

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

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

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8 TRANSCRIPT OF PROCEEDINGS  
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11 BEFORE: THE HONORABLE ALETA A. TRAUGER  
12 DATE: OCTOBER 26, 2006  
13 TIME: 9:00 A.M.  
14

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15 APPEARANCES:

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

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23 REPORTED BY: BEVERLY E. "BECKY" COLE, RPR CCR  
24 OFFICIAL COURT REPORTER  
25 A-837 U.S. COURTHOUSE  
NASHVILLE, TN 37203  
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1                   THE COURT: Good morning. We are in the  
2 position of having to substitute an alternate for the jury.  
3 And, [REDACTED] you are our first alternate. Have you  
4 complied with my instructions not to discuss the case with  
5 other people, not to listen to or watch any news coverage,  
6 and not to do any research on your own?

7                   [REDACTED] I complied with most of it. I did  
8 look at one thing on the Internet, one article, and I have  
9 it with me if you want to see it.

10                  THE COURT: You looked at something on the  
11 Internet?

12                  [REDACTED] I told Shari when we called me last  
13 night because I didn't think I was to be called back in.

14                  THE COURT: You brought a copy of what you  
15 looked at on the Internet. Can I see it, please? How did  
16 you get to this? What was the web site Queerplanet.us?

17                  [REDACTED] I was on Yahoo and doing some work,  
18 and then I thought, well, I'm just -- I don't know -- well,  
19 I just want to look and see. I thought, no, and then I did  
20 it anyway. I know I shouldn't have. And I put in Timothy's  
21 name, and then I saw a connection under an article about  
22 Justin Berry, and I clicked on that, and that's about what  
23 that was.

24                  THE COURT: Okay. I'll let counsel look at  
25 this.

1 (Pause.)

2 THE COURT: You want to take the pages she's  
3 done with over to the prosecutors so they can look at it?

4 MS. HODDE: Yes.

5 (Pause.)

6 THE COURT: As soon as you have had enough time  
7 to scan it, I'll call you to the bench. (Pause.) Approach  
8 the bench.

9 (Bench conference begins.)

10 MS. HODDE: I don't know how she can sit as our  
11 substituted juror in this case. She's been contaminated by  
12 an outside influence. A lot of the article is obviously  
13 favorable to the defendant.

14 However, it does point out he's in custody, and it  
15 does talk about Dew. And I'm just concerned about any  
16 outside influence altering her deliberations in this case.  
17 And for that reason I think we move to the next alternate  
18 juror.

19 THE COURT: Yeah. Do y'all agree?

20 MS. DAUGHTREY: Yeah, absolutely.

21 THE COURT: Okay.

22 MS. DAUGHTREY: I will note this is the  
23 defendant's writing that he published.

24 THE COURT: Excuse me?

25 MS. DAUGHTREY: I will note that this the

1 defendant's writing that he published during the pendency of  
2 this case.

3 THE COURT: Yeah.

4 MS. HODDE: This is something that's obviously a  
5 favorable article to the defendant. It does mention Dew  
6 which gives me concern. And I'm concerned any time a juror  
7 has admitted that they have breached the court's  
8 instruction.

9 THE COURT: Yeah.

10 MS. HODDE: So I think it's just appropriate to  
11 move on to the next juror.

12 THE COURT: Yeah, I do too.

13 MS. HODDE: I don't want to make that mistake.

14 THE COURT: Okay, great.

15 MS. DAUGHTREY: Is he here today or do we know?

16 THE COURT: We had a heads-up from the jury  
17 coordinator last night.

18 MS. HODDE: Good.

19 MS. DAUGHTREY: Good.

20 MS. HODDE: Your Honor, I did want to ask, I was  
21 hoping that you could inquire of her has she spoken -- if  
22 she's spoken to any of the other jurors?

23 THE COURT: Yes.

24 MS. HODDE: Okay.

25 MS. BAKSHI: Thank you.

1 (Bench conference concludes.)

2 THE COURT: [REDACTED] we are not going to be  
3 able to let you sit with the jury because you have looked at  
4 something that is not in evidence. I trust you have not  
5 discussed this with any of the jurors?

6 [REDACTED] No, not with anybody.

7 THE COURT: You have had no contact with any of  
8 the jurors while they have been deliberating?

9 [REDACTED] No.

10 THE COURT: And you, I guess, were in the same  
11 room with them briefly this morning. Did you have any  
12 conversation whatsoever with any of the jurors?

13 [REDACTED] Not about the deliberations. We  
14 just talked about, you know, being away from work and that  
15 kind of thing.

16 THE COURT: Okay. All right. All right.  
17 [REDACTED] we're distressed that you didn't follow my  
18 instructions, and it has caused us some problem. And I  
19 would just urge you, the next time you are called in for  
20 jury service to follow instructions.

21 [REDACTED] Yes, ma'am. I'm sorry.

22 THE COURT: I do thank you for your service in  
23 this case and all the time that you spent working on the  
24 case, and I appreciate that.

25 [REDACTED] Okay.

1 THE COURT: All right. You are excused. And  
2 can we get in alternate number 2?

3 MS. HODDE: Your Honor, before the court ends up  
4 joining an alternate juror to the actual jury that exists, I  
5 did have a proposed instruction I wanted to read to the  
6 court. I know the court is going to instruct them to  
7 deliberate anew.

8 THE COURT: Yeah, I couldn't find one.

9 MS. HODDE: I couldn't find one either, so I  
10 drafted one.

11 THE COURT: Okay. All right. I'll be glad to  
12 look at it. Thank you.

13 MS. BAKSHI: Can we see it?

14 MS. HODDE: Yeah.

15 THE COURT: Good morning, [REDACTED]

16 [REDACTED] Good morning.

17 THE COURT: Thanks for coming in this morning.

18 [REDACTED] Thank you.

19 THE COURT: We had a juror who had to make a  
20 business trip. She had alerted us to that during jury  
21 selection, and we didn't think that this case could go that  
22 long, so we ended up losing her, so we are needing to  
23 substitute.

24 [REDACTED] have you complied with my instructions to  
25 not discuss this case with anyone?

1           ██████████ Yes, Your Honor.

2           THE COURT: And have you complied with my  
3 instruction not to find -- listen to or watch any news  
4 coverage if there has been any?

5           ██████████ Yes, I have.

6           THE COURT: Have you complied with my  
7 instruction not do any research on your own, especially on  
8 the Internet?

9           ██████████ Yes, I have not done that.

10          THE COURT: And have you not had any contact  
11 except for briefly this morning in the jury assembly room  
12 with any of the jurors?

13          ██████████ No, this is the first time.

14          THE COURT: You have not talked with any of them  
15 during their deliberations?

16          ██████████ No, I have not.

17          THE COURT: All right, very good. Anybody have  
18 any other questions they wish to ask ██████████

19          MS. HODDE: No, Your Honor.

20          MS. DAUGHTREY: No, Your Honor.

21          THE COURT: All right. ██████████ we will  
22 excuse you at this time to go back to the jury room, and  
23 we'll await the other jurors. Then we'll bring you in and  
24 give you all some instructions. Thank you.

25                   (Juror exits.)

1 THE COURT: Okay.

2 MS. HODDE: Your Honor, as I was researching  
3 this issue last night, I saw Rule 24, and I realize that it  
4 had changed and allowed the court to do this, I have just  
5 never seen this in one of my cases.

6 Then I realize the court has seen this before in  
7 United States vs. Moore. In fact, I think this court  
8 created the Sixth Circuit law on this issue perhaps.

9 So I was looking for a jury instruction, couldn't  
10 find anything anywhere on how to instruct them that they are  
11 to begin anew.

12 So I crafted something, and I don't know if this will  
13 be acceptable to everybody, but it was my best effort. And  
14 it -- I have crafted it like this.

15 THE COURT: Okay.

16 MS. HODDE: Members of the jury, yesterday one  
17 of your -- members of the jury, yesterday one of your  
18 original members was excused and the court has substituted  
19 an alternate juror in her place.

20 I instruct you to begin your deliberations anew with  
21 the alternate juror as a member of the group.

22 You must reconsider all of the evidence and all of  
23 the charges contained in the indictment together with the  
24 instructions I have given you.

25 Those counts upon which you may have reached a

1 verdict must be completely reassessed with the new member of  
2 the jury.

3           The defendant is entitled to a unanimous -- I'm  
4 sorry -- I scratched that sentence. It is as if [REDACTED]  
5 were never a member of your jury. You must restart your  
6 deliberations with the new member and consider her views  
7 equally.

8           Remember, Mr. Richards is entitled to a unanimous  
9 verdict on each and every count in the indictment, and this  
10 includes the new juror's consideration of each count in the  
11 indictment.

12           THE COURT: Any objection?

13           MS. DAUGHTREY: This is the first time I have  
14 heard it. If I can digest it for a minute, that would be  
15 great.

16           THE COURT: Yeah, except we'll have to change  
17 "her" to "his".

18           MS. DAUGHTREY: Right.

19           THE COURT: What's the date on U.S. vs. Moore?

20           MS. HODDE: It's *United States vs. Lavelle*  
21 *Moore*. April 21, 2004 was the Sixth Circuit opinion, a Fed  
22 Appendix case, 2004 Westlaw 719665. And I have a copy if  
23 the court would like to see it.

24           The Sixth Circuit was kind enough to reprint -- I was  
25 going to ask the court this morning to question the juror as

1 this court did and was set forth in the Moore decision, and  
2 the court did that.

3 THE COURT: Thank you. One's memory fades more  
4 and more with each day.

5 MS. HODDE: I understand. According to the  
6 Sixth Circuit, it was 16 count drug, money laundering and  
7 firearm violation case in which the court imposed an 85 year  
8 sentence of imprisonment.

9 THE COURT: I remember the defendant. I just  
10 didn't remember the jury issue.

11 MS. HODDE: That's a lot of time.

12 MS. DAUGHTREY: Your Honor, Ms. Hodde has  
13 numbered these, and I realize that you don't have a copy in  
14 front of you. There are seven sentences in here, and the  
15 government must -- is going to object to a couple of things  
16 in here and ask that it be somewhat reworded.

17 I think a lot of it is very repetitive. What the  
18 government would recommend, and I don't know if you want me  
19 to go through each of the objections or just read --

20 THE COURT: Let's run a few copies of this so we  
21 can all be looking at the same page.

22 MS. HODDE: Hopefully they can read my  
23 handwriting.

24 THE COURT: I thought it was a bit repetitive,  
25 too. I thought it was excellent but a bit repetitive.

1 MS. HODDE: We were struggling.

2 THE COURT: You are creating it from whole cloth  
3 and I appreciate your doing that.

4 MS. HODDE: We wanted to make sure they  
5 understand because we knew they would be getting something  
6 of a bombshell this morning -- Mr. Strianse and I talked a  
7 little bit about this last night. We were concerned that  
8 what might happen this morning, we thought the existing  
9 original 11 members might be tempted to say to the new  
10 juror, here's where we are on these counts we have already  
11 reached a verdict on, are you okay with that, instead of  
12 rehashing the evidence, discussing the elements, to try to  
13 shortcut it.

14 I know it would be very tempting if you were on the  
15 jury to do that, and we just wanted to make sure it was very  
16 clear it's as if Ms. Manes were never a member of the jury  
17 and as if this juror needs to have an equal opportunity to  
18 give input.

19 So --

20 MS. DAUGHTREY: We don't object to the general  
21 instruction. There's just a couple of places in there that  
22 we --

23 THE COURT: That's fine. We'll just work on it.  
24 Have they gone back to the jury room?

25 COURT SECURITY OFFICER: They're back.

1           THE COURT: That's good because it will take a  
2 few minutes here.

3           Let me alert you to one scheduling issue. I am out  
4 of town tomorrow. We had always said we would not have  
5 trial tomorrow, and I'm out of town, and I am sorry about  
6 that, if they don't finish today that we have to bring them  
7 back next week.

8           MS. HODDE: Your Honor, I know the court -- and  
9 it didn't occur to Mr. Strianse and I to even inquire about  
10 this, but I was curious as to when [REDACTED] might be coming  
11 back from her trip. Did the court ask that question at any  
12 point in time?

13           THE COURT: I didn't. And I didn't really think  
14 about the fact that I would be -- well, we were thinking  
15 they might finish last night, weren't we? Okay. Let me  
16 hear the government's suggestions here.

17           MS. DAUGHTREY: Okay. On the first page under  
18 sentence number 1, and the government has already -- on the  
19 sheet that you have, there's this -- it reads as Ms. Hodde  
20 wrote, those counts upon which you may have reached a  
21 verdict must be completely reassessed with the new member of  
22 the jury, and the concern that the government has is adding  
23 that "completely".

24           We struck it in her scratching notes, and I didn't  
25 mean for that to then be copied as if that's what she's

1 suggesting to you, but the government's concern about  
2 putting "completely" in there is we don't want to imply to  
3 the jury that they have to change their minds about  
4 something.

5 So the government is suggesting that maybe the better  
6 way to say that is how she originally had it, and that is  
7 those counts upon which you may have reached a verdict must  
8 be reassessed with the new member of the jury.

9 Turning to the second page, line number 5, it is as  
10 if [REDACTED] were never a member of your jury. I think that  
11 that -- I think this is -- did you have an extra page that's  
12 not counted? Were there three pages?

13 MS. HODDE: I had originally written on the back  
14 and then I had scratched. All that there is some of my  
15 ramblings.

16 THE COURT: So this page without the numbered  
17 sentences was just draft. We should throw that away.

18 MS. HODDE: On the back, yes, it was just draft.

19 MS. DAUGHTREY: Okay.

20 THE COURT: Okay.

21 MS. DAUGHTREY: I think I understand what  
22 Ms. Hodde is trying to say with number 5. I'm not sure that  
23 it's necessary. I think it may not be entirely clear. I  
24 think number 6, you must restart your deliberation with the  
25 new member and consider his views equally suffices, and I

1 think that the seventh sentence is -- is essentially  
2 repetitive and repeats what you have said in your  
3 instructions already.

4 I think it's very clear from sentences 1, 2, 3, 4 and  
5 6 that they need to start their deliberations, and I don't  
6 want to emphasize anything out of the jury instructions  
7 that's either for or the -- for the defense or for the  
8 government over any other -- any other instruction that's  
9 already in your instructions.

10 MS. HODDE: Your Honor, the reason I included  
11 the "completely reassess" is because it's supposed to be  
12 exactly that. They are supposed to start anew as if they  
13 had never begun deliberations at all.

14 And they are in a uniquely disadvantageous place at  
15 this point having to basically scratch the last 15 hours or  
16 so from their minds and start over with -- I can't remember  
17 the new juror's last name, but start over with his input.  
18 But that's exactly what they are to do.

19 MS. DAUGHTREY: Your Honor, in paragraph number  
20 6, which is somewhat repetitive of 4, and I do think it's  
21 appropriate, but in that paragraph it actually says, you  
22 must restart. So, I mean, I think -- I don't want to imply  
23 to the jury that they have to completely change their minds  
24 about where they are.

25 I think they need to be instructed that they need to

1 restart and consider equally what this new juror has to say,  
2 but I don't think that it should be --

3 MS. HODDE: I don't think -- respectfully, I  
4 don't think that I'm suggesting that they have to change  
5 their minds and their verdict.

6 I'm just suggesting that they need to go back with  
7 open minds, listen to each other like the court has  
8 instructed in other instructions, and they need to hear each  
9 other's viewpoints, including the new member, and scratching  
10 from their minds [REDACTED] prior input, whatever that may  
11 have been; and that then the 12 of them should have a  
12 discussion about each and every one of these charges and the  
13 elements and reach a verdict, whatever that may be.

14 THE COURT: I'm going to give it pretty much as  
15 you have drafted it. I'm going to add to paragraph 6 "and  
16 consider his views equally with your own".

17 MS. HODDE: Okay.

18 THE COURT: I think it's clear. I think it's  
19 exactly what they must do, and I appreciate your drafting  
20 it. I will add it to my lexicon of what to do in this  
21 situation.

22 MS. HODDE: Thank you, Your Honor.

23 THE COURT: Okay. We're ready for the jury.  
24 I'm leaving off the "completely", however.

25 (Jury enters.)

1 THE COURT: Good morning.

2 THE JURORS: Good morning.

3 THE COURT: Members of the jury, yesterday one  
4 of your original members, [REDACTED] was excused, and the  
5 court has substituted an alternate juror in her place,  
6 Mr. [REDACTED]. And we thank him for coming in today.

7 I instruct you, as I must under the Rules of Criminal  
8 Procedure, that you are to begin your deliberations anew  
9 with the alternate juror as a member of the group.

10 You must reconsider all of the evidence and all of  
11 the charges contained in the indictment together with the  
12 instructions I have given you.

13 Those counts upon which you may have reached a  
14 verdict must be reassessed with the new member of the jury,  
15 Mr. Conway. It is as if [REDACTED] were not -- were never a  
16 member of the jury. You must restart your deliberations  
17 with the new member, [REDACTED] and consider his views  
18 equally with your own.

19 Remember, Mr. Richards is entitled to a unanimous  
20 verdict on each and every count on the indictment, and this  
21 includes [REDACTED] consideration of each count in the  
22 indictment.

23 So that's where we are. You are excused at this  
24 time. [REDACTED] we will send in your notes and your  
25 binders. You are excused at this time.

1           Let me remind you, we will not be holding court  
2 tomorrow.

3                   (Jury exits.)

4           THE COURT: Any comments, objections?

5           MS. HODDE: No, Your Honor.

6           MS. DAUGHTREY: Not from the government, Your  
7 Honor.

8           THE COURT: Okay. We'll stand in recess.

9                   (Reassembled at 6:45 p.m.)

10          THE COURT: Well, they have reached a verdict on  
11 all counts. So we are ready for the jury, [REDACTED]

12                   (Jury enters.)

13          THE COURT: [REDACTED] you all have reached  
14 verdicts on all the counts?

15          JURY FOREPERSON: We have, Your Honor.

16          THE COURT: Would you hand the verdict form to  
17 the court security officer?

18                 The verdict is as follows. With regard to Count One,  
19 distribution of -- in interstate commerce of child  
20 pornography between in or about 2000 and on or about  
21 September 12, 2005, we find the defendant guilty.

22                 Count Two, advertising, we find the defendant guilty.  
23 Count Three, advertising, we find the defendant guilty.

24                 Count Four, production, we find the defendant not  
25 guilty.

1           Count Five, possession on September 22, 2005, not  
2 guilty.

3           Count Six, production between 2001 and 2005, not  
4 guilty.

5           Count Seven, possession on September 22, 2005, not  
6 guilty.

7           Count Nine, distribution, 2000 to September 12, 2005,  
8 not guilty.

9           Count Eleven, record-keeping requirements, guilty.  
10 Count Ten, conspiracy to advertise child pornography, not  
11 guilty.

12           Count Fifteen, advertising child pornography, not  
13 guilty.

14           Count Twelve -- I'm sorry. Count Sixteen,  
15 distribution of pornography, guilty.

16           Count Eighteen, conspiracy to advertise, not guilty.  
17 Count Nineteen, advertising pornography, child pornography,  
18 guilty.

19           Count Twenty, conspiracy to distribute child  
20 pornography, guilty.

21           Count Twenty-One, distribution of child pornography,  
22 guilty.

23           Count Twenty-Two, record-keeping requirements,  
24 guilty.

25           Count Twenty-Three, production of child pornography,

1 guilty.

2 Count Twenty-Four, possession of child pornography,  
3 guilty.

4 Count Twenty-Five, production of child pornography,  
5 not guilty.

6 Count Twenty-Six, possession of child pornography,  
7 not guilty.

8 Signed by [REDACTED] the foreperson.

9 POLLING OF THE JURY

10 BY THE COURT:

11 Q [REDACTED] is that your -- are those your verdicts?

12 A Yes, ma'am.

13 Q [REDACTED] are those your verdicts?

14 A Yes, ma'am.

15 Q [REDACTED] are those your verdicts?

16 A Yes, ma'am.

17 Q [REDACTED] are those your verdicts?

18 A Yes, Your Honor.

19 Q Mr -- I'm sorry, I can't --

20 A [REDACTED].

21 Q [REDACTED], are those your verdicts?

22 A Yes, ma'am.

23 Q [REDACTED] are those your verdicts?

24 A Yes, ma'am.

25 Q [REDACTED] are those your verdicts?

1 A Yes, ma'am.

2 Q [REDACTED] are those your verdicts?

3 A Yes, ma'am.

4 Q [REDACTED] are those your verdicts?

5 A Yes.

6 Q [REDACTED] are those your verdicts?

7 A Yes, ma'am.

8 Q [REDACTED] are those your verdicts?

9 A Yes, ma'am.

10 Q And, [REDACTED] are those your verdicts?

11 A Yes, Your Honor.

12 THE COURT: Members of the jury, I can't thank  
13 you enough on behalf of the courts, on behalf of the  
14 parties. This is probably the most difficult trial I have  
15 presided over in eight years, and I know it was very  
16 difficult for you.

17 I will paraphrase defense counsel who described this  
18 as a difficult content and distasteful content, but we need  
19 juries to try these cases, and we are most grateful to you.  
20 You have worked very hard, and I know it was very difficult  
21 to start over this morning, but we appreciate it. And you  
22 are hereby released. And thank you again.

23 (Jury exits.)

24 THE COURT: Eleven counts guilty and ten counts  
25 not guilty.

1           Okay. Are we going to set the sentencing? Can we  
2 have the sentencing on January 26, which is a Friday, at  
3 1:00? Does that work?

4           MS. HODDE: Did Your Honor say the 26th?

5           THE COURT: It's a Friday.

6           MS. HODDE: I can do that.

7           MR. STRIANSE: That should be fine.

8           THE COURT: Okay.

9           MS. DAUGHTREY: That's fine with the government,  
10 Your Honor. Thank you.

11          THE COURT: Okay.

12          MR. STRIANSE: Did you say 1:00, Your Honor?

13          THE COURT: I said 1:00.

14          MR. STRIANSE: Okay.

15          THE COURT: I would call that a pretty hard  
16 working jury, having to deliberate over 21 counts and having  
17 to start over this morning. And I would say that their very  
18 individualized verdict indicates that they put in much  
19 effort and individually considered all these counts.

20          I thank all of you for your professionalism in a  
21 difficult case and well-trying case. And anything else we  
22 need to do today?

23          MR. STRIANSE: No, Your Honor. Thank you.

24          THE COURT: We are in recess.

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REPORTER'S CERTIFICATE

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

That I reported on the stenotype shorthand machine the proceedings held in open court (excluding October 17, 2007) October 10 through October 26, 2006, in the matter of UNITED STATES OF AMERICA vs. TIMOTHY RYAN RICHARDS, Case No. 3:05-00185;

That a transcript of proceedings, consisting of Volumes I through XII, (excluding Volume V, which was prepared by another reporter) in connection with the trial was reduced to typewritten form by me;

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

This the 2nd day of February, 2007.

/s/  
BEVERLY E. COLE, RPR CCR