counsel and the
20 government, and make our proposed redactions.

21 THE COURT: Okay.

22 MR. PERKINS: If that would be okay?

23 THE COURT: That would be great. That would be
24 great.

25 MR. PERKINS: All right. Thank you.

1 THE COURT: That would help the Court. So why
2 don't you -- you could simply file a proposed list of
3 redactions by docket number and page number --

4 MR. PERKINS: Okay.

5 THE COURT: -- and say credit card number on
6 docket number 220, page 3; Social Security number on docket
7 number 225, page 5. Okay?

8 MR. PERKINS: I'll do that, Your Honor. Thank
9 you.

10 THE COURT: And you all can confer, if you wish,
11 but I'm not going to require that. Seems to me your client
12 has the biggest interest in going through it with a fine
13 tooth comb.

14 MR. PERKINS: Yes, Your Honor.

15 THE COURT: And I will make a determination as
16 to whether I think it's a proper redaction.

17 MR. PERKINS: Fair enough. Thank you.

18 THE COURT: So I will postpone lifting all of
19 this out from under seal until I get a list of proposed
20 redactions from Mr. Perkins.

21 Okay. Anything else on this?

22 MR. PERKINS: I don't have anything further,
23 Your Honor.

24 THE COURT: Mr. Perkins? Ms. Hodde?

25 MS. HODDE: Not from the defendants.

1 THE COURT: All right.

2 MR. PIERCE: Your Honor, may I be heard on this?
3 My name is Doug Pierce. I filed a notice of appearance on
4 behalf of the Institute for the Advancement of Journalistic
5 Clarity which publishes a monthly news magazine.

6 THE COURT: Is that the CounterPunch magazine?

7 MR. THORESEN: Correct, Your Honor. Our
8 interest has to do with both the open proceedings today as
9 well as the open documents which you all just addressed.

10 THE COURT: So you ought to be real happy?

11 MR. PIERCE: Yes. One very small point, you
12 said you would wait for Mr. Perkins to provide you with that
13 redaction list. I just wondered if there would be a time
14 limit on that redaction list?

15 THE COURT: Well, I gathered he was going to get
16 that to me within the next few days.

17 MR. PERKINS: Absolutely, Your Honor.

18 THE COURT: Yeah. So within the next few days.

19 MR. PIERCE: Thank you, Your Honor.

20 THE COURT: Okay. Anything else? Okay. We are
21 still set for the 17th, and nobody is anticipating any
22 problems with that? I will -- Judge Brown knows that
23 timing, and I will work with him on this, and we will get
24 this done.

25 Give me how long you think the sentencing is going to

1 take. I'm counting on three hours or so. If you are
2 talking about three days or so, I need to know it. I do not
3 intend for you to try Mr. Eichenwald, Mr. Mitchell,
4 Mr. Brown or anybody else in the sentencing hearing. Okay?

5 I will hear a certain amount of your contentions on
6 what we have been discussing today, but it's not going to
7 get out of control, and I will cut you off when I think I
8 have heard enough. Okay? Sentencing is for me. And I'm
9 not going to allow this to become a protracted trial of
10 other people. So --

11 MS. HODDE: I wouldn't expect that Your Honor
12 would. Your Honor, I think the Court knows Mr. Strianse and
13 I very well, and that we are -- I hope that we're going to
14 come into the courtroom that day very focused on the issues
15 that we believe are going to be most compelling to the Court
16 in determining the ultimate sentence in this case. So I
17 would expect that from the Court.

18 THE COURT: Okay.

19 MS. HODDE: I did want to tell the Court one
20 thing out of just total candor with the Court. We are
21 anticipating filing, and Ms. Daughtrey knows this is coming,
22 a motion for a new trial based on some post-trial
23 discoveries that we would consider to be newly discovered
24 evidence, and I will get that filed probably this afternoon.

25 So I wanted to alert the Court that there is a motion

1 coming, and I don't know if that's going to cause a
2 continuance of the sentencing or request for a continuance
3 of the sentencing, but I just wanted to tell the Court that
4 for scheduling purposes.

5 THE COURT: Okay. Well, let me go ahead then
6 and see if I can order a response, an early response. You
7 think you're filing it today?

8 MS. HODDE: I can file it. It's in final form,
9 and I could file it this afternoon.

10 THE COURT: How quickly could you respond, Ms.
11 Daughtrey?

12 MS. DAUGHTREY: Your Honor, I'm -- I've sort of
13 been in discussion with the defense about this, and I am
14 aware that it's a fairly lengthy motion, and I don't know
15 what the content of it is. I would typically ask for ten
16 days.

17 If the defense thinks that there is a chance that we
18 will go forward on the 17th, then I would certainly be
19 willing to speed that up. But if there's some reason to
20 think now, even before I respond, that we're going to need
21 to continue the sentencing hearing beyond the 17th, then I
22 would ask for the traditional ten days, at least, unless
23 there's much more to it than I'm anticipating.

24 THE COURT: Well, there's also a question of --

25 MS. DAUGHTREY: Of these subpoenas.

1 THE COURT: -- the Court being able to get it
2 decided. I have a hearing the week of the 13th which is to
3 go four days, an evidentiary hearing. So --

4 MS. DAUGHTREY: My understanding is that the
5 defense is going to be asking for a hearing in this motion
6 for a new trial as well. So I think in that sense, the
7 17th may be an unrealistic date for a sentencing.

8 THE COURT: Are you opposed to continuing the
9 sentencing?

10 MS. HODDE: No, Your Honor.

11 THE COURT: Okay. Well, I think --

12 MS. HODDE: If that's what needs to happen,
13 that's what needs to happen.

14 THE COURT: Let me look at the motion, and you
15 look at the motion, and --

16 MS. DAUGHTREY: Yes, Your Honor.

17 THE COURT: -- just give Ms. Briggs-Jones a call
18 and tell her if you think you need the ten days --

19 MS. DAUGHTREY: Okay. I probably will.

20 THE COURT: -- to respond.

21 MS. DAUGHTREY: I probably will. I have a lot
22 on my plate for a lot of different reasons.

23 THE COURT: And -- okay. Then -- why don't we
24 do this? Let's have a telephone conference on -- let's see
25 -- could we have a telephone conference on either the

1 afternoon of the 2nd, Thursday, or the morning of the 3rd,
2 and we could kind of figure out how long you need to
3 respond, and if I think I'm going to grant an evidentiary
4 hearing and when that would be scheduled, and when we might
5 reschedule the sentencing; does that make some sense?

6 MR. STRIANSE: (Counsel moves head up and down.)

7 MS. DAUGHTREY: I can do it the afternoon of the
8 2nd. I think I have something set for the 3rd, and I don't
9 have my calendar in front of me to know when that timing is.
10 Actually, I have some things set with you on Friday,
11 so as long as it doesn't interfere with that.

12 THE COURT: The Weller sentencing is at 1:00.

13 MS. DAUGHTREY: So Friday morning would be fine
14 too.

15 THE COURT: Which is better for you all?

16 MR. STRIANSE: I have something Friday morning
17 so that's not good, and I have something with this Court on
18 Thursday but I neglected to write down what time it was.

19 THE COURT: I have a sentencing at 2:00. Do you
20 represent Rufino Tellez-Araujo?

21 MR. STRIANSE: I do. So after that I would be
22 free.

23 THE COURT: And you said you are free in the
24 afternoon on Thursday?

25 MS. DAUGHTREY: Yes, that's correct, Your Honor.

1 THE COURT: Why don't we say -- do you know how
2 long -- is that going to be a lengthy sentencing, do you
3 think?

4 MR. STRIANSE: Probably no more than about 45
5 minutes or so, I would think.

6 THE COURT: Why don't we set this for 3:00 on
7 Thursday the 2nd, and we'll have a telephone conference.

8 MS. DAUGHTREY: Thank you.

9 THE COURT: And you can have digested the
10 motion --

11 MS. DAUGHTREY: If I have been able to read it
12 by then.

13 THE COURT: -- and we'll figure out our timing
14 and so forth. I hope you can read it by then.

15 MS. DAUGHTREY: I hear it's very lengthy.

16 THE COURT: You hear it's very lengthy, okay.
17 Okay. Anything else? All right. We are in recess. Thank
18 you.

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3 REPORTER'S CERTIFICATE

4 I, BEVERLY E. "BECKY" COLE, Official Court Reporter
5 for the United States District Court for the Middle District
6 of Tennessee, with offices at Nashville, do hereby certify:

7 That I reported on the stenotype shorthand machine
8 the proceedings held in open court, excluding July 31, 2007,
9 in the matter of UNITED STATES OF AMERICA vs. TIMOTHY RYAN
10 RICHARDS, Case No. 3:05-00185;

11 That a transcript of proceedings in connection with
12 the trial was reduced to typewritten form by me;

13 That the foregoing transcript is a true and
14 accurate record of the proceedings to the best of my skills
15 and abilities;

16 This the 16th day of August, 2007.

17
18
19 /s/
20 BEVERLY E. COLE, RPR CCR
21
22
23
24
25