

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

4 UNITED STATES OF AMERICA)
5 vs.) CASE NO. 3:05-00185
6) VOLUME I
7 TIMOTHY RYAN RICHARDS)

8 TRANSCRIPT OF PROCEEDINGS
9

10
11 BEFORE: THE HONORABLE ALETA A. TRAUGER
12 DATE: OCTOBER 10, 2006
13 TIME: 9:00 A.M.
14

15 APPEARANCES:
16 FOR THE GOVERNMENT: CARRIE DAUGHTREY
17 U.S. Attorney's Office
18 Nashville, Tennessee
19 KAYLA BAKSHI
20 U.S. Department of Justice
21 Washington, D.C.
22 FOR THE DEFENDANT: PETER STRIANSE
23 KIMBERLY HODDE
24 Nashville, Tennessee

25 REPORTED BY: BEVERLY E. "BECKY" COLE, RPR CCR
OFFICIAL COURT REPORTER
A-837 U.S. COURTHOUSE
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1 THE COURT: Good morning. We are here on United
2 States vs. Timothy Ryan Richards, criminal case 3:05-CR-185.
3 We have Carrie Daughtrey -- do you want me to introduce you
4 to the jury as Carrie Daughtrey or as Carran Daughtrey?

5 MS. DAUGHTREY: Carrie Daughtrey is fine, Your
6 Honor.

7 THE COURT: Carrie Daughtrey, and Kayla Bakshi.
8 I'm pronouncing that correct?

9 MS. BAKSHI: Yes, Your Honor.

10 THE COURT: For the government. I know how to
11 pronounce your names. For the defense we have Peter
12 Strianse and Kimberly Hodde.

13 MR. STRIANSE: Good morning, Your Honor.

14 THE COURT: Good morning. And you have with you
15 Nicole Earl?

16 MS. HODDE: Right, she's my assistant.

17 THE COURT: Assistant, okay. Let's talk about a
18 few things before we get the jury in here. The government
19 is moving to dismiss counts of the indictment 10, 14 and 17.

20 And let me just -- it will affect what I tell the
21 jury in terms of how many counts of what. So are these --
22 all right. Ten is advertising and 14 is advertising, so
23 that makes five counts of advertising. And 17 is the
24 records requirements, so that makes it three counts of the
25 record-keeping requirements.

1 MS. DAUGHTREY: That is correct, yes.

2 THE COURT: Okay. And that motion will be
3 granted.

4 All right. The defendant has moved to exclude the
5 use of certain material in the opening statement. I have
6 read the government's response. I'm going to grant that
7 motion.

8 The kind of demonstrative evidence that I anticipate
9 in opening is something that will really help the jury with
10 the chronology or relationships, charts, something of that
11 nature.

12 I see no purpose whatsoever to introducing in the
13 opening statement the kind of evidence the government
14 proposes to introduce which would really expose the jury to
15 that evidence twice. So that motion is -- the defense
16 motion is granted.

17 Now --

18 MS. DAUGHTREY: Your Honor, if I may clarify, we
19 can use other demonstrative evidence that hasn't been
20 objected to?

21 THE COURT: That's fine, if there's no
22 objection, but the things that are specifically objected to
23 I'm granting.

24 MS. DAUGHTREY: My understanding is we weren't
25 planning on playing video today anyway, although we had

1 responded to the motion as if we were, but there were a
2 couple of pictures of websites, the front page of a web site
3 that we were planning on using, and I'm presuming that your
4 ruling that is we cannot show the jury those?

5 THE COURT: I presume those were --

6 MS. HODDE: That what is challenged in our
7 motion.

8 THE COURT: Yeah, whatever they challenged in
9 their motion I'm granting.

10 MS. DAUGHTREY: Okay.

11 THE COURT: Anything that's not been challenged
12 you may introduce.

13 MS. DAUGHTREY: Okay.

14 THE COURT: Now, in terms of something I want to
15 cover with the jury, there are no children alleged to be
16 under the age of what in any of the pornography that is
17 charged?

18 I want them no know they are not going to see babies
19 or two year olds or five year olds.

20 MS. DAUGHTREY: These are all teenagers.

21 THE COURT: All teenagers?

22 MS. DAUGHTREY: Yes.

23 THE COURT: Okay. All right. Anything else
24 before we get the prospective jurors in?

25 MS. HODDE: Your Honor, there was one other

1 preliminary matter that I wanted to ask the court about. In
2 the course of preparing for using some defense exhibits in
3 this case and in the course of discussing this with
4 Mr. Sprowl, it came to our attention that we probably needed
5 to ask the court's permission to make some exhibits from the
6 hard drive evidence that's in our possession at this point.

7 A lot of the exhibits I know would not be
8 objectionable. They are not going to contain any
9 pornography at all, but there are a couple of exhibits that
10 we would like to make that contain pornography, but we're
11 not sure if the government would say that is child or adult
12 pornography. It would be kind of a close call on the ages,
13 and I just wanted to clear it with the court before we
14 copied anything to make an exhibit that that would be okay,
15 make use of it in that way?

16 THE COURT: Yeah, that seems entirely
17 appropriate. Does the government want to see what they're
18 talking about before you take a position or do you have any
19 objection?

20 MS. BAKSHI: Yes, if we could just see the
21 exhibits before they -- before we respond to that.

22 THE COURT: During the break, show them what it
23 is you want to copy --

24 MS. HODDE: Okay.

25 THE COURT: -- on make an exhibit.

1 Mr. Strianse?

2 MR. STRIANSE: Your Honor, one other thing about
3 the jury selection, I obviously don't know what areas the
4 court is going to be discussing.

5 THE COURT: I'm not going to go into great
6 detail, but I want to make it clear to them that they are
7 not going to see babies and young children.

8 MR. STRIANSE: And I was going to try to pass
9 the buck to the court on one of these areas.

10 THE COURT: Okay.

11 MR. STRIANSE: This is clearly not a sexual
12 assault trial, but I felt like there may be some jurors that
13 have been some connection with either being a victim of a
14 sexual assault or knowing somebody that was accused of being
15 involved in a sexual assault.

16 And it's something that I don't want to ask, but I
17 think that if somebody who was a prospective juror had an
18 experience like that, they may be not particularly well
19 suited to this type of case. And I didn't know if the court
20 was going to go into that area at all?

21 THE COURT: I wasn't, and I would think that
22 that might lead them to think that there's something under
23 the surface here about sexual assault.

24 MR. STRIANSE: Right, and that's why --

25 THE COURT: So I would think that would not be

1 something that we want to throw jurors off the jury for.

2 MR. STRIANSE: I agree.

3 THE COURT: Okay. On second thought, you agree.

4 MR. STRIANSE: I knew I didn't want to ask it.

5 THE COURT: Well, if you give me more reason to
6 ask it, I will be glad to consider it, but it seems to me
7 that it would be harmful to the defense to ask such
8 questions.

9 MR. STRIANSE: Yes.

10 THE COURT: Do you agree?

11 MR. STRIANSE: I agree.

12 THE COURT: All right. Is there anything else
13 that anybody else wants me to ask so you don't have to ask
14 it?

15 MS. BAKSHI: No, Your Honor.

16 MS. HODDE: No, Your Honor. There's one other
17 matter I wanted to bring to the court's attention, and we
18 have discussed it amongst ourselves, is these motions in
19 limine that had been granted, we think it might be
20 appropriate for the court to instruct some of those
21 witnesses not to discuss matters contained in those motions,
22 these investigations and other matters that have been
23 granted relating to Dew when the time comes. I wanted to
24 alert the court to that request.

25 THE COURT: Yes, you all are the first line of

1 instruction to your witnesses. But if either of you has
2 your own witness or feel that an opposing witness is going
3 to be particularly problematic in that way, then just let me
4 know ahead of time. And during a jury out portion of the
5 trial, I'll instruct them on that. All right.

6 MS. BAKSHI: We have.

7 MS. DAUGHTREY: We have one more matter, Your
8 Honor.

9 THE COURT: Yes.

10 MS. BAKSHI: Two more matters, Your Honor. The
11 first is that at this point we do not anticipate calling
12 Justin Berry to testify.

13 THE COURT: Okay.

14 MS. BAKSHI: And as a result, we'd like to bar
15 the defense from or make a motion to exclude -- to bar the
16 defense from making any mention during their opening
17 statement of the existing immunity agreement. It's
18 irrelevant if he's not testifying.

19 THE COURT: Any reference to what?

20 MS. BAKSHI: The existing immunity agreement
21 between the government and Justin Berry.

22 THE COURT: Well, that certainly would be
23 inappropriate if Justin Berry is not going to be testifying.

24 MR. STRIANSE: What happens to those Justin
25 Berry counts in the indictment?

1 MS. BAKSHI: We'll be using other documentation
2 to support those counts and other evidence and other
3 witnesses to support those counts.

4 MR. STRIANSE: Well, I assume when we reach that
5 point in your proof that you can alert us because I would
6 like to have a 104 hearing outside the presence of the jury
7 to see how they are going to cobble this Justin Berry proof
8 together without him.

9 THE COURT: Well, they will either succeed or
10 they will not succeed. I'm not going to -- I mean, at this
11 point, it seems to me that any mention of an immunity
12 agreement with Justin Berry would be irrelevant and not
13 appropriate for any purpose, but if at some point the
14 defense feels there's an argument to be made that it should
15 come in, for instance, if some statement somehow of Justin
16 Berry will come in, then it might be appropriate.

17 So I'm not ruling for all time that no mention may be
18 made of an immunity agreement with Justin Berry, but it does
19 seem that it would be irrelevant.

20 MS. BAKSHI: May we also make that motion in
21 reference to the voir dire as well?

22 THE COURT: Yes, yes.

23 MS. BAKSHI: And the other matter that I would
24 like to take up with the court is that in pretrial motions
25 the defense has made reference to consensual sexual

1 relationships and consensual relationships throughout, and
2 we have a concern that's inviting them to nullify.

3 There's no exception for relationships with -- for
4 the production of child pornography where the minor consents
5 or doesn't consent. It's still a federal crime.

6 And our concern is by continued use of the term
7 "consensual" they may actually confuse the prospective
8 jurors and the jurors as to what the law is with respect to
9 the bright line of child pornography and the production of
10 such. And the fact is it doesn't matter whether or not the
11 minor actually agreed to engage in sexual relationships
12 remains the crime.

13 THE COURT: Does the defense intend to make
14 those points?

15 MS. HODDE: Yes, Your Honor, we do. Your Honor,
16 this is a case where the statute particularly contains the
17 language entices, coerces, induces, persuades the minor to
18 participate in this conduct. This is consensual conduct.

19 These individuals are willing participants. You're
20 not going to see anybody held hostage on this videotape, and
21 it's important for the jury to understand that when it reads
22 that language in the indictment, that these individuals were
23 not enticed, coerced, persuaded.

24 THE COURT: Are you saying that consensuality is
25 a defense?

1 MS. HODDE: It may be partially a defense to the
2 charges in that if the -- if the jury were to get hung up on
3 that language in the statute.

4 It's certainly relevant, and it's not going towards
5 nullification by any stretch to refer to the consent of
6 these individuals.

7 The court can see in the indictment itself the
8 government has charged these individuals were enticed,
9 persuaded, induced.

10 THE COURT: What charge is that language an
11 element of?

12 MS. BAKSHI: Your Honor, it applies to the
13 crimes of production of child pornography, which is charged
14 under 18 U.S.C. 2251(a), and the language of that statute
15 contains not only the words that Ms. Hodde referenced but it
16 also contains the word "use", that someone used a minor for
17 the production of child pornography.

18 THE COURT: Well, somebody get me some law on
19 whether or not consensuality is a defense to production of
20 child pornography. I doubt it is.

21 It seems to me that the defense can make the point
22 and try to prove that these were consensual relationships,
23 at which point I will be glad to instruct the jury that the
24 fact that they were consensual relationships is not a
25 defense to the crime. But I would like someone to give me

1 the law on that so I make sure that that's a correct
2 instruction.

3 I think it is relevant to the defense whether or not
4 this was consensual behavior. The jury may not believe it
5 was consensual. The jury may believe, like with sexual
6 harassment, that a minor cannot consent to these kinds of
7 acts, but I need to know what the law is clearly on this
8 point one way or the other, whether it is a defense or not.

9 MS. HODDE: The consensuality of this is
10 particularly relevant given the ages of these individuals.

11 Obviously, if these were seven year olds, this would
12 not be an issue. These were 17 year olds that we are
13 talking about. So --

14 THE COURT: Well, I'm not interested in having
15 any questioning of the jury on this point until we clarify
16 it. I would think that would be pretty clear one way or the
17 other.

18 MS. BAKSHI: It's very clear.

19 THE COURT: Give me some case law.

20 MS. BAKSHI: It's written in the statute, and
21 this is not something that we expected was going to be
22 challenged. We can get the case law for you on this issue,
23 but it's patent in the statute that it applies -- it comes
24 up under the definition of minor, when a minor says a child
25 under 18. Nowhere can the defense point to a place that

1 there's any exception made for the age of children under the
2 age of 18 having a different standard for minority.

3 THE COURT: Yeah, I'm going to put the burden on
4 the defendant here because I can't imagine that consent is a
5 defense, so give me a case.

6 MR. STRIANSE: Your Honor, but the context that
7 the jury is going to see these videos, these are
8 individuals -- some witnesses for the government are going
9 to be unable to say what age they were in some of the
10 depictions.

11 An individuals by the name of Tory, is his stage
12 name, he's not going to be able to testify whether he was 17
13 or 18; he just doesn't remember.

14 It's obvious from the context that it's a consensual
15 exercise. He had his own web site. Justin Berry had his
16 own websites. I think that it is fair comment by the
17 defense to be able to argue to this jury that these are
18 people that were basically promoting themselves, had their
19 own websites. They were doing these things consensually.

20 This isn't Mr. Richards who has some spell over a six
21 year old who's coercing that individual to perform. I think
22 it's integral to our defense theory in the case.

23 THE COURT: I'm going to have some research done
24 on this by my law clerks while we're getting the jury in.

25 Mr. Strianse, I'm not hearing you say that it is a

1 defense. I'm hearing you say it is a relevant inquiry.

2 MR. STRIANSE: Your Honor, it's not an
3 affirmative defense that we can ask for an instruction on,
4 but it is so inextricably intertwined with our defense
5 theory, it is relevant for the jury's evaluation of how old
6 were these people, what is the relationship between this
7 person and Tim Richards.

8 For example, this Tory individual, [REDACTED]
9 they were contemporaries. They were friends. It's obvious
10 from the video "Paint Tory" that he is a willing
11 participant. He's launching his own site. He's an unabashed
12 self promoter.

13 We should be able to argue to the jury you have seen
14 the evidence. No one was holding a gun to [REDACTED]
15 head to have him perform in this video.

16 THE COURT: Ms. Bakshi?

17 MS. BAKSHI: Your Honor, what Mr. Strianse has
18 just described is nothing more than nullification. There is
19 nothing in the law that says that a child who is 17 and a
20 half has any different expectation of being treated as a
21 victim than a seven year old. They might wish that the law
22 was different, but it's not.

23 THE COURT: Well, they will be fully instructed
24 on the law, but this is relevant evidence, it seems to me,
25 and I'm going to let this come in.

1 And if it gets to the point that the government
2 requests or I decide it's necessary, I will tell them that
3 the consensual nature of this activity is not a defense to
4 the crime.

5 Mr. Strianse, I'm going to say that because you're
6 not telling me it's a defense. You are saying it's relevant
7 evidence.

8 MR. STRIANSE: It is relevant evidence.

9 THE COURT: I think it's very relevant evidence.
10 It's not a defense to the crime. I'll tell them that. They
11 will be instructed to that defense, and we have to trust
12 that a jury is not going to nullify.

13 If you give me some case law that says it's not
14 relevant evidence, I will consider it, but I can't imagine
15 it's not relevant evidence when you charge in the indictment
16 that they were enticed and compelled, and everything else.
17 That's the language of your charge.

18 MS. BAKSHI: Your Honor, respectfully, I'll also
19 add that the language of the indictment is any person who
20 employs, uses, persuades, entices. And so the fact is that
21 this defendant did use a minor in the production.

22 THE COURT: That's fine. The instructions will
23 say that. Your argument will say that, I'm sure, in spades
24 if there's a lot of this kind of proof, and the jury will
25 have to make their verdict based on the instructions.

1 MS. BAKSHI: May I be allowed in opening to
2 discuss this point of law?

3 THE COURT: No. Law is not discussed in the
4 opening. It's is a preview of the evidence.

5 All right. Are we ready for the jury? Hearing
6 nothing, we will get the jury in.

7 We're going to -- whoever is sitting over there,
8 could you move to this side because we are putting the jury
9 over there?

10 Now, what we're going to do is we're going to -- you
11 have the charts, and, Betty, can we get through 23 in this
12 front row. Do we have the right number of chairs?

13 THE CLERK: Yes, ma'am.

14 THE COURT: So we'll do these three rows, and
15 then so that we don't get confused, Mr. Thompson, I'm going
16 to ask that you go -- can we just get one extra chair over
17 here? Could you just pull that chair over there? Thank
18 you.

19 And what I'll have you do, Mr. Thompson, is to
20 fill --

21 COURT SECURITY OFFICER: Where do you want it,
22 Judge, on that end? It might be a little tight.

23 THE COURT: I think back there, yeah, that would
24 be good.

25 COURT SECURITY OFFICER: This will make ten on

1 the front row.

2 THE COURT: No, what I'm going to do is make
3 that number 60.

4 THE CLERK: There's only 57 jurors.

5 THE COURT: We don't need that chair. I'm very
6 sorry.

7 THE CLERK: Sorry.

8 THE COURT: My chart went to 60, so -- but we
9 have only got 57, so --

10 MS. DAUGHTREY: Are you going to put people on
11 this front --

12 THE COURT: What I want to do is seat them --
13 what I'm thinking is we're going to have to -- all the
14 people in the courtroom who are not prospective jurors, I'm
15 going to ask you all to sit in the first row behind the
16 bench and go way over because we're going to have to put
17 jurors -- Mr. Fielder, I'm sorry, you can sit wherever you
18 want to.

19 MR. FIELDER: I'll stay here, Judge. I can't
20 see everything as --

21 THE COURT: These fine. You can sit in that
22 chair back there if you want to. What we're going to do is
23 fill these three rows. Then the row that starts juror 24 is
24 going to be four rows back. We're going to use -- the front
25 bench will be starting with juror 51. The second bench will

1 be starting with juror 42. The third bench will be starting
2 with juror 33, and the fourth bench with juror 24. So we're
3 going to start four benches back. When we fill up these
4 seats, we'll start four benches back.

5 COURT SECURITY OFFICER: Once you start calling
6 the names that's how you will arrange them.

7 THE COURT: Yeah.

8 COURT SECURITY OFFICER: Yes, ma'am.

9 THE COURT: I'll be making this real clear to
10 you, but we'll do four benches back, then 24 through 32,
11 then we'll start the third bench back with 33 to 41, and I
12 think that way we'll be able to keep track of who is where.

13 COURT SECURITY OFFICER: When I first load the
14 courtroom, you want me to start at this corner with jurors?

15 THE COURT: That's what I'm thinking, maybe fill
16 all those rows behind these folks, then the very back rows.

17 COURT SECURITY OFFICER: Yes, ma'am.

18 THE COURT: I guess that's how we're going to
19 have TO do it. And we are picking six alternates. You have
20 your peremptory challenges, so I guess we are ready.

21 COURT SECURITY OFFICER: Once we fill that chair
22 there, the next seat will be down there?

23 THE COURT: Four rows back and on the end, that
24 will be 24.

25 COURT SECURITY OFFICER: Yes.

1 THE COURT: Great. Thanks, Mr. Thompson.

2 (Prospective jurors enter.)

3 THE COURT: Good morning. We are going to call
4 you by name and juror number and ask you to come forward,
5 and we're going to fill the back row of the jury box first
6 and then the front row, and then the row in front of the
7 jury box, and then we'll have to do a little shifting around
8 because then we're going to fill four benches on this side.

9 And by that time we will have some more space to move
10 you so we can fill those four bunches. So when your name is
11 called, if you would come up, and Mr. Thompson will get you
12 seated in the right place. Okay.

13 THE CLERK: [REDACTED] juror number 34,
14 seat number 1. [REDACTED] juror number 54, seat number
15 2. [REDACTED] juror number 42, seat number 3.

16 THE COURT: Could you spell that name?

17 THE CLERK: [REDACTED]. [REDACTED] juror
18 number 1, seat number 4.

19 [REDACTED] juror
20 number 23, seat number 5. [REDACTED]
21 juror number 47, seat number 6.

22 [REDACTED] juror number 44, seat number 7. [REDACTED]

23 [REDACTED] juror number 43, seat number 8. [REDACTED]

24 [REDACTED], juror number 55, seat number 9.

25 [REDACTED] juror number 25, seat number 10.

1 [REDACTED] juror number 19, seat number 11.

2 [REDACTED] juror number 35, seat number 12.

3 [REDACTED] juror number 40, seat number 13.

4 [REDACTED] juror number 26, seat number 14.

5 [REDACTED] juror number 20, seat number 15. [REDACTED]

6 [REDACTED] juror number 33, seat number 16.

7 Michael D. Stuteville. [REDACTED] juror
8 number 48, seat number 17.

9 [REDACTED] juror number 27, seat
10 number 18. [REDACTED] juror number 53, seat number
11 19.

12 [REDACTED] juror number 18, seat number 20.

13 [REDACTED] juror number
14 21, seat number 21.

15 [REDACTED] juror number 10, seat number 22.

16 [REDACTED] juror number 56, seat number 23.

17 [REDACTED] juror number 6, seat number 24.

18 [REDACTED] juror number 3, seat number
19 25.

20 [REDACTED] juror number 24, seat number 26.

21 [REDACTED] juror number 45, seat number 27.

22 [REDACTED] juror number 49, seat
23 number 28. [REDACTED] juror number 28, seat number 29.

24 [REDACTED] juror number 29, seat number 30.

25 [REDACTED] juror number 31, seat number 31.

1 [REDACTED] juror number 32, seat number 32.
2 [REDACTED] juror number 50, seat number 33.
3 [REDACTED] juror number 37, seat number 34.
4 [REDACTED] juror number 52, seat number
5 35. [REDACTED] juror number 30, seat number 36.
6 [REDACTED] juror number 15, seat number 37. [REDACTED]
7 [REDACTED] juror number 36, seat number 38.
8 [REDACTED] juror number 8, seat number 39.
9 [REDACTED] juror number 2, seat number
10 40. [REDACTED] juror number 16, seat
11 number 41.
12 [REDACTED] juror number 4, seat number
13 42. [REDACTED] juror number 41, seat number 43.
14 [REDACTED] juror number 13, seat number
15 44.
16 [REDACTED] juror number 11, seat number 45.
17 [REDACTED] juror number 51, seat number 46. [REDACTED]
18 P [REDACTED] juror number 39, seat number 47.
19 [REDACTED] juror number 7, seat number 48. [REDACTED]
20 [REDACTED] juror number 5, seat number 49.
21 [REDACTED] juror number 17, juror
22 number 50. [REDACTED] juror number 14, seat
23 number 51.
24 [REDACTED] juror number 12, seat number 52.
25 [REDACTED] juror number 9, seat number 53.

1 [REDACTED] juror number 46, seat number
2 54. [REDACTED] juror number 22, seat
3 number 55.

4 [REDACTED] juror number 38, seat number 56.
5 [REDACTED] juror number 57, seat
6 number 57.

7 THE COURT: Okay. You have been summoned today
8 as prospective jurors in a criminal case. You will be sworn
9 and asked questions by the court and by the lawyers to
10 determine whether you are to be selected to try this case.

11 The government and the defendant are entitled to
12 jurors who approach this case with open minds and agree to
13 keep their minds open until a verdict is reached.

14 Jurors must be as free as humanly possible from bias,
15 prejudice or sympathy and not influenced by preconceived
16 ideas as to either the facts or the law.

17 You are undoubtedly qualified to serve as a juror.
18 However, there may be something about this case that could
19 disqualify you for this particular case.

20 The questions asked of you are not designed to pry
21 into your personal affairs but to discover if you have any
22 knowledge of this particular case, have any preconceived
23 opinion which you cannot lay aside or have had any
24 experience in life that will cause you to side with the
25 government or with the defendant.

1 These questions are necessary to assure the selection
2 of an impartial jury.

3 If it should appear that there is a lawful cause for
4 a prospective juror not to serve in this case, that person
5 may be excused for cause.

6 In addition, the government and the defendant each
7 have a right to excuse a certain number of jurors without
8 assigning any cause or reason at all.

9 If you are excused, you should not consider it a
10 reflection on you in any way.

11 Consider each question asked of you very carefully.
12 And most of these questions will be asked of you all at the
13 same time, and we'll ask for a raising of hands and then
14 we'll individually talk with you, but consider each question
15 very carefully and do not wait until after you are selected
16 and sworn as a juror to tell us something that ought to have
17 been made known at the time that a question was asked.

18 So, as I say, we'll be asking questions of all of
19 you, and so each of you must pretend the question is being
20 asked individually of you and figure out whether you have
21 something you need to tell us with relation to that
22 question.

23 If at any point you do not understand a question,
24 raise your hand, and we'll try to clarify it.

25 If after a question is asked, you later think of

1 something you should have said even though we have -- we may
2 have moved on to another question, you think of something
3 you should have said earlier, just raise your hand, and
4 we'll call you on you and discuss what you have to say.

5 Ms. Briggs-Jones will now administer an oath to all
6 of you. The answers you give in response to the questions
7 asked by the lawyers and by me will be given under this
8 oath. So if you could please stand.

9 THE CLERK: Raise your right hand, please.

10 (Prospective jurors were sworn.)

11 THE CLERK: Be seated, please.

12 (Jury voir begins by the Court and Counsel.

13 Transcription not requested.)

14 THE COURT: Are you about finished, Ms.

15 Daughtrey?

16 MS. DAUGHTREY: I'm about finished with the
17 computer questions. I do have some other questions I would
18 like to ask.

19 THE COURT: I don't want our jurors to starve to
20 death, so we may interrupt your questioning.

21 MS. DAUGHTREY: Well, I am finished with the
22 questions about the computers. This would be a good
23 breaking point if you would like to.

24 THE COURT: Okay. All right. I think what
25 we'll do because some of you will be excused, do you think

1 you can have lunch in 45 minutes and get back? I mean, we
2 have a cafeteria in the building. We have a snack bar down
3 below.

4 Let's try to do 45 minutes. And then those of you
5 who are not selected for the jury will have that much more
6 time when you can be excused. So we'll come back in 45
7 minutes which according to that clock would be about 10
8 after 1:00.

9 COURT SECURITY OFFICER: You want to us pick
10 them up in the jury room or have them come right back here?

11 THE COURT: What do you think?

12 COURT SECURITY OFFICER: Doesn't matter to me,
13 Judge.

14 THE COURT: Jury room or back here?

15 COURT SECURITY OFFICER: Jury room.

16 THE COURT: Report back to the jury room, and
17 we'll try to get you back in here by shortly after or ten
18 after one. Then you will take your same seats. Okay. We
19 are in recess.

20 You all are excused. I'm going to talk to the
21 lawyers for a minute.

22 (Prospective jurors exit.)

23 THE COURT: Sit down. I just wanted to tell you
24 for purposes of your opening statements my ruling on this --
25 the business of whether or not this behavior was compelled

1 in any way, the 2251 makes it a crime to employ or use or
2 persuade or induce or entice or coerce any minor, and I
3 believe all those words are used in the indictment.

4 The defendant wants to introduce proof that at least
5 some -- and I don't know what form that proof will take, but
6 the defendant wants to introduce proof that this behavior
7 was consensual.

8 Consent is not a defense to the crime. However, it
9 certainly rebuts a charge of coercing, among other things.
10 So the defendant will be allowed to introduce that proof
11 because it rebuts a charge that he coerced minors to do
12 something.

13 That doesn't mean he can't be convicted of 2251
14 because he can be convicted of 2251 if he employs or uses or
15 persuades, et cetera.

16 So the instructions will just be very clear on that
17 point that it is a violation of the statute if he does any
18 of these things, and I don't believe that it is asking a
19 jury to nullify to introduce proof that shows that the
20 defendant did not coerce.

21 It is proof that rebuts that particular charge of the
22 indictment, so -- and an alternative ground would be that it
23 would be part of the res gestae of the underlying facts, but
24 I really think more appropriately it is proof that rebuts
25 committing this offense in this particular way, the coercion

1 part.

2 So that's my ruling on that. And we'll just have to
3 make sure that the -- and I will make sure that the
4 instructions are very clear on that point.

5 And if I feel that in the midst of any proof I need
6 to give an interim instruction, I'll do that. And if
7 anybody feels that we are at a point where I really ought to
8 do that, you are certainly free to request it.

9 Mr. Strianse, I was alerted you had something you
10 wanted to bring to my attention?

11 MR. STRIANSE: Yes, Your Honor. It's a very
12 minor point that I wanted to disclose to the court and the
13 government that our law firm, Tune, Entrekin and White,
14 hosted a little campaign gathering for [REDACTED] and that
15 was within the last six weeks or so.

16 THE COURT: All right. Thank you for that. I
17 intend to ask [REDACTED] the one who said she was all about
18 children, I intend to ask her whether the information that
19 this case does not involve any children under 14 makes a
20 difference in her mind.

21 If it doesn't, then probably we will need to dismiss
22 her for -- excuse her for cause, but I'm going to ask that
23 question of her when we get back.

24 Ms. Daughtrey, how much longer are you going to be?

25 MS. DAUGHTREY: I would say that I'm probably

1 three quarters of the way through at this point.

2 THE COURT: Okay. And I would ask you to try to
3 word as many of these collectively to sort of weed out the
4 people you really need to zero in on, if you can.

5 MS. DAUGHTREY: Yeah, I will do that. Your
6 Honor, I would also, while we are before Your Honor, ask to
7 strike [REDACTED] for cause. He indicated that he's
8 the person who -- whose brother is serving two life
9 sentences for murdering his father and perhaps his wife, I'm
10 not sure, but a sister-in-law.

11 He had stated that he really had some bias against
12 both parties, but then was very specific about the fact that
13 he has bias against the prosecution and specifically said,
14 when you asked him about attorneys, that it was specifically
15 prosecutors that he was biassed against.

16 THE COURT: I'm not sure I heard that, but I
17 might have missed it, that it was one sided in that way.
18 Does the defense object?

19 MR. STRIANSE: I don't have any objection to
20 [REDACTED] being stricken for cause.

21 THE COURT: Okay.

22 MR. STRIANSE: But I would also put [REDACTED]
23 in that same category. He's on the third bench, juror 35 --
24 seat 35, juror 52. He is the man who is a firefighter who
25 indicated that more than half of his friends were in law

1 enforcement, and he gave sort of a tepid I will try to be
2 fair to both sides, and I sort of put him in the same
3 category of Mr. Walker.

4 They were saying they could try to be fair, but they
5 didn't seem very enthusiastic about it.

6 THE COURT: What's the government's position on
7 that one?

8 MS. DAUGHTREY: Your Honor, the government -- I
9 certainly think Mr. Strianse has a right to ask him further
10 questions but at this time the government would oppose
11 striking him for cause. I didn't get the impression that he
12 was not going to be impartial and unfair, and I don't think
13 those questions have been asked of him at this point.

14 THE COURT: That's my feeling. I thought he
15 answered my questions appropriately, so if you want to
16 question him further, that's fine.

17 MR. STRIANSE: Yes.

18 THE COURT: Anything else?

19 MS. DAUGHTREY: Yes, I would also ask that if we
20 could ask those questions of [REDACTED] at the bench rather
21 than in front of everybody about whether or not that would
22 make a difference, the government would request that.

23 THE COURT: Okay. All right. Okay, very good.
24 We are in recess.

25 (Break.)

1 THE COURT: All right, Ms. Daughtrey?

2 MS. DAUGHTREY: Thank you.

3 (Voir dire continues and is completed by
4 Counsel. Transcription not requested.)

5 THE COURT: All right. We have another oath for
6 you, so if you would stand for another oath?

7 THE CLERK: Please raise your right hand.

8 (Juror oath was administered.)

9 THE CLERK: Be seated, please.

10 THE COURT: I'm going to give you some
11 introductory instructions, and then we're going to take a
12 break.

13 Members of the jury, I'll now give you some initial
14 instructions about this case and about your duties as
15 jurors. At the end of the trial, I shall give you further
16 instructions. I may also give you instructions during the
17 trial.

18 Unless I specifically tell you otherwise, all of
19 these instructions are equally binding on you and must be
20 followed.

21 It will be your duty to decide from the evidence
22 whether the defendant is guilty or not guilty of each of the
23 crimes charged. From the evidence you will decide what the
24 facts are.

25 You're entitled to consider that evidence in the

1 light of your own observations and experiences in the
2 affairs of life.

3 You may use reason and common sense to draw
4 deductions or conclusions from facts which have been
5 established by the evidence.

6 You will then apply those facts to the law which I
7 give you in my instructions so that you may reach a verdict.
8 You are the sole judges of the facts, but you must follow
9 the law as stated in my instructions whether you agree with
10 it or not.

11 Do not let sympathy or prejudice influence you. The
12 law demands of you a just verdict unaffected by anything
13 except the evidence, your common sense and the law as I give
14 it to you.

15 You should not take anything I say or do during the
16 trial as indicating what I think of the evidence or what I
17 think your verdict should be.

18 The evidence from which you will find the facts
19 includes the testimony of witnesses, documents and other
20 things received as exhibits, any facts that have been
21 stipulated -- that is, formally agreed to by the parties --
22 and any fact which I say you may accept as true even without
23 evidence.

24 Certain things, however, are not evidence and must
25 not be considered by you. Statements, arguments, questions

1 and comments by lawyers representing the parties in the case
2 are not evidence.

3 Objections are not evidence. Lawyers have a right to
4 object when they believe something is improper. You should
5 not be influenced by the objection. If I sustain an
6 objection to a question, you must ignore the question and
7 must not try to guess what the answer might have been.

8 Testimony that I strike from the record or tell you
9 to disregard is not evidence and must not be considered.

10 Anything you see or hear about this case outside the
11 courtroom is not evidence.

12 You are to decide the case solely on the evidence
13 presented to you here in the courtroom.

14 Sometimes evidence is received for a limited purpose
15 only. That is, it can be used for one particular purpose
16 but not for another purpose. I will tell you when that
17 occurs and instruct you on the purposes for which an item of
18 evidence can or cannot be used.

19 There are two kinds of evidence, direct and
20 circumstantial evidence. Direct evidence is direct proof of
21 a fact such as testimony of an eyewitness. Circumstantial
22 evidence is proof of facts from which you may conclude that
23 other facts exist.

24 I will be giving you further instructions on this at
25 the end of the trial, but keep in mind that you may consider

1 both direct and circumstantial evidence and that the law
2 makes no distinction between them.

3 It will be up to you to decide which witnesses to
4 believe, which witnesses not to believe, and how much of any
5 witness's testimony to accept or reject.

6 I will give you further instructions on determining
7 the credibility or believability of witnesses at the end of
8 the case.

9 As you know, this is a criminal case. There are some
10 basic rules about a criminal case that you must keep in
11 mind.

12 First, the defendant is presumed innocent until
13 proven guilty. The indictment against him brought by the
14 government is only an accusation. Nothing more. It is not
15 proof of guilt or anything else. The defendant, therefore,
16 starts out with a clean slate.

17 Second, the burden of proof is on the government
18 until the very end of the case. The defendant has no burden
19 to prove his innocence or to present any evidence or to
20 testify. Since the defendant has the right to remain
21 silent, the law prohibits you from arriving at your verdict
22 by considering that the defendant may not have testified.

23 Third, the government must prove the defendant's
24 guilt beyond a reasonable doubt. I will give you further
25 instructions on this point later, but bear in mind that in

1 this respect, a criminal case is different from a civil
2 case, which is proof by a preponderance of the evidence.

3 Fourth, the number of charges is no evidence of
4 guilt, and this should not influence your decision in any
5 way. It is your duty to separately consider the evidence on
6 each charge and to return a separate verdict as to each one
7 of them.

8 For each charge, you must decide whether the
9 government has presented proof beyond a reasonable doubt
10 that the defendant is guilty of that particular charge.

11 Your decision on any one charge whether it is guilty
12 or not guilty should not influence your decision on any
13 other charge.

14 Now a few words about your conduct as jurors. First,
15 do not discuss the case either among yourselves or with
16 anyone else during the course of the trial and do not permit
17 anyone to discuss it with you.

18 Until you retire to the jury room at the end of the
19 case to deliberate your verdict, you simply are not to talk
20 about the case.

21 In fairness to both sides, you should keep an open
22 mind throughout the trial reaching your conclusions only
23 during your final deliberations after all the evidence is in
24 and you have heard the closing arguments and my instructions
25 to you on the law.

1 And that sounds probably strange to you that you're
2 not supposed to during recesses talk about the case, but you
3 aren't. You have to hear all the proof and the instructions
4 before you talk about the case.

5 So you can talk about the weather and your children
6 and your parents and anything else you want to talk about,
7 your jobs, but don't talk about the case.

8 Second, do not read or listen to anything relating to
9 this case in any way. Ignore any news stories, turn off the
10 television or radio or computer if anything connected with
11 this case is reported. You must decide this case solely on
12 the evidence presented here in court and the law as the
13 court instructs you.

14 Third, do not permit any person to discuss the case
15 in your presence. Please wear your juror badge at all times
16 visible so that people know you are a juror.

17 If anyone should try to talk to you about the case,
18 bring that could the court's attention promptly in writing
19 through the court security officer, Mr. Thompson, without
20 discussing this with your fellow jurors.

21 Fourth, though it is a normal human tendency to
22 converse with people with whom one is thrown in contact,
23 please do not during the time you serve on this jury talk in
24 or out of the courtroom with the defendant, or his lawyers,
25 or the prosecutors, or the witnesses, or anybody you see in

1 the courtroom or the news media.

2 By this, I mean do not just not talk about the case
3 but don't talk to them at all, even about the weather. In
4 no other way can everyone be assured of the absolute
5 impartiality they are entitled to expect from you as jurors.

6 Fifth, do not do any research or make any
7 investigation about this case on your own. And I'm going to
8 give a particular caution about the computer. Please do not
9 research anything on the computer about this case, about any
10 witness in this case, about any web site on this case, about
11 anything in this case. You are to decide this case from the
12 evidence you hear only in this courtroom.

13 Can I get everybody's commitment on that? Lots of
14 nodding heads. Thank you very much.

15 Six, do not make up your mind about what the verdict
16 shall be until after you have gone to the jury room to
17 decide the case and you and your fellow jurors have
18 discussed the evidence. Keep an open mind until then.

19 During the trial, I will permit you to take notes,
20 and we will furnish you with some notebooks after the break.
21 Many courts do not permit note-taking by jurors, and I want
22 to caution you about it.

23 There's always a tendency to attach undue importance
24 to matters which one has written down. Some testimony which
25 is considered unimportant at the time that it is presented

1 and thus not written down takes on greater importance later
2 in the trial in light of all the evidence presented.

3 Therefore, you are instructed that your notes are
4 only a tool to aid your own individual memory. And you
5 should not compare your notes with other jurors in
6 determining the content of any testimony or in evaluating
7 the importance of any evidence.

8 Your notes are not evidence and are by no means a
9 complete outline of the proceedings or a list of the
10 highlights of the trial.

11 Above all, your memory should be your greatest asset
12 when it comes time to deliberate and render a decision in
13 this case. Your notes are to be left at your seats during
14 recesses and overnight and are not to leave the courthouse
15 at any time.

16 The trial will proceed in the following manner.
17 First the government will make an opening statement, which
18 is simply an outline to help you understand the evidence
19 that they will be presenting.

20 Then the defense attorneys may, but don't have to,
21 make an opening statement at that time.

22 Opening statements aren't neither evidence nor
23 arguments. The government will then present its witnesses
24 and counsel for the defendant may cross-examine them.

25 Following the government's witnesses, the defendant

1 may, if he wishes, present witnesses whom the government
2 will cross-examine.

3 After all the evidence is in, the attorneys will
4 present their closing arguments to summarize and interpret
5 the evidence for you.

6 Then the court will instruct you on the law. After
7 that, you will retire to deliberate on your verdict.

8 So we are going to take a 20 minute break at this
9 time. When we come back, we will start the opening
10 statements. So we are in recess.

11 COURT SECURITY OFFICER: Ladies and gentlemen,
12 come this direction, please.

13 (Jurors exit.)

14 THE COURT: Could I have an estimate of the
15 length of the government's opening?

16 MS. BAKSHI: About 25 minutes maybe at most.

17 THE COURT: Are you going to make an opening now
18 or later?

19 MR. STRIANSE: Now. Probably ten minutes.

20 THE COURT: Okay, great. So we'll get the
21 openings in, and --

22 MS. DAUGHTREY: Your Honor, I may have a very
23 short witness that I could put on this afternoon, but
24 otherwise it's going to be our lead agent, Brooke Donahue,
25 and it's going to be a long direct and probably long cross,

1 so I would ask if I don't -- my witness is flying in from
2 California, supposed to have arrived at 2:00, I haven't
3 heard yet whether or not he has; if I could put him on, I
4 would like to do that, but otherwise I would ask if we could
5 start the proof in the morning.

6 THE COURT: Okay, that's fine. All right.
7 We'll hope that person is here. Okay. We are in recess.

8 (Break.)

9 THE COURT: Okay. Any preliminary matters
10 before the jury? Okay. We're ready for the jury. Is your
11 witness here, your short witness?

12 MS. DAUGHTREY: The short witness is not here.
13 I haven't heard what happened with the flight.

14 THE COURT: Okay. I presume the rule has been
15 invoked. Are there any witness in the courtroom, anybody
16 who's going to testify in the courtroom?

17 MS. DAUGHTREY: Could we approach?

18 THE COURT: Excuse me?

19 MS. DAUGHTREY: May we approach?

20 THE COURT: Okay.

21 (Bench conference begins.)

22 MS. DAUGHTREY: The gentleman sitting at our
23 table is Brooke Donahue. I mentioned him before. He's our
24 lead agent in this case. We are asking for him to stay.

25 There's another woman who's sitting on the front row,

1 the very petite looking woman whose name is Kristi Witsman.
2 She is one of the expert witnesses. And based on fact she's
3 an expert witness, we would ask --

4 THE COURT: Experts are fine.

5 MS. HODDE: We are also going to have our expert
6 witness joining us at counsel table.

7 THE COURT: That's fine.

8 MS. DAUGHTREY: I don't know what your thoughts
9 are on this. We are probably going to have her at counsel
10 table some of the time but not necessarily all the time.

11 THE COURT: And yours is going to be?

12 MS. HODDE: That's fine.

13 THE COURT: That's fine. I'm going to go ahead
14 and introduce him. He's with the FBI.

15 MS. DAUGHTREY: He's with FBI, yes.

16 (Bench conference concludes.)

17 THE COURT: Members of the jury, I wanted to
18 introduce to you the gentleman that's sitting at the
19 government table because he wasn't here earlier. This is
20 Brooke Donahue from the FBI, and he's the government's
21 representative for the purposes of the trial.

22 Okay, Ms. Daughtrey, Ms. Bakshi, we are ready for the
23 government's opening.

24 MS. BAKSHI: Ladies and gentlemen of the jury,
25 this is a case about a man who took advantage of adolescent

1 boys for his own sexual gratification and for profit.

2 The evidence will show that Timothy Ryan Richards
3 knew a lot about computers. He knew a lot about business.
4 But rather than put those skills to work in a legitimate and
5 legal business, this defendant put his energy in lucrative
6 and illegal child pornography businesses that are at issue
7 in this case.

8 This defendant knew and had every reason to know that
9 the boys that he was exploiting were minors, and he did it
10 anyway. And that is why this defendant sits before you
11 today accused of 23 child pornography offenses.

12 The government will introduce evidence from law
13 enforcement agents, from victims, from computer forensic
14 specialists.

15 We will also show you some of the images that the
16 defendant created and sold on the Internet. We will show
17 you e-mails that the defendant received and sent. We will
18 show you that the defendant had images in his home, and he
19 used technological means to put them on the Internet.

20 We will even show you a video where you will see the
21 defendant's face and hear his voice as he narrates customers
22 through one of his websites that contains child pornography.

23 So what are all of these charges? The 23 charges
24 that we have been talking about this morning involve
25 multiple counts of all of production of child pornography,

1 advertising to child pornography, distributing child
2 pornography on websites and possessing yet more child
3 pornography in his home.

4 There are also three counts of failing to keep
5 records as required by law that prove that the defendant
6 checked and kept records that all of the people that
7 performed in his videos and his images were indeed of age.

8 In addition to all the crimes that this defendant is
9 accused of committing by himself, he is also indicted for
10 three conspiracy charges.

11 There are two individual conspiracies, two separate
12 conspiracies, involved in working with other people to
13 advertise to child pornography.

14 And there is another conspiracy charge associated
15 with the distribution of child pornography by a very popular
16 and a particular child pornography web site.

17 As we've talked about all morning, the judge will
18 instruct you about the rules of the law, but the government
19 would like to take this opportunity to show you some of the
20 highlights or to tell you about some of the highlights that
21 you are going to hear about as we put our case into
22 evidence.

23 We'll be adding a great deal more detail as we go
24 forward, but I want to give you a sense of what these
25 different words, production, distribution, advertising,

1 possession, what they really mean in real terms that one can
2 understand.

3 With respect to production of child pornography, some
4 of the relevant facts that the government expects to put
5 into evidence include the fact that this defendant engaged
6 in a sexual relationship with an adolescent boy at the time
7 that that boy was approximately 14 years of age.

8 By the time that that child was 15 years, this
9 defendant had created videotape and still photography images
10 of the two of them engaged in sexual activity.

11 The defendant then brought that material into the
12 state of Tennessee and distributed that material on the
13 Internet for profit.

14 There will be no question as to whether or not this
15 defendant knew the child's age. We will present evidence
16 from this victim himself. His name is Patrick Lombardi.
17 And Patrick will tell you about how the two of them
18 discussed the fact that it was probably risky for the
19 defendant to be making these kinds of child pornography and
20 maybe they would wait a while before distributing them.

21 In addition to that, the government will present
22 evidence related to a different victim in relation to
23 production of child pornography offenses. That victim is
24 now a young man named [REDACTED]

25 At the time that the defendant knew him -- actually

1 the defendant knew him for several years, but by the time
2 that that victim, [REDACTED] was 17 year old, the
3 defendant, along with a group of the defendant's friends,
4 took this victim, [REDACTED] on a trip to Las Vegas.

5 And during that trip, when this adolescent was 17
6 years old, this defendant stood behind the camera and rolled
7 tape as his friends, as their mutual friends, painted up the
8 17 year old with body paint and had him pose naked and in
9 the shower and as a woman performed oral sex on the 17 year
10 old.

11 The evidence will show that these two -- that the
12 defendant knew this individual for a number of years, that
13 he had reason to know and certainly to inquire about the age
14 of that minor victim, and that nowhere is there any
15 documentation that he did so.

16 We will also talk about distribution of child
17 pornography, and in particular in this case the government
18 will introduce evidence related to the distribution of child
19 pornography on commercial websites.

20 And we will have a representative of the FBI whose
21 been reviewing the computer evidence in this case as well as
22 computer forensic experts who can help us to interpret some
23 of the information that they were able to uncover by looking
24 at this material and looking at it with their specialized
25 tools.

1 What they will be able to tell us is that this
2 defendant operated not just one but two or three but four
3 separate websites, all of which contained child pornography.

4 The first web site that we'll talk about is a web
5 site called Caseyandkylescondo.com. Now, that is a web site
6 that's going to feature a great deal of content involving
7 this defendant.

8 As it turns out, and as the evidence will show, he
9 employed a stage name named Casey. And the young boy that I
10 mentioned earlier, Patrick [REDACTED], was called Kyle.

11 And Caseyandkylescondo depicts their sexual liaisons
12 including sexual interactions from the time that Patrick was
13 15, 16 and 17 years old.

14 Again, the evidence will have shown that the
15 defendant knew at all times relevant to the charge in the
16 indictment the minority status and the age of this young
17 victim.

18 In addition to that, the evidence will show, and you
19 will hear directly from Patrick [REDACTED] that after Patrick
20 turned 18 and the relationship disintegrated that at one
21 point, Patrick asked for the materials to come back to him,
22 to take all the materials off the web and have it returned
23 to him.

24 And you will hear evidence that the defendant refused
25 and that the defendant continued to use this material on the

1 Internet and that he continued to possess it in the state of
2 Tennessee.

3 You will also hear about another web site. As I
4 said, after that relationship disintegrated, Mr. Richards
5 continued to use all of the content that he had created with
6 Mr. [REDACTED] or Patrick, even after Patrick had asked for
7 it back, and instead he came up with a new idea. This would
8 just be Caseyscondo.

9 And remember, the evidence will show that this
10 defendant uses the stage name Casey. However, the name
11 changed but the content remains the same, and all the child
12 pornography that was on the Caseyandkylescondo site was put
13 onto and distributed through the Caseyscondo web site.

14 You will also hear testimony about a third web site,
15 and that is called the Penisclub web site. And that, again,
16 contained child pornography, some material that has been
17 used on the Caseyandkylescondo web site, some material that
18 had been used in the Caseyscondo web site and some
19 additional material.

20 But the mode was the same. It was the distribution
21 of child pornography without documentation, that the
22 performers in all of the different videos and pictures were
23 of age, brought in the state of Tennessee on Mr. Richards'
24 computer and distributed by a web site, in this case the
25 Penisclub web site through the Internet.

1 There will be a fourth site as well of which the
2 government will -- about which the government will introduce
3 testimony, and that's called the Justinsfriends web site.

4 And the testimony will -- the testimony and other
5 evidence will show that this site was a little bit
6 different. This is not one the defendant started from
7 scratch. However, it is one that he took over even though
8 it had child pornography on it.

9 And the child pornography includes several victims.
10 One of those victims is a child named Colin and another
11 child named Taylor.

12 Now, those two children are still minors to this day,
13 so there will be no question that they were minors at the
14 time that the content, which included them masturbating on
15 camera, was created. They were minors. And as a result,
16 the sexually explicit conduct was child pornography, and
17 defendant distributed that.

18 That material also features a now young adult named
19 Justin, who is the subject of the site. And evidence will
20 show that the defendant sent an e-mail in which he
21 demonstrated his knowledge that at the time of that e-mail
22 or at the time of the picture that's -- at the time the
23 picture that's referenced in that e-mail was created, Justin
24 Berry was also a minor.

25 As with the other cases, the defendant brought all of

1 his material or housed all of his material in the state of
2 Tennessee and put it onto the Internet using computer
3 technology and made it available for sale.

4 There will be a great deal more evidence associated
5 with all the distribution counts that we'll bring into
6 evidence to provide clarity as to exactly how he was able to
7 accomplish all of these tasks.

8 In addition, you have heard that there's going to be
9 evidence about or you have heard that there's charges
10 related to the advertising. And this is specifically the
11 crime of advertising to child pornography in one form or
12 another.

13 This defendant created a very elaborate advertisement
14 that we will show you, and that advertisement points the
15 viewers of that material to the Caseyandkylescondo web site
16 where the viewer can find more child pornography.

17 He used these advertisements, this advertisement and
18 other similar sorts of marketing techniques, to bolster the
19 business operation so that he could line his pockets with
20 the profits of these commercial child pornography websites.

21 In addition, the government will bring in evidence
22 about something called violations of the record-keeping
23 requirements.

24 The statute is named 18 U.S.C. 2257. This will be
25 important both because in the process of bringing in

1 evidence talking about this law, 18 U.S.C. 2257, the judge
2 will provide instructions about what kinds of requirements
3 are mandated by law with respect to people who produced any
4 kind of sexually graphic content for distribution in the
5 public domain.

6 So even if it's all adult performers, we will bring
7 into evidence information about how the defendant failed to
8 comply with these requirements enough so that you will be
9 able to determine that he did not do so because the minors
10 could not provide documentation for him.

11 They were children. They couldn't provide for him
12 the documentation that they were adults, so he simply failed
13 to abide by the requirements of this law, 18 U.S.C. 2257.

14 You will also hear evidence about possession of child
15 pornography charges. And the possession of child
16 pornography simply relates to facts that we'll bring into
17 evidence about material some of which shows up in other
18 charges, much of which shows up in other charges that he not
19 only distributed on the Internet but also kept in his home
20 in one way, shape or form, or another, either for his own
21 use or potentially for use in one of his web site endeavors.

22 Let me also say a few words about the victims in this
23 case. We expect the evidence will show you that the
24 defendant exploited several adolescent boys in various ways.

25 You will hear directly from this Patrick [REDACTED]

1 That is the minor who assumed the stage name Kyle and was in
2 the Caseyandkylescondo web site that the defendant
3 distributed.

4 I expect that he will tell you that he met the
5 defendant when he was a 14 year old troubled adolescent, and
6 that he met the defendant online.

7 I anticipate he will tell you defendant quickly
8 arranged for the two of them to meet in person. And shortly
9 after they did meet, that the defendant used abundant charm
10 to make young Patrick [REDACTED] feel special.

11 And as a result, Patrick [REDACTED] agreed to run away
12 with this defendant a very short time after they met, and
13 they ran away together for six days.

14 I anticipate the evidence through Patrick [REDACTED]
15 testimony will tell you this was Patrick [REDACTED] first
16 sexual experience of any kind and that the six week --
17 excuse me -- the six day period they ran away together set
18 the stage for the next four years of their relationship
19 where the defendant showered Patrick [REDACTED] with
20 attention, and Patrick went along with the defendant's plans
21 to use him in child pornography endeavors.

22 We will present to you several images of the child
23 pornography that this defendant produced of himself
24 exploiting Patrick.

25 The testimony of Patrick himself will enable you to

1 conclude beyond a reasonable doubt that the government has
2 met the element of showing that both the minor -- that the
3 boy, Patrick, was a minor at times of production and also
4 that the defendant knew that he was a minor at the time that
5 all of this material was being produced and distributed.

6 Patrick -- I expect that Patrick will tell you that
7 when he got older and the relationship ended that he asked
8 for all the graphic content to be returned to him. And as I
9 said earlier, the defendant refused and instead reused that
10 content on later websites.

11 I also expect that the government will be able to
12 introduce testimony about another boy named [REDACTED]
13 [REDACTED] And [REDACTED] -- the evidence will
14 show that this defendant again knew this boy, [REDACTED]
15 [REDACTED] for several years.

16 And when that child was 17 years old, he took him on
17 a road trip to Las Vegas where he produced elicited material
18 the way that I described earlier. That material shows up on
19 numerous websites and on advertisements.

20 And we expect that the evidence that we are able to
21 introduce will prove to you beyond a reasonable doubt that
22 this child, [REDACTED] who had the stage name of
23 Tory, that [REDACTED] was indeed a minor at the
24 time of production and distribution, and that the defendant
25 had every reason to know that he was a minor.

1 The evidence will also talk about other victims that
2 the defendant never actually met in person. However, that
3 didn't stop him from taking advantage of these other
4 children.

5 He got ahold of sexual images of them and distributed
6 them on the web site. Two of the victims I have mentioned
7 as Colin and Taylor, those boys were 15 and 14 when someone
8 else took pictures of them and videos of them masturbating
9 into a camera.

10 The evidence will prove, as I said, that these boys
11 are still to this day under the age of 18. And as a result,
12 there will be no doubt that they were minors at the time
13 that these videos and photographs were produced.

14 In addition, the evidence will show that these
15 children's pictures showed up in websites that were
16 distributed to the public, in advertisements and in some
17 cases were possessed in the defendant's homes.

18 In fact, the evidence will show that this defendant
19 used the younger one's picture -- his name is Taylor -- used
20 the younger one's picture to advertise some of the more
21 expensive parts of one of his websites, and that web site is
22 the Justinsfriends web site, and used it to cross advertise
23 to another web site that had started himself.

24 The evidence will also show -- will also encompass
25 the images of Justin Berry. Justin Berry is now a young

1 adult.

2 And as I said earlier, we will bring into evidence an
3 e-mail that shows that the defendant knew that at certain
4 times during the production of material for the Justin's
5 Friends web site that the star of this site, Justin Berry,
6 was indeed a minor.

7 This is, as I said in the beginning, a case about a
8 man who exploited these adolescent boys for his own sexual
9 gratification and for profit. This is not a case where the
10 defendant had no idea that he was exploiting minors.

11 The evidence will show that he had explicit
12 conversations with one of his victims, Patrick [REDACTED]
13 about the risks associated with creating the child
14 pornography featuring Patrick.

15 The evidence will also show they were in a
16 relationship for four years and that they knew each other
17 very well.

18 The evidence will show that with respect to another
19 victim, [REDACTED] that the two of them knew each other
20 very well, and he had reason to at least be on notice that
21 the child had not reached the age of 18.

22 With all of the individuals, with all the victims
23 that I have mentioned, the evidence will show that the
24 defendant was remiss, criminally remiss, in obtaining
25 records that would verify and show that he had verified all

1 of the ages of the performers in his sexually graphic
2 content as required by law.

3 I'll say just a few words about the technology. This
4 case will involve computer technology, and we'll have
5 experts from the government and from the defense explain
6 some of the more complicated material.

7 Much of the evidence is going to be in the form of
8 computers, but we will also be talking about good old
9 fashion VHS videotape, and we will also be talking about
10 8 millimeters.

11 This is not a case where the technology confuses the
12 issue. This is a case where the technology enabled this
13 defendant to offend these victims more easily and more
14 prolifically than he would have in an era gone by.

15 However, the fact is that be it on 8-millimeter
16 videotape, on digital technology, on VHS, this defendant
17 exploited these minors, and he did it for his own sexual
18 gratification, and he did it for profit.

19 Thank you.

20 THE COURT: Thank you, Ms. Bakshi. Does the
21 defense wish to make an opening at this time?

22 MR. STRIANSE: Yes, Your Honor.

23 THE COURT: All right.

24 MR. STRIANSE: Good afternoon. I know it's been
25 a long day so I'll try to keep this short.

1 It's customary at this time for both sides to give an
2 opening statement. It's not proof. It's not argument.
3 It's supposed to be more or less a preview to help you
4 follow the case more closely as the evidence is being
5 presented.

6 Now, the government has thrown out a lot of people's
7 names and a lot of different situations, and I'm sure you
8 are sitting there saying, I don't know what that means or
9 what that has to do with anything. All of this will become
10 obvious to you as we make our way through the proof over the
11 next week or so.

12 But I think something we talked about in jury
13 selection is sort of a polestar, something you can look at
14 as you hear the evidence in this case, and that is that this
15 case is going to boil down to a question of knowledge.

16 And as you hear the evidence in the case, I'd like
17 you to ask yourselves a couple of questions. Is the
18 performer that we're seeing in the video under the age of
19 18? Because if the performer is not under the age of 18,
20 there's no criminal liability.

21 The second question that I want you to ask yourselves
22 is, is the government proving to me beyond a reasonable
23 doubt that Timothy Richards knew that that performer was a
24 minor? Because if they can't prove that beyond a reasonable
25 doubt, then it's going to be your duty to acquit because

1 there would be no criminal liability.

2 Now, the government said, well, you are going to hear
3 about this computer evidence and it's going to aid you, and
4 there's going to be these forensic experts. I respectfully
5 suggest to you, ladies and gentlemen, that they can bring in
6 50 computer experts, and they're not going to answer the
7 ultimate question in this case. And that's the question of
8 knowledge.

9 You all are going to have to answer that question.
10 When we get to the end of the case, the judge is going to
11 tell you that you are the judges of the facts. And as
12 judges of the facts, you are that, judges, not partisans.

13 You don't -- you have told us in jury selection
14 there's not going to be any bias, prejudice for either side,
15 and that you are going to view this evidence as difficult as
16 it's going to be to view as dispassionate judges of the
17 facts, not as members of the moral majority, not as members
18 of the legion of decency because you are going to see some
19 rough stuff over the next week or so, but as dispassionate
20 judges.

21 And I respectfully suggest to you, ladies and
22 gentlemen, that it's going to be a decidedly low tech
23 exercise.

24 Can the government prove beyond a reasonable doubt
25 that Timothy Richards knew these performers were underage?

1 Despite the exchanges that we had in jury selection, which
2 were pretty eye-opening, and I'm glad that people were
3 honest with us, Mr. Richards is not on trial for being gay.

4 He's not on trial for being active in the adult
5 pornography industry. You will hear from Mr. Richards in
6 this case. He will tell you that he is a entrepreneur, an
7 Internet entrepreneur. He's somebody that filmed consenting
8 performers. He ran some web based business. They are
9 basically low budget, reality TV type programs. They are
10 not commercially produced.

11 Basically, as we discussed in jury selection, a lot
12 of them look like homemade movies, basically a video camera
13 on a tripod.

14 The conduct that the government spoke about in the
15 opening statement they have alleged occurred between 2000
16 and 2004. It's interesting to note that Mr. Richards was 19
17 to 24 years of age during that period of time.

18 Now, the government likes to talk about these child
19 victims with the emphasis on child because that's what
20 they're selling, and they are going to try to be selling it
21 to you over the next week or so.

22 And it struck me as I heard them talking about these
23 child victims, and I think you will conclude this as you
24 hear the evidence, there's a fine line between these child
25 victims and these perpetrators because you have to take a

1 look at -- they talk about this Patrick [REDACTED] individual,
2 as he being a child victim.

3 I assume they will say Justin Berry was a child
4 victim and this [REDACTED] also known as Tory,
5 was a child victim.

6 You may be wondering and scratching your head as you
7 hear that proof, how come they are not charged with putting
8 child pornography on the Internet if they were, in fact,
9 knowing participants in this and were underage?

10 That's a question that you will need to consider
11 because as you see this evidence and hear these witnesses,
12 it's going to be clear to you, ladies and gentlemen, each
13 one of these individuals was consenting to the conduct.
14 They were actively participating in the conduct. They had
15 their own sites. They had their own agendas. They had
16 their own careers, and they're actively promoting
17 themselves. There's no element of coercion in any of this.

18 But when these activities come under the microscope
19 of the government and the government seeks them out and
20 starts asking them questions, then you would have to
21 question their motives.

22 Why are they all pointing the finger at Timothy
23 Richards? What is their reason for blaming things on
24 Timothy Richards?

25 The government's investigation and prosecution of Mr.

1 Richards is sort of like musical chairs. Everybody is
2 playing. Everybody is enjoying themselves. You have got
3 this Justin Berry, Patrick [REDACTED] known as Kyle, this
4 [REDACTED] known as Tory, all promoting
5 themselves, all having a grand time, but when they come
6 under the microscope and the music stops and everybody looks
7 for a chair, the odd man out is Tim Richards. There's no
8 chair for him. They have all safely landed, and they are
9 all pointing the finger at Mr. Richards.

10 You may wonder how did we get here; how did we get
11 from the worldwide web that you are going to be hearing
12 about and that you're familiar with in your daily activities
13 to the courtroom here?

14 And I think it's ironic the way that we got here was
15 through the ultimate self promoter, who they don't really
16 want to talk about, and that's Justin Berry.

17 And as you hear the evidence, you may be scratching
18 your head saying, well, why didn't the government call
19 Justin Berry as a witness?

20 You will see from the evidence in this case that at
21 every turn Mr. Berry always announced himself as being over
22 the age of 18.

23 Now, Mr. Richards never has met Justin Berry. Their
24 communication was limited to online communications. But I
25 would like to tell you a little bit about the background

1 because that's how this case gets started.

2 It's sort of like the elephant in the room. The
3 government hasn't told you much about it but --

4 THE COURT: Mr. Strianse, is this all coming
5 into evidence?

6 MR. STRIANSE: Yes, I believe it is, Your Honor.

7 THE COURT: And I hope it's not argument. We
8 are just talking about previewing the evidence.

9 MR. STRIANSE: Yes. I think you'll hear that in
10 the summer of 2005, this individual Justin Berry hired my
11 client, Tim Richards, as a marketing and technical advisor
12 for his web site, Justinsfriends, not Mr. Richards' web
13 site.

14 Mr. Richards was responsible for hosting, and he was
15 responsible for billing. And it's important for you all to
16 realize that at the time Mr. Richards was hired,
17 Justinsfriends site was complete.

18 All of the content had been made by Mr. Berry and his
19 partner, an individual by the name of Greg Mitchell. It was
20 exclusively owned and operated by Justin Berry and his
21 partner.

22 Mr. Richards is brought in to provide technical
23 assistance, not to aid in the production of the content
24 because the content had been made. It was a done deal. It
25 was 100 percent complete.

1 You will hear proof both from the witness stand and
2 from these computer experts that Justin Berry and his
3 partner made those videos and uploaded them to the server so
4 they could be seen.

5 You will also hear that Justin Berry, consistent with
6 his insistences that he's 18 and all his performers are 18,
7 he created a biography section, and you will see that in the
8 evidence where he's proclaiming every one of these
9 performers to be over the age of 18.

10 Now, Mr. Richards didn't speak to any of these
11 models. His contact was online with Justin Berry. When the
12 preview that you are going to hear about, this Justin's
13 Preview 2, was created, and Mr. Richards assisted with the
14 creation of the Justin's Preview 2, you are going to learn
15 that he had no access to the identifications of the people
16 that were working on the web site.

17 At that point in time, Mr. Richards is an employee of
18 Justin Berry, and he's an employee of the Justinsfriends web
19 site.

20 They are going to show Mr. Richards what they want to
21 show him. They are going to show him the nice biography
22 that shows Taylor [REDACTED], who they claim is underage, was
23 listed as 18 years of age.

24 Every other performer was listed as being 18 years of
25 age, but that only gives the person's stage name. It

1 doesn't give the person's real name and real identifying
2 information.

3 And the reason for that is people that are engaged in
4 this kind of business, it's a highly competitive business,
5 and they are going to protect their talent jealously. So
6 Mr. Richards was on a need-to-know basis as far as the ages
7 of the performers for Justinsfriends.

8 They talk about Mr. Richards not complying with these
9 record-keeping requirements, and you will learn about this
10 during the course of the trial. There's a federal statute
11 that requires people that run these websites that they have
12 records on file of the performers.

13 Well, you are going to see that Mr. Richards prepared
14 on the main web page of this Justinsfriends the advisory.
15 But once again, he was at the mercy of Justin Berry. He was
16 at the mercy of Mr. Berry's partner, Greg Mitchell, to sort
17 of complete the circle.

18 He put the language together as to where the records
19 could be found, but they were supposed to give him that
20 address. They never gave him that address.

21 He basically was relying on the representations made
22 to him by Justin Berry, by Greg Mitchell, and that reliance
23 is going to be very important to your consideration of the
24 case as you hear this evidence because I think the judge is
25 going to instruct you at the conclusion of this case, if you

1 find that Mr. Richards was acting in good faith, acting in
2 good faith reliance on what he was being told by some of
3 these people as to the age of the performers as to what they
4 were going to do, then that can be a complete defense to the
5 charges in this indictment.

6 And you wonder, well, how does this all get to the
7 attention of law enforcement. In the fall of 2005, in
8 September of 2005, the FBI, presumably on the strength of
9 some complaints made by Justin Berry, serve a search warrant
10 on a server out in Los Angeles on or about September 12.

11 Well, September 13th, Mr. Richards starts getting
12 complaints about, well, how come people can't access this
13 web site any more. So what does Mr. Richards do?

14 September 13th, 2005, he picks up the telephone,
15 and he calls the FBI in Los Angeles and says, I sublease a
16 server from a guy, and it's located out of Los Angeles.
17 There are customers wondering why they can't access this
18 adult web site; what's going on.

19 Now, as you hear that evidence, ladies and gentlemen,
20 and they are going to produce a witness from California, an
21 FBI agent, to say that Mr. Richards called him on
22 September 13, and he wrote it up in a report, does it make
23 sense that somebody who is a knowing participant in putting
24 child pornography on the worldwide web is going to call the
25 Federal Bureau of Investigation and ask why isn't my child

1 porn site on line; I have got some grumpy customers?

2 What does Mr. Richards do? He gives his full
3 complete name, his telephone number, and says if there's any
4 assistance I can give you, let me know.

5 What does that say about Mr. Richards's good faith?
6 Well, this whole Justin Berry episode sets in motion the
7 investigation of Mr. Richards.

8 And I don't know if the government was hedging their
9 bets, I don't know if they feel unsure about Justin Berry, I
10 guess we are not going to see him in this trial, but they
11 start beating the bushes. And who do they beat the bushes
12 for?

13 ██████████ you heard about him in the
14 government's opening statement. He's a friend of Tim
15 Richards, a contemporary of Tim Richards who knowingly,
16 willingly, and you will see him portrayed in this video,
17 makes a video for a site that he wants to promote because he
18 wants to have his own reality site and perform as an adult.

19 Now, he's going to take the witness stand, ladies and
20 gentlemen, and I don't know what he's going to say. You are
21 going to have to pull out your Ouija board when you hear
22 some of these people testify because ██████████ I don't
23 think, is going to be able to come in here and say, well,
24 that video that we made in Las Vegas when we were all -- a
25 bunch of friends going to the adult porn convention in Las

1 Vegas, I was under 18. I don't think he's going to be able
2 to tell you that, ladies and gentlemen, because he wasn't
3 under 18 at the time.

4 He certainly represented to Mr. Richards that he was
5 over 18. He was shoulder to shoulder with Mr. Richards in
6 this group of friends at the adult pornography convention in
7 Las Vegas where they're checking identification for people
8 that come through the door. So that's going to leave you
9 scratching your head about was that performer 18?

10 And then you've heard about the victim, Patrick
11 [REDACTED] the ex-boyfriend, the one who was abused in every
12 way that he could be abused by Mr. Richards. Well, that was
13 a relationship that was approved of -- we may not approve of
14 it, but it was approved by Mr. Richards' family, by
15 Mr. [REDACTED] family.

16 And I think that you will see that Mr. [REDACTED] who
17 had the stage name of Kyle, was involved in the production
18 of pornography long before he met Timothy Richards.

19 The government says, well, he signed away his rights
20 to that content; Tim Richards leaned on him and got him to
21 sign away his rights to that content. Well, could that be
22 perhaps some motive or bias that Mr. [REDACTED] would bring to
23 the table in this case to say things about Timothy Richards,
24 to say things about when some of these images were created?

25 And you will be asking yourselves, if his insistences

1 are true, that he was underage, that he knowingly created
2 this child pornography and caused it to be uploaded to the
3 server so it could get out on the Internet, how has he
4 avoided prosecution for this?

5 As I mentioned to you, ladies and gentlemen, at the
6 beginning of this, no expert is going to be able to age
7 these videos for you. It's going to be a decidedly low tech
8 exercise that you're about to embark on.

9 And we talked about this in jury selection. The mere
10 making of the image, the production of the image, the
11 distribution of the image, the advertising of the image
12 standing alone is not enough.

13 They must prove beyond a reasonable doubt that
14 Timothy Richards knew that these performers were under the
15 age of 18. And if they can't prove that essential element
16 beyond a reasonable doubt, then it's going to be your duty
17 to acquit.

18 THE COURT: Thank you, Mr. Strianse. Members of
19 the jury, we're going to let you go home today rather than
20 starting with the proof. We'll start that in the morning.

21 So if you would all be back promptly ready to start
22 at 9:00, so that basically means if you could be in the jury
23 assembly room by ten of nine or so, so we can get you
24 organized and over here.

25 I will give you an instruction that you are going to

1 get real tired of hearing but every night I'm going to give
2 the same instruction, and that is to please not read
3 anything about this case or do any research on your own,
4 talk about it with anyone at home, or talk about it amongst
5 yourselves when you get back in the morning, and we will see
6 you all refreshed in the morning, and we will start the
7 proof. So you are excused for the evening.

8 And leave your notebooks on the chairs. And please
9 -- you will take the same seats in the morning, so try to
10 remember where you are sitting.

11 A JUROR: Do we need to check out through the
12 jury room?

13 THE COURT: He will tell you what you need to
14 do.

15 (Jurors exit.)

16 THE COURT: Okay. Could the -- could you give
17 us the first several witnesses in the order that you are
18 going to call them? Are you willing to do that to speed
19 things up?

20 MS. DAUGHTREY: We are probably going to put the
21 California witnesses on first thing in the morning. That
22 would be Bernie Riedel, Bernard Riedel, and Douglas Hunt.
23 They will be very quick witnesses.

24 And then that will be followed by Brooke Donahue, and
25 I'm fairly sure that's going to take the good bit of

1 tomorrow. Pat [REDACTED] will be following.

2 THE COURT: [REDACTED] i will be after Donahue?

3 MS. DAUGHTREY: And I am certain that will take
4 us in to Thursday.

5 THE COURT: Mr. [REDACTED] I presume, is coming
6 from out of state, is he?

7 MS. DAUGHTREY: He is. He's currently here in
8 Nashville at this time.

9 THE COURT: Okay. And you have already given
10 over all the Jencks, have you?

11 MS. DAUGHTREY: Yes, I have.

12 THE COURT: I appreciate that. Okay. Anything
13 else before we adjourn?

14 MR. STRIANSE: No, Your Honor.

15 THE COURT: We'll see you at 9:00 in the
16 morning. We are in recess.

17 (TRANSCRIPT CONTINUED IN VOLUME II.)

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